CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 07.08.2017

S. T. Appeal No. 1384 of 2011
(Arising out of order-in-appeal No. IND/CEX/000/APP/235/11 dated 21.06.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Indore).

M/s Kothari Agencies Appellant

Vs.

CCE, Indore Respondent

Appearance:

Sh. R. S. Sharma, Advocate for the appellant
Sh Sanjay Jain, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 55753 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. IND/CEX/000/APP/235/11 dated 21.06.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Indore. The period of dispute is 2004 to 2008. During the period under consideration, the appellant was engaged in the business of cargo handling and warehousing service to the fertilizer companies at the railway station. Out of short payment of service tax of Rs.2,04,115/-, the appellant has already paid Rs. 97,534/- alongwith interest. The balance amount of Rs. 1,06,581/- is still pending. The same is disputed in the present appeal.

2. In this regard, ld. Counsel Sh. R.S. Sharma submits that the demand is on total consideration received by the appellant from fertilizer companies whereas service tax has neither been billed nor charged from the fertiliser companies. So, the cum-tax benefit is to be extended to the appellant.

3. On the other hand, Sh. Sanjay Jain, ld. AR for the Revenue submits that no evidence regarding not charging of service tax by the appellant has been furnished before the lower authority.

4. After hearing both the parties and on perusal of record, it appears that in the instant case, the fertiliser companies have given a lumpsum payment to the appellant. No separate amount was charged/ mentioned pertaining to service tax. As per the ratio laid down by the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Delhi vs. Maruti Udyog Ltd., - 2002 (141) ELT 3(SC),*** the appellant is entitled for the benefit of cum duty value when no separate service tax has been charged or mentioned by the appellant in the bills. When it is so, then we allow the benefit of cum-tax benefit of Rs. 1,06,581/- to the appellant. For this purpose, the impugned order is modified accordingly.

5. In the result, appeal filed by appellant is allowed with consequential relief.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Justice (Dr.) Satish Chandra)
Member (Technical) President

Pant