CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Service Tax Appeal No. 1206 of 2011

(Arising out of OIA No.05/2011 (G) ST dt.21.01.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Blaze Colour Laboratories
D.No.74-1-15/4, MVN Complex,
MG Road, Vijayawada - 10 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Guntur
Kannavarithota, Guntur
Andhra Pradesh – 522 004 **......Respondent**

with

Service Tax Appeal No. 1207 of 2011

(Arising out of OIA No.04/2011 (G) ST dt.21.01.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Blaze Colour Laboratories
D.No.74-1-15/4, MVN Complex,
MG Road, Vijayawada - 10 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Guntur
Kannavarithota, Guntur
Andhra Pradesh – 522 004 **......Respondent**

and

Service Tax Appeal No. 1208 of 2011

(Arising out of OIA No.03/2011 (G) ST dt.21.01.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Blaze Colour Laboratories
D.No.74-1-15/4, MVN Complex,
MG Road, Vijayawada - 10 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Guntur
Kannavarithota, Guntur
Andhra Pradesh – 522 004 **......Respondent**

Appearance
Shri Raghavendra, Advocate for the Appellant.
Shri A.V.L.N. Chary, AR for the Respondent.

Coram:
HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30119-30121/2023

Date of Hearing: 30.05.2023
Date of Decision: 30.05.2023

[Order per: R. MURALIDHAR]

The present Appeals are on account of dispute as to whether cost of consumables used in the photocopying services is includible in the assessable value or not, while the Service Tax is to be paid. The learned Counsel appearing on behalf of the Appellants submits that in case of three of their units Show Cause Notices were issued on 05.09.2006 by invoking the extended period provisions wherein the period involved is April, 2001 to March, 2006. After due process, the Adjudicating Authority confirmed the demand. However, on Appeal, the Commissioner (Appeals), after going through their submissions has held that the cost of consumables is not required to be added to arrive at the value on which Service Tax is payable. He has remanded the matter to the lower authority to get the facts of actual value of consumables used by the Appellant and pass necessary Order. Being aggrieved by the impugned OIA, the Appellants have filed these Appeals.

2. The learned Counsel submits at this stage that the issue was under litigation for quite some time and got resolved by the decision of the Larger Bench in the case of Agarwal Colour Advance Photo System vs CCE [2011 (33) STT 33] wherein it was held that cost of consumables are includible in the value. The Hon'ble High Court of Madhya Pradesh in the case of Agarwal Colour Advance Photo System and Others, passed judgment dated 13.03.2020 wherein they have held that Larger Bench decision of the Tribunal is not good in law. Therefore, as per the learned Counsel as on date, they are eligible to get the abatement towards cost of consumables while arriving at the value of the Service Tax payable on photocopying services. However, in order to give a stop to the litigation, he submits that they are ready to argue the case on limitation alone without contesting on the merits of the case, if the same can be considered by the Bench.

3. He submits that since the issue was under litigation at various stages and that matter had reached up to the Hon'ble Supreme Court and decisions were given by different Benches taking opposite views which actually resulted in Larger Bench being formed for this purpose and now even Larger

Bench's decision is being questioned by the Hon'ble High Court of Madhya Pradesh, the Appellant cannot be fastened with the demand for the extended period as the matter involved is that of interpretation. He cites case law of Nice Colour Lab vs CCE, Jaipur [Final Order No.55434-55435/2013 dt.29.01.2013] and Laxmi Colour Lab vs CCE [Final Order No.ST/A/267/2012 dt.06.03.2012] wherein on identical issues the Tribunals have held that the demand for the extended period does not sustain. Accordingly, he submits that the Appeal may be allowed on limitation.

4. The learned AR submits that though the Appellant had taken registration in 2001, they were never paying the Service Tax nor filing any Returns. Only after detailed investigation by the Department, the Appellants came out with their data pertaining to 2001-2006 on 06.03.2006 & 07.06.2006. Therefore, the lower authorities have rightly held that they should not be given the benefit of limitation.

5. Heard both sides and perused the documents and cited case laws.

6. Admittedly, the issue as to whether the cost of consumables is includible in the assessable value or not was under dispute and was being litigated in various coordinate Benches of the Tribunal, who have taken varying stands and decisions. The matter had also gone up to the Hon'ble Supreme Court and the matter was resolved by way of Larger Bench which shows that even the coordinate Benches were not on the same page on this issue.

7. It is seen from the record that even in the Appellant's own case, the Commissioner (Appeals) has agreed with the submissions of the Appellant that they are eligible to get abatement towards the cost of consumables used by them. This would mean that within the same Department the Adjudicating Authority has taken stand that the value of consumables is to be added and the Commissioner (Appeals) has taken stand that the same is not required to be added. Such being the case, it is clear that the issue is that of interpretation. The Delhi Tribunal in the case of Nice Colour Lab (cited supra) has held as under:

> *"3. However, we find that the demand stands raised and confirmed by invoking the longer period of limitation. <u>The Tribunal in the case of CCE vs Satyam Digital Photo Lab [2012 (34) STT 56] has held that when the law was declared against the assessee subsequently to the period</u>*

> *involved, and when the earlier decision were in favour of the assessee, no suppression can be attributed to the appellant so as to justifiably invoked longer period of limitation. The said decisions stand followed subsequently in number of other appeals. One such reference can be made to the subsequent decision in the case of Shobha Digital Lab vs CCE [Final Order No. ST/499/2011, dated 23-8-2011] as also in the case of CCE v Centre Point Colour Lab vide Final Order No. ST/526-527/2011 dated 4.10.2011." [emphasis supplied]*

8. In view of the foregoing, we allow the Appeal to the extent that the confirmed demand for the extended period along with the interest is set aside. The Assessee is required to calculate and pay the Service Tax for the normal period along with interest. Since the entire issue is on account of interpretational difficulties, all the penalties are set aside.

9. Appeals disposed of thus.

(Dictated and pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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