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

ST/282/2009

(Arising out of Order-in-Appeal No.26/2009 dated 25.2.2009 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s.Thangammal Traders Appellant

Vs.

Commissioner of Central Excise, Trichy Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellant
Shri K.P. Muralidharan, AC (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: **01.08.2017**

Final Order No. 41387/2017

Per Bench

Brief facts of the case are that the appellants are engaged in the business of providing services to various yarn manufacturers and they collected service charges in the form of commission / brokerage / incentives. They discharged service tax liability on the commission received by them but did not discharge service tax on the incentives. The department was of the view that the appellants are also liable to pay service tax on the incentives received by them and therefore issued a show cause notice alleging the same and

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demanding service tax along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand of Rs.1,07,382/- for the period from 9.7.2004 to 31.3.2006 along with interest and imposed equal penalty under section 78 besides penalty under section 76 and Rs.1,000/- under section 77 of the Finance Act, 1994. Being aggrieved, the appellants filed appeal before the Commissioner (Appeals) who upheld the order of the original authority. Hence this appeal.

2. On behalf of the appellant, the learned counsel Ms.Minchu Mariam Punnose submitted that the appellants were discharging service tax liability on the commission received by them. The incentives received by them is nothing to do with the rendering of service to the clients and therefore cannot be categorized as a taxable service. For the activities of promotion and marketing of goods, the appellants received commission, whereas incentive was paid to them for achieving targets. She relied upon the judgment in the case of EURO RSCG Advertising Ltd. Vs. Commissioner of Service Tax, Bangalore – 2007 (7) STR 277 (Tri. – Bang.), P.Gautam & Co. Vs. Commissioner of Service Tax, Ahmedabad – 2011 (24) ELT 447 (Tri. – Ahmd.) and Grey Worldwide (I) Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai – 2015 (37) STR 597.

3. The learned AR Shri K.P. Muralidharan reiterated the findings of the impugned order. He submitted that the case laws referred to by the learned counsel relates to

advertisement agency and in the present case, the activity being promotion as well as marketing of goods, the incentives received by the appellant are subject to levy of service tax.

4. Heard both sides and perused the records.

5. It is not disputed that the appellants are receiving commission for the promotion and marketing of the goods for various manufacturers. Over and above this commission, the appellants are paid incentives for achieving sales targets. The issue is whether such incentives are subject to levy of service tax. In the judgment relied by the learned counsel for appellant, the issue whether discounts / incentives received by the advertising agency, through print media, is subject to levy of service tax was analysed and discussed. Tribunal in those cases has held that the incentives received are not liable to service tax. Following the same, we find that the impugned order is unsustainable. The same is set aside and the appeal is allowed with consequential relief, if any.

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

Sulekha Beevi

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

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

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Customs, Excise & Service Tax Appellate Tribunal

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