IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 03.02.2017
Date of Decision:09.02.2017

Service Tax Appeal No.966/2010 (DB)

[Arising out of Order-in-Appeal No.74(DK) S.T/JPR-I/2010 dated 5.3.2010 of the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

M/s.Rennaissance Leasing & Finance Pvt. Ltd. Appellants

Vs.

CCE, Jaipur Respondent

<u>Appearance</u>:

Rep. by none for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

Coram: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.50732/2017

<u>Per B. Ravichandran:</u>

The appeal is against order dated 5.3.2010 of Commissioner (Appeals), Jaipur. The appellants are engaged in providing services to ICICI Bank in relation to disbursal of loans to various customers. The proceedings were initiated against them to demand service tax for the period 1.7.2003 to 31.03.2005. On completion of adjudication, the Original Authority confirmed service tax liability of Rs.8,00,165 and imposed penalties under Section 76, 78 and 75 A of the Finance Act, 1994. On appeal, the Commissioner (Appeals) vide the impugned order confirmed the original order.

2. The appellant, in the grounds of appeal, submitted that they are not rendering any service under the category of "Business Auxiliary Service". The lower authorities are biased and pre-judged the issue. They are working as direct selling agents of ICICI bank and this service can be taxed only under "Business Support Service" w.e.f 1.5.2006 as held by the Tribunal in **Wings Groups of Companies – 2008 (12) STR 287 (Tribunal-Bangalore).**

3. We have heard ld. AR, who submitted that the appellants provided services to ICICI Bank by way of promoting loan disbursal of the bank to various customers. They were receiving commission for their services. The said service is correctly taxable under “Business Auxiliary Service”.

4. None appeared on behalf of the appellant.

5. However, vide letter dated 26.10.2016, the appellant prayed for deciding the matter on merits based on the case laws relied upon by them.

6. We have examined the appeal records.

7. Admittedly, the appellants were acting as Direct Selling Agents for the banks and were engaged in promoting loans for the vehicles to be disbursed to various customers. Their activities included promotion of loan disbursal, facilitation of the buyer of vehicles in documentation and getting the loan amount from the bank. For this, the banks are paying certain commissions. We find that the said activities are covered under the tax entry of “Business Auxiliary Service” in terms of Section 65(105)(zzb) of Finance Act, 1994 inasmuch as they are promoting and marketing the services provided by the client banks. The appellants relied on the decision of the Tribunal in **Wings Group of Companies (supra).** We note that the said decision of the Tribunal of a Single Member Bench is without discussing the merits of the case and only on relying on the decision of the Tribunal in **S.R. Kalyanakrishnan – 2008 (9) STR 255 (Tribunal-Bangalore).** In that case, the Tribunal clearly recorded that the assessee was only verifying the correctness of the details provided by the customers seeking loan from the bank. They were not involved in promotion of service provided by the bank. As such, it was held that simple verification of the details will not amount to promotion of service provided by the client. We find that in the present case the lower authorities recorded that the appellants are engaged in providing promotional service of financial loans disbursed by the banks. Further, we note that the Larger Bench of the Tribunal in **Pagariya Auto Centre – 2014 (33) S.T.R. 506 (Tribunal-LB)** held that identification of nature of transaction is necessary to find the tax liability under “Business Auxiliary Service”. If there is a substantial activity of business promotion, then the same will be covered under “Business Auxiliary Service”. Considering the nature of transaction,

as recorded by the lower authorities, we find that there is no reason to interfere with the findings of the lower authorities. The appellant contested the penalties on the ground that there is a bona fide belief regarding tax liability and there is no justification to invoke allegation of suppression of facts, fraud, etc. The appellants did not elaborate the background of their bona fide belief. The impugned order also records that there is no ground to invoke bona fide belief or the ignorance of law in the present case. As no substantial ground with supporting evidence has been pleaded by the appellant, we find no reason to interfere with the impugned order. Accordingly, the appeal is dismissed.

[order pronounced on 09.02.2017.]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.