(2015) 05 CESTAT CK 0012

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 174 Of 2009, Cross Objection Application No. 83 Of 2009

CCE, Raipur — APPELLANT

Vs

M/s Supreme Warehousing Corporation — RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:
Service Tax Rules, 1994 — Rule 2(1)(d)(v)
Central Excise Act, 1944 — Section 35A

Citation : (2015) 05 CESTAT CK 0012

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

Bench : Division Bench

Advocate : B.B. Sharma, V.K. Puri

Final Decision : Disposed Of

Judgement

1. Revenue has filed this appeal against order-in-appeal dated 15.212.208 which held that transportation charges reimbursed by M/s Grasim Industries

Ltd. to its C&F agent (respondent in the present case) was not includible in the assessable value of the C&F agent service and having thus held

allowed the respondent's appeal before it, [(i.e. Commissioner (Appeals)] and set aside the related order-in-original with consequential relief subject to

verification of documents relating to the reimbursement of freight mentioned in para-4 of the impugned order-in-appeal. Revenue is in appeal on the

following grounds :

(i) The amount shown in the balance sheet of the respondent is the value of service received in exchange of providing C&F Agent Service. The

service tax amount of Rs.10,66,912/- + Ed. Cess Rs.13,256/- has been rightly demanded by the adjudicating authority on the suppressed amount of

Rs.1,32,66,415 /-.

(ii) The Commissioner (Appeals) has held in his OIA that the amount which has been shown by the Revenue is related to freight paid by the

Respondent to the GT As in which they claim that M/s Grasim Industries, Rawan has already paid service tax on Goods Transport Agency (in short

GTA) Service. This payment of service tax on 'GTA' service is not legal and proper as per the provisions of service tax law.

(iii) In the instant case, the Respondent as a consignee has paid fright to the GTAs in terms of Rule 2(1)(d)(v) of Service Tax Rules, 1994 read with

Notification No. 35/2004 dated 3.12.2004 (as amended). So, the respondent is required to pay service tax on Goods Transport Agency service, not

M/s Grasim Industries Ltd., Rawan. The respondent is covered as person in this category of 'GT A' service and by no agreement and by no

arrangement like reimbursement of the freight, the responsibility of payment of service tax assigned by Service Tax Law, can be shifted from the

respondent to another person M/s Grasim Industries, Rawan.

(iv) The transportation charges are related to the C&F service and are includible in the assessable value.

(v) In term of amended Section 35A (as amended with effect from 11.5.2001) the Commissioner (Appeals) has no power to remand.

2. The respondent has contended that as per C&F agent of M/s Grasim Industries, it was providing C&F agent service and in terms of the agreement

entered into with M/s Grasim Industries in this regard the freight for transportation of goods whenever paid by C&F agent was to be reimbursed by

M/s Grasim Industries and therefore the same was not includible in the assessable value of C&F. It also stated that Grasim Industries had actually

been paying service tax under GT A service on such transport charges. It cited a few judgement to the effect that the transportation charges so

reimbursed are not includible in the assessable value of C&F Agent Services.

3. We have considered the contentions of both sides. We find that in terms of agreement between Grasim Industries and the respondent, it is clearly

stated that ""You (the respondent) shall paid freight in the case of ""to pay"" consignments on our behalf to the transporter. The same shall be reimbursed

to you from time to time on production of proof of payment"". It is thus evident that freight was paid by the respondent on reimbursable basis. In the case of J.N. Traders Vs. CCE - 2007 (7) STR 216 (Tri.-Chennai), it has been held that re-imbursement of expenses on actual basis towards freight is

not liable to be included in the value of taxable C&F agent service. Similar view has been held in the case of Bhagyanagar Services Vs. CCE,

Hyderabad - 2006 (4) STR 22. Thus the Commissioner (Appeals) order holding that transportation charges reimbursed by M/s Grasim Industries are

not includible in the assessable value for charging service tax under the C&F agent service provided by the respondent is legal and proper. However,

the Revenue's contention that the Commissioner (Appeals) does not have any power of remand after amendment to Section 35A of the Central

Excise Act, 1944 with effect from 11.5.2001, has been upheld by various judicial pronouncements. In the case of CC, Amritsar Vs. Enkay (India)

Rubber Co. Pvt. Ltd. - 2008 (224) ELT 303 (P&H), the Punjab & Haryana High Court held that once power of remand has been expressly taken

way by the Finance Act, 2001, which came into operation with effect from 11.5.2001, the Commissioner (Appeals) is divested of power to remand the

case back to the adjudicating authority. Similar view was reiterated in the case of CCE, Jalandhar Vs. B.C. Kataria - 2008 (221) ELT 508 (P&H.)

Thus, Commissioner (Appeals) was debarred from referring the matter back to the original adjudicating authority for verification in terms of para 9 &

10 of the impugned order-in-appeal.

4. In the light of the foregoing discussions, we hold that transportation charges reimbursed by M/s Grasim Industries are not includible in the

assessable value of C&F agent service rendered by the respondent. However, we remand the case to the Commissioner (Appeals) with direction that

the required verification in terms of paras 9 & 10 of the impugned order-in-appeal shall be conducted at his end and appropriate orders passed. The

appeal and the cross-objections stand also disposed of accordingly.