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

Date of hearing/decision: 11.05.2018

S. T. Appeal No. 1862 of 2010
(Arising out of order-in-appeal No. IND/293/2010 dated 22.09.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore).

M/s Pharma Traders Appellant

Vs.

CCE, Indore Respondent

Appearance:

Sh. S. K. Pahwa, Sh. Rohan Pahwa & Sh. Kuldeep Singh, Advocates for the appellant

Sh. A. K. Singh, AR for the Respondent

Coram:

Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Mr. Ajay Sharma, Member (Judicial)

Final Order No. 51832/2018

Per: **V. Padmanabhan**:

The present appeal is against Order-in-Appeal No. 293/2010 dated 22.09.2010.

2. The appellant was engaged in the activity of clearing and forwarding service for various pharmaceutical companies. The activities undertaken by them included receiving the goods from the manufacturers warehousing of these goods and discharging the same as to the customers as per instructions of the principal. They also maintained the connected records and issued invoices on behalf of the principal. The dispute covers the period 01.04.2002 to 31.03.2007. The Revenue noticed that the appellant was receiving from their principals,

certain amounts over and above the commission received by them for clearing and forwarding activity. The authorities below took the view that such amounts, which were in the nature of reimbursable expenses, have been received by the appellant in connection with the C&F Agency Service rendered by the appellant and is liable to be included in the commission received by the appellant from their principals. Accordingly, both the authorities below demanded the differential service tax amount totally Rs. 27,89,269/- alongwith interest and penalties. Aggrieved by the order of the Commissioner (Appeals), the present appeal has been filed.

3. With this background, we heard Sh. S. K. Pahwa, ld. Advocate for the appellant and Sh. A. K. Singh, ld. AR for the Revenue.

4. Ld. Advocate submitted that the Revenue has sought to include certain reimbursable expenses as part of the consideration received from the principals and have held that service tax was liable to be paid on such reimbursable expenses received. He argued that the inclusion of such reimbursable expenses in the consideration is not justified since such amounts have been received by the appellant for services other than clearing and forwarding services for activities such as collection of payments, keeping the principal informed about charges in local tax authorities representing the company before Sales Tax authorities etc. He submitted that there is no justification for including the same.

5. Ld. AR on the other hand justified the impugned order. He submitted that such amounts have been received by the appellant only because of their

status as C&F agent of the principal and but for that they would not receive amounts from the principal and accordingly he justified the inclusion of the same.

6. After hearing both sides and on perusal of the record, we find that there is no dispute that the activities undertaken by the appellant were covered by the definition of C&F service. It is also seen from the record that on the commission received from the appellant from the principal, the service tax due thereon has already been paid. The dispute pertains to only the amounts which were reimbursed to the appellant over and above the commission, by their principal. From the record, we find that such amounts have been received by the appellant towards activities which are unconnected with the clearing and forwarding services rendered. Hence, we are of the view that inclusion of such reimbursable expenses as part of the consideration is without justification.

7. In any case, the issue regarding inclusion of reimbursable expenses have been settled in favour of the appellant by the Hon'ble Delhi High Court in the case of ***Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union of India – 2013 (29) STR 9 (Del.***). The said decision has also been upheld by the Apex Court reported as – ***2018 (10) GSTL 401 (SC)***.

8. In the result, the impugned order is set aside and appeal succeeds.

(Dictated and pronounced in the open Court).

(Ajay Sharma)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Pant