

Appeal No. ST/387/2012-CU [DB]

The present appeal is against order dated 19.12.2011 of Commissioner (Adjudication), Service Tax, New Delhi. The appellants are engaged in providing taxable service under the category of Courier Service. The dispute in the present appeal relates to the consideration received by the appellant for co-loading service for business associates/franchise in connection with delivery

of consignments. The Revenue entertained a view that such amount received by the appellant is liable to tax under the category of 'Business Auxiliary Services' as, such activity of the appellant can be brought under "provision of service on behalf of the client". Proceedings initiated against the appellant resulted in impugned order which confirmed the service tax liability of Rs. 63,90,956/-. Penalties were also imposed under various sections of Finance Act, 1994.

2. Ld. Counsel for the appellant submitted that prior to 16.05.2008, the definition of "Courier Agency" in terms of section 65(105) was applicable only to service provided to customer by Courier Agency. The word, "a customer" was substituted with the term "to any person" from 16.5.2008. From that date co-loading provided to any other Courier Agency also become taxable. She relied on a clarification dated 31.10.1996, issued by the Board regarding the tax liability on co-loading service. It has been categorically classified that co-loaders do not provide any service directly to the customers and give documents, goods or articles to the Courier Agency to deliver to consignee; that they have provided service to other Courier Agency and not to any customer, no service tax liability can be confirmed against them. The Original Authority has erred in classifying their service under Business Auxiliary Services, considering that they are providing service on behalf of the clients. It is very clear that they are not providing any service on behalf of anybody. They have arrangements with other courier agents where the customer sending or receiving articles, are not a

party to the said arrangements. Otherwise, they are not providing any service on behalf of the any other courier agency to the customer.

3. Ld. AR for the Revenue reiterated the findings of the Original Authority and stated that tax liability on the appellant has been correctly upheld by the Original Authority.

4. We have heard both sides and perused the appeal records. We have perused the impugned order and noted that findings of the Original Authority regarding tax liability of the appellant under Business Auxiliary Services, is devoid of any legal merit. He mentioned the clarification by Board referred to above, and stated that the said clarification is for Courier Services. Business Auxiliary Services was brought to tax net thereafter only and hence, the appellants are liable to tax. We note that the Original Authority failed in giving reasons as to what type of service has been rendered by the appellant to service recipient on behalf of the client. As per the details available and the submissions made by the appellant, it is clear that appellants have arrangements with other Courier Agencies to help them out in transport and delivery of articles, goods etc. The appellant is not dealing with any customer directly and receiving any consideration from the customer. In fact, the arrangement between the appellants and other Courier Agencies is two party arrangements with no role for the customer in such arrangement. We are not able to appreciate as to what type

of service has been provided by the appellant to any third party on behalf of the client.

5. In view of the above discussion, we find no merit in the impugned order and accordingly, set-aside the same. The appeal is allowed.

[Pronounced in the open Court on 04.01.2017]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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