IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/754/2012-ST [DB]

[Arising out of Order-in-Appeal No.10/AKJ/ST/JPR-II/2012 dated 15.03.2012 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

M/s.Rajeev Synthetics Pvt. Ltd. …Appellant

Vs.

C.C.E.,Jaipur-II … Respondent

Service Tax Appeal No.ST/755/2012-ST [DB]

[Arising out of Order-in-Appeal No.12-13/AKJ/ST/JPR-II/2012 dated 30.03.2012 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

M/s.Umed Textile Mills Pvt. Ltd. …Appellant

Vs.

C.C.E., Jaipur-II … Respondent

Present for the Appellant : Mr.O.P. Agarwal, C.A.
Present for the Respondent: Mr. J.P. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/decision: 28/03/2017

FINAL ORDER NO. 52674-52675/2017

PER: B.RAVICHANDRAN

These two appeals are having identical set of facts and hence are taken up together for disposal. The appellants are engaged in the processing of gray fabric. Being recipient of service under the category of Goods Transport Agency, the appellants were liable to pay service tax on such inward transport of goods, received by them. The dispute in the present appeal relates to denial of exemption under Notification No. 34/2004-ST to the appellants on the ground that the freight payable by the appellants are intentionally split-up into small consignment in order to show that they did not exceed Rs.750/- per consignment. Notification No.34/2004-ST exempts service tax payable on 'goods transport agency', where the gross amount charged on consignments transported in a goods carriage does not exceed Rs.1,500/- or the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs.750/-. The explanation appended to the Notification states that for the purpose of this Notification "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage, for a consignee. The Revenue held the view that the appellants had carried more consignments by splitting-up the freight charges to be within Rs.750/-, in order to claim the said exemption.

2. The ld. Counsel appearing for the appellants, submitted that they are getting gray fabrics from various small weavers and mostly the consignments are small in size, booked by the suppliers with the transport agent. The consignment note was sent to them for claiming the consignment from the transport agent. Neither the sender nor the appellant is aware of the

actual transport vehicle number or whether the transporter is consolidating various such consignments. The consignment note does not contain the vehicle number for the said reason. The freight to be paid is given in a receipt, separately by the goods carrier, which will have cross reference to GR number etc. Even before the introduction of service tax on GTA services, the appellants were following the same practice and the ld. Counsel submitted certain illustrative consignment notes and freight receipts to support his arguments.

3. The ld. A.R. reiterated the findings of the impugned orders. He drew our attention to the findings of the Commissioner (Appeals) to state that many bills issued by the transport company bears same consignee and consigner and it would appear that the appellants are deliberately showing split-up consignments in order to avail the benefit of Notification No. 34/04-ST.

4. We have heard both sides and perused the appeal records.

5. First of all we note that the proceedings by the lower authorities are mainly based on allegations and presumptions, without any categorical evidence. It is a fact that the appellants received small consignments from various senders and the consignment notes bear the details of sender, receiver and quantity of goods covered for transport. Separate freight

receipt is issued by the transport agent. Based on the illustrative documents submitted by the appellant, we find no evidence of deliberate split-up or manipulation, to claim the benefit of the said Notification. In order to sustain such allegation, the Revenue should have brought out clear evidence, which is lacking in the present proceedings. Denial of exemption, based on presumption is not sustainable.

6. In view of the above discussion, we find that the impugned orders are not legally sustainable. Accordingly, the same are set aside. The appeals are allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita