(2015) 08 CESTAT CK 0012

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 574 Of 2009

Amit Enterprises APPELLANT

Vs

CCE, Bhopal RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:
Finance Act, 1994 — Section 77, 78

Citation : (2015) 08 CESTAT CK 0012

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Sandeep Mukherjee, B.B. Sharma

Final Decision : Allowed

Judgement

1. Appeal is filed against order-in-appeal dated 27.3.2009 in terms of which service tax demand of Rs.10,83,602/- was upheld (along with interest and

penalties under Sections 77 & 78 of Finance Act, 1994), under clearing and forwarding agent service on the ground that the appellant had not included

the labour charges for loading and unloading of cement transportation charges and godown rent.

2. The appellant has contended that the C&F charges @ 67 PMT comprised the following element:

Reimbursement on account of labour charges: Rs.32/-

Reimbursement on account transportation: Rs.25/-

Reimbursement on account of go down rent: Rs.5/-

Commission/Service charges: Rs.5/-

It discharged service tax liability on commission/service charges as reimbursements were not includible in the assessable value as has been held by

CESTAT in the cases of Keralam Enterprises Vs. CCE & ST, Cochin - 2008 (9) STR 503 (Tri.-Bang.), Sangamitra Services Agency Vs. CCE,

Chennai - 2007 (8) STR 233 (Tri.-Chennai), S&K Enterprises Vs. CC & C. Ex. (Appeals), Calicut - 2008 (10) STR 171 (Tri.-Bang.), Narottam &

Company Vs. CCE, Jaipur- 2014 (33) STR 472 (Tri.-Del.), Nandini Warehousing Corporation Vs. CCE, Belgaum - 2007 (8) STR 511 (Tri.-Bang.),

Ankushis Enterprises - 2013 (30) STR 612 (Tri.-Del.). It also stated that the extended period is not invokable in the present case as there was no

wilful mis-statement/suppression of facts and during the audit conducted in July 2005 it was directed to deposit differential service tax of Rs.31639 /-

which it deposited along with interest and that all the facts were known to Revenue.

3. The Id. DR reiterated the grounds adopted in the impugned order.

4. We have considered the contentions of both sides. We find that the issue of includibility of re-imbursed expenses in the assessable value of C&F

agent service has been the subject matter of several judgements of CEST AT as cited above. In the case of Nandini Warehousing Corporation

(supra) it was held that godown rent, establishment expenses, incentives, STD call charges are to be excluded from taxable value. In the case of S&K

Enterprises (supra), it was held that reimbursements on account of loading/ unloading, coolie/cartage and freight charges are not includible in clearing

and forwarding agent service. A similar view has been taken in CESTAT judgement in the case of Sangamitra Services Agency (supra) which was

taken before Madras High Court by Revenue and Madras High Court vide order reported at 2014 (33) STR 137 (Mad.) held that reimbursable

expenses received by assessee need not be added to the taxable value related to C&F agents service. We find that primary adjudicating authority in

its order has cited the judgement of Keralam Enterprises (supra) and also other judgement in the case of Sangamitra Agencies (supra) which

supported the appellant's claim but the primary adjudicating authority did not follow the ratio of the said judgements on the ground that those

judgements had not been accepted by Revenue and had been appealed against. We find this approach of the primary adjudicating authority totally

unacceptable and in gross violation of the judicial discipline. Even as regards the allegation of suppression of facts it is a fact that during audit in May

2005 a short levy of 31,639/- was pointed out by the audit party which the appellant deposited along with interest. Â Â Â Â Â Â Having regard to it

and in view of the various judgements cited earlier which have consistently held that reimbursable expenses are not includible in the assessable value

of C&F agents service and the fact that the break-up of Rs.67/- per tonne did show the labour and transportation charges and godown rent as

reimbursement, it cannot be said to be unreasonable on the part of the appellant to have a bonafide belief that no service tax was payable on such

charges. Thus we are of the view that the allegation of suppression of facts is not sustainable. It is a separate matter that on closer scrutiny these

charges may not be found to be reimbursement of expenses in real sense and break up my only be facilitate to arrive at the gross amount of Rs.67/-

PMT paid by the service recipient.

5. In the light of the foregoing, the appeal is allowed by way of remand to the primary adjudicating authority for de novo adjudication with the following

directions.

(i) The demand for the normal period of one year should be recomputed in the light of the aforesaid judgements cited above by excluding only such

charges which the appellant is able to demonstrate with evidence to be in the nature of reimbursements and the penalty under Section 76 of the

Finance Act, 1994 should be recomputed accordingly.

(ii) The appellant shall be given an opportunity of being heard.