
(2023) 10 CESTAT CK 0012

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 41455 Of 2014

M/S. Jansons Industries Limited

APPELLANT

Vs

Commissioner Of Central Excise

RESPONDENT

Date of Decision : 10-10-2023

Acts Referred:

Finance Act, 1994 — Section 65(19), 66, 66A, 93(1)

Citation : (2023) 10 CESTAT CK 0012

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

Bench : Division Bench

Advocate : R. Charulatha, M. Ambe

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. This appeal has been filed by the assessee against Orders-in-Appeal No. 81 & 82/2014-ST dated 20.03.2014 passed by the Commissioner of Central Excise (Appeals), Salem, whereby the Ld. first appellate authority has confirmed the demand of Service Tax along with applicable interest and penalty under the category of 'business auxiliary service' on commission paid to overseas agents under reverse charge mechanism as per Section 66A of the Finance Act, 1994 invoking the proviso to Section 73(1) of the Finance Act, 1994. The period of dispute involved is from April 2007 to March 2011.

2. Heard Smt. R. Charulatha, Ld. Advocate for the appellant and Shri M. Ambe, Ld. Deputy Commissioner for the Revenue.

3.1 The Ld. Advocate would submit at the outset that on identical facts, this Bench in the case of M/s. Texyard International v. Commissioner of Central Excise, Trichy [2015 (40) S.T.R. 322 (Tri. – Chennai)] has set aside the demand raised under reverse charge mechanism on commission paid to overseas agents and hence, the ratio in the above case would be squarely applicable to the present case as well.

3.2 She further contended that the invocation of extended period of limitation in the facts of circumstances of the present case was not justified since the issue on hand was under dispute before various fora during the disputed period. In this regard, she placed reliance on the order in the case of M/s. Texyard International (supra) an order of the co-ordinate Mumbai Bench of the CESTAT in the case of M/s. Tata Blue Scope Steel Ltd. v. Commissioner of C.Ex., Pune-I [2018 (14) G.S.T.L. 370 (Tri. – Mumbai)] to argue that since the appellant was under a bona fide belief that tax was not payable and also since the situation is revenue neutral, the invocation of extended period of limitation was not proper.

4. Per contra, the Ld. Deputy Commissioner defended the impugned order. He relied on an order of the Delhi Bench of the Tribunal in the case of M/s. Shree Ranie Gums & Chemicals Pvt. Ltd. v. Commissioner of C.Ex., Jaipur-II [2017 (4) G.S.T.L. 340 (Tri. – Del.)] in his support.

5. We have heard the rival contentions and we have also gone through the orders of various Benches of the CESTAT relied upon during the course of arguments.

6.1 After hearing both sides, we find that this Bench in the case of M/s. Texyard International (supra) had occasion to analyse an identical issue wherein, after considering the submissions of both sides, the Bench had observed as under: -

"6.1 We have carefully considered the submissions of both sides and also examined the records. The assessees filed appeals contesting the service tax demanded under reverse charge on the commission paid to the overseas agents for export of finished goods. The Revenue filed appeal against setting aside of penalties by Commissioner (Appeals). The main issue in the present appeals is whether appellant-assessees are eligible to the benefit of exemption of service tax under Business Auxiliary Service under Notification No. 14/2004-S.T., dated 10-9-2004 and whether assessee is liable for penalty as contended by Revenue. Prima facie, we find that there is no dispute on the fact that the appellants are manufacturer-exporters and they manufacture textile made ups and export to overseas. They have engaged overseas agents and paid commission for procurement of export orders and the commission agency service is covered under the Business Auxiliary Service. The appellants claimed the exemption under Notification No. 14/2004-S.T., dated 10-9-2004 as applicable during the relevant period before appellate authority and he rejected their plea on the ground that the said exemption is applicable to the input services related to textile processing. The period involved in all these appeals relates to post 18-4-2006. It is relevant to reproduce the Notification No. 14/2004-S.T., dated 10-9-2004 as under :-

"Service tax exemption to specified services in relation to Business auxiliary service

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is

necessary in the public interest so to do, hereby exempts taxable service provided to a client by any person in relation to the business auxiliary service, insofar as it relates to, -

- (a) procurement of goods or services, which are inputs for the client;
- (b) production or processing of goods for, on behalf, of the client;
- (c) provision of service on behalf of the client; or
- (d) a service incidental or auxiliary to any activity specified in (a) to (c) above. and provided in relation to agriculture, printing, textile processing or education, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

6.2 The lower authorities denied the exemption merely on the ground that the said services are not used for textile processing. On careful reading of the above notification, it is evident that service tax was exempted during the relevant period for the services provided under Business Auxiliary Service if it relates to agriculture, printing, textile processing or education. The appellants are Textile manufacturer and exporters. The word "textile processing" referred in the notification is to be understood in a broader sense. The dictionary meaning of "textile processing" means sequence of operations or changes undergone and the definition of "textile" includes fabrics, fibre, yarn suitable for weaving into fabric. The exemption of service tax under BAS was allowed in relation to four industries namely agriculture, printing, textile processing and education. Therefore, the appellant being textile industry, it is covered under the category "textile processing" in the notification.

6.3 Commission paid to the overseas agents is in respect of service provided by that agent to the appellant to export its goods and thereby sales is promoted. That is an activity incidental or auxiliary to processing of textile goods and covered by Business Auxiliary Service and Clause (d) of the notification extracted above covers the case of the appellant bringing the export promotion activity abroad as incidental and auxiliary to the activity of production as is meant by Section 65(19) of Finance Act, 1994. Appellants are accordingly entitled to the benefit of exemption Notification No. 14/2004 and not liable to the payment of service tax under reverse charge.

7. It is also relevant to state that appellants being the exporter of textile made ups as per the Foreign Trade Policy are not expected to export the taxes. Appellants pleaded that there was no suppression of facts with deliberate intention to evade payment of service tax. As payment of service tax by the recipients was under dispute for a long period till that was settled by the decision of Apex Court in the case of UOI v. Indian National Shipowners Association - 2011 (21) S.T.R. 3 (S.C.) there was no deliberate intention to make suppression of facts. Appellants were under bona fide belief that as per the EXIM Policy at para 2.482 of the Policy Period 2009-10 issued by Notification No. 1/

(RE/2008)/2004-2009 dated 11-4-2008 all goods and services exported from India, services received/rendered abroad wherever possible shall be exempted from service tax. Therefore, the demand is also hit by limitation and the extended period cannot be invoked.

8. It is further pertinent to mention that appellants are manufacturer-exporters. Service tax if any payable under reverse charge is permissible to be availed as Cenvat credit and that may be refundable under Notification No. 41/2007 unless otherwise deniable by law. The provision made in Central Excise Rules and Cenvat Credit Rules ensures that tax is not added to the cost of export so that Indian exporter can compete with overseas market. The

Hon'ble Supreme Court in CCE v. Coca Cola India (Pvt.) Ltd. - 2007 (213) E.L.T. 490 dismissed Revenue's appeal holding that when an assessee is eligible to Modvat credit, the situation becomes revenue-neutral. In the present case, service tax demanded entitles the appellants to the credit thereof and claim refund thereof under 41/2007 since it is stated by appellants that they have no other liability for which the exercise may become revenue-neutral.

9. Therefore, in view of the above discussions, the demand of service tax under reverse charge confirmed against the appellants is set aside. As regards Revenue's appeal on imposition of penalty, since demand of tax itself is set aside, the question of imposing penalty does not arise. Revenue's appeal is rejected accordingly and the Assessee's appeals are allowed."

6.2 The ratio laid down in the above case has been followed by this Bench in the case of M/s. Madras Security Printers Pvt. Ltd. v. Commissioner of Service Tax, Chennai [Final Order No. 40305 of 2023 dated 26.04.2023 in Service Tax Appeal No. 41714 of 2013 - CESTAT, Chennai]. Further, a similar view was also expressed by this Bench in the case of M/s. Stahl India Pvt. Ltd. v. Commissioner of G.S.T. and Central Excise, Chennai [2023 (6) TMI 498 - CESTAT, Chennai].

6.3 With regard to the order in the case of M/s. Shree Ranie Gums & Chemicals Pvt. Ltd. (supra) relied upon by the Ld. Assistant Commissioner, we find that the same was not issued in the context of Notification No. 14/2004-S.T. dated 10.09.2004.

7. Hence, following the above consistent view as held in various cases, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.