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

COURT-III

Date of hearing: 29.06.2017
Date of Decision: 14.07.2017

Appeal No. ST/1993/2012 (DB)
[Arising out of the Order-in-Appeal No. 47 (AKJ)ST/JPR-I/ dated 29/03/2012, passed by Commissioner of Central Excise Commissionerate (Appeals-I),Jaipur]

Agarwal Colour Lab … Appellant

Vs.

CCE Jaipur- II … Respondent

Appearance:

Present Shri Kumar Vikram, Ad for the appellant
Present Shri Amrish Jain, DR for the respondent

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

FINAL ORDER No. 55119/2017

Per: Ashok K. Arya

1. This Appeal is against Order in Appeal Number 47/2012 dated 28/03/2012 whereunder inter alia demand of service tax of Rs.1,86,122/- along with interest and penalties under Sections 76 & 78 of Finance Act, 1994 have been confirmed.

2. Both sides represented by Shri Kumar Vikram Ld. Advocate for the appellant and Shri Amresh Jain, Ld DR for the Revenue have been heard.

3. The main issue here is whether the liability of service tax is on gross value collected for the services of photography and photography studio/ agency provided by the appellant. The appellant pleads that they were under the belief that work relating to photostudio was not taxable and they did not collect any service tax from Photography Studio. However, the appellant has already paid the demand of service tax confirmed against them. The appellant also pleads that demand beyond period of limitation cannot be confirmed. The appellant in support cites following case laws:

i. *CCE vs. Satyam Digital Photo Lab Final Order No. St/503-504/11 dated 20.09.2011.*

ii. *CCE vs. Centre Point Colour Lab Final Order No. ST/526-27/11 dated 03.10.2011*

iii. *CCE vs. Classic Colour Lab Final Order No. St/425-426/11 dated 01.09.2011*

iv. *Laxmi Colour Lab vs CCE Final Order No. ST/ 267/12 dated 06.03.2012*

v. *Shobhna Digital Lab vs. CCE 2011 (24) STR 430 (Tri-Del)*

4. The Ld. DR has reiterated the findings given in the impugned order.

5. After having carefully considered the facts of the case and the submissions of both sides it appearas that the appellant is liable to pay service tax for the gross amount received on account of services of photography & Photostudio/ agency. The subject matter has been dealt with by the Larger Bench of the Tribunal in the case of *Agarwal Colour Advance Photo System Vs Commr. of C. Ex., Bhopal* 2011 (23) STR 608 (Tri,-LB). In the said case inter alia the relevant question mentioned in para 3 of the said order finds answer in its para 22. The said questions mentioned in para 3 is as under.

(3) ……

(2). *Whether for the purpose of Section 67 of the Finance Act, 1994 the value of service provided in relation to photography would be the " gross amount charged" including the cost of material, goods used/ consumed minus the cost of unexpected film?*

(3) …..

The answer to above question has been given in para 22 of the said decision as under:

22 …..

(i) For the purpose of Section 67 of the Finance Act, 1994, the value of service in relation to photography would be the gross amount charged including cost of goods and material used and consumed in the course of rendering such service. The cost of unexposed film etc. would stand excluded in terms of Explanation to Section 67 if sold to the client.

The Larger Bench in above decision also makes a mention that determination of value of taxable service of photography depends on circumstances of each case. However, considering full facts of the case and the Tribunal's Larger Bench Decision (supra), there cannot be two opinions that the liability of service tax payable by the appellant is for the gross value collected for the service of photography and photography studio/agency rendered to the customers. It is an undisputed fact that the appellant has already paid the demand of service tax confirmed by the impugned order. The case laws cited by the appellant are not strictly applicable to the present facts.

5.1. In the light of above discussion the demand of service tax along with interest is sustained. But on the issue of penalty imposed under Section 78 of Finance Act, in our view the appellant deserves relief and the same is hereby dropped, when there is no willful suppression or misstatement of facts, fraud, and collusion with intent to evade payment of Service Tax on the part of the appellant.

6. In the result the impugned order is modified to above effect and appeal partly allowed in above terms.

[Order Pronounced in the open court on_14.07.2017_]

(S.K. Mohanty)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

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