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

Date of hearing/decision: 15.09.2017

S. T. Appeal No. 57182 of 2013

(Arising out of order-in-appeal No. 15(RDN)ST/JPR-I/2013 dated 31.01.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur).

M/s Dileep Industries Pvt. Ltd., Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Rinky Arora, Advocate for the appellant
Sh Ranjan Khanna, AR for the respondent

Coram:

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

Final Order No. 56726/ 2017

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

The present appeal is filed against the order-in-appeal No. 15(RDN)ST/JPR-I/2013 dated 31.01.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur. The period of dispute is 2006-07 to 2009-2010.

2. Brief facts of the case are that the appellant is engaged in the manufacture of wooden furniture and articles. Further, the appellant are also engaged in the export of goods and for this purpose they lodged their bills for collection to the Indian Bankers who in turn send the bills for collection to the foreign bankers. The appellant also organizing fairs in foreign countries for

exhibition of the products wherein the appellant participated. The department has levied the service tax by issuing the show cause notice dated 19.11.2010. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Ms. Rinky Arora, ld. Advocate for the appellant and Sh. Ranjan Khanna, ld. AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up before the Tribunal in the case of ***Greenply Industries Ltd. vs. CCE, Jaipur*** (Final Order No. 50149/2014 dated 03.01.2014) where it was observed that-

> "4. *We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged under Section 66A read with Rule 2 (1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order in appeal dated 12.11.08 has set aside that order and as per the appellant's counsel, no appeal has been filed against that order. In view of*

> *this, the impugned order is not sustainable, the same is set aside and appeal is allowed*".

5. By following our earlier decision (supra), we allow the claim of the appellant in this regard.

6. The second grievance of the appellant is pertaining to the demand of Rs.1,90,033/- for conducting the handicrafts fairs in the foreign countries. From the record, it appears that the appellant has participated in a fair organised in foreign country. The appellant paid huge charges for allotment of booth/ space and other arrangements to the Council. There is no dispute that the services were performed outside India. But the department has demanded service tax.

7. After hearing both the parties and on perusal of record, it appears that the issue has come up before the Tribunal in the case of ***Paramount Communication Ltd. vs. CCE*** (Final Order No. 50029/2017 dt. 05.01.2017) where it was observed that-

> "4. *We have heard both sides and perused the appeal records. The admitted facts of the case are that the appellant participated in Business Exhibition held outside India. For such participation they paid consideration to the organizers. The Business Exhibition Service is entirely performed outside India. No part of the same is performed in India. In similar set of facts, the Tribunal in the case of Positive Packaging Industries Limited (supra), after examining the 'Provisions of Taxation of Services (Provided from Outside Indian and Received in India) Rules, 2006, held that there is no liability for the Indian assessee when the Business Exhibition Service is entirely performed outside India. Following the said decision, we find no merit in the impugned order and accordingly, set aside the same. Appeal is allowed*".

8. By following our earlier decision (supra), we allow the claim of the appellant.

9. Third issue is pertaining to availing services of truck operators for inward transportation of goods, the Department has brought the services to the clutches of service tax .

10. After hearing both the parties and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of ***South Eastern Coalfields vs. Commissioner -2017 (47) STR 93 (Tri. Del***.) where it was observed that-

> "6. ....
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> *It is clear that to be called "goods transport agency" a person should fulfil two conditions, namely, he should provide service in relation to transport of goods by road and issue consignment note, by whatever name called. In the present case, admittedly, no consignment note was issued by the goods transporter. The original authority held that the slip/challans issued for monitoring purposes by the appellant (receiver of service) will satisfy such conditions and tax liability can be upheld. We are unable to understand or appreciate such reasoning. The original authority is creating an amalgamation of service provider and recipient to fit in the definition of Goods Transport Agency. In other words, the transport of coal is done by the transport contractor which satisfied the first condition but no consignment note being issued. The slip issued by the appellant as recipient of service is taken with such activity of transport to bring in tax liability. We find that such attempt is beyond the scope of law and without merit.*
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> *7. ....*
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> *8. In cases where admittedly no consignment notes have been issued, the said transporter cannot be called Goods Transport Agency. In Birla Ready-mix – 2013 (30) STR 99 (Tri. Del.), it was held that the provisions of the Act has to prevail and the definition at Section 65(50b) has to be understood independent of Rule 4B of the Service tax Rules, 1994 to decide whether the person concerned is a goods transport agency.*
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> *9. In northern Coalfields Limited vs. CCE, Bhopal vide Final Order No.53313/2015, dated 29.10.2015, an identical situation was examined by the Tribunal. There also, the payment slips were generated by the service recipient containing relevant particulars like truck number, weight, etc. for monitoring and paying contractors for their service. No consignment notes were issued*

by the transporter. The Tribunal held that as no consignment note as generally understood or delineated in Rule 4B was issued by the transporter to the appellant in the transaction the tax liability under GTA does not arise".

11. By following our earlier decision (supra), we find no reason to sustain the impugned order. The claim of the appellant is allowed.

12. In the result, the impugned order is set aside and appeal is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Justice (Dr.) Satish Chandra)
President

Pant