(2024) 01 CESTAT CK 0071

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 42282 Of 2014

M/s. Annur Cotton Mills APPELLANT

Vs

Commissioner Of Central Excise RESPONDENT

Date of Decision : 24-01-2024

Acts Referred:

Service Tax Rules, 1994 — Rule 2 (1)(2)(iv), 7C
Finance Act, 1994 — Section 65(12), 65(105)(zm), 66A, 70, 73, 75, 77(1)(a), 77(2), 78

Citation : (2024) 01 CESTAT CK 0071

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : S. Durairaj, Anoop Singh

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. This appeal is filed against the Order-in-Appeal No. 150 & 150(A)/2014-ST dated 10.07.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Salem. The dispute pertains to the demand of Service Tax under "banking and other financial services" under Section 65(12) read with Section 65(105)(zm) of the Finance Act, 1994 under reverse charge mechanism.

2.1 Brief facts, as could be gathered from the impugned order are that during the course of scrutiny of accounts of the appellant by the Officers of the Central Excise Department, it was noticed that the appellant had paid bank charges to Banks located in foreign countries for realization of export proceeds and other financial services, but had failed to (i) pay Service Tax of Rs.6,20,682/- on the above charges in respect of "banking and other financial services", (ii) failed to take Registration Certificate and (iii) failed to file the statutory S.T.-3 Returns during the period from October 2007 to March 2012. A Show Cause Notice dated 23.04.2013 came to be issued to the appellant proposing to demand Service Tax of Rs.6,20,682/- along with interest, apart from imposition of penalties under the provisions of the Finance Act, 1994.

2.2 During adjudication, the original authority vide Order-in-Original Sl. No. 11/2013 JC(ST) dated 21.02.2014 confirmed the above demand of Service Tax under Section 73 of the Finance Act, 1994 by invoking the extended period of limitation, along with appropriate interest under Section 75 ibid. and imposition of penalties under Sections 78, 77(1)(a) and 77(2) of the Act. The adjudicating authority has also demanded Late Fee at the applicable rates under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

2.3 It appears that both the appellant as well as the Revenue approached the first appellate authority, who vide Order-in-Appeal No. 150 & 150(A)/2014-ST dated 10.07.2014 has rejected the appeal filed by the appellant, however, allowing the Revenue's appeal thereby upholding the order passed by the adjudicating authority, except for modification of the penalty imposed under Section 77(1)(a) of the Finance Act, 1994 and it is against this order that the present appeal has been filed before this forum.

3. Heard Shri S. Durairaj, Ld. Advocate for the appellant and Shri Anoop Singh, Ld. Deputy Commissioner for the Revenue.

4. The Ld. Advocate for the appellant stated that such charges are for inter-bank transactions and the Indian Banks are to be considered as service recipients for the purpose of payment of Service Tax and not the Indian exporter. He stated that the C.B.E.C. vide its Circular No. 163/14/2012-ST dated 10.07.2012 has clarified that there is no service under such transactions.

5. Per contra, the Ld. Deputy Commissioner has stated that since the services provided by the foreign banks are covered under banking and financial services who do not have an office of establishment in India, the assessee being the service recipient is liable to pay the appropriate Service Tax.

6. After hearing both sides, we find that the main issue that arises for our consideration is: whether the amount deducted by the foreign banks towards banking charges was taxable under the category of "banking and other financial services"?

7.1 At the outset, we find that this Bench of the Tribunal in the case of M/s. Kadri Mills (CBE) Ltd. v. Commissioner of G.S.T. and Central Excise, Salem [Final Order No. 40711 of 2023 dated 24.08.2023 in Service Tax Appeal No. 41066 of 2014 – CESTAT, Chennai], relied upon by the Ld. Advocate, has, while analysing an identical issue, held as under: -

"7. We have heard both sides and perused the case records. We find that the main issue involved in this case is whether the amount which was deducted by the foreign banks towards banking charges are taxable under the service 'Banking and Other Financial Services' during the period from 1.4.2007 to 31.5.2012. A similar matter came to be decided by a co-ordinate Bench of this Tribunal in the case of SKM Egg Products Export (I) Ltd. Vs. CCE, Salem – 2023

(3) TMI 1384 – CESTAT Chennai. The relevant portion of the said judgment is extracted below:-

“5.1 The main issue involved in this case is whether the amount which was deducted by the Foreign bank towards the bank charges are taxable under the service “Banking and other Financial Service” for the period 2006- 2007 to 2010-2011? The other issues involved are whether invocation of extended period and imposition of penalties are sustainable in the facts of the case?

5.2 We find that the appellants have submitted the documents for realization of export sale proceeds to their bank namely SBI, which in turn has used the services of the foreign bank for collection of export sale proceeds. Obviously, the foreign banks who have rendered their services, have deducted their charges while remitting the export sale proceeds to SBI. The appellant has never dealt with the foreign bank on his own and the Banking and Other Financial Service if at all was rendered only to SBI. Amount charged by the foreign bank while remitting export sale proceeds, whether can be subjected to service tax or not has been decided by the CESTAT Principal Bench, New Delhi in the case of Theme Exports Pvt. Ltd. Vs. CST, Delhi (supra), by relying on the ratio laid down by the Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur (supra), where the Tribunal held as under:-

4. We find that the issue arising out of present dispute is no more res integra, in view of the decision of this Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur -2017 (10) TMI 1231-CESTAT, New Delhi. The relevant paragraph in the said decision is extracted herein below:-

“4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up before the Tribunal in the case of Greenply Industries Ltd. vs. CCE, Jaipur (Final Order No. 50149/2014 dated 03.01.2014) where it wa observed that-

"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged under Section 66A read with Rule 2 (1)(2)(iv) of the Service Tax Rules, 1994.

Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order in appeal dated 12.11.08 has set aside that order and as per the appellant’s counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed".”

5. By following our earlier decision (supra), we allow the claim of the appellant in this regard.”

5.3 As the issue is resolved on merits, there is no need to discuss about invocability of extended period in this case and also regarding legality of imposition of penalties.

6. We find that the issue is no more res integra and stands resolved by the orders of the Tribunal as cited supra. So, we set aside the impugned order which demanded service tax under “Banking and Other Financial Service” and allow the appeal with consequential relief, if any.”

We find that the matter is squarely covered by the judgment and we agree to the same.

8. Based on the discussions as above, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.”

7.2 In view of the above decision of this Bench in M/s. Kadri Mills (CBE) Ltd. (supra), we do not find any merit in the demand raised in the case on hand, for which reason the impugned order deserves to be set aside.

8. Resultantly, the impugned order is set aside and the appeal is allowed.