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

APPEAL No. ST/257/2009
*(Arising out of **Order-in-Appeal** No. 32/2008 (H-III) ST, dt. 24.12.2008 passed by CCE&ST (Appeals-I&III), Hyderabad)*

P. VASUDHA .. APPELLANT

Vs

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

Appearance
None for the Appellant.

Shri A.V.L.N. Chary, Superintendent/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: 01.01.2019
Date of Decision: 01.01.2019

FINAL ORDER No. A/30008/2019

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

1. This appeal is directed against Order-in-Appeal No. 32/2008 (H-III) ST, dt. 24.12.2008.

2. None appeared on behalf of the appellant despite notice. However, since the matter is of 2009 and on perusal of records, it is noticed that the

issue lies in a narrow compass, accordingly we take up the appeal for disposal even in the absence of any representation.

3. After hearing Ld. DR, we find that the issue is regarding demand of service tax for the period 01.04.2006 to 31.03.2007 under the category of "Business Auxiliary Service" for rendering the services of marketing to one M/s e-Biz.Com (P) Limited, Noida. It is the case of Revenue that the appellant having received consideration for marketing of the software in the form of CDs, he is liable to pay service tax under the category of "Business Auxiliary Service" while it is the case of the appellant that the appellant being an individual, is not covered under the definition of taxable service for Business Auxiliary Service inasmuch he being an individual is not covered in the phrase "Commercial Concern".

4. We find that the first appellate authority after considering the very same argument has passed a detailed order which we concur and rely upon, which is reproduced-

> *´I have carefully gone through the appeal memorandum and the submissions made during the personal hearing. As rightly held by the adjudicating authority, the activity of enlisting more customers amounts to promotion or marketing of the business activities of the firm, for whom the activity was undertaken by the appellant. As regards the plea that the activity involved imparting of education through CDs and therefore exempt in terms of Notification No. 14/2004-ST, dated 10.09.2004 was also turned down by the adjudicating authority on the grounds that the appellant, being an associate of the principal company, was creating new clientele and*

was being paid commission for the said work. I agree with the view of the adjudicating authority. The Notification No. 14.2004 dated 10.09.2004 exempts services provided in relation to, inter-alia, education. In the instant case, the appellant is not providing any service relating to education. Their activity is one of creating new clientele by introducing new customers to the principal company which enabled the later to market their products, which may be designed to provide the knowledge required for operating a computer system. Thus, the appellant is only creating new clientele and promoting the business of the principal's but not rendering any service in relation to education. At the time of personal hearing, the advocate had stated that prior to 01.06.2006, the appellant cannot be fastened with duty demand as the Notification No. 14/2004 only covered a 'Commercial Concern' and not 'any person'. It is further stated that the demand is barred by limitation as the Department could not show any evidence that non-payment of service tax during the relevant period was due to malafide intentions. The advocate has placed reliance on the decision of the Hon'ble Tribunal in the case of Engineering & Commercial Agencies Ltd. vs. Collector of Central Excise, Madras – 1996(82) ELT 295 (Tri.) and also in the case of Kirloskar oil Engines Ltd. vs. Commissioner of Central Excise, Nasik – 2004 (178) ELT 998 (Tri.-Mumbai). In so far as the contention that demand of duty prior to 1.6.2006 is not maintainable, as already observed above, the service rendered by the appellant is not in relation to education, In view of the same, the contentions in this regard are not acceptable. However, the contention, that invoking longer period is barred by limitation due to the reason that the Department has not shown any evidence of malafide intentions on the part of the appellant is tenable. In the case law Engineering & Commercial Agencies Ltd. Vs. Collector of Central Excise, Madras – 1996 (82) EKT 295 (Tri.), it was held that when any allegation is made of intent to evade payment of duty, the burden to prove th same is on the Department. In view of the fact that no evidence of deliberate intention has been cited by the Department, the demand is hit by limitation. Further, as submitted by the Advocate, the subject matter involves considerable interpretation of the provisions of the Service Tax Statute. Therefore, it is not correct to hold that the appellant had a deliberate intention in not discharging the service tax *liability. Furthermore, being an individual and carrying out an activity for client through computer online interface, as pointed out by the advocate, it would be difficult to presume that such activity would attract service tax. In view of the same, it is not correct to allege malafides in a case of this nature. It is also on record that the appellant had declared the income in the profit & Loss account for the relevant periods and therefore, in the light of the Hon'ble Tribunal decision in the case of Kirloskar Oil Engines Limited vs. Commissioner of Central Excise, Nasik – 2004 (178) ELT 998 (Tri.-Mumbai), the demand beyond the normal period does not sustain. For the same reason, order imposing penalties is also set aside."*

5. We find that nothing survives in this appeal as the order passed by the first appellate authority is a detailed one and does not require any interference.

6. Appeal stands rejected.

(Dictated and pronounced in open court on 01.01.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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