(2014) 12 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 377, 439 Of 2009

Commissioner Of Central Excise Jaipur APPELLANT

Vs

M/s. Rajasthan Textiles Mills RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Citation : (2014) 12 CESTAT CK 0010

Hon'ble Judges : Ashok Jindal, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Suchitra Sharma, Jitin Singhal

Final Decision : Allowed

Judgement

1. Both the Revenue as well as assessee are in appeal before us against the impugned order.Â

2. Brief facts of the case are that assessee is manufacture of cotton yarn and manmade staple fiber yarn and exporting the same. The assessee is

receiving services of agent located outside India for selling of their product and paying commission overseas thereon. During the period December,

2005 to October, 2006, Revenue issued a show cause notice to demand service tax on the commission paid to the service provider located outside

India under the category of Business Auxiliary services under reverse charge mechanism. Therefore, impugned proceedings were initiated and the

adjudicating authority confirmed the demand of Service Tax for whole of the period.

3. On appeal before the learned Commissioner (Appeals), the learned Commissioner relying on the decision of Indian National Shipowners

Association vs. Union of India [2009 (13) STR 235 (Bom)] which was affirmed by the Apex Court in [2010 (17) STR J 57 (SC)] gave the benefit of

commission paid prior to 18.4.2006 and for the period 18.4.06 to October 2006, he confirmed the demand of Service Tax.

4. Revenue is in appeal against the impugned order for dropping the demand for the period prior to 18.4.06 and assessee is in appeal against the

impugned order for confirming the demand for the period 18.4.06 to October, 2006 on the premises that services have been received by the appellant

prior to 18.4.06. Only the invoices have been raised by the service provider post 18.4.06. Therefore, services which have been received prior to

18.4.06, are not liable to pay service tax.

5. Heard the parties and considered the submissions.

6. As the issue is settled by the decision of Indian National Shipowner Association (supra) that in such a case, for the period prior to 18.4.06, the

assessee is not liable to pay service tax. In these circumstances, appeal filed by the Revenue deserves no merits. Hence, dismissed.

7. We further find that contention of the assessee is that for the period post 18.4.06 to October, 2006, the services have been received by the assessee

prior to 18.4.06 this fact has to be examined by the adjudicating authority. Therefore, we set aside the impugned order for the said period and remand

it back to the adjudicating authority with the direction that if services have been received by the assessee prior to 18.4.06, although the services

invoices have been received post 18.4.06, the assessee is not required to pay service tax on the commission paid to the service provider located

outside India. If the services has been received post 18.4.06, then the assessee is required to pay service tax along with interest and the penalty as per

law. The assessee is directed to produce the evidence in support of their contention within 7 days of the receipt of this order before adjudicating

authority, failing which the adjudicating authority shall be at liberty to recover the dues pending against the assessee.

8. Appeal is disposed of by way of remand.

(Dictated and pronounced in the open court)

