IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/126/2011

(Arising out of Order-in-Appeal No.106/2010-ST dated 13.12.2010 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Aviram Knitters   Appellant

Vs.

Commissioner of GST & Central Excise
Coimbatore   Respondent

Appearance

Shri M.N. Bharathi, Advocate for the Appellant
Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **22.11.2018**

Final Order No. **43021 / 2018**

Per Bench

Brief facts are that the appellant had engaged overseas commission agents for procuring orders for their products namely 'Hosiery Garments'. They were paying commission to such foreign agents. On investigation, it was found that they had not paid the service tax on the commission paid to foreign agents under reverse charge mechanism. Hence show cause notice was issued proposing to demand service tax of Rs.2,38,568/- along with interest and for imposing penalties for the period from 18.4.2006 to 31.3.2009. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri M.N. Bharathi appeared and argued on behalf of the appellant. He submitted that the appellant engaged overseas agents and paid commission for procurement of export orders. However, the said services are exempted vide Notification No. 14/2004-ST dated 10.9.2004 as applicable during the relevant period. The Tribunal in the case of Texyard International Vs. Commissioner of Central Excise, Trichy – 2015 (40) STR 332 has held that levy of service tax cannot sustain in view of the exemption as per the notification. He also relied upon the decision in the case of M/s. KPR Cotton Mills Pvt. Ltd. Vs. Commissioner of Central Excise – 2018-TIOL-433-CESTAT-MAD.

3. The ld. AR Ms. T. Usha Devi supported the findings in the impugned order.

4. Heard both sides.

5. The similar issue as to the demand of service tax for services of overseas commission agents for procurement of orders was analyzed by the Tribunal in the case of Texyard

International (supra). The Tribunal in the said case observed that the assessee is eligible for exemption of the Notification 14/2004-ST dated 10.9.2004. The Tribunal in the case of M/s. KPR Cotton Mills Pvt. Ltd. (supra) has followed the said decision and held that the assessee is eligible for exemption. Following the said decisions, we are of the opinion that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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