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

Date of Hearing:17.04.2017
Date of Decision:25.04.2017

Service Tax Appeal No.1778/2010 (DB)

[Arising out of Order-in-Appeal No.315(DKV)ST/JPR-I/2010 dated 23.08.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-I]

M/s.Moti Commodity Futures (P) Ltd. Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:
Rep. by Shri S. Sunil, Advocate for the appellant
Rep. by Ms. Neha Garg, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53078/2014

Per B. Ravichandran:-

This appeal is against order dated 23.08.2010 of Commissioner of Central Excise (Appeals), Jaipur-I. The appellants are engaged in providing taxable service under the category of "Forward Contract Service". The dispute in the present appeal is relating to non-payment of service tax on the amount of transaction fee collected by the appellant from their clients and paid to the stock exchange as a custodian. Revenue held a view that the transaction fee has to be included in the gross taxable value and will be subjected to service tax at the hands of the appellant as provider of taxable service to the clients. It is held that the appellants collected this transaction fee from their clients in addition to brokerage, in consideration of the "forward contract service" provided by them during the period 10.09.2004 to 30.04.2006.

2. Ld. Counsel for the appellants submits that the impugned order held that there is no supporting evidence to substantiate that the appellants were collecting transaction fee from their clients and passing it on to the commodity exchanges. In terms of Section 67 of the Finance Act, 1994, as it existed till 18.04.2006, the value for taxable service shall be gross amount charged by the service provider for such service. The amount charged as transaction fee is not a consideration received by the appellant for providing taxable service. It is a mandated payment to the commodity exchange, which they collect from the clients and pay to the exchange. The commodity exchanges were brought to tax w.e.f. 16.05.2008. The scope of the service tax liability has been clarified by the Board vide circular dated 5.8.2008. The transaction charges paid to the commodity exchanges were not taxable under any category of service prior to 16.05.2008. The demand was also contested on the question of time bar.

3. Ld. AR reiterated the findings recorded in the impugned order. She submitted that the appellants have collected transaction fee from their clients. The clients are not legally bound to pay any transaction fee to the commodity

exchanges. It is the responsibility of the appellant to pay such transaction fee. As such, any amount collected by the appellant from their clients in whatever name should be included in the gross value for tax liability. The appellants provided service of "forward contract service". The clients were paid consideration for such service. Accordingly, irrespective of the name of consideration, the gross amount is liable to be taxed.

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

5. The dispute is relating to the tax liability of the appellant with reference to transaction fee collected by them from their clients as part of the bill amount during the course of providing taxable service to their clients. The ld. Counsel for the appellant submitted specimen copies of the daily MTM bills raised by the appellant. In the said bill, the transaction fee is specifically mentioned separately, apart from brokerage and service tax on brokerage. We have perused Circular dated 30.09.2004 of Multi Commodity Exchange of India Ltd. The said circular stipulated that the transaction fee is required to be paid by the members based on the daily turnover in all the futures contracts traded at the exchange. The transaction fee applicable is stipulated in the said circular. The said circular also provided for an option to pay Rs.2 lakhs per month in advance and the members will be allowed to do unlimited turnover during the said month.

6. The appellant claimed that they are mandated to pay transaction fee to the exchanges. The said fee is in turn being collected from the clients. They clarified

that when they acted as a pure agent, such consideration cannot form part of the taxable value. Reliance was also placed on the decision of the Tribunal in the case of First Securities Pvt. Ltd. – 2007 (7) STR 690 (Tribunal-Bang.).

7. It is apparent that the appellant collected transaction fees specifically showing the same in their bills issued to the clients. However, the fact which is to be supported by the documentary evidence is that the said transaction fee collected by the client is paid to the exchange on actual basis without any retention by the appellant. This aspect requires verification. The ratio laid down by the Tribunal in earlier cases, as relied upon by the appellant, can be applied on satisfactory verification of the factual details only. In this connection, we note, admittedly, there is a provision of payment of lump sum transaction fee of Rs.2 lakhs per month which will allow the applicant to do unlimited turnover during the month. It is not clear as to what will be the transaction fee that will be collected by the appellant from their clients. It is for the appellant to support their claim that whatever transaction fee payable for the transaction based on the daily turnover has been collected on actual basis from their clients and remitted to the exchanges without any retention. Ld. Counsel submitted that they have in fact collected transaction fee and paid to the exchange on actual basis. In case, any amount collected in the name of transaction fee is not remitted to the exchange and is retained by the appellant, it is apparent that the same will be an additional consideration accruing to the appellant towards service rendered to the clients. The

name of such consideration becomes immaterial as the same does not represent the actual transaction fee.

8. In view of the discussions and analysis as recorded above, we find it fit and proper to set aside the impugned order and remand the matter to the original authority to decide the case afresh after taking into consideration the submissions made by the appellant along with the supporting documentary evidences and case laws. The appellants shall be given opportunity to submit their defence before a decision is taken. The appeal is allowed by way of remand.

(Pronounced on 25.04.2017)

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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