
(2024) 03 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 51967 Of 2018

Commissioner Central Excise & Service Tax, Delhi South
Commissionerate

APPELLANT

Vs

M/S Pharmax Corporation Limited

RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Finance Act, 1994 — Section 65(12)

Citation : (2024) 03 CESTAT CK 0041

Hon'ble Judges : Binu Tamta, Member (J); P.V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Rajeev Kapoor, Ravi Goyal, Anchal

Final Decision : Dismissed

Judgement

P.V. Subba Rao, Member (T)

1. Revenue has filed this appeal to assail the order-in-appeal dated 28.03.2018 passed by the Commissioner of Central Tax, Appeals ? II, Delhi whereby he allowed the appeal of the respondent herein and set aside the order-in-original dated 05.05.2017 passed by the Additional Commissioner.

2. M/s Pharmax Corporation Ltd.[the respondent] provides various services and pays service tax on them. During the course of audit and scrutiny of balance sheets, it was found that the respondent had provided corporate guarantee on behalf of its sister concerns to lenders but had not charged any commission or interest or fees for providing the guarantee. It is the case of the Revenue that had the sister concerns approached other banks or institutions to obtain a guarantee of equivalent amount, the banks would have charged them certain fees. Such fees would have been taxable at the hands of the banks under the category of ?Banking & Financial Services?. Therefore, even though the respondent had not received any consideration for the corporate guarantees which it had provided, a notional value equivalent to the amount which banks

could have charged for similar services should be taken as a consideration and service tax should be charged on such notional amount.

3. There is no dispute that no consideration was received by the respondent firm in these transactions. A show cause notice dated 24.04.2015 was issued to the respondent invoking extended period of limitation and demanding service tax amounting to Rs. 81,13,864/- along with interest and penalties. These proposals were confirmed by the Additional Commissioner in his order-in-original. Aggrieved, the respondent had appealed to the Commissioner (Appeals) who, by the impugned order, observed that the courts have repeatedly held that this kind of activity was not chargeable to service tax and therefore set aside the order-in-original. He placed reliance on the following decisions :-

(a) Infrastructure Leasing & Financial Services Ltd. versus CST [2015 (37) S.T.R. 487 (Tri. ? Mum.)] ;

(b) Sterlite Industries versus CCE [2014 (35) S.T.R. 849 (Tri. ? Mum.)] ;

(c) Sports Club of Gujarat Ltd. versus Union of India [2010 (20) S.T.R. 17 (Guj.)] ;

(d) CCE versus Jabalpur Motors Ltd.[2014 (36) S.T.R. 1160 (Tri. ? Del.)]

4. We have heard learned authorized representative for the Department and learned consultant for the respondent and perused the records.

5. On behalf of the Revenue, learned authorized representative for the Department reiterated the following grounds of appeal and prayed the impugned order may be set aside as it was not legal and proper and the order of the Additional Commissioner may be restored for the following reasons :

(a) The Tribunal held that in the following extended corporate guarantees would fall under Section 65 (12) of the Finance Act, 1994 i.e. under Banking & financial Services.

(i) Kaveri Agricare versus CST, Mysore [2011 (22) S.T.R. 220 (Tri. ? Bang.)] ;

(ii) Olam Agro versus CST, Delhi ? I [2014 (33) S.T.R. 251 (Tri. ? Del.)]

(b) the consideration received by one entity for providing corporate guarantee to the other is classifiable under Banking & Other Financial Services under Section 65 (12) of the Finance Act, 1994.

(c) Therefore, the Commissioner (Appeals) erred in setting aside the demand relying on certain other decisions.

6. Learned consultant for the respondent fully supports the impugned order and asserts that it calls for no interference.

7. We have considered the submissions.

8. There is no dispute that no consideration whatsoever was received by the

respondent for the corporate guarantee which it had provided on behalf of its sister concerns and it has been explicitly recorded so in paragraph 14 of the show cause notice. The demand has been made only on a notional amount which, according to the Revenue, the respondent could have received had it charged its sister concern for providing the guarantees. This notional amount has been calculated on the basis of the prevailing market rates for bank guarantees obtained from various banks.

9. Service tax can be charged on the consideration received for providing taxable services. In other words, there must be a service provider, a service recipient, a taxable service and a consideration. The service provider shall be liable to pay service tax on the consideration which it receives for providing a taxable service. Any amount which is received but which is not a consideration for providing a taxable service is not exigible to service tax. Similarly, if a service is rendered, but no consideration is received no service tax can be charged. It is for the reason that if the consideration received is zero any percentage will be zero itself. This issue has been settled in the series of decisions which have been correctly relied upon by the Commissioner (Appeals) while setting aside the order of the Additional Commissioner.

10. We have gone through the two case laws relied upon by the learned authorized representative. It is being explicitly recorded in Kaveri Agricare that the demand is on account of consideration received by the appellant for providing the above corporate guarantee during the material period?. Similarly, in the case of Olam Agro it is recorded that a show cause notice dated 03.04.2012 was issued covering the period October 2010 to 31.12.2011 proposing levy of service tax, interest and penalties for corporate guarantee commission remitted by the petitioner to the signatory entity and agency commission remitted for service provided by agents in respect of the export business of the petitioner?. Thus, in both cases, a commission or other consideration was received for providing the taxable services and the dispute was whether service tax could be charged on such commission which is received.

11. In the present case, there is not an iota of doubt that no consideration was received at all because the show cause notice itself says so. This being the position, we find that the impugned order is correct and proper and calls for no interference.

12. The impugned order is upheld and Revenue's appeal is rejected with consequential relief, if any, to the respondent.