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

APPEAL No. ST/1862/2010
(Arising out of Order-in-Appeal No. 31/2010(H-II)ST, dated 30.03.2010 passed by CCCE&ST (Appeals-II), Hyderabad)

KARVY CONSULTANTS LIMITED .. APPELLANT

Vs.

CCE, C&ST, Hyderabad-II .. RESPONDENT

Appearance
Shri Harish Bindumadhavan, Advocate for the Appellant.

Shri P.S. Reddy, Asst. Commissioner/AR for the Respondent.

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

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

Date of Hearing: 25.10.2018
Date of Decision: 25.10.2018

FINAL ORDER No. A/31540/2018

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

1. This appeal is directed against Order-in-Appeal No. 31/2010(H-II) ST, dated 30.03.2010.

2. The relevant facts that arise for consideration, after filtering out unnecessary details are, the appellant is registered with the Department for

rendering various taxable services such as banking and other financial services, business management and maintenance or repair services. It is the case of Revenue in the show cause notice that the appellants had evaded the service tax by incorrectly computing the service tax liability, not paying the service tax on various services rendered to the client resulting in escapement of tax. Appellant contested the show cause notice on merits. The adjudicating authority, after following due process of law, confirmed the demands raised along with interest and imposed penalties. This appeal is against those findings.

3. Ld. Counsel submits that during the period 2003-04 to 2006-07, the demand has been raised on courier charges under “Banking and other Financial Services”, which is for the amount collected from various clients for sending physical shares and various other documents. It is his submission that these are reimbursable expenses and the law as settled on this issue by the judgment of Hon’ble Apex Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. [2018(10) GSTL 401 (S.C.)] shall apply in full force. It is his submission that they are also in the business of Medical Transcription Training Services which is sought to be taxed under Commercial Training or Coaching Services which, he fairly submits that needs to be upheld and they are not contesting the same and they have discharged the amount along with interest. It is his further submission that as regards the demand under Banking & other Financial Services for Registrar and other services on the appellant for the services

rendered by them to National Commodity and Derivative Exchange (NCDEX) by an agreement dated 07.11.2003, they have been appointed as R&T Agent in respect of the commodities on NCDEX and the only job of the appellant is to analyze critically information relating to deposit or withdrawal of commodities passed on to the appellant by the relevant Warehouses or vaults including storage tanks for liquid commodities, accordingly facilitating the crediting or debiting of the dematerialized commodity accounts of the trading or the clearing members with respect to the trading of commodities on the trading system of NCDEX, a submission which the lower authorities have not considered and the impugned order is non speaking. It is his further submission that the penalties imposed on the appellants be set aside.

4. Ld. DR on the other hand reiterates the findings of lower authorities.

5. On careful consideration of the submissions made, we find that the issue is correctly put up by the Commissioner and is regarding the service tax liability under various heads. We decide the appeal, issue wise, as follows.

(a) As regards the Medical Transcription Training Services under Commercial Training & Coaching Services, we find that since the appellant has not contested this before us, the service tax liability confirmed under this head along with interest is upheld.

(b) As regards the courier charges under Banking and other Financial Services, we find that the facts as put forth by the appellant as to what these courier charges are, we find that the amounts involved are for sending/couriering various documents to their clients for which appellant charges the client. Appellant being in the depository service business, are required to transmit to their client physical shares and various other documents; it is also seen from the application form that they are charging a lump sum amount towards Courier/Postal charges. In our view, the endeavor of the Revenue to tax this amount under Banking & other Financial Services, seems to be incorrect inasmuch the lower authorities have not controverted the fact that the amounts charged by the appellant as courier charges were in fact for transmitting the documents. The only reasoning given by the first appellate authority for upholding the demands on this count is that these are all non-reimbursable expenses incurred on behalf of the client. We find that this amount is charged by the appellant as Courier charge are in fact in nature of reimbursement of expenses incurred. In our view, this cost will not get covered for taxing under the category of Banking & Other Financial Services, as per the law settled by Hon'ble Apex Court in the case of Intercontinental Consultants & Technocrats Pvt. LTd. (supra). We are also fortified in our view by the recent judgment of Bangalore Bench in the case of Karnataka Vikas Grameena Bank vs. CCE [2018(8) TMI 1222 (Cestat-Bang.)] wherein similar issue came up and it was held that the ratio of Intercontinental Consultants & Technocrats Pvt. Ltd. would apply. Accordingly, in our view, the Courier expenses incurred are reimbursable in nature hence not taxable, under the category of "Banking & Other Financial Services" and the impugned order to that extent is unsustainable.

(c) As regards the Registrar and Transfer services for NCDEX, we find that this amount is also not taxable under "Banking & Other Financial Services"; as per the agreement dated 07.11.2003 (page 15 onwards) appellant has been appointed as Registrar and Transfer Agents for the commodities traded on NCDEX and it cannot be considered as depository services. During the relevant period, definition of "Banking & Other Financial Services" under section 65 (12) of Finance Act, 1994 reads as under:

"(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or [commercial concern]*, namely :—

(i) financial leasing services including equipment leasing and hire-purchase;

Explanation.—For the purposes of this item, "financial leasing" means a lease transaction where—

(i) contract for lease is entered into between parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;

(ii) Omitted

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services ,

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;

(vii) provision and transfer of information and data processing; and

(viii) banker to an issue services; and

(ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;";

(b) foreign exchange broking and purchase or sale of foreign currency including money changing provided by a foreign exchange broker or and authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a);

[Explanation. – For the purposes of this clause, it is hereby declared that "purchase or sale of foreign currency, including money changing" includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately;]"

d. As regards It can be seen from the above reproduced definition that the activity undertaken by the appellant for Registrar & Transfer Services of the commodities of NCDEX is not included in the definition of "Banking & Other Financial Services". In view of the foregoing, we hold that even this amount is not liable to be charged under service tax liability.

6. Since we have disposed of the major demands of the appellant on merits, we are not recording any findings on the limitation argued by both sides.

7. In view of the foregoing, the demands raised under Medical Transcription Services rendered is upheld along with interest along with the penalty on the amount confirmed as service tax, demands raised under "Banking and Other Financial Services" and on "R&T services" rendered for NCDEX are set aside so also the interest and penalty involved in this amount.

8. Appeal is disposed of as indicated herein above.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg