CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40584 of 2015

(Arising out of Order-in-Original No. 23/2014-Commr dated 09.12.2014 passed by Commissioner of Central Excise, Customs and Service Tax, 6/7, A.T.D. Street, Coimbatore 641 018)

M/s. Voltas Ltd. **....Appellant**
Textile Machinery Division,
No.1413, Trichy Road,
Coimbatore-641 018.

Versus

Commissioner of GST and
Central Excise **...Respondent**
6/7, A.T.D. Street,
Race Course,
Coimbatore-641 018.

APPEARANCE:
Shri S. Murugappan, Advocate for the appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40539/2025

DATE OF HEARING: 17.12.2024
DATE OF DECISION: 27.05.2025

Per: Shri P. Dinesha

The facts of the case as could be gathered from the Show Cause Notice are that appellants are the selling agents for textile machineries manufactured by various principal companies viz. M/s.Lakshmi Machine Works, M/s.Lakshmi Automatic Loom Works Ltd. M/s. Lakshmi Card Clothing Mfg. Co. Pvt. Ltd, M/s.Textool Company Ltd. & M/s.Rabatex Group of Industries. Upon scrutiny of the documents, it appeared that appellant had provided certain services on commissions to their principals which fall under the service category of 'Clearing and Forwarding Agency's Services (CFAS, for short). However, the service provider had not registered themselves with the Department and had not discharged their service tax liability. The scope of the work by the appellant is to identify the sales opportunities and promote the sales of the products manufactured by the said principals who in turn, supplied the goods to the customers. Appellant also attended to the follow up work of their principals relating to the sale; that for such services provided by them, they got commission from their principals based on the despatches made, as per the selling agency agreements.

2. Upon completion of investigation, a Show Cause Notice dt. 29.08.2003 for the period 01.09.1999 to 30.06.2003 was issued demanding service tax and proposing to impose penalties under various sections of the Finance Act, 1994 after invoking the extended period of limitation. After due process, the Adjudicating Authority *vide* Order-in-Original No.601/2004 dated 27.10.2004 confirmed the demand and interest and also imposed penalties under Section 75A, 76 and equal penalty under Section 78 of the Finance Act, 1994. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) who *vide* Order-in-Appeal No.09/2005 dt. 29.03.2005 partly allowed the appeal, by confirming the demand with interest, penalties under Sections 75A and 76 ibid, but however setting aside the equal penalty imposed under Section 78 ibid. The appellant filed an appeal against the order of Commissioner (Appeals) before Tribunal. The Tribunal vide Final Order No.299/2006 dated 03.08.2006 remanded the case back to the Adjudicating Authority.

3. In the second round of litigation, the Adjudicating Authority vide impugned Order-in-Original No. 23/2014-Commr. dated 09.12.2014 confirmed the demand of service tax with interest under the category of 'C & F Agent's Services' for the period from 01.09.1999 to 30.06.2003 and imposed penalties under Sections 75A, 76, 77 & 78 of the Finance Act, 1994. Aggrieved by the impugned OIO dt. 09.12.2012 passed by the Adjudicating Authority, the present appeal has been filed before Tribunal.

4. We have heard Shri S. Murugappan, Ld. Advocate for the Appellant/Assessee and Shri Sanjay Kakkar, Ld. Deputy Commissioner for the Respondent/Revenue.

5. After hearing both sides and upon perusal of records, we find that the scope and issue of the present appeal is the liability of the appellant to Service Tax under Clearing and Forwarding Agents Services (**C&FS** in short).

6.1 In the Agreement titled '*Selling Agency Agreement*' between the appellant and "Lakshmi Automatic Loom Works Ltd" [**LAL** for short] at clause 4, the understanding between the parties is clear in as much as the assessee being appointed by LAL, is to act as one of their selling agents for the sale of their products in this specified area. The same reads as under:

> **<u>Agreement with Lakshmi Automatic Loom Works Ltd.</u>**
>
> <u>Appointment</u>:
>
> LAL hereby appoints VL and VL agrees to act as one of the Selling Agents of LAL for the sale of the products in the area.

6.2 Similarly, in the agreements with the other parties, the understanding *interse* parties as appearing in the respective agreements are as under:

> **<u>Agreement with Rabatex</u>**
>
> WHEREAS Rabatex is desirous of appointing VL as one of the Selling Agents for the sale and distribution in the area (as hereinunder defined) of the products (as hereinafter defined) manufactured by Rabatex;

AND WHEREAS VL has expressed its willingness to be appointed as such Selling Agent on the terms, hereinafter appearing.

Agreement with Textool Company Ltd.

Appointment:

TEXTOOL hereby appoints VL and VL agrees to act as one of the Selling Agents of TEXTOOL for the sale and distribution of the products in the area.

Agreement with Lakshmi Machine Works Ltd.

Appointment:

LMW hereby appoints VL and VL agrees to act as one of the Selling Agents of LMW for the sale and distribution of the products in the area.

Agreement with Lakshmi Card Slothing Manufacturing Company Pvt. Ltd.

Selling Agency:

The PRINCIPALS hereby appoint and the AGENTS agree to act as one of the Selling AGENTS of the PRINCIPALS for the goods described under Clause 02 in the territory described under Clause 03 of this

> Agreement, subject to the terms and conditions of this Agreement.

7. In their reply dated 21.06.2013 prior to Show Cause Notice, the appellant has explained their role that they do not come under the purview of C&FS. The same reads as below:

> (a) One of the category of persons to whom Service Tax is applicable is a Clearing & Forwarding Agent (C&FA). We do not perform the specified operations of a C&FA namely clearing and forwarding of goods. We are only involved with identification of sales opportunities and its follow up. Invoicing, preparation of Usance Bills, collection of dues from buyers, etc. are being done by our Principals directly. We do not perform any of the operations of the clearing & forwarding of Goods.

8. Case of the assessee – appellant is that as early as in 1999, *vide* their letter dated 08.12.1999 they had clarified the factual position that they were not performing any specified operations of a C&FA, namely,

clearing and forwarding of goods, they were only involved in identification of sales opportunities and the follow up. Subsequently, in response to query by the superintendent of central excise, the appellant had clarified the above factual position once again, through their letter dated 21.06.2003. It is thus claimed that no factual aspect was ever hidden or suppressed from the revenue. Hence, at the outset, the ld. Advocate would plead that the issuance of SCN by invoking the larger period of limitation is itself on a faulty footing as there was no suppression of any facts or fraud.

9. From the documentary evidences placed on record in the form of appointment agreements, the scope and nature of the understanding between the parties becomes clear. There is no disputes that the documents have to be considered in full and hence, these agreements also have to be read in entirety, as laid down by the Apex Court in the case of **Super Poly Fabrics Ltd. Vs. CCE, Punjab** [2008 (10) STR 545 (SC)] When the agreements are read as a whole, what boils down is the fact that the appellant is providing the services of a selling agent alone. On the contrary, other than these

agreements and other than picking up parts selectively from these very agreements, the Revenue has not come out with any evidence to dislodge the claim of the appellant. Nor do we find any denial as to the fact of the appellant was procuring orders on behalf of their principles and promoting sales of their products for which services they had received commission. Strangely, even the show cause notice at page 2 having recorded the above factual position that the appellant was acting as a selling agent, however, has deviated from the above in the Order-in-Original, to hold that the appellant was acting as a Cleaning & Forwarding Agent.

10. We have reproduced the object of the Agreements in the earlier paragraphs of this order and going by the same which reflects the understanding between the parties, the appellant was only to act as the selling agent of its respective principal and for that alone, the commission was payable.

11. In the case of **Commissioner of C. EX., Panchkula vs. Kulcip Medicines (P) Ltd.,** [2009 (14) S.T.R. 608 (P&H)] Hon'ble Punjab and Haryana High Court has interpreted the meaning and scope of clearing

and forwarding Agent service; after hearing both sides, the Hon'ble High Court has held as under: –

> *11. The question which falls for consideration is whether word 'and' used after the word 'clearing' but before the word 'forwarding' at two places in clause (j) be considered in a conjunctive sense or dis-injunctive sense. It appears to be fairly well settled that the context and intention of legislature are the guiding principles. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of Mazagaon Dock Ltd. v. CIT (1958) 34 ITR 368. By necessary intendment the expression 'a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner' contemplates only one person rendering service as 'clearing and forwarding agent' in relation to 'clearing and forwarding operations'. To say that if, one person has rendered service as 'forwarding agent' without rendering any service as 'clearing agent' and he be deemed to have rendered both services would amount to replacing the conjunctive 'and' by a disjunctive which is not possible. The counsel for the revenue has not been able to bring on record any material to show the word 'and' should be construed as disjunctive. He has not shown any 'trade practice' which may lead to a necessary inference that service of one kind rendered by one is invariably considered to comprise both. No argument has been advanced before us by him to canvass that the legislature intention is discernible from the scheme of the statute or from any other relevant material. Therefore the word 'and' should be understood in a conjunctive sense (See Maharaja Sir Pateshwari Prasad Singh v. State of U.P. (1963) 50 ITR 731. In these circumstances if we read the word 'and' as or' then it would amount to doing*

violence to the simple language used by Legislature which cannot be imputed ignorance of English language. In that regard we place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Inayat Ali Khan v. State of U.P., (1971) 2 SCC 31 (Para 5) and para 6 of the judgment of Hon'ble the Supreme Court rendered in the case of APE Belliss India Ltd v Union of India, The observations of their Lordship reads thus:

> *"6……..A plain reading of the Section (sic Tariff Public Notice) clearly shows, as contended by Mr Bhatt, that for an alloy steel to be considered as stainless steel, it will have to satisfy two conditions i.e. The alloy steel should be known in the trade as stainless steel and further, it should contain 11% chromium as a component of the allow steel. This is clear from the use of the word "and". If the intention of the trade notice was to treat the two types of alloy steels as stainless steel, then it would have been made clear by using the word "of instead of the word "and"."*

12. From the above decision, it is clear to us that the appellant in the case on hand is not performing the essential characters as highlighted by the Hon'ble High Court and hence, we are of the view that the impugned order has failed to appreciate the facts in the proper perspective. Hence, the same cannot sustain for which reason, we set aside the impugned order.

13. In the result, the appeal stands allowed with consequential benefits, if any.

Order pronounced in open court on 27.05.2025

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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