(2010) 02 P&H CK 0302

In the Punjab And Haryana At Chandigarh

ADH Agencies APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 04-02-2010

Acts Referred:

Citation : (2010) 18 STR 259 : (2010) 25 STT 395

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—The appellant has impugned the order dated 21-5-2007 (Annexure P7) passed by the 2007 (7) S.T.R. 660 . By relying upon the decision of a Larger Bench of the Tribunal in 2006 (110) ECC 652 the appeal filed by the Revenue was allowed and the appellant was held liable to pay the Service tax.

2. The claim of the appellant was that they are consignment agents of two manufacturers, namely ABS Limited and SRF Polymers Limited. It was their case that they being consignment agents and stockists are not liable to pay Service tax as they are neither cleaning agents nor forwarding agents.

3. A demand of Service tax of Rs. 1,73,952/- raised by the Adjudicating Authority was confirmed against the appellant, vide Order in original dated 7-3-2005.

4. The appellant has filed the appeal which was allowed by the Commissioner (appeals) vide order dated 15-9-2005 (Annexure P6), wherein it was held that as the appellant were the consignment agents and stockists, therefore, they are not liable to pay any Service tax. Reliance was placed by the 2004 (95) ECC 54 , wherein it has been held that the consignment agents were not liable to pay Service tax.

5. The Revenue has filed the appeal before the Appellate Tribunal, which was allowed. Reliance was placed on Medpro Pharma''s case (supra) wherein it has

been held that even the consignment agents would be liable to pay Service tax.

The following questions of law arise in this case:

(i) Whether the consignment agents are liable to pay Service tax under the category of C and F agents?

(ii) Whether the notice dated 10-6-2004 is beyond the period of limitation u/s 73 of the Finance Act?

(iii) Whether the extended period of limitation could be invoked in the absence of any allegation justifying any period of invocation?

6. Learned Counsel for the appellant has placed reliance on Commissioner of C. Ex. Vs. Kulcip Medicines (P) Ltd., , wherein the view taken by the Tribunal in Mahavir Generics''s case (supra), accepted by the Revenue as no appeal has been filed, has been noted with the approval. Thus, the first question as framed by this Court is answered in favour of the assessee and it is held that the consignment agent or stockist is not liable to pay Service tax under the category of C & F agents.

7. Once it is held that the appellant being a consignment agent, is not liable to pay Service tax under the category of C&F agents, hence Question Nos. 2 and 3 have become redundant and need not to be answered.

8. In view of the above, we allow the appeal filed by the applicant-sessee and set aside the order passed by the Appellate Tribunal (Annexure P7). The order of Commissioner (Appeals) (Annexure P6) is maintained.