(2014) 12 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Miscellaneous No. 54959 Of 2014 In Service Tax Appeal No. 313 Of 2012

M/s GAP International Sourcing (India) Pvt. Ltd. — APPELLANT

Vs

CST, Delhi — RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 CESTAT CK 0003

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : N. Venkataraman, Paresh Khandelwal, Suchitra Sharma

Final Decision : Allowed

Judgement

1. The appellants have filed Misc. application for early hearing of their appeal against Order-in-Appeal No. 438/S. Tax/D-II/2011 dated 1.12.2011.

The Misc. application for early hearing has been filed on the basis of a Circular dated 13.9.2013 in terms of which early hearing can be requested in

those cases where the issue involved is covered by the judgement of CESTAT or the higher Courts. The appellants have stated that the issue involved

in their case is covered by judgement of CESTAT in the case of Paul Merchant Ltd. Vs. CCE, Chandigarh - 2012-TIOL-1877--CESTAT-Del. The

ld. DR also does not object to the request. Therefore the Misc. application is allowed.

2. The issue involved in this case is briefly stated as under :

The appellants filed 17 refund claims under Notification No. 5/2006-ST (NT) dated 14.3.2006 for refund of the input service credit. The same were

rejected by the primary adjudicating authority [and the rejection was upheld by the Commissioner (Appeals)] on the ground that:

(i) The service provided did not qualify to be export of service under Export of Service Rules, 2005;

(ii) The services rendered was not Business Auxiliary Service;

(iii) The services in respect of which the Cenvat credit was taken did not qualify to be called input service within the definition of Cenvat Credit Rules

2004;

3. The appellants have contended that in their own case decided by CESTAT 2014-TIOL-465-CESTAT-Del., CESTAT has held the impugned

service to be classifiable under Business Auxiliary Service. Also CESTAT has held in the case of Paul Merchant Ltd. (supra) that in the given

situation the service rendered by the appellants qualified to be export of service under Export of Service Rules, 2005. The appellants therefore

contended that the impugned order is not sustainable.

4. We have considered the contentions of both sides. We find that the refund was rejected essentially on the ground that :

(1) The service rendered was not Business Auxiliary Service ;

(2) The service rendered did not tantamount to export of service.

(3) The input services in respect of which the refund of Cenvat credit was sought did not qualify to be input services.

5. We find that in the order in appeal the Commissioner (Appeals) while upholding the view of the adjudicating authority that the service rendered did

not qualify to be Business Auxiliary Service or export of service has not given any finding as to whether the services in respect of which the credit

was taken (the refund of which was sought) qualified to be input service in the light of the submissions of the appellants. In the appellantâ??s own

case CESTAT has held that in the given circumstances the service rendered by the appellants qualified to be covered under the Business Auxiliary

Service and in the wake of the CESTAT judgement in case of Paul Merchant Ltd. (supra) it also amounted to export of service. However, as stated

earlier, the Commissioner (Appeals) has not given any finding whether the services in respect of which credit was taken and the refund of which has

been sought qualified to be input service. Accordingly, we set aside the impugned order and allow the appeal by way of remand to Commissioner

(Appeals) to decide the matter afresh regarding the admissibility of refund taking into account the judgements of CESTAT in the case of Paul

Merchant (supra) and in appellants own case referred to in para-3 above and giving a clear finding regarding the eligibility of the services in respect of

which credit was taken to be called input services.

