CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

APPEAL No. ST/36/2009
*(Arising out of Order-in-Appeal No. **53/2008(H-II)S.T,** Dated **31.10.2008** passed by CCE&ST (Appeals-II), Hyderabad).*

CCCE&ST, Hyderabad-II .. APPELLANT

Vs.

Prayag Enterprises Pvt. Ltd. .. RESPONDENT

Appearance
Smt. B.V. Siva Naga Kumari, Commissioner/AR for the Appellant.

Shri P. Rama Krishna, Advocate for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 08.10.2018
Date of Decision: 08.10.2018

FINAL ORDER No. A/31403/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is filed by Revenue against Order-in-Appeal No. 53/2008(H-II)S.T, Dated 31.10.2008.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this appeal is whether the respondent is liable to discharge service tax liability under the category of 'Business Auxiliary Service' for the amount received as commission for sale of Indian Made Foreign Liquor (IMFL) during the period 01.07.2003 to 30.06.2004. Investigating authorities after investigating the issue, issued a show cause notice demanding service tax liability by holding a view that the services rendered by the respondent would be as sales promotion agent and therefore is not eligible for the benefit of notification No. 13/2003-ST as a Commission Agent. Adjudicating authority confirmed the demands so raised with interest and imposed penalties. The first appellate authority, after considering the clauses of the agreement entered into by the respondent with the manufacturers, set aside the Order-in-Original holding that the respondent has received the consideration as Commission Agent.

4. Ld. Commissioner indicates that the respondent is a Sales Promotion Agent for IMFL manufacturers and therefore taxable under "Business Auxiliary Service" and is not Commission Agent. She would draw our attention to the agreement entered into by appellant with the manufacturers of IMFL. She would submit that the role of respondent is not only a Commission Agent but is also doing sales promotional activities.

5. Ld. Counsel submits that the issue is now well settled by the judgment of Tribunal in the case of Chahabria Marketing Limited vs. CST, Mumbai [2016(43)S.T.R. 193 (Tri.-Mumbai)], Brindco Sales Ltd. vs. CST,

Delhi [2015(40)S.T.R. 986 (Tri.-Del.)] and Premier Enterprises vs. CCE, Hyderabad [2009(16) S.T.R. 158 (Tri.-Bang.)] and produces copies of the said decisions of the Tribunal.

6. We find that the first appellate authority has relied upon the definition of "Commission Agent" as indicated in the explanation in Notification No. 13/2003-ST, dated 20.06.2003 and also the consideration paid to the respondent by the manufacturers of IMFL. On perusal of the clauses in agreement, we do find that the agreement entered into indicates that the respondent shall be paid the amount as commission which is based on the quantum of sale or purchase. The first appellate authority has correctly come to the conclusion that the respondent is covered under the notification No. 13/2003-ST, dated 20.06.2003 for the period in question and no tax liability arises. We do find that such conclusion is correct and that the decisions cited by Ld. Counsel directly apply to the case in hand and are favouring respondent. Accordingly, we hold that the impugned order is correct and legal and does not require any interference.

7. Appeal stands rejected.

(Dictated and pronounced in open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg