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

Date of Hearing/Decision:11.12.2017

Appeal No.ST/732/2011 (DB)

[Arising out of Order-in-Revision No.01/COMMR.REVISION/ADJ/JBP/2011 dated 17.01.2011 passed by the Commissioner of Customs, Central Excise & Service Tax, Bhopal]

M/s.Vijay Enterprises Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Rep. by none for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

Coram: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 58362/2017

Per B. Ravichandran:

When the case was called, none appeared on behalf of the appellant in spite of notice. We note that adequate opportunities have already been provided to the appellants to submit their side of the case. We proceed to decide the appeal with the assistance of ld. AR and appeal papers.

2. The brief facts of the case are that the appellants are engaged in providing C & F Agency service in pursuant to contract with their clients. The dispute in the

present appeal relates to addition of certain expenses towards rent, loading and unloading etc. incurred by the appellant during the course of their service to the client, in the taxable value. The proceedings initiated against the appellant were dropped by the Original Authority by the order dated 26.02.2009. He held that the services provided by the appellant by paying freight, loading and unloading expenses or other misc. expenses are getting them reimbursed by the principal company, cannot be the subject matter of service tax. He found that such activities are not connected to taxable activities of clearing and forwarding operations. Relying on various decisions of the Tribunal, he held that there is no need to add these expenses in the taxable value. The order was reviewed by the Commissioner, who passed the impugned order on 17.01.2011. He held that these expenses are incidental to C & F services and are accordingly to be added in the taxable value. The appellant filed the present appeal contesting the said revision order.

3. After hearing the ld. AR for Revenue and on perusal of the appeal records, we note that the Original Authority examined the factual and legal issue and arrived at the correct conclusion regarding valuation of C & F Agent service. The findings of the Original Authority are as below:-

> "4. I have gone through the records of the case. I find that as per the terms of the agreement the company was reimbursing the loading /unloading expenses to the party. The enclosed chart showed that the difference in gross amount received by them and the taxable value on which they paid service tax as shown in the ST3 returns is due to the loading/unloading expenses which were reimbursed to them. The party has shown that the amount received

by them was less than the actual expense incurred by them on account of labour payment. I find that they did not suppress the taxable value as alleged in the said notice. They have substantiated the difference in the gross value and the taxable value on which they paid the service tax. In the light of the above mentioned decisions of various tribunals on taxability of service tax on various types of reimbursable expenses, I find that the service provided by the party by way of paying freight, loading and unloading expenses or other miscellaneous expenses and getting them reimbursed by the company will not be eligible for levy of service tax, since no service connected with clearing and forwarding operations is involved in such activities. I find that the expense incurred and received by the party by way of providing an establishment set up is not taxable to service tax as they acted as agent in respect of such expenses. The cited case laws held that service tax is to be collected only on amounts received for rendering services towards C&F agents and other amounts in regard to assistance in receipt, warehousing and forwarding cement were not covered under C& F activities. It has been held in the case of APCO Agencies Kozhikode Vs. CCCE, Calicutt (2008) 13 STJ 173 (CESTAT-Bangalore), Alathur Agencies vs. CCE, Calicutt- 2007 (007) STR 0402 (Tribunal-Bang.); and Popular Cement Traders vs. CCE, Cochin-2007(005)STR 0384 (Tribunal-Bang.) that 'reimbursement of rent, loading/unloading, packing, freight, taxes on actuals like telephone, courier, photocopies, printed stationery are not liable to service tax'. The cases cited by the party and other cases clearly assert that the charges incurred by the party on the above mentioned heads and later reimbursed on actual basis by the principal company are not taxable to service tax under the said service. Thus, the service tax including education cess amounting to Rs.2,22,545/- is not payable by them under Section 68 of the Act and hence the same is not recoverable from them under Section 73 of the Act, Held accordingly. "

4. Against the above categorical finding, we find that the impugned order has not come out with any sustainable legal reasons to reverse the same. We note that by now, it is a well settled principle upheld by this Tribunal as well as by various High Courts regarding valuation of C & F Agent Service that, any expenses incurred by such agent and reimbursed as per contractual agreement, on actual basis cannot form part of the taxable value on C & F agent service. The Original Authority categorically recorded that all these expenses are incurred and reimbursed on actual basis and we find no reason to vary the finding recorded by the Original Authority. Accordingly, we set aside the impugned order and restore the order-in-original. The appeal is allowed.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.