CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 06.06.2017

Appeal No. ST/1599/2010-SM
[Arising out of the Order-in-Appeal No. 217(DKV)ST/JPR-I/2010 dated 01/06/2010, passed by the Commissioner (Appeals), Central Excise, Jaipur-I Commissionerate.

M/s Krishna Trading Co. … Appellant

Vs.

CCE, Jaipur … Respondent

Appearance:

Present Shri Krishna Mohan Menon, Advocate for the appellant
Present Shri K. Poddar, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53793/2017

Per Ashok K. Arya :

1. *M/s Krishna Trading Company* is in appeal against Order in Appeal No. 217(DKV) ST/JPR-I/2010 dated 01/06/2010 where under inter alia demand of service tax of Rs. 3,54,328/- along with interest has been confirmed.
2. The brief facts are that;

i. The appellant is a consignment agent acting on behalf of various consignors of iron and steel products.

ii. The appellant is given a commission by the consignors for the sales effected.

iii. The sale is on FOR basis to third parties, where all inclusive price is recovered by the consignor from third party consignee/ purchasers.

iv. During the relevant period of January, 2005 to March, 2007 the appellant paid the freight on behalf of consignors as their agent and recovered the same from the consignors. It was agreed in the contract that the consignor would pay the Service Tax on the freight.

v. During the audit of the appellant the Department raised objection that freight was paid by the appellant and they are liable to pay Service Tax on the same. The appellant submitted that they were paying freight only on behalf of the consignors, who reimburse the appellant and discharge service tax; therefore, there is no liability of payment of Service Tax on the appellant.

vi. The Department issued a show cause notice dated 12/08/2008 to the appellant demanding service tax for the relevant period of January, 2005 to March, 2007.

vii. The Order in Original dated 03/09/2009 confirmed the demand.

viii. The Order in Original was sustained by the Order in Appeal passed by the Commissioner (Appeals). The appellant is in appeal against the said order before the Tribunal.

3. . Both sides represented by the Ld. Counsels, Mr. Krishna Mohan Menon for the appellant and Shri K. Poddar for the Revenue have been heard.

4. During the hearing it was pleaded by the Ld. Counsel for the appellant that in these cases the concerned consignors, who are the manufacturers of iron and steel products, have already paid the Service Tax on the service of goods transport agency service; therefore, there is no liability against the appellant. However, as per facts on record, the appellant has not given any proof of such payment of Service Tax on goods transport agency service by the consignor manufacturers. The Ld. Counsel for the appellant submits that they will collect the said evidence/ proof of payment from the concerned consignors and submit the same to the Department.

4.1 The appellant also pleaded that when the service tax has been paid already the same cannot be charged again from the appellant. The appellant refers to CBEC's letter F. No. 341/18/2004-TRU (Pt)., dated 17-12-2004 which has been issued on the subject of levy of service tax on goods transport agency and observes as under;

> 5.7 If service tax due to transport of a consignment has been paid or is payable by a person liable to pay service tax, service tax should not be charged for the same amount from any other person, to avoid double taxation.

4.2. Considering overall facts of the case at the CBEC's letter dated 17.12.2004 referred above, the impugned order is set aside and matter is remanded to the original adjudicating authority, who shall give an opportunity of personal hearing and submission of documents in respect of payment of service tax to the appellant and decide the matter afresh.

5. In the result the appeal is allowed by way of remand in above terms.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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