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

ST/74/2008

(Arising out of Order-in-Original No. 2/COMMR/ST/2008 dated 17.1.2008 passed by the Commissioner of Central Excise, Tirunelveli)

M/s.Villavarayar & Son Appellant

Vs.

Commissioner of Central Excise, Tirunelveli Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (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: **09.08.2017**

Final Order No. 41650/2017

Per Bench

The appellant is a partnership firm and are engaged in providing CHA/Stevedoring service. The dispute is in regard to the demand of service tax of Rs.51,20,238/- under "Port Services" for that stevedoring services rendered by appellant from April 2002 to November 2005. On scrutiny of the profit and loss account, it revealed that the appellants had rendered stevedoring services to their client but had not discharged service tax on the said services. Show cause notice dated 10.8.2007 was issued and after due process of law, the original authority confirmed the demand of service tax of Rs.51,20,238/- along with interest and also imposed penalties under section 76 and 77 and equal penalty under section 78 of the Finance Act, 1994.

2. On behalf of the appellant, ld. counsel Shri M.Kannan submitted that the appellant is not contesting the liability to pay the service tax and that the issue whether stevedoring services are subject to levy of service tax under Port Services has been settled by the decision of the Larger Bench of the Tribunal in the case of Western Agencies Pvt. Ltd. Vs. Commissioner of Central Excise, Chennai – 2011 (22) STR 305 (Tri. – LB) wherein the issue is held in favour of the Revenue. He submitted that the only request is with regard to the eligibility of credit on the service tax paid to the Tuticorin Port Trust (TPT) with regard to other services. He submitted that the appellant being an intermediary, collected service charges including the service tax from their clients and paid the same to TPT. Though the appellant requested for credit of such service tax paid to TPT, the lower authority failed to consider the said request. Port services have become taxable with effect from 16.7.2001 and therefore the service tax paid on other

Customs, Excise & Service Tax Appellate Tribunal services which fall under port services to the Port Trust is eligible for credit. The learned counsel also argued on the penalties imposed. He submitted that the issue whether stevedoring services would fall under the definition of 'Port Services' was under much confusion and the matter had travelled upto the Larger Bench and there were also writ petitions before the jurisdictional High Court. That therefore, it was an interpretational issue. Penalties imposed may be set aside.

3. Learned AR Shri A. Cletus reiterated the findings in the impugned order. He submitted that the appellant has not discharged the service tax on stevedoring services and therefore the penalties imposed are right and proper.

4. Heard both sides and perused the records.

5. The appellant is not contesting the liability to pay the demand of service tax but has only requested for remand to consider the eligibility of credit on input services in relation to stevedoring services. In our view, in case the appellant has paid service tax on input services in relation to stevedoring services, the same is eligible for credit. However, to verify the same, matter requires to be remanded and ~~the~~ for the limited purpose of such verification, of whether the appellant is eligible for any input service credit on services in relation to

stevedoring services, the matter is remanded to the adjudicating authority.

6. In regard to the penalties imposed, we are of the view that the learned counsel has put forward sufficient ground to set aside the penalty for the reason that there were much litigations pending with regard to the issue whether stevedoring services would fall within the definition of 'Port Services'. The matter was settled by the decision rendered by the Larger Bench of the Tribunal cited supra, which itself shows that the issue was an interpretational one. On this ground, we set aside all the penalties imposed.

7. In the result, the impugned service tax demand is sustained and the appeal is remanded to the adjudicating authority only for the limited purpose to verify whether appellant is eligible for input service credit in relation to stevedoring service and also by setting aside all the penalties imposed.

8. In the result, appeal is partly allowed in the above terms.

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

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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