
(2014) 05 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 510 Of 2009

M/s. Venkatesh Merchantiles Private Limited

APPELLANT

Vs

CCE And ST, Bhopal

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Finance Act, 1994 — Section 65(105)(j), 65(25), 67, 76, 77, 78
Service Tax Valuation Rules, 2006 — Rule 5, 5(1), 5(2)

Citation : (2014) 05 CESTAT CK 0016

Hon'ble Judges : G. Raghuram, J; Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : A.K. Batra, Amresh Jain

Final Decision : Allowed

Judgement

1. The facts leading to filing of this appeal are, in brief, as under:-

1.1 The appellant are engaged in providing taxable services of Clearing and Forwarding Agent taxable under Section 65(105)(j) read with Section

65(25) of the Finance Act, 1994. They are providing the C & F Agents Services to M/s. Gujarat Ambuja Cement (w.e.f. July, 2002) , M/s. Prism

Cements (from 1.4.2002 to May, 2004), M/s. Manikgarh Cement Ltd. (w.e.f. 17.07.2002) and M/s. J.P. Cement (Upto March, 2003). For providing

C& F Agent services, the appellant have entered into an agreement with each of the Cement companies. The period of dispute in this case is from

October, 2001 to September, 2006. The appellant in terms of their agreements with their clients, were required to maintain godowns at the cost of the

clients for the storage of the goods and were required to maintain proper records. Besides this, they were fully responsible for unloading the cement at

railway station/godown and its transportation to various dealers, stockists as per

directions of their Principal. The appellant besides receiving per metric ton amount for these services, were also receiving reimbursement of expenses for arrangement of transport, loading and unloading of cement at rack point (railway station) and at godown and payment of godown rent. The point of dispute is as to whether the amounts being reimbursed for arranging transportation, supervision of loading and unloading of the goods at the railway station and at godown and payment of godown rent are includible in the assessable value or not. The jurisdictional Addl. Commissioner vide order-in-original dated 1.9.2008 held that these expenses are includible in the assessable value and accordingly, confirmed service tax demand of Rs.9,67,244/- against the appellant along with interest and besides this, imposed penalty on them under Sections 76, 77 and 78 of the Finance Act, 1994. On appeal being filed to the Commissioner (Appeals) against this order, the same was dismissed vide order-in-appeal dated 25.3.2009. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri A.K. Batra, CA, Id. Counsel for the appellant, pleaded that godown rent, charges for arranging loading and unloading of the goods at the rake point at the godown and charges for arranging transportation of the goods from the godown to the dealers/stockists premises are being reimbursed by their principals on actual basis, that the appellant act only as pure agents, that the bills of the transporters, labour contractors and the godown owners are in the name of the principals or not in the name of the appellant, that in view of this, these charges cannot be treated as the amount received for the services provided, that though Rule 5(1) of the Service Tax Valuation Rules, which came into force w.e.f. 19.04.2006 provides that where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of services for the purpose of charging service tax on the said service except for the cases where the expenditure or costs have been incurred by the service provider as a pure agent as defined in sub-rule 2 of Rule 5, since in this case, the appellant arranged the transportation of the goods, supervision of loading and unloading of the goods at the rake point and at the godown and payment of godown rent as pure agent, even in

terms of the provisions of Rule 5(1) of the Service Tax Rules, these expenses reimbursed to them by principals are not includible, that in any case, Rule 5 cannot be invoked, as Honâ??be Delhi High Court in the case of Intercontinental and Consultants & Technocrats Pvt. Ltd. reported in 2013 (29) STR 9 (Delhi) has held that this rule of the Service Tax Valuation Rules is ultra vires to the provisions of Section 67 of the Finance Act, 1994 and that in view of the above, the impugned order is not sustainable.

4. Shri Amresh Jain, Id. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the activity of arranging loading and unloading of goods at the Rake point as well as at the godown, arranging transportation of goods to dealer/stockists, and paying godown rent is an integral part of the service provided by the appellant to their customers and hence, the expenses incurred on these activities re-imbursed to the appellant by their clients would be includible in the assessable value. Shri Jain also cited the judgement of the Larger Bench of the Tribunal in the case of Sri Bhagavathy Traders Vs. CCE, Cochin reported in 2011 (24) STR 290 (TR-LB), wherein the Tribunal has held that the expenses incurred by the C & F Agent which were reimbursed to them by their principals would be includible in the in the assessable value unless their clients were under legal obligation to reimburse those expenses in terms of some agreement. He pleaded that since there is no such obligation in this case, the expenses, in question, have to be included in the assessable value.

5. We have considered the submissions from both the sides and perused the records.

6. The point of dispute is as to whether the expenses for arranging transporting from the godown to the premises of the dealers/stockists; the expenses for arranging the loading and unloading of the goods at rake points and at the godown and the godown rent paid by the appellant and which are reimbursed to them by their principals, to be included in the assessable value of the C&F Agents Service or not. We find that sofar as the godown rent is concerned, in terms of the agreements, it is the principals, who are required to maintain the godown and hence, it is the principals who are liable to pay the godown rent. In this regard, the appellant act only as their agent. Similarly, it is not disputed that the bills of the labour contractors for

arranging loading and unloading of the goods at the rake point and at the godown and the bills of transporters are in the name of the principals and not in the name of the appellant and payment against these bills are made by on behalf of the assessee. Thus, the appellant act as pure agent. Therefore, we are of the view that these expenses would not be includible in the assessable value. Moreover, in any case, since the expenses in question, incurred by the appellant in course of providing the taxable service are reimbursed by the service recipients and the department seeks to include these reimbursable expenses in the assessable value of the services by invoking Rule 5 of the Service Tax Valuation Rules and since this rule has been stuck down by Delhi High Court as ultra vires to the provisions of Section 67 of 1994 Rules in its judgement in the case of Inter Continental Consultants & Technocrats Pvt. Ltd. (supra), for this reason also, the reimbursement expenses, in question, would not be includible in the assessable value.

8. In view of the above discussion, the impugned order is not sustainable. The same is set aside and the appeal is allowed.

[Operative portion already pronounced in open court]