<u>CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL</u>
<u>SZB, CHENNAI</u>

COURT : Division Bench 2

APPEAL No. ST/40204/2013

(Arising out of Order-in-Appeal No.60/2012/ST dated 25.10.2012 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. SKM EGG Products Export (I) Ltd. **Appellant**
Cholangapalayam, Erode-638 154.

Vs.

The Commissioner of Central Excise (Appeals) **Respondent**
No. 1, Foulk's Compound,
Annai Medu Salem-641 001.

APPEARANCE

FOR APPELLANT : Shri M.N. Bharathi, Advocate
FOR RESPONDENT : Shri M. Ambe, DC, Authorized Representative

<u>CORAM</u>

Hon'ble Shri P. DINESHA, MEMBER JUDICIAL
Hon'ble Shri VASA SESHAGIRI RAO, MEMBER TECHNICAL

Date of Hearing: **15.03.2023**
Date of Pronouncment:**31.03.2023**

<u>FINAL ORDER No. 40223/2023</u>

Order : Per Hon'ble Shri Vasa Seshagiri Rao

Brief facts of the case in this appeal indicate that M/s.S.K.M. Egg Products Export (India) Limited, Erode, the appellants herein are the manufacturers and exporters of whole Egg powder, Yolk Powder and Albumen Powder. During the verification of their records, it was noticed from the Foreign inward remittance statement/Bank realization statement that lesser amounts were received when compared to the export bill amounts due to deduction of Foreign bank charges for realization of export sale proceeds. The lesser amounts paid were on account of the bank charges paid to the foreign bank for the services rendered by them in realization of export sale proceeds from the foreign buyers. The entire demand was computed on the basis of the statement of the appellants of the foreign bank charges paid for the year 2006-2007 to 2010-2011. The Revenue demanded service tax under the "Banking and other Financial Service" on Reverse Charge basis on these Foreign Bank charges borne by the appellants.

2.1 In the grounds of appeal, the appellants contended that the State Bank of India through whom they have realized the export proceeds charged service tax on total invoice value before deducting foreign bank charges. Further, they submitted that buyer bank is not providing any service to them directly and hence the provisions of Section 66 A of the Finance Act, 1994, are not applicable. It was vehemently put forth by the appellants that the State Bank of India charged service tax on total invoice value before all deductions including Foreign bank charges.

2.2. The learned Advocate representing the appellants has submitted that they have engaged only SBI for collection of bills and have no dealing with the buyers abroad and the SBI is paying service tax inclusive of foreign bank charges. He argued that the buyer bank is not providing any service to the appellant directly and Section 66 A of the F. A, 1994, is not at all applicable to them. It was also submitted that the issue is settled in favour of the appellants relying on the following decisions involving an identical issue.

1. *Theme Exports Pvt. Ltd. Vs. CST, Delhi*
   2019 (26) GSTL 104 (Tri.-Del.)
2. *M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur*
   2017 (10) TMI 1231-CESTAT, New Delhi

He has also submitted his contentions with regard to Limitation and also on the issue of imposing penalties, as the authorities invoked extended period for confirming the demand of service tax along with interest and imposition of penalties in this appeal.

3. Learned AR Shri M. Ambe has reiterated the reasoning and findings given in the impugned order.

4. We have heard both sides and perused the records.

5.1 The main issue involved in this case is whether the amount which was deducted by the Foreign bank towards the bank charges are taxable under the service "Banking and other Financial Service" for the period 2006-2007 to 2010-2011? The other issues involved are whether invocation of extended period and imposition of penalties are sustainable in the facts of the case?

5.2 We find that the appellants have submitted the documents for realization of export sale proceeds to their bank namely SBI, which in turn has used the services of the foreign bank for collection of export sale proceeds. Obviously, the foreign banks who have rendered their services, have deducted their charges while remitting the export sale proceeds to SBI. The appellant has never dealt with the foreign bank on his own and the Banking and Other Financial Service if at all was rendered only to SBI. Amount charged by the foreign bank while remitting export sale proceeds, whether can be subjected to service tax or not has been decided by the CESTAT Principal Bench, New Delhi in the case of *Theme Exports Pvt. Ltd. Vs. CST, Delhi (*supra), by relying on the ratio laid down by the Tribunal in the case of *M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur* (supra), where the Tribunal held as under:-

> 4. We find that the issue arising out of present dispute is no more res integra, in view of the decision of this Tribunal in the case of *M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur* -2017 (10) TMI 1231-CESTAT, New Delhi. The relevant paragraph in the said decision is extracted herein below:-
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> > "4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign

banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up before the Tribunal in the case of *Greenply Industries Ltd. vs. CCE, Jaipur (Final Order No. 50149/2014 dated 03.01.2014)* where it was observed that-

> *"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged under Section 66A read with Rule 2 (1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order in appeal dated 12.11.08 has set aside that order and as per the appellant?s counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed".'*
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> 5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."

5.3 As the issue is resolved on merits, there is no need to discuss about invocability of extended period in this case and also regarding legality of imposition of penalties.

6. We find that the issue is no more *res integra* and stands resolved by the orders of the Tribunal as cited supra. So, we set aside the impugned order which demanded service tax under "Banking and Other Financial Service" and allow the appeal with consequential relief, if any.

(Order pronounced in the Open Court on **31.03.2023**)

(VASA SESHAGIRI RAO)
MEMBER TECHNICAL

(**P. DINESHA)**
MEMBER JUDICIAL

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