IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 40027 of 2014

(Arising out of Order-in-Appeal No. 359/2013 dated 31.10.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), No. 6/7, ATD Street, Race Course Road, Coimbatore – 641 018)

M/s. Original Knit Exports **...Appellant**
SF No. 59/2, Rithvik Towers,
Opp. Ragam Exports,
Kangayam Main Road,
Tirupur – 641 606.

Versus

Commissioner of GST and Central Excise **...Respondent**
Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

APPEARANCE:

For the Appellant : Shri M.N. Bharathi, Advocate
For the Respondent : Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MR. S.S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 16.01.2024
DATE OF DECISION : 25.01.2024

FINAL ORDER No. 40092 / 2024

Order : [Per Mr. VASA SESHAGIRI RAO]

Service Tax Appeal No. 40027 of 2014 has been filed by M/s. Original Knit Exports, Tirupur (herein after referred to as the 'Appellant' or 'OKE') challenging the Order-in-Appeal No. 359/2013 dated 31.10.2013 of the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore who have upheld the Order-in-Original No. 03/2013-ST dated 03.06.2013 of the Deputy Commissioner of Central Excise, Tirupur Division, confirming the demand of Service Tax of Rs.78,294/- along with interest besides imposing penalties under Section 77 and 78 of the Finance Act, 1994.

2.1 Brief facts of the appeal are that the Appellants *Viz.,* M/s. Original Knit Exports are engaged in the manufacture and export of hosiery garments. The Appellants have incurred expenditure towards bonus, recycling compensation and inspection charges at the buyers end and the same is shown in their export invoices/shipping bills but they have not discharged the Service Tax liability on the same. 'OKE' is getting their export orders for supply of goods to M/s. Bon Prix through M/s. JPS Trading. M/s. JPS Trading is a company based in Dubai, UAE, who are appointed by Otto Group of which M/s. Bon Prix is a member, as their buying and sourcing agent for Middle East. M/s. Max Moda is a manufacturer in Dubai, through whom JPS Trading is sourcing the goods for Bon Prix, for the last 20 years. Since Max Moda is unable to do the entire production in Dubai due to cost factors, they are allowed to do outsourcing from India, under strict supervision from JPS Trading. Fashion Force is the Indian office of M/s. JPS Trading Company, Dubai.

2.2 M/s. OKE receives the payments from their overseas buyer M/s. Bon Prix, Germany through M/s. JPS Trading Company after deductions of the above mentioned elements i.e., bonus, inspection charges and recycling compensation by the buyer and they show only the net amount received by them in their Proft and Loss account. The above mentioned elements are paid by the exporter for the furtherance of their business, and as such are classifiable under the head "Business Auxiliary Service" & "Technical Inspection and Certification" and is taxable at the recipient's end as such expenses are incurred outside the country and the provider of such services have no permanent establishment in India. It was noticed that the deductions on the invoice price under various heads on account of commission and towards quality inspection were received by the persons appointed by the buyer M/s. Bon Prix Germany and were split into various heads at their convenience. Bonus of 5% which is an incentive given to the parent company Otto GmbH, by each of their subsidiaries, cover the cost of various business promotion activities. 1% packing recycling charges, shown in the invoice is the amount to be given to German Govt. Authorities, for handling the packing material waste, especially the polythene bags used for packing the garments. 1.5% inspection charges mentioned in the invoice is the amount charged by Bon Prix to cover the cost of deputing their quality control representatives to the market, from time to time to control the quality of products and also to impart training to the concerned Q C staff in the market. All the above charges are pre-defined and added to the cost while quoting the price by each supplier.

2.3 The Department was of the view that the Appellants have failed to discharge the Service Tax liability on the services received from M/s. JPS Trading, Dubai. The Appellants were also found not to have taken Service Tax registration and not paid the Service Tax and not filed the Service Tax returns. Consequently, a Show Cause Notice dated 23.12.2010 was issued to the Appellant proposing to demand the Service Tax under 'Business Auxiliary Service' and 'Technical Inspection and Certification Service'. After due process of law, the Original Adjudicating Authority confirmed the demand along with interest under BAS and Technical Inspection Certification Service and imposed penalties. Against this, the Appellant filed an appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore who *vide* order impugned herein upheld the demand, interest and penalties imposed. Aggrieved, M/s. OKE came on appeal before this forum.

3.1 The Ld. Advocate Shri M.N. Bharathi representing the Appellant have referred to a copy of invoice raised by the Appellant on M/s. Bon Prix, Germany and submitted that the deductions are shown in the invoice price as 'packing recycling compensation', 'bonus', 'inspection charges'. The Ld. Advocate has submitted that the Appellant has not made any payment to M/s. JPS Trading, Dubai or their unit in India *viz.,* M/s. Fashion Force, Tirupur. The allegation in the Show Cause Notice does not bring out as to who is the service provider and the service receiver. It merely states that the deductions have been made by the Appellant in the invoice in the nature of inspection charges and recycling compensation. These amounts cannot be considered as consideration for service provided by the foreign entity M/s. JPS Trading, Dubai to the Appellant. The Appellant is selling the goods to M/s. Bon Prix in Germany offering deductions in the nature of discounts during the sale. The discounts shown in the invoice cannot be equated with commission paid. The discounts are nothing but part of sale transactions and there is no service provided / received. The transaction between the appellant and M/s. Bon Prix by raising the invoice is only sale and there is no service element. M/s. JPS Trading and M/s. Bon Prix have an understanding between themselves and thus M/s. JPS Trading undertakes to conduct quality check of the garments through their agent in India *viz.,* M/s. Fashion Force, Tirupur. The transaction between M/s. JPS Trading and M/s. Bon Prix in this regard has taken place outside India. As M/s. JPS Trading has an agent in India, the demand raised against the appellant is not legal and proper. The appellants have not paid Service Tax on the exported goods due to *bonafide* belief that no tax is needed to be paid and that no services have been received.

3.2 It is submitted by the Ld. Advocate that in Paragraph 17 of the Order-in-Original, the Original Adjudicating Authority has noted that M/s. JPS Trading has an office in India in the name of M/s. Fashion Force and so, demand of Service Tax on Reverse charge basis is not legal. The Ld. Counsel relied on the decision in the case of *J.B. Exports & Oswal Mills India Vs. Commissioner of Central Excise & Service Tax-Surat I [2023 (10) TMI 353 CESTAT-Ahmedabad]* to argue that when any amount is deducted in the sale invoice by whatever name it may be called, the same is nothing but discount given during the transaction of sale. For this reason itself, the demand raised against the Appellant cannot be sustained.

3.3 The Ld. Advocate has also relied upon the decisions rendered by the Tribunal in the cases of *Veer Prabhu Marketing Ltd. Vs. Commissioner of Central Excise, Jodhpur [2023 (73) GSTL 222 (Tri.- Del.)]*, *Madras Security Printers Private Limited Vs. Commissioner of Service Tax, Chennai [2023 (4) TMI 1195-CESTAT-Ahmedabad]* and *Texyard International Vs. Commissioner of Central Excise, Trichy [2015 (40) STR 322 (Tri.-Chennai)]* and also on the *Order-in-Appeal No. 196/2012* dated *24.09.2012* passed by the Commissioner (Appeals) contending that the services received for export of their finished goods cannot be subject to Service Tax.

4. The Ld. Authorized Representative Shri Harendra Singh Pal appeared and argued for the Department. He has reiterated the findings of the impugned order No. 359/2013 dated 31.10.2013. He has submitted that M/s. JPS Trading Company, Dubai through its local office by name Fashion Force was rendering the services to the

Appellant in getting the export orders and also in receiving payments for the goods supplied to M/s. Bon Prix, Germany. On behalf of M/s. JPS Trading Company, Dubai through their local office helps the Appellant by carrying out inspection as to quality to ensure the goods exported are as to the specification of the buyer. The above said activities are in the nature of promoting the business of the Appellant and so would fall under the category of commission agent and therefore has been correctly subjected to levy of Service Tax. The Appellant while raising the invoice on M/s. Bon Prix, Germany arrives at the price of the goods supplied, after deducting bonus, recycling compensation and inspection charges. For these services rendered by M/s. JPS Trading, Dubai to the appellant, they get paid by the appellant in the nature of bonus, recycling compensation and inspection charges. Therefore, for the services rendered by M/s. JPS Trading, Dubai through their branch office M/s. Fashion Force, Tirupur to the appellant for furtherance of business prospects, M/s. JPS Trading, Dubai gets paid by the appellant through M/s. Bon Prix, Germany. Thus, the demand raised is proper.

5. We have heard both sides and we have carefully gone through the submissions made.

6. The only issue that is to be considered in this case is whether the Appellant is liable to pay Service Tax under "Business Auxiliary Service" & "Technical Inspection and Certification" or not?

7. The contention of the Appellant is that certain deductions shown in the invoices raised to M/s. Bon Prix, Germany, are only discounts in a transaction of sale. M/s. JPS Trading, Dubai arranges for procuring the goods from the appellant to M/s. Bon Prix, Germany. M/s. JPS Trading

conducts quality test for export of the garments through their agent *viz.,* Fashion Force, Tirupur situated in India. It is thus assumed by the Department that the deductions made in the invoice price is towards payment of commission and for furtherance of business of the appellant rendered by M/s. JPS Trading, Dubai through M/s. Fashion Force, situated in India. It requires to be stated that the Show Cause Notice is not clear as to who the service recipient is and who the service provider is. So also, it does not bring out a clear picture of the consideration that is passed from the service recipient to the service provider. It is brought out from evidence that garments are sold by the appellant to M/s. Bon Prix, Germany. M/s. JPS Trading, Dubai has played a role of middleman in conducting quality check through M/s. Fashion Force in India. According to the department, it is an agent of M/s. JPS Trading, Dubai. However, there is no payment made by the appellant to M/s. Fashion Force. We therefore do not understand how there would be a service rendered by M/s. JPS Trading Company to the appellant so as to be taxable under reverse charge mechanism. Even if there was any service rendered in regard to quality checking, the demand ought to have been raised against M/s. Fashion Force, who is the service provider for quality checking. If the department is of the view that Fashion Force, Tirupur is the branch office of JPS Trading, Dubai then it would be M/s. Fashion Force, Tirupur who is liable to collect and pay service tax. It cannot be said that the deductions made in the invoices raised in the name of M/s. Bon Prix, Germany is a payment made to Fashion Force, Tirupur. For these reasons, we find that the demand raised under 'BAS', 'Technical Inspection and Certification Service' is without any factual or legal basis.

8. M/s. JPS Trading, Dubai through their agent or their own office in the name of M/s. Fashion Force is carrying out quality check of the garments being exported. M/s. JPS Trading is rendering the service of a buying agent for M/s. Bon Prix, Germany. The service provider and service receiver are thus located in a non-taxable territory. There is neither any written or oral agreement between the Appellant and M/s. JPS Trading, Dubai. When M/s. JPS Trading, Dubai is a buying agent, he cannot be termed as a commission agent for the Appellant promoting export of garments. M/s. JPS Trading service is incidental to his rendering of buying agent service to M/s. Bon Prix, Germany. Whatever, the deductions shown in the export invoice of the Appellant are concerned with the sale transaction between the Appellant and M/s. Bon Prix, Germany. As such, the demand raised and penalties imposed cannot be sustained and the impugned Order-in-Appeal No. 359/2013 dated 31.10.2013 is required to be set aside, which we hereby do so. The issue is thus answered in favor of the Appellant.

9. Further, we refer to the decision in the case of *M/s. Aquamarine Exports Vs. Commissioner of Central Excise & Service Tax, Surat-I [2022 (2) TMI 361-CESTAT AHMEDABAD]* wherein it was held that there is no commission agent exist who provided the service for export trading of the goods exported by the appellant. When no service provider is in existence it cannot be said that the appellant have received the commission agent service. Secondly, it is also fact that the appellant have not paid the commission to any person in the foreign country. Therefore, in absence of any consideration paid for the alleged commission agent services no Service Tax can be demanded. In the export invoice the appellant have deducted an amount in the nomenclature of commission from the gross sale price thus, the deduction

was passed on to the buyer of export goods which is nothing but a discount given to the Foreign Buyers of the goods. Neither any service provider exist nor was any consideration paid to any service provider. Therefore, the Department's contention is baseless and not sustainable.

10. Involving different exporters where M/s. JPS Trading, Dubai have procured the goods for M/s. Bon Prix, Germany in the cases of *M/s. Veera Creations Vs. Commissioner of GST & Central Excise, Coimbatore [F.No. 40045/2024 dated 11.01.2024]* and *M/s. Harini Colour Vs. Commissioner of GST & Central Excise, Coimbatore [F.No. 40044/2024 dated 11.01.2024]*, this Tribunal has already set aside the demands and penalties imposed involving identical facts.

11. In view of the above, we are of the opinion that the impugned Order-in-Appeal No. 359/2013 dated 31.10.2013 is required to be set aside.

12. The Appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 25.01.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(S.S. GARG)
MEMBER (JUDICIAL)

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