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

Date of hearing: 12.09. 2017
Date of decision: 22.09.2017

S.T. Appeal Nos. 51922 & 55738 of 2014

(Arising out of order-in-appeal No. BPL-EXCUS-000-APP-181-13-14 & BPL-EXCUS-000-APP-095-14-15 dated 03.01.2014 & 31.07.14 passed by the Commissioner (Appeals), Customs, Central Excise & Service tax, Bhopal).

M/s Singh Trading Company Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Sh. Vineet Sinha, 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 Nos. 56687 – 56688/ 2017

Per: **V. Padmanabhan**:

Both the appeals are filed against the order-in-appeal No. BPL-EXCUS-000-APP-181-13-14 & BPL-EXCUS-000-APP-095-14-15 dated 03.01.2014 & 31.07.14 passed by the Commissioner (Appeals), Customs, Central Excise & Service tax, Bhopal.

2. Both the appeals have been filed covering the demand made for the period April 2011 to March, 2013. Both the appeals are being disposed of by this common order.

3. Brief facts of the case are that the appellants are engaged in providing clearing and forwarding agent service and transportation of goods by road service taxable under Section 65(105)(j) & Section 65(105)(zzp) of the Finance Act, 1994 respectively. They were appointed as a Clearing and Forwarding Agent of M/s Yamaha Motor India Pvt. Limited (YMI). As per the agreement dated 30.08.2005 entered into by the appellant with YMI, they were required to receive the goods from YMI, store the same and deliver the products to the destination specified by the company. They also receive remuneration as per the agreement. The department noticed that w.e.f. 01.04.2007, the appellant started raising separate invoices for C&F service as well as transportation service to YMI. In respect of the C&F, Service Tax was paid by the appellant. However, with reference to transportation services, service tax was claimed to be paid by M/s Yamaha Motor India on reverse charge basis after availing the abatement of 75%. The department was of the view that the amounts covered by invoices issued towards transportation was nothing but a part of the consideration received by the appellant from YMI for clearing and forwarding services. Accordingly, demand for service tax was made by the department under C&F services alongwith interest and penalty under the Finance Act, 1994. Aggrieved by the impugned orders, present appeals are filed.

4. With this background, Ld. Counsel for the appellant submitted that the service tax has been demanded on transportation freight which cannot be part of clearing and forwarding agent service. For transportation, the recipient of service has already paid the service tax under reverse charge mechanism and hence the department cannot demand service tax on the same activity in more than one category. Ld. Counsel also argued that the agreement entered into between the appellant and M/s YMI has indicated rates for transportation freight, according to which the invoices have been raised.

5. Ld. AR for the Revenue justified the impugned order. He argued that the agreement with YMI was for C&F service which included all operations for storing of goods as well as despatch of the products to various destinations as per the instructions of YMI. He further submitted that the specified fees and charges to be paid to the appellant by YMI are consolidated including all expenses. Accordingly, he submitted that the impugned order may be upheld.

6. We heard Sh. Vineet, ld. Advocate for the appellant and Sh. Sanjay Jain, ld. AR for the respondent.

7. The bone of contention between the appellant and department is an agreement entered into by the appellant with YMI. In terms of the agreement, the appellant was required to undertake clearing and forwarding service for YMI. From the perusal of the agreement, it is seen that the appellant was required to carry out clearing and forwarding services and other allied services in connection therewith. They were required to have suitable premises for storage of the

products of YMI and despatch the product to various destinations as per the instructions of YMI. As per the terms of agreement they were entitled to receive various amounts towards godown rent, staff and security, establishment charges, computerisation charges, loading and unloading charges and also transportation freight payment. From the wordings of the agreement, it is evident that the C&F service rendered for YMI include not only receipt and storage of the vehicle, but also despatch of the same to the destination. Under such terms of the provision of service, all consideration received by the appellant from YMI should form part of the consideration for payment of tax under C&F agent service. Since loading and unloading, handling and transportation of goods upto the destination was an integral part of C&F service, we are of the view that transportation charges alone cannot be bifurcated and charged separately to service tax under GTA service. Further, it is evident from the facts of the case that the appellant does not satisfy the condition of being considered as Goods Transport Agency. Consequently, we are of the view that the transportation charges received should form part of the consideration for C&F service.

8. In view of the above, we find no reason to interfere with the impugned orders which are upheld for the reasons mentioned therein.

9. In the result, appeals are rejected.

(Pronounced on 22.09.2017).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant