IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 40781 of 2014

(Arising out of Order-in-Appeal No. 168/2013 (M-III) dated 09.12.2013 passed by Commissioner of Central Excise & Service Tax (Appeals), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034)

M/s. K.H. Arind Private Limited **...Appellant**
No. 142/1, Trunk Road,
Perumugai,
Vellore – 632 009.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai III Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellant : Shri A.R. Raghunathan, Consultant

For the Respondent : Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 22.02.2024

FINAL ORDER No. 40200 / 2024

Order :-[Per Ms. SULEKHA BEEVI C.S.]

Brief facts are that the appellant is engaged in the manufacture and export of Leather Gloves falling under Chapter 42 of the Central Excise Tariff Act, 1985. They were utilising the services of Goods Transport Agency (GTA) and Commission Agents located outside India under Business Auxiliary Service (BAS). The appellant filed Form EXP-1 on 22.07.2009 claiming exemption from the payment of Service Tax to the tune of Rs.4,17,792/- relating to the specified services for the reason that the commission paid to agents located outside India is exempt as per the Notification No. 18/2009-ST dated 07.07.2009. Subsequently, they filed Form EXP-2 on 30.10.2009 relating to the services received from foreign commission agents. On the basis of revised Table submitted by the appellant, the tax exemption claimed was Rs.3,26,855. On verification of Bank Certificates furnished by the exporters the amount was found to be Rs.3,64,826/-. Since, the documents showed different figures, a Show Cause Notice was issued to the appellant proposing to deny the exemption and to demand the Service Tax along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand of Rs.4,17,792/- along with interest and imposed penalty under Section 76 of the Finance Act, 1994. On appeal, the Commissioner upheld the same. Hence, this appeal.

2. The Ld. Consultant Shri A.R. Raghunathan appeared and argued for the appellant. It is submitted that the period involved is from July 2009 to September 2009 and it was a period when the Notification No.

18/2009-ST dated 07.07.2009 was introduced. The appellant did not have much clarity and was awaiting the clarifications from higher authorities. There was a delay in receiving the invoices on commission paid to foreign agents and consequently delay in payment of Service Tax. The lapse in furnishing the EXP-1 and EXP-2 documents occurred only due to the delay in receiving the invoices from the foreign agents. The appellant furnished the CA Certificate which would show that the amount of Rs.3,54,200/- is the Service Tax paid on commission paid to foreign agents. The same is exempted under Notification No. 18/2009-ST dated 07.07.2009. It is prayed that the appeal may be allowed.

3. The Ld. Authorised Representative Shri Harendra Singh Pal appeared and argued for the Department. It is submitted that the appellant had not fulfilled the conditions by furnishing EXP-1 and EXP-2 documents within the prescribed time. The demand confirmed is therefore legal and proper.

4. Heard both sides.

5. The short issue to be considered is whether the demand confirmed alleging that the appellant has not fulfilled the conditions prescribed in the Notification No.

18/2009-ST dated 07.07.2009 to furnish EXP-1 and EXP-2 documents is legal and proper.

6. On perusal of Paragraph 7.5 to 7.7 of the order passed by the Adjudicating Authority, it is seen that the only ground for confirming the demand is the non-fulfilment of conditions prescribed in the Notification. The Ld. Consultant has explained that the delay in furnishing the above documents (EXP-1 and EXP-2) occurred only because of the delay in receiving the invoices from the foreign commission agents. They have subsequently submitted the documents and the CA Certificate was also furnished before the authorities. Taking note of the fact that the Service Tax paid in respect of export of services and cannot be subject to levy of Service Tax under Notification No. 18/2009-ST dated 07.07.2009, we are of the view that the denial of exemption on procedural lapses cannot be sustained.

7. The impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in open court)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI C.S.)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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