(2014) 03 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 3670 Of 2012 In Appeal No. 2927 Of 2012

?M/s Alpine Modular Interiors (P) Ltd. APPELLANT

Vs

CST (Adjudication), New Delhi RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Citation : (2014) 03 CESTAT CK 0006

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Sujit Ghosh, Govind Dixit

Final Decision : Dismissed

Judgement

1. Heard Shri Sujit Ghosh, Advocate, the learned counsel for the appellant and Shri Govind Dixit, learned Departmental Representative for the

respondent/Revenue.

2. The order dated 25/05/12 passed by the learned Commissioner, Service Tax, Delhi confirmed the service tax demand of Rs.72,43,736/- apart from

interest and penalties, for having provided Business Auxiliary Service to an overseas corporate entity -UB Office Systems Ltd., a resident entity of

Hong Kong (hereinafter UBOS), during April 2005 to September 2009 and October 2009 to September 2010. Proceedings were initiated under two

show cause notices dated 22/10/10 and 13/04/11 for the respective periods in issue.

3. The appellant (hereinafter referred to as AMIL) provided certain services to UBOS under an agreement dated 02/01/02. The scope of the services

provided by AMIL are evaluation of market trends and identification of prospective customers in India for the overseas entity, for its modular furniture

business; and providing a list of prospective customers on a regular basis to enable UBOS to strategise its decisions, for sale of its products to

customers. The agreement also records a clear stipulation that the ultimate customer shall deal directly with UBOS and remit payments against

supplies received, to UBOS, with a specific stipulation that AMIL is not authorized to collect any payments from customers on behalf of the foreign

entity. The agreement clearly stipulates that goods would be supplied by UBOS directly to the customers. Clause 2 of the agreement stipulates that

UBOS shall pay commission in U.S. dollars at the stipulated rates (in percentage terms) to AMIL for every successful sale made by UBOS in India.

The agreement between the parties also stipulates that AMIL should bear the minor and incidental expenditure incurred for assembly of the finished

components at customers premises, for or on behalf of UBOS; that reimbursement of these expenses is not estimated to be more than 1% of the FOB

value of the products and is included in the commission payable by UBOS to the appellant -AMIL.

4. Revenue initiated proceedings on an allegation that AMIL provided Business Auxiliary Service to the overseas entity and was liable to remit service

tax. The appellant does not contest the classification of the service provided as being BAS. Before the Adjudicating Authority AMIL contended that

Business Auxiliary Service provided to UBOS amounts to export of service within the ambit of Export of Service Rules, 2005, since from the nature

of the services provided, these were utilized by the recipient outside India; that it received consideration in convertible foreign exchange; and is

therefore, excluded from exigibility of the tax, under provisions of the 2005 Rules.

5. The above defence was negated by the Adjudicating Authority resulting in confirmation of the demand of tax, interest and penalty, as adverted to

supra.

6. Larger Bench of this Tribunal in Paul Merchants Ltd. vs. CCE, Chandigarh reported in 2013 (29) S.T.R. 257 (Tri. - Del.) considered substantially

analogous facts and the relevant statutory provisions and concluded that the transactions fall within the ambit of Export of Service Rules, 2005 and are

not therefore liable to levy of service tax. This view is reiterated in the recent decision of this Tribunal dated 28/02/14 in an appeal preferred by M/s

GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi, Service Tax appeal No. 819 of 2008.

7. The learned Departmental Representative would however contend that the judgment in Paul Merchants Ltd. vs. CCE, Chandigarh (supra) and in

GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi (supra) have not correctly comprehended the scope and trajectory of provisions of the

Export of Service Rules, 2005 nor Board Circular No. 141/10/2011-TRU dated 13/05/2011.

8. The invitation by Revenue to ignore the law declared by the Larger Bench in Paul Merchants Ltd. vs. CCE, Chandigarh (supra) and reiterated in

GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi (supra) is unacceptable. It is axiomatic that decisions of this Tribunal are binding on

Revenue. Jurisprudential stability and coherence in law is the foundation for a stable investment climate which is critical to economic stability of the

Republic. Once the Tribunal pronounces a verdict after consideration of the relevant legal environment, the executive branch and an adjudicator at a

lower level in the hierarchy is bound by such verdict, subject only to remedies within the judicial branch or appropriate and constitutionally permitted

legislative curatives. We are informed that Revenue has preferred an appeal against Paul Merchants Ltd. vs. CCE, Chandigarh (supra) and the same

is under the consideration before the Punjab & Haryana High Court. In the circumstances, Revenue cannot be heard to contend that there are errors

in the declaration of law by the Larger Bench. The contention on behalf of the Revenue is therefore fundamentally mis-conceived and rejected out of

hand.

9. The transactions in issue in the present appeal are identical to issues presented in the appeal preferred by M/s GAP International Sourcing (India)

Pvt. Ltd. vs. CST, Delhi (supra) and substantially analogous to the facts that were considered in Paul Merchants Ltd. vs. CCE, Chandigarh (supra).

On application of these precedents, the impugned order passed by the learned Commissioner, New Delhi dated 25/05/2010 cannot be sustained. It is

therefore quashed. There shall however be no order as to costs.

(Dictated and pronounced in open court)

