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

Date of Hearing:30.05.2017
Date of Decision:19.09.2017

Service Tax Appeal No.206/2011 (DB)

[Arising out of Order-in-Appeal no.IND/272/2010 dated 15/21.09.2010 of the Commissioner (Appeals), Central Excise, Indore]

M/s.Anurag Trivedi Appellants

Vs.

CCE, Indore Respondent

Appearance:

Rep. by Ms. Priyanka Goel, Advocate for the appellant.
Rep. by Ms. Neha Garg, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Final order No.56641/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 15/21.09.2010 passed by the ld. Commissioner (Appeals), Customs, Central Excise and Service Tax, Indore, upholding the adjudged demand on the ground that the activities provided by the appellant fall under the category of "Clearing & Forwarding Agent Services", as defined in Section 65(25) of the Finance Act, 1994.

2. Ld. Advocate appearing for the appellant submitted that in order to fall under the purview of taxable service of "Clearing & Forwarding Agent Services", there must be involvement of both clearing as well as forwarding activities. Since clearing activities by the appellant is absent in the present case, the activities

undertaken by the appellant for its client will not fall under the ambit of such service for the purpose of levy of service tax. In this context, ld. Advocate has relied on the decision of this Tribunal in the case of **Commissioner of Central Excise, Meerut-II Vs. Rakesh Ahuja & Others – 2016 (12) TMI 596 – CESTAT-Allahabad.**

3. On the other hand, ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

4. Heard both the sides and examined the case records.

5. We find that M/s.Vikram Cement (a unit of Grasim Industries Ltd.) vide work order dated 1.4.2007 had assigned the following tasks to the appellant:-

> " You shall appoint persons at Dewas in two shifts from 6.00 AM to 10.00 PM and shall divert the material by issuing new challans, as per instructions of Depot Incharge of your area/site Incharge."

For undertaking the above assigned job, the appellant was entitled to various payments including the reimbursable expenses.

6. On perusal of the work order and the invoice-cum-delivery challans issued by M/s.Vikram Cement, we find that the manufactured goods were delivered by M/s.Vikram Cement at their Dews unit and thereafter, the appellant undertook the activities of diversion of such goods by issuance of new challans. Thus, the above documents show that the appellant is only engaged in forwarding the goods received at DEWS Unit by diverting the materials to different depots located within such zone/area. Since the appellant is not involved in clearing the goods from the factory of its principal, M/s. Grasim Industries, it cannot be said that the

appellant is providing both clearing & forwarding service to its principal. Thus, in our considered view, the activities of only “forwarding” without involvement of any clearing activities will not subject to levy of service tax under the category of “clearing & forwarding agent service”. We find that in an identical set of facts, this Tribunal in the case of **Rakesh Ahuja & Others (supra)**, while dismissing the appeal filed by the Revenue, has held that in absence of any provision of clearing service, other services of receiving /storing of goods and delivering the same on the direction of the principal would not fall under the purview of taxable service as defined under Section 65(105) ibid.

7. In view of above, we do not find any merits in the impugned order, clarifying the disputed service under “Clearing and Forwarding Service”. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

[Order pronounced on 19.09.2017]

(S.K. Mohanty)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Ckp.