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

ST/48/2009

(Arising out of Order-in-Appeal No.147/2008 (SLM) (ST) dated 28.10.2008 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Sri Rajalakshmi Finance Appellant

Vs.

Commissioner of Central Excise, Salem Respondent

Appearance

Ms. Cynduja Krishnan, Advocate for the Appellant
Shri B. Balamurugan, 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: **21.08.2017**

Final Order No. 41762/2017

Per Bench

Brief facts of the case are that a show cause notice was issued to the appellant raising demand for discharging the service tax under the category of 'Clearing and Forwarding Agency Service'. The appellant contested the show cause notice stating that they were only rendering commission sales agent services and were not indulging in any clearing and

Customs, Excise & Service Tax Appellate Tribunal forwarding services. After due process of law, the original authority confirmed the service tax demand to the tune of Rs.2,56,589/- along with interest and also imposed equal penalty under section 76 and 78 of the Finance Act besides imposing penalty under section 77 of the Act. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned counsel Ms. Cynduja Krishnan adverted to the commission sales agreement and argued that the appellant was appointed as a commission sales agent and was not doing any activity of clearing and forwarding agent. The activity of commission agent services, though falls under Business Auxiliary Service, is exempted from service tax vide Notification No. 13/2003 dated 20.6.2003. The products of the principal are supplied to the appellant on consignment basis and appellant sells the products to the customers and such activity will not come under the purview of clearing and forwarding agency service. The findings of the Commissioner (Appeals) that the appellant is not merely a commission agent receiving orders from the principal but an agent maintaining godown, undertaking clearing and forwarding operation on behalf of the principal and preparing invoices on behalf of the principal is erroneous. The activity of the appellant falls under the category of a person who causes sale or purchase of goods on behalf of another

person for a consideration which is based on the quantum of such sale or purchase. The appellant had produced copies of the agreement before the adjudicating authority who has not considered the contentions put forward by the appellant.

3. The learned AR Shri B. Balamurugan reiterated the findings in the impugned order. He stressed that the appellant was connected with the clearing and forwarding operations of the principal and therefore is discharging the activity of clearing and forwarding agent.

4. Heard both sides and perused the records.

5. We have perused the copy of the agreement produced by the appellant. The agreement is named as 'commission sales agreement' and the activity entrusted with the appellant is that of commission sales agent. It is specifically stated that the principal has appointed the appellant for the purpose of effecting consignment / commission sales to their goods. It is not stated in the agreement that the appellant has to undertake clearance of the goods from the principal. This makes it clear that the appellant does not fall within the category of clearing and forwarding agent service. In Commissioner of Central Excise Vs. Kulcip Medicines Pvt. Ltd. – 2009 (14) STR 608 (P&H), it has been held that if the goods already cleared by the principal, the recipient who receives the goods, stores them and sells them cannot be held to be a

Customs, Excise & Service Tax Appellate Tribunal clearing and forwarding agent so as to be liable to service tax under this category.

6. Following the said judgment, we hold that the demand is unsustainable and the impugned order is set aside and the appeal is allowed with consequential relief.

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

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

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै / CHENNAI