
(2024) 01 CESTAT CK 0034

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.42480 Of 2014

M/S.Harini Colours

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 11-01-2024

Acts Referred:

Citation : (2024) 01 CESTAT CK 0034

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : M.N. Bharathi, M. Selvakumar

Final Decision : Partly Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant is engaged in manufacture and export of knitted garments. The appellant get their orders for supply of goods to M/s.Bonprix, Germany through M/s.JPS Trading. The company viz. M/s.JPS Trading is based in Dubai and is a sourcing and quality monitoring agent of goods shipped to M/s.Bonprix, Germany. M/s.Fashion Force, Tirupur, is the Indian office of M/s.JPS Trading Company, Dubai. The appellant is one of the suppliers of goods to M/s.Bonprix, Germany through M/s.JPS Trading, Dubai. The appellant receives payments from their overseas buyer through M/s.JPS Trading after the deductions of bonus, inspection charges and recycling compensation by the buyer. The department was of the view that the above mentioned deductions are paid by the exporter for the furtherance of their business which is classifiable under the head "Business Auxiliary Service" and "Technical Inspection and Certification Services" and is taxable at the recipient's end as such expenses are incurred outside the country and the provider of such services have no permanent establishment in India. It was noticed by the department that the deductions on the invoice price under various heads on account of commission and towards quality inspection were received by the persons appointed by M/

s.Bonprix in Germany. It was further found that the appellant had paid the freight charges to goods transport agencies for transport of goods by road from and to their factory. As per law, if the recipient of GTA is a registered partnership firm, then such recipient is liable to pay service tax for the said service. The appellant is therefore liable to pay service tax under "GTA Service" also. The appellant failed to register themselves, pay service tax and file ST-3 returns. Show cause notice dt. 19.04.2010 was issued proposing to demand the service tax under "Business Auxiliary Service", "Technical Inspection and Certification Service" and "GTA Service". After due process of law, the original authority confirmed the demand for the period 18.04.2006 to 31.03.2009 along with interest under BAS and Technical Inspection Certification services. In regard to GTA services, demand along with interest was confirmed after granting abatement for the period after 1.3.2008 only. Penalties were also imposed. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) who vide order impugned herein upheld the demand, interest and penalties imposed. Hence this appeal.

2. The Learned Counsel Sri M.N. Bharathi appeared and argued for the appellant. Ld. Counsel adverted to the invoice raised by the appellant on M/s.Bonprix, Germany and submitted that the deductions are shown in the invoice price as 'packing recycling compensation', 'bonus', 'inspection charges'. The appellant has not made any payment to M/s.JPS Trading, Dubai or their unit in India viz. M/s.Fashion Force, Tiruppur. The allegation in the show cause notice does not bring out as to who is the service provider. It merely states that the deductions having been made by the appellant in the invoice in the nature of inspection charges and recycling compensation, these amounts have to be considered as consideration for service provided by the foreign entity M/s.JPS Trading, Dubai to the appellant. The appellant is selling the goods to M/s.Bonprix in Germany offering a discount during the sale. The discounts shown in the invoice cannot be equated with commission paid. The discounts are nothing but part of sale transactions and there is no service provided. The transaction between the appellant and M/s.Bonprix by raising the invoice is only sale and there is no service element. M/s.JPS Trading and M/s.Bonprix have an understanding between themselves and thus M/s.JPS Trading undertakes to quality check the garments through their agent in India M/s.Fashion Force, Tiruppur. The transaction between M/s.JPS Trading and M/s.Bonprix in this regard has taken place outside India. As M/s.JPS Trading has an agent in India the demand raised against the appellant is not legal and proper. The appellants have not paid service tax on the exported goods due to bonafide belief that no tax is needed to be paid and that no services have been rendered. It is asserted by the learned counsel that in para-6.2 of the OIO, the adjudicating authority has noted that M/s.JPS Trading has an office in India in the name of M/s.Fashion Force. The Ld. Counsel relied on the decision in the case of J.B. Exports & Oswal Mills India Vs CCE & ST-Surat I - 2023 (10) TMI 353 CESTAT-Ahmedabad to argue that when any amount is deducted in the sale invoice by whatever name it may be called,

the same is nothing but discount given during the transaction of sale. For this reason itself, the demand raised against the appellant cannot sustain.

2.1 In regard to demand of service tax under GTA service, the learned counsel submitted that for the period after 1.3.2008 the adjudicating authority has granted abatement. However, for the period prior to 1.3.2008 the authorities below have denied to grant abatement as envisaged in Notification No.32/2004 dated 2.12.2004 for the reason that the condition in the notification applicable to goods transport agency has not been complied with by the appellant. The said condition requires that the appellant has to furnish declaration that the Goods Transport Agency has not availed cenvat credit on capital goods. This condition in the notification was omitted w.e.f. 1.3.2008 and therefore abatement was granted for the period after 1.3.2008. It is argued by the counsel that the appellant had used the transport services for export of goods. Services in relation to export cannot be subjected to levy of service tax. It is also submitted that even if the appellant had paid service tax, the same would be eligible as credit to the appellant and the entire exercise, in any case, is revenue-neutral. For these reasons, the invocation of extended period cannot sustain. Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Shri M. Selvakumar appeared and argued for the Department. The findings in the impugned order was reiterated. It is argued that M/s.JPS Trading, through its local office helps the appellant in getting the export orders and to receive payment for the goods supplied to Bonprix, Germany. Further, M/s.JPS Trading, through its local office, also helps the appellant in supplying the goods of desired quality, by undertaking technical inspection of the goods of the appellant. The above said activities resulted in furtherance of the business of the appellant and would fall under the category of 'Commission Agent' and therefore is subject to levy of service tax. The appellant while raising the invoice on M/s.Bonprix, Germany arrives at the price of the goods supplied, after deducting bonus, recycling compensation and inspection charges. For these services rendered by M/s.JPS Trading, Dubai to the appellant, they get paid by the appellant in the nature of bonus, recycling compensation and inspection charges. Therefore, for the services rendered by M/s.JPS Trading, Dubai through their branch office M/s.Fashion Force, Tirppur to the appellant for furtherance of business prospects, M/s.JPS Trading, Dubai gets paid by the appellant through M/s.Bonprix, Germany. Thus, the demand raised is proper. It is prayed that the appeal maybe dismissed.

4. Heard both sides. The issue to be considered is whether the appellant is liable to pay service tax under 'Business Auxiliary Service', 'Technical Inspection and Certification Service', and 'GTA Service'.

5. In regard to 'Business Auxiliary Service' and 'Technical Inspection and Certification Service', the contention of the appellant is that the appellant has made certain deductions in the invoices raised to M/s.Bonprix, Germany, which are only discounts in a transaction of sale. M/s.JPS Trading, Dubai arranges for

procuring the goods from the appellant to M/s.Bonprix, Germany. M/s.JPS Trading conducts quality test for export of the garments through their agent (Fashion Force, Tiruppur) situated in India. It is thus assumed by the department that the deductions made in the invoice price is towards commission and towards furtherance of business of the appellant rendered by M/s.JPS Trading, Dubai to the appellant and also for the quality test done through M/s.Fashion Force, situated in India. It requires to be stated that the SCN is not clear as to who is the service recipient and who is the service provider. So also, it does not bring out clear picture of the consideration that is passed from the service provider to the service recipient. It is brought out from evidence that garments are sold by the appellant to M/s.Bonprix, Germany. M/s.JPS Trading, Dubai has played a role of middleman in making arrangements. The quality test is done by M/s.Fashion Force in India. According to the department, it is an agent of M/s.JPS Trading, Dubai. However, there is no payment made by the appellant to M/s.Fashion Force. We therefore do not understand how there would be a service rendered by M/s.Bonprix, Germany to the appellant so as to be taxable under reverse charge mechanism. Even if there was any service rendered in regard to quality checking, the demand ought to have been raised against M/s.Fashion Force, who is the service provider for quality checking. If the department is of the view that Fashion Force, Tiruppur is the branch office of JPS Trading, Dubai then it would be M/s.Fashion Force, Tiruppur who is liable to pay service tax. It cannot be said that the deductions made in the invoices raised in the name of M/s.Bonprix, Germany is a payment made to Fashion Force, Tiruppur. For these reasons, we find that the demand raised under 'BAS', 'Technical Inspection and Certification Service' is without any factual or legal basis and requires to be set aside which we hereby do. The issue on merits is answered in favour of the appellant and against the Revenue.

6. In regard to the demand raised under GTA service, we find that the authorities below have extended the benefit of abatement after the period 1.3.2008. The show cause notice has been issued invoking the extended period. Even if the appellant paid tax on GTA services, the appellant would be eligible for availing cenvat credit of the tax paid. The entire situation is revenue-neutral. In such situation, the extended period cannot be invoked as decided in the case of Nirlon Ltd. Vs CCE – 2015 (320) ELT 22 (SC) which was followed by the Hon'ble High Court of Madras in CCE Chennai IV Vs Tenneco RC India Pvt. Ltd. – 2015 (323) ELT 299 (Mad.). The relevant para reads as under :

"4. When this matter is taken up for hearing, it is brought to the notice of this Court by the learned counsel appearing for the parties that similar question has been considered by the Gujarat High Court in the case of Commissioner of Central Excise and Customs, Vadodara II, v. Indeos Abs Ltd. reported in 2010 (254) E.L.T. 628 (Guj.) and the issue raised was answered in favour of the assessee. It is not in dispute that, in an identical matter where a similar issue was raised, the Supreme Court, in the case of Nirlon Ltd. v. Commissioner of Central Excise, Mumbai, reported in 2015-TIOL-96-SC - CX = 2015 (320) E.L.T.

22 (S.C.), affirmed the view taken by the concerned High Court. The relevant paragraphs of the order reads thus,

"7. We have ourselves indicated that the two types of goods were different in nature. The question is about the intention, namely, whether it was done with bona fide belief or there was some mala fide intentions in doing so. It is here we agree with the contention of the learned senior counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty.

8. Therefore, it was not permissible for the respondent to invoke the proviso to Section 11A (1) of the Act and apply the extended period of limitation. In view thereof, we confirm the demand insofar as it pertains to show cause notice dated 25-2-2000. However, as far as show cause notice dated 3-3-2001 is concerned, the demand from February, 1996 till February 2000 would be beyond limitation and that part of the demand is hereby set aside. Once we have found that there was no mala fide intention on the part of the appellant, we set aside the penalty as well. "

5. In view of the said statement made by the learned counsel on either side that the ratio laid down by the Supreme Court in Nirlon Ltd. case cited supra, is applicable to the case on hand, the substantial question of law is answered in favour of the assessee/respondent and against the Revenue/appellant."

7. In the result, the impugned order is modified to the extent of setting aside the demand, interest and penalties under 'Business Auxiliary Service', 'Technical Inspection and Certification Services'.

8. The demand, interest and penalties in regard to 'GTA Service' is set aside for the extended period. The details as to whether GTA services were used only for export is not before us. Therefore, the appellant is liable to pay the tax on GTA services for the normal period along with interest. For the same reasons of revenue neutral situation, the penalties are set aside entirely.

9. The appeal is partly allowed with consequential relief, if any, in above terms.