M/S. Palar Home Textiles Pvt. Ltd Vs Commissioner Of Service Tax

Court: Customs, Excise And Service Tax Appellate, Chennai

Date of Decision: Feb. 12, 2024

Acts Referred: Finance Act, 1992 â€" Section 77, 78
Finance Act, 1994 â€" Section 65(19), 66, 93(1)

Hon'ble Judges: Vasa Seshagiri Rao, Member (T)

Bench: Single Bench

Advocate: R. Balagopal, M. Selvakumar

Final Decision: Allowed

Judgement

Vasa Seshagiri Rao, Member (T)

1. Service Tax appeal No. ST/40875/2017 has been filed by M/s. Palar Home Textiles Private Limited (formerly M/s. Indokem Overseas Limited),

Chennai, challenging the Order-in-Appeal No. 720/2016 (STA-I) dated 29.12.2016 of the Commissioner of Service Tax (Appeals-I), Chennai.

2.1 Briefly stated the facts are that the appellants are engaged in the manufacture and export of textile made ups. In order to procure export orders,

the appellants have incurred expenditure in the form of payment of commission to overseas agents. It was noticed that the appellants have not

discharged the Service Tax under the category of Ã¢â‚¬ËœBusiness Auxiliary ServicesÃ¢â‚¬â„¢.

2.2 Consequently, Show Cause Notice No. 201/2011 dated 12.04.2011 was issued, demanding Service Tax of Rs.16,92,458/-for the period from April

2006 to September 2010. After the due process of law, the Adjudicating Authority has confirmed the demand of Service Tax along with appropriate

interest and also imposed penalties under Section 77 and 78 of the Finance Act, 1992.

2.3 Being aggrieved, the appellant filed an appeal before the Commissioner of Service Tax (Appeals-I) contending that (i) the commission paid to

foreign agents is eligible for exemption vide Notification No. 14/2004-ST dated 10.09.2004 or Cenvat Credit or refund under Notification No. 18/2009-

ST 23.12.2009 (ii) Service Tax under reverse charge is liable to be paid only with effect from 18.04.2006 vide BoardÃ¢â‚¬â„¢s Circular No. 276/8/2009-

CX8A dated 26.09.2011 and (iii) the issue involves revenue neutrality and interpretation of law and as such, extended time limit is not invokable and

penalty is not imposable.

2.4 The appellants were directed to make a pre-deposit of Rs.4,00,000/- vide Order-in-Stay Petition No. 230/2013 (M-ST) dated 18.12.2013 by the

Commissioner of Central Excise (Appeals). As the appellant failed to make the pre-deposit, the appeal was dismissed vide Order-in-Appeal No.

27/2014 (M-ST) dated 29.02.2014. Being aggrieved by the above Order-in-Appeal, the appellant has approached the CESTAT, Chennai which vide

F.O.No. 40980/2014 dated 12.12.2014 in Appeal No. ST/S/41143/2014 & ST/40897/2014 directed the appellant to make a pre-deposit of Rs.3,00,000/-

. In compliance to the direction of the CESTAT, Chennai, the appellants have paid the amount of Rs.3,00,000/- on 31.12.2014. Then, the appeal was

taken up for decision by the Commissioner of Service Tax (Appeals-I), Chennai, who upheld the Order-in-Original No. 53/2013 dated 17.05.2013

which demanded Service Tax of Rs.16,92,458/- along with interest and also imposed penalties under Section 77 & 78 of the Finance Act, 1994.

2.5 A scrutiny of the impugned order dated 29.12.2016 reveals that the appellate authority has rejected the appeal of the assessee exporter as the

decision in the case of Aravind A Traders Vs. Commissioner of Central Excise [2016 (44) STR 264] has been appealed against by the Department in

the HonÃ¢â‚¬â„¢ble Apex Court and the appeal was admitted. The Lower Adjudicating Authorities have upheld that services received by the appellant

from the foreign agents does not relate to any of the four specified purposes in the Notification No. 14/2004-ST dated 10.09.2004 such as agriculture,

printing, textiles processing or education and so its benefit is not applicable to the appellant.

3. The Ld. Consultant Shri R. Balagopal has submitted that the issue is no more res integra in view of the decisions rendered by the CESTAT in the

cases of Arvind A Traders and Others Vs. Commissioner of Central Excise and Service Tax, Trichy [F.O.Nos. 41056-41095/2014 dated 31.12.2014],

Texyard International and Others Vs. Commissioner of Central Excise, Trichy [F.O.Nos. 41051-41055/2014] and Aruppukottai Sri Jayavilas Ltd. and

Others Vs. Commissioner of Central Excise, Madurai [F.O.Nos. 40733-40755/2015] wherein the Tribunal has set aside the demands on merits and

also on limitation. He has further submitted that the impugned order has been passed rejecting their appeal on the ground that the appeal filed by the

Department against the decision rendered by the Tribunal in the case of Aravind A Traders (supra), was admitted by the HonÃ¢â‚¬â„¢ble Supreme Court

reported in [2016 (44) STR J14 (SC)]. The Civil Appeal No. 4077/2016 filed by the Department has been dismissed by the HonÃ¢â‚¬â„¢ble Supreme

Court vide Order dated 06.02.2019 as the tax demand is less than Rs. One crore.

4. The Ld. Authorised Representative Shri M. Selvakumar has represented the Department. He has affirmed the findings of the Lower Adjudicating

Authorities. He has argued that the appellant is not eligible for the benefit of the Notification No. 14/2004-ST dated 10.09.2004 as they have involved

in export of fabrics and not in textile processing.

5. Heard both sides and considered the submissions made in the grounds of appeal and also during the course of hearing before the Tribunal.

6. The only issue involved in this appeal to be decided is whether the appellant is eligible for the benefit of Notification No. 14/2004-ST dated

10.09.2004 or not?

7. The issue is no more res integra as in a catena of judgments which are identically placed, the Tribunal Chennai has held that textile exporters who

have paid overseas agency commission to promote their exports are eligible for the benefit of the exemption Notification No. 14/2004-ST dated

10.09.2004. As detailed in Paragraph 3, in all these cases, the demands were set aside on merits as well as on limitation. Further, the

DepartmentÃ¢â‚¬â„¢s appeal filed against the decision in the case of Aravind A Traders Vs. Commissioner of Central Excise [2016 (44) STR 264] before

the HonÃ¢â‚¬â„¢ble Apex Court has been dismissed.

8. The Tribunal in the cases of Texyard International and Others Vs. Commissioner of Central Excise, Trichy [F.O.No. 41051-41055/2014] has held

as follows:-

Ã¢â‚¬Å“6.1 We have carefully considered the submissions of both sides and also examined the records. The assessees filed appeals contesting the service

tax demanded under reverse charge on the commission paid to the overseas agents for export of finished goods. The Revenue filed appeal against

setting aside of penalties by Commissioner (Appeals). The main issue in the present appeals is whether appellant-assessees are eligible to the benefit

of exemption of service tax under Business Auxiliary Service under Notification No. 14/2004-ST dt. 10.9.2004 and whether assessees are llable for

penalty as contended by Revenue. Prima facie, we find that there is no dispute on the fact that the appellants are manufacturer-exporters and they

manufacture textile made ups and export to overseas. They have engaged overseas agents and paid commission for procurement of export orders and

the commission agency service is covered under the Business Auxiliary Service. The appellants claimed the exemption under Notification No.14/2004-

ST dt. 10.9.2004 as applicable during the relevant period before appellate authority and he rejected their plea on the ground that the said exemption is

applicable to the input services related to textile processing. The period involved in all these appeals relates to post-18.4.2006. It is relevant to

reproduce the Notification No. 14/2004-ST dt. 10.9.2004 as under :-

Service tax exemption to specified services in relation to Business auxiliary service

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied

that it is necessary in the public interest so to do, hereby exempts taxable service provided to a client by any person in relation to the business auxiliary

service, insofar as it relates to Ã¢â‚¬

a) procurement of goods or services, which are inputs for the client;

b) production or processing of goods for, on behalf, of the client;

c) provision of service on behalf of the client, or

d) a service incidental or auxiliary to any activity specified in (a) to (c) above.

and provided in relation to agriculture, printing, textile processing or education. from the whole of service tax leviable thereon under section 66 of the

said Finance Act:Ã¢â‚¬â€‹

6.2 The lower authorities denied the exemption merely on the ground that the said services are not used for textile processing. On careful reading of

the above notification, it is evident that service tax was exempted during the relevant period for the services provided under Business Auxiliary

Service if it relates to agriculture, printing, textile processing or education. The appellants are Textile manufacturer and exporters. The word ""textile

processing"" referred in the notification is to be understood in a broader sense. The dictionary meaning of Ã¢â‚¬Å“textile processing"" means sequence of

operations or changes undergone and the definition of textile"" includes fabrics, fibre, yarn suitable for weaving into fabric. The exemption of service

tax under BAS was allowed in relation to four industries namely agriculture, printing, textile processing and education. Therefore, the appellant being

textile industry, it is covered under the category ""textile processing"" in the notification.

6.3 Commission paid to the overseas agents is in respect of service provided by that agent to the appellant to export its goods and thereby sales is

promoted. That is an activity incidental or auxiliary to processing of textile goods and covered by Business Auxiliary Service and Clause (d) of the

notification extracted above covers the case of the appellant bringing the export promotion activity abroad as incidental and auxiliary to the activity of

production as is meant by Section 65 (19) of Finance Act, 1994. Appellants are accordingly entitled to the benefit of exemption Notification No.

14/2004 and not liable to the payment of service tax under reverse charge.

7. It is also relevant to state that appellants being the exporter of textile made ups as per the Foreign Trade Policy are not expected to export the

taxes. Appellants pleaded that there was no suppression of facts with deliberate intention to evade payment of service tax.

As payment of service tax by the recipients was under dispute for a long period till that was settled by the decision of Apex Court in the case of UOI

Vs Indian National Ship Owners Association 2011 (21) STR 3 (SC) there was no deliberate intention to make suppression of facts. Appellants were

under bonafide belief that as per the EXIM Policy at para 2.482 of the Policy Period 2009-10 issued by Notification No.1/(RE/2008)/2004- 2009 dt.

11.4.2008 all goods and services exported from India, services received/ rendered abroad wherever possible shall be exempted from service tax.

Therefore, the demand is also hit by limitation and the extended period cannot be invoked.

8. It is further pertinent to mention that appellants are manufacturer-exporters Service tax if any payable under reverse charge is permissible to be

availed as cenvat credit and that may be refundable under Notification No. 41/2007 unless otherwise deniable by law. The provision made in Central

Excise Rules and Cenvat Credit Rules ensures that tax is not added to the cost of export so that Indian exporter can compete with overseas market.

The Hon'ble Supreme Court in CCE Vs Coca Cola India (Pvt) Ltd. - 2007 (213) ELT 490 dismissed Revenue's appeal holding that when an assessee

is eligible to Modvat credit, the situation becomes revenue-neutral. In the present case, service tax demanded entitles the appellants to the credit

thereof and claim refund thereof under 41/2007 since it is stated by appellants that they have no other liability for which the exercise may become

revenue-neutral.

8. Therefore, in view of the above discussions, the demand of service tax under reverse charge confirmed against the appellants is set aside. As

regards Revenue's appeal on imposition of penalty, since demand of tax itself is set aside, the question of imposing penalty does not arise. Revenue's

appeal is rejected accordingly and the Assessees' appeals are allowed.Ã¢â‚¬â€‹

8. Appreciating the facts and evidence and in compliance to the judicial discipline, I hold that the appellant is eligible for the benefit of the Notification

No. 14/2004-ST dated 10.09.2004 and the impugned Order-in-Appeal No. 720/2016 (STA-I) dated 29.12.2016 cannot be sustained and so ordered to

be set aside.

9. Thus, the appeal is allowed with consequential relief, if any as per the law.