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

ST/34/2009

(Arising out of Order-in-Original No. 3/2008 dated 30.10.2008 passed by the Commissioner of Central Excise, Coimbatore)

M/s. K.P.R. Cotton Mills Pvt. Ltd. Appellant

Vs.

Commissioner of Central Excise, Coimbatore Respondent

Appearance

Ms. D. Naveena, Advocate for the Appellant
Shri R. Subramaniyam, 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: **07.08.2017**

Final Order No. 41529/2017

Per Bench

The appellant is a manufacturer and exporters of textile and textile articles such as garments. A show cause notice was issued demanding service tax under the category of Business Auxiliary Service on the commission paid by the appellant to its overseas agents for the period 9.7.2004 to 31.12.2006. After due process of law, the original authority confirmed the demand along with interest and imposed penalties.

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2. On behalf of the appellant, learned counsel Ms. D. Naveena submitted that the issue whether service tax is leviable on commission paid to foreign agents under reverse charge mechanism in terms of section 66A of the Finance Act, 1994 prior to the period 18.4.2006 is settled by the judgment in the case of Indian National Shipowners Association Vs. Union of India – 2009 (13) STR 235 (Bom.) which was affirmed by the Hon'ble Supreme Court. Further, the jurisdictional High Court in the case of T. Abdul Wahid & Co. Vs. Union of India – 2017 (47) STR 123 (Mad.) has taken a similar view. For the period after 18.4.2006, learned counsel submitted that the appellant is eligible for benefit of exemption under Notification No. 14/2004-ST dated 10.9.2004 and the Tribunal in the case of Texyard International Vs. Commissioner – 2015 (40) STR 322 has held that the demand of service tax under Business Auxiliary Service for services provided in relation to textile processors cannot be sustained.

3. Learned AR Shri R. Subramaniayam reiterated the findings in the impugned order.

4. Heard both sides.

5. The period involved is 9.7.2004 to 31.12.2006. The demand is for service tax on the commission paid to foreign agents under reverse charge mechanism. Whether such levy of service tax is sustainable or not has been decided by the

Hon'ble Bombay High Court in the case of Indian National Shipowners Association (supra). Therefore, the demand for the period prior to 18.4.2006 is not sustainable and therefore requires to be set aside.

6. Learned counsel has also drawn our attention to the Notification No. 14/2004-ST dated 10.9.2004 as well as the decision of the Tribunal in the case of Texyard International (supra), thereby notifying that no service tax is leviable under Business Auxiliary Service in relation to textile processors. The appellants being manufacturers and exporters of textile articles would fall within the category of assessee who are eligible for the benefit of the Notification.

7. Following the judgment in the case of Texyard International (supra), we hold that the demand for the period post 18.4.2006 is also not sustainable. 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

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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अपील अधिकरण/(CESTAT)
चेन्नै/Chennai