(2023) 08 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.339 Of 2010

M/s Laxmi Pipes Limited APPELLANT

Vs

Commissioner Of C.E & S.T, Rohtak RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Citation : (2023) 08 CESTAT CK 0049

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

Bench : Division Bench

Advocate : Shubham Garg, ShivamSyal

Final Decision : Dismissed

Judgement

P. Anjani Kumar, Member (T)

1. The appellants, M/s Laxmi Pipes Ltd., assails the order in Appeal No. 406/MA/RTK/2009 dated 9.12.2009 passed by commissioner of Central Excise (Appeals), Delhi III.

2. The appellants have entered into contracts with M/s Tiger Logistics (I) Pvt. Ltd. and M/s Color Barcode Pvt. Ltd. and provided certain services as per the contracts. The consideration received from the said companies was accounted as commission in the books of accounts.Revenue opined that the commission received by the appellants to be the consideration towards the commission and brokerage service rendered by the appellants to their clients and the same is chargeable under “Business Auxiliary Service” chargeable to Service tax. A show cause notice dated 24.04.2008 was issued to the appellants demanding Service tax of Rs. 07,96,622/-. The demand was confirmed, by the joint commissioner, vide Order-in-Original dated 30.04.2009, along with interest and penalty. On the appeal preferred by the company, Commissioner (appeals) who upheld the order-in-original vide order dated 09/12/2009. Hence, this appeal.

3. Shri Shubham Garg, learned Consultant for the appellants submits that that

activities performed by the appellants were in fact related to Administrative services like maintenance of payroll of the employees, maintenance of attendance data, managing office supply needs, planning meeting, scheduling appointments etc.He submits affidavits dated 08.06.2023 and 03.08.2023 to that effect.Learned Consultant further submits that it is incorrect to decide the type of service on the nomenclature used for accounting; He relies on the decision of the tribunal in the case of Laminar industries 2007 (220) ELT 946 (Tri. Mumbai). The services rendered by the appellants would at best fall under "Business Support Service" which came to be charged from 01.05.2006 which is after the impugned period i.e, 01.04.2005 to 31.03.2006. Before 01.05.2006, "Business Support Service" cannot be taxed under any other Heading.

4. Learned Consultant further submits that in the instant case, there are two separate transactions involved, one transaction is between the company and their own clients where in the companies render "Business Auxiliary Service" of management of distribution and logistics services, the second transaction is between the appellant and the above mentioned companies where in the appellants render administrative assistance; the appellant raises the invoice and receives the consideration which is a specific percentage of the total consideration charged by the companies to their own clients . He further submits that even if it is assumed that the services rendered by them are taxable under "Business Auxiliary Service", the appellant is eligible for the benefit available to sub service providers as per department circular F/No. 341/43/96-TRU dated 31.10.1996 and trade notice No. 1/2000 dated 24/07/2000.

5. Shri Shivam Syal, Authorized Representative for the Revenue submits that the appellants themselves submitted, vide letter dated 16.06.2008, that the commission income received from two companies was for the services rendered, on their behalf to their customers, in management of distribution and logistics; it is important to note that the service was rendered by the appellants on behalf of their clients and therefore as held in Phoenix IT solutions ltd. 2011 (22) STR 400(Tri-Bang), the service falls under "Business Auxiliary Service". He further submits that the appellants were receiving commission based on the revenue earned by the two companies from their customers and therefore they are acting as a commission agent as held by the circular F/No. 334/4/2006-TRU dated 28.02.2006.

6. Learned Authorized Representatives further submits that the agreement mentions the service without detailing the roles and responsibilities of the appellant. He relied on the Hon'ble Himachal High Court order in the case of Ramlal versus Om Prakash and another (Appeal No. 87/2009) and submits that "All material aspects which needed to be reflected with certainty have been left in the realms of speculation. Neither the agreement gives out a clear identity of the land nor it spells out the boundaries. Even the area of the house-subject matter of the agreement is not correctly recorded therein. No ascertainable or determinative intention can be deciphered from this agreement. Such an

agreement to sell is not capable of enforcement. Its specific performance cannot be granted".

7. Learned Authorized Representative submits, moreover, that as per circular 15.8.2003 dated 20.06.2003 services need to be classified under "Business Auxiliary Service'' even before 01.05.2006 in view of Tribunal's Judgment in Kopran Ltd. 2009 (16) STR 279 (T) and in Kajaria Ceramics ltd. 2005 (191) ELT 20 (SC), it was held that the circular can be read as a contemporaneous understanding and exposition of the intention and purpose of the notification. He further submits that the appellants claim that the show cause notice did not specify the sub-heading under which "Business Auxiliary Service'' falls and thus the show cause notice requires to be set aside, is wrong . He relies on M/s Golden Handling Works Final Order dated 16.10.2017 by CESTAT New Delhi. He further submits that in the present case, it was specifically mentioned that the appellants were rendering the work as a commission agent. He relies on ITC ltd. 2014(36)STR481(DEL) and submits that the object and purpose of the issue of show cause notice is to inform the assessee so that reply or submissions can be made and relevant facts which are in the knowledge of the assessee can be brought on record. After examining and considering the show cause notices, we feel that the assessee was informed and made aware of the contention of the revenue and their stand and stance.

8. Heard both sides and perused the records of the case. It is the case of the appellants that though the consideration received from their clients as "Commission" in their books of accounts; the appellants received only the remuneration for the services rendered by them to M/s Tiger Logistics (India) Limited and M/s Color Bar Cosmetics Private Limited; the remuneration received was towards the service and the actual service rendered was that of maintenance of pay-roll of the employees, maintenance of attendance data, managing office supply needs, planning meeting, scheduling appointments etc. which are basically administrative services and are essentially classifiable under "Business Support Service" and not taxable during the impugned period; they cannot be classified as "Business Auxiliary Service". We find that the appellant submits that the nomenclature in the books of accounts cannot be a deciding factor in arriving at the type of services rendered; the actual services rendered need to be looked into.

1) To have a proper appreciation of the facts of the case, we consider that it is expedient to have a look at the relevant clauses of the agreement which are as follows:

(i) In respect of Tiger Logistics, the offer letter dated 10.04.2005 informs that M/s Tiger Logistics are pleased to appoint the appellants for managing distribution and logistics of their above-mentioned clients as per the discussions held in their office between the appellant and Mrs. Rakhi Marwah of M/s Tiger Logistics Limited and that M/s Tiger Logistics would give 6.5% of the total billing to the parties mentioned therein in respect of management of their distribution and logistics.

(ii) The agreement with Color Bar which is titled "Business Support Agreement" mentions as under

"Support Service Clause"

CCPL hereby appoints LPL as its facilitator for business support for promotion of its products and LPL accepts the said appointment. LPL shall render services including evaluation of prospective customers, processing of purchase orders and fulfillment services, information and tracking of delivery schedules in regard to the sale of the products which CCPL in representing their foreign principal supplies, including the competitor's information.

"Price Clause"

CCPL shall pay to LPL a 60% of revenue earned by CCPL from its immediate principal subject to Tax Deduction at Source at applicable rates.

9. Ongoing through both the agreement and offer letter, we find that none of them specify the nature of services to be in relation to administrative services like maintenance of payroll of the employees, maintenance of attendance data, managing office supply needs, planning meeting, scheduling appointments etc. This being so, we are not in a position to appreciate the arguments of the appellant that the services was in the nature of "Business Support Service". Moreover, there is no mention of charges paid for the said "Business Support Services" claimed to have been rendered by the appellants. The consideration is only in the form of a fixed percentage of the total transaction that the principals had with their clients. Therefore, notwithstanding, the averments of the appellants and the affidavits filed by the Counsel on behalf of the appellants, we are unable to be convinced that the appellants have rendered "Business Support Services". We are of the considered opinion that an agreement, oral or written, is the source to understand the type of service rendered. In the instant case, it is understood from the contracts or the offer letter that the appellants rendered services with reference to the main work of their principals i.e. provision of support for logistics. This being the case, we are not inclined to accept the argument of the appellant that the services rendered were "Business Support Service". Therefore, we find nothing in the records or in the arguments proposed by the appellants to set aside the impugned order. We find that the impugned order does not necessitate any interference.

10. In the result, the appeal is dismissed.

