(2015) 03 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 369 Of 2009

C.C.E., Indore APPELLANT

Vs

M/s. B. Champaklal & Co. RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 03 CESTAT CK 0004

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

Bench : Division Bench

Advocate : BB Sharma, Krishan Garg

Final Decision : Dismissed

Judgement

1. Revenue has filed this Appeal against Order-in-Appeal No. IND- 1/21/2009, dated 05.08.2009 which set aside the Order-in-Original dated

24.12.2008 in terms of which Service Tax demand of Rs.2,27,679/- was confirmed for the period April, 2002 to March, 2006 (along with interest and

penalties) under the category of ""Clearing and Forwarding Agents"" service on the ground that the respondents had short paid service tax by not

including in the assessable value the amounts recovered towards transportation charges, handling (loading and unloading) charges and other re-

imbursements. Revenue has contended that these charges are includible in the assessable value as these are for functions which are integral part of

Clearing and Forwarding Agents"" service. Revenue has further contended that the issue whether charges such as loading and unloading charges,

security charges, electricity charges, stationery and printing, telephone and fax charges, photocopy expenses, re-packing charges, travelling charges,

internet charges, etc. are excludible on the ground that they were collected as re-imbursements from the service recipient has been referred to the

Larger Bench of CEST AT in the case of M/s. Amit Sales Vs. CCE, Jaipur [2009 (13) STR 165] and thus the said judgement has not yet attained

finality.

2. Ld. counsel for the respondents argued that the transportation charges are recovered as part of a separate agreement and the re- imbursibles

related to telephone charges, warfage, etc. which were also recovered on actual basis as per the agreement and therefore were not includible in the

assessable value and that loading and unloading can also be not treated as part of ""Clearing and Forwarding Agent"" service as that is covered under

cargo handling service, which became taxable with effect from 16.08.2002 while the impugned demand has been raised in respect of such handling

charges only upto 15.08.2002. Further the respondents stated that there was no wilful mis-statement or suppression of facts.

3. We have considered the contentions of both sides. It has been clearly noted by Commissioner (Appeals) in the impugned order that the

transportation charges have been recovered as a part of separate agreement In the case of EV Mathai & Co. Vs. CCE, Cochin [2006 (3) STR 116

(Tri. - Bang.)] CESTAT held that the transportation chages under a separate contract are not includible in the assessable value for the purpose of

Clearing and Forwarding Agent"" service. It was also so held in the case of Bhagya Nagar Services Vs. CCE, Hyderabad (2006 (4) STR 22 (Tri. -

Bang.)]. As regards loading and unloading charges and other re-imbursements, Revenue itself has conceded that the issue of includibility of such

charges was referred to the Larger Bench in the case of Amit Sales (supra). In a situation, where there was a difference of opinion on this aspect

between two Id. Members of CESTAT, the allegation of wilful mis-statement/ suppression of facts for evading service tax can hardly been sustained

merely because, as alleged in the Show Cause Notice the Respondents had not included the impugned amounts in the assessable value. In the present

case, we find that the Show Cause Notice was issued on 21.09.2007, while the demand pertains to the period 2002-03 to 2004-05. Evidently, the

demand relating to loading/ unloading charges and other reimbursables is clearly hit by time bar.

4. In the light of the foregoing, we do not find Revenue's appeal sustainable and

the same is therefore dismissed.

