(2024) 05 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 55231 Of 2014

M/s Blue Star Ltd — APPELLANT

Vs

Commissioner Of Central Excise & Service Tax, New Delhi — RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:
Export Of Service Rules, 2006 — Rule 3(1)(iii)
Finance Act, 1994 — Section 76, 77, 78

Citation : (2024) 05 CESTAT CK 0009

Hon'ble Judges : S. S. Garg, Member (J);P. Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : Niranjan Nayak, Narinder Singh

Final Decision : Partly Allowed

Judgement

P. Anjani Kumar, Member (T)

1. M/s Blue Star Limited, the appellants, are engaged in providing the services under the category "Repair and Maintenance", "Installation and Commissioning", "Business Auxiliary Service" and "Goods Transport Agency Services"; during the course of audit, it was observed by the audit that the appellants received commission from abroad in foreign exchange and have not been discharging service tax on the same; the appellants contended that the services rendered by them to their overseas clients such as M/s WEIR, Netherlands, M/s AE, Netherlands and M/s Joel Tokyo Ltd. etc. constitute export in terms of Rule 3(1)(iii) of Export of Service Rules, 2006 as none of their clients commercial establishments in India and the services are delivered and utilized outside India. It appeared to the Revenue that in terms of the CBEC Circular No.BF/4/2006-TRU dated 19.04.2006, as the services are consumed in India, the services rendered by the appellants cannot be classified as export of services; Department has issued various Show-Cause Notices dated 20.08.2008, 27.02.2009, 09.10.2009, 20.10.2010, 25.03.2011; all the Show-Cause Notices were adjudicated by the Commissioner (Adjudication) Service Tax vide impugned order No. DEL-SVTAX-

ADJ-COM-85-89-13-14 dated 04.07.2014confirming the demands raised therein i.e. service tax of Rs.2,95,45,945/- on commission received; Rs.65,978/- under Repair and Maintenance Service and Rs.5,29,038/- on annual maintenance charges received by the appellants; learned Commissioner has also imposed penalties under Sections 76,77 & 78 on the appellants. Hence, this appeal.

2. Shri Niranjan Nayak, representative for the appellant, submits that the issue involved in these Show-Cause Notices is no longer res integra and has been decided in the favour of the appellant in their own case 2016 (46) STR 59 (Tri. Mumbai); 2008 (11) STR 23 (Tri. Bang.); 2009 (18) STR 34 (Tri. Bang.). He also submits that in the recent judgment, this Bench vide Final Order No.60528/2023 dated 20.10.2023 has decided the issue in favour of the appellants; therefore, he submits that the appellant's appeal may be allowed.

3. Per contra, learned Authorized Representative for the Department takes us through the various agreements; Export of Service Rules, 2005 and the Board's Circular and reiterates the findings of the impugned order. He submits that the appellants have not challenged the service tax of Rs. 3,79,202/- on commission received and service tax of Rs.65,978/- on the earnings of Repair and Maintenance Service.

4. Heard both sides and perused the record of the case. We find that the appellants are engaged in providing various services as per the contract with overseas entities; they are acting as commission agents for the machines supplied by the overseas agents and undertake Installation & Commissioning and Repair & Maintenance wherever required. It is the argument of the Department that as the services are rendered and consumed in India, such services cannot be treated as export of services. We find that the issue is no longer res integra having been decided in the case of appellants themselves in their own case. We find that Mumbai Bench of the Tribunal vide Order dated 24.09.2014, relying on the decision of the Tribunal in the case of Paul Merchants Ltd. – 2013 (29) STR 257 decided the issue in favour of the appellants. In respect of the services provided by the appellant, the appellant acted as an agent of their foreign principals; even though, the activities of the Installation & Commissioning or Maintenance & Repair are performed in India, the payment for the same was made by the foreign principals as the work was undertaken on their behalf and at their behest. In such circumstances, it has to be construed that the ultimate beneficiary is situated in abroad and the payment for the same has been received in convertible foreign exchange. It is not the case of the Department that the payment for the service rendered is made by the Indian clients of the foreign entities and there is no agreement or understanding between the appellant and such Indian clients; therefore, notwithstanding the fact that the services are physically rendered in India and consumed in India, they qualify to be considered as export. We find strength in our argument from the case of Paul Merchants (supra) and the case of Arcelor Mittal Stainless India Pvt. Ltd.- (2023) 06 CESTAT- CK-0011.

5. In view of the above, the appeal is partially allowed; demand of service tax of Rs. 3,79,202/- on commission received and service tax of Rs.65,978/- on the earnings of Repair and Maintenance Service during the period 2006-2008 is, however, confirmed; all penalties are set aside.

