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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/25 /2007-26 /2007,203 /2007 - CU[DB] Date 25/08/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
VIJAY SHARMA & COMPANY

CABIN NO 102-103, SCO NO. 58-59, IST FLOOR,
SECTOR-17-D, CHANDIGARH.

VIJAY SHARMA & COMPANY Appellant

Vs

C.C.E.CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/56-58 **2010 CU[DB]** dated 29.04.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.E.CHANDIGARH

PLOT NO 19, SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult : OP Khurana, Conslt.
C/O Appellant

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(Customs Appeal Branch)

M/S UNIQUE INVESTMENT CENTRE
CABIN NO.315, SCO NO. 58-59, 3RD FLOOR,
SECTOR-17D, CHANDIGARH.

N.K.CHUG & COMPANY
37, SECTOR 12-A, PANCHKULA

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Larger Bench

ST/Appeal Nos. 25,26 & 203/2007

(Arising out of order in appeal Nos. 946-948/Appeal/Chd/06 dated 5.10.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

1. M/s Vijay Sharma & Co — Appellant
2. M/s N.K. Chug & Co.
3. M/s Unique Investment Centre

Vs

CCE, Chandigarh — Respondent

Appeared for the Appellant: Shri O.P. Khurana, Consultant
Appeared for the Respondent: Shri Vijai Kumar, DR
Shri Sumit Kumar, SDR

Coram: Hon'ble Dr. Chittaranjan Satapathy, TechnicalMember
Hon'ble Mr. D.N. Panda, Judicial Member
Hon'ble Mr. Ashok Jindal, Judicial Member

Date of Hearing: 29.4.2010

Final ORDER No. ST/56-58/10

Per D.N. Panda:

All the three cases came up before Larger Bench pursuant to the direction of the Hon'ble High Court of Punjab & Haryana in CEA No. 130 of 2008 in the case of CCE Chandigarh Vs. M/s. N.K. Chugh & Company Ltd, in Service Tax Appeal No. 1/2009 in the case of M/s Unique Investment Centre Vs CCE Chandigarh and in ST/Appeal No. 2/2009 in the case of CCE Vs. Vijay Sharma & Co. A common order dated 22.2.2010 was passed by Hon'ble High Court directing Tribunal for constitution of Larger Bench to decide the question involved in all the three cases. The question that was framed by Hon'ble High Court for answer by the Larger Bench is as under:-

"Whether service provided by sub-brokers are covered under the ambit of service tax and are taxable or not ?"

2. While passing the order framing the question as above, Hon'ble High Court noticed that the Customs, Excise & Service Tax Appellate Tribunal (for short 'the Tribunal') in CEA No. 130 of 2008 has held that sub-brokers are not liable to pay any service tax as the same has already been paid by the main stock broker. Similar view has been taken in STA No.2 of 2009. However, in STA No.1 of 2009 M/s Unique Investment Centre Vs Commissioner of Central Excise, Chandigarh, the Tribunal has held as under:-

"In Vijay Sharma & Company Vs CCE Chandigarh (supra), it was observed that levy will fall only on the main broker who 'handled' sale and purchase of securities in stock exchange. It is clear that the Tribunal overlooked the import of the term 'in connection with' sub-clause (a) of clause (105). The decision would appear to have been rendered per in curium."

3. It was observation of Hon'ble High Court that there were conflicting decisions of the same Tribunal on the point in issue, for which the Hon'ble Court allowed the appeal setting aside the impugned order passed by the Tribunal and remanded the case back to the Tribunal to decide the matter afresh in view of the amendment to law.

4. Revenue represented by Shri Sumit Kumar, learned DR submitted that a stock-broker by virtue of amended definition with effect from 10.9.2004 includes a sub-broker. If service provided by a sub-broker in connection with sale or purchase of securities dealt in recognized stock exchange, is of similar nature as that is provided by a stock broker, there is no difference between the two and a sub-broker is brought to the ambit and scope of law for providing such service recognized as taxable service. If a sub-broker is registered under SEBI Rules and Regulation or made application for such purpose under such Regulations, to provide the service of aforesaid nature, he qualifies to be service provider of taxable service under the category of stock broker. The statutory definition contained by Section 65(101) of Finance Act, 1994 when brings sub-broker into the scope of taxation, the claim of the present appellants that they are not liable to service tax, is inconceivable and the sub-broker is thus liable to service tax w.e.f. 10.9.2004 although initial definition under Section 65(101) of Finance Act, 1994 did not include a sub-broker within the meaning of a stock broker. A sub-broker not liable to service tax prior to 10.9.2004 does not enjoy same status after such date because definition under Section 65(101) of Finance Act, 1994 has undergone amendment bringing a sub-broker within the meaning of stock broker specifically.

5. Learned DR's further submission is that the present appellants were sub-brokers and they have received

consideration for the service of broking in relation to securities dealt in recognized stock exchange. Appellants' averment before the learned First Appellate Authority was that they have paid service tax to the main broker who ultimately deposited the service tax on their behalf for which they are not liable is without any evidence on record. In absence of any evidence, their claim that they have paid service tax is not entertainable.

6. All the three assessees represented by learned Consultant submitted that in view of differences by various orders of the Tribunal, Hon'ble High Court directed for resolution of dispute by a Larger Bench. When the statutory definition of Section 65(101) did not include a sub-broker, within the meaning of stock broker, levy of service tax on them is unwarranted. A sub-broker provides service to a stock broker who as such provides service to the clients. Therefore, sub-brokers and stock brokers are agent and principal. Therefore, no liability is fastened on the appellants in terms of the definition of stock broker. Asking the appellant to pay taxes shall amount to double taxation since the main stock broker has paid tax for the service provided. Revenue has not suffered any loss due to discharge of tax liability by the stock broker. There shall be no levy of tax on the present Appellants. The sub-broker having been immune from taxation, these appellants cannot be discriminatory dealt. But he submitted that it is an established fact that the sub-brokers have paid tax to the broker and the stock broker has discharged his liability, ultimately depositing the same into the treasury.

7. Heard both sides and perused the record.

8. The dispute in all the three references is on a narrow compass. There is no dispute by either side that a sub-broker is falling under the definition of stock broker under Section 65(101) of the Finance Act, 1994 w.e.f. 10.9.2004. The definition reads as under:-

> *"(101) 'Stock-broker' means a person, who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under SEBI Act 1992".*

There is also no dispute by either side that when an application is made by a person for registration as a sub-broker or a person registered as such under SEBI Act 1992 read with the regulations made thereunder, shall be called as stock-broker. So also there is no dispute that in terms of Section 65(105)(a) of Finance Act, 1994 services provided to any person by a sub-broker or stock broker in connection with the sale or purchase of securities listed on a recognized stock exchange shall be taxable service from the aforesaid date. So also, a sub-broker who is registered or has made an application for registration as such under SEBI Act, 1992, is permitted to provide similar service as provided by a stock broker. The service so provided becomes taxable service under Finance Act, 1994 w.e.f. 10.9.2004. A sub-broker is thus liable to pay service for the nature of taxable service provided as defined by Finance Act, 1994 aforesaid.

9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that

it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10.9.2004. No set off is permissible prior to this date when sub broker was not within the fold of law during that period.

10. In all the three references before us, it would be proper to send the matter back to the original authority, without being

sent to the concerned Benches, to verify as to whether the stock brokers have paid service tax on behalf of the sub-brokers and if so, reduce the demand on sub-brokers to that extent and pass fresh orders, granting fair opportunity of hearing to the sub-brokers. All the appeals are allowed by way of remand.

(operative part of the order with reasons of decision was pronounced in the open Court on the date of hearing.)

(Chittaranjan Satapathy)
Technical Member

(D.N. Panda)
Judicial Member

(Ashok Jindal)
Judicial Member

MPS*