(2024) 03 CESTAT CK 0033

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal Nos. 40968, 40969,40970, 40971 Of 2014

M/S.Tamil Nadu Co-Operative Silk Producers? Federation Ltd APPELLANT

Vs

Commissioner Of GST & Central Excise RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:
Finance Act, 1994 — Section 65A(3)

Citation : (2024) 03 CESTAT CK 0033

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

Bench : Division Bench

Advocate : J. Vamini, M. Selvakumar

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. These appeals arise out of the common Order in Appeal No.33/2014 dated 23.1.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. The case of the Revenue, which is also undisputed by the appellant, are that the appellant is engaged in the purchase of raw silk from ?Anna Silk Exchange?, Kancheepuram which is the silk market run by the Sericulture Department for raw silk in the State of Tamil Nadu. Their function is to test the quality of silk received from the reelers and stock it for being sold in open auction to various agencies like the appellant, Handloom Silk Weavers Cooperative Societies and Twisters. The raw silk so procured by the appellant would be sold to B-Class Members (twisters) for further processing i.e. twisting, after doing so, the twisters would bring back the twisted silk i.e. ready silk for the purposes of sale.

2.1 It thus appeared to the Revenue upon investigation that the appellant had received / collected commission / incidental expenses, godown rent for storage conversions charges but however, had not obtained Service Tax registration and thus had not remitted the service tax payment on the above services, which according to the Revenue, merited classification under the category of ?Clearing and Forwarding Agents?. The above resulted in issuance of four Show Cause Notices dated 8.12.2003, 15.12.2004, 23.2.2005 and 18.7.2005 proposing to demand the service tax under Clearing and Forwarding Agents services for the period 1.9.1999 to 31.3.2005 and it was also proposed to recover applicable interest and penalties. It appears that the appellant filed its reply denying the liability to service tax but, however, the original authority having considered the reply during adjudication, confirmed the proposed demands vide common Order in Original Nos. 12 to 15/2007 dated 29.3.2007. Aggrieved by the above demands, the appellant appears to have preferred appeals before the first appellate authority but, however, even the first appellate authority having upheld / confirmed the demands, the present appeals having been filed before this forum.

3. Heard Ms. J. Vamini, learned Advocate for the appellant and Shri M. Selvakumar, learned Assistant Commissioner (AR) for the Revenue.

4. The submissions of the learned Advocate are summarized as below:-

? The appellant is a statutory body engaged in promotion and marketing of silk industry by facilitating their own members of the society in production of twisted silk and marketing to its own A-Class members,

? The appellant purchased raw silk from Anna Silk Exchange which is also a Government of Tamil Nadu undertaking and the raw silk so procured is sold to their own registered members on cash basis with a mark-up of 1% market value,

? The value addition of 1% is to meet the administrative cost like staff salary, printing and stationery, rent, rates and taxes, travel etc.

? The raw silk purchased by the members are twisted in their premises and the twisted consignments are brought for sale by such members to the appellant?s premises where the same are stored and thereafter sold to A-Class members of the society,

? For the above, the appellant would also charge godown rent for storage at 1.5% on its cost of ready silk to meet its administrative cost,

? The appellant also collects 0.50% on the purchase of twisted silk by the member-twisters towards administrative cost and the appellant would discharge market / Government levy at 0.75% on cost of silk by remitting to the Government of Tamil Nadu account,

? The appellant cannot therefore be considered as clearing and forwarding agents since the appellant and the members are one and the same and there is no service provider- client relationship,

? The appellant is only providing a platform for effecting sale of the goods belonging to their registered members and the sale is based on the approved price fixed by the pricing committee.

In support, learned Advocate relied on the following decisions:-

(a) CCE, Salem Vs. Salem Starch & MFR?s Service Indl. Co-Op. Society Ltd. ? 2014 (33) STR 16 (Mad.)

(b) CCE, Panchkula Vs. Kulcip Medicines (P) Ltd. ? 2009 (14) STR 608 (P&H) affirmed by the Hon'ble Supreme Court as reported in 2012 (25) STR J127 (SC)

(c) Salem Starch & Manufacturers Service Industrial Co-Op Society Ltd. Vs. CCE, Salem ? 2006 (1) STR 106

(d) CCE Vs. Bhuwalka Steel Industries ? 2015 (2) STT 138 (Chennai)

(e) State of West Bengal Vs. Calcutta Club Ltd. ? 2019 (29) GSTL 545 (SC)

5. Per contra, the learned Assistant Commissioner relied on the findings of the original authority as well as the first appellate authority. He specifically drew our attention to paragraph 6 of the impugned order wherein the first appellate authority has reproduced the receipts in the hands of the appellant.

6. We have heard rival contentions and carefully perused the orders of the lower authorities and the documents placed on record. It is an undisputed fact that the appellant had received various payments as recorded at para 6 of the impugned order. But however, the appellant has explained the nature of such receipts. Further, it is also an undisputed fact that the appellant being a society would facilitate the sale and purchase of raw silk and twisted silk both belonging to its members. In this context, it is useful to refer to the guiding principles laid down by the Hon'ble High Court of Madras in the case of CCE, Salem Vs. Salem Starch & MFR?s Service Ind. Co-Op Society Ltd. (supra). The facts as reported in the said judgment at para 6 is reproduced for convenience:-

?The claim of the assessee that the activity of the assessee did not fit in with the understanding of the clearing and forwarding agency, was, however, rejected by the Assessing Officer in a very detailed manner. The said Officer pointed out that the Society effected sales only after obtaining the concurrence of the principal; they maintained the records for receipts, despatches and the stock available with them in the warehouse. Thus, the assessee was undertaking all the activities normally undertaken by the clearing and forwarding agents. After receiving the goods, the clearing and forwarding agency also undertook to arrange dispatch of goods as per the directions of the Principal by arranging transport on his own or through various transporters. The Assessing Officer pointed out that even if the goods were not received from the factory directly, it was enough if they had received the goods from any other premises belonging to the Principal. The assessee admitted the fact that it received the goods. However, on receipt of the goods, they were weighed and weighment card was issued to the customers. The goods were sent to the godown in a lot and lot number was assigned and stacked. The Assessing Officer, however, pointed out that even though the assessee denied the allegations contained in the show cause notice that they had received dispatch orders from the members and arranged dispatch of goods as per the directions of the Principal, no evidence was let in by them to substantiate this aspect. The Assessing Officer viewed that transport could be arranged either by the Principal or by the assessee and as far as the present case is concerned, it was totally immaterial, since, the sale was effected by the assessee only after obtaining the concurrence of the Principal. This action was nothing but arranging dispatch of goods on the instruction of the Principal; consequently, the activities undertaken by the assessee was connected with or in relation to sale of sago. The Assessing Officer further found that apart from maintaining details as regards the receipt of goods and the dispatch, the invoices were prepared by the assessee. Going by the nature of activity, it was clear that the assessee was required to be assessed as clearing and forwarding agents. The Assessing Officer further pointed out that the assessee had paid the Service Tax under storage and warehousing, with effect from 16-8-2002. Thus, considering the status to be assigned to the assessee herein as a clearing and forwarding agent, the Assessing Officer adjusted this payment towards the liability fastened on the assessee. Thus holding against the assessee, the Assessing Officer confirmed the levy of penalty too in not submitting the transactions.?

7. After hearing both sides, the Hon'ble High Court has held at para 15 to 17, which read as below:-

?15. The case of the Department is that the nature of services accepted by the assessee included receiving of goods from the Principal, warehousing of the goods, receiving the dispatched orders from the Principal, arranging dispatch of goods as per the directions of the Principal, maintaining records of the receipt and dispatch of goods and the stock available at the warehouse and preparing invoices on behalf of the Principal. As far as the parameters which are contained in Circular dated 11th July 1997, as applicable to the facts of the case is concerned, as already seen from the extract of the Commissioner?s order, it is no doubt true that the assessee prepared invoices on behalf of the Principal. The invoice consisted of the amount payable to the Society by way of storage charges, testing charges and other handling charges. We do not find any material herein to hold that the assessee was having any responsibility for receiving the goods from the factory or from the premises of Principal or his agents. It is only the Principal who brought their products to the doorsteps of the assessee to make use of the common market platform provided by the Society for its members and on the request of the Principals for warehousing of the goods the assessee offered the storage facility. It is a matter of record that for the purpose of auction sale, on receipt of the goods, the same was sorted out according to the quality testing and kept in a lot in the godown. A lot number was assigned and stacked. The samples were drawn for quality testing as well as to display in the tender hall. Once tenders were received, they were opened. On opening, the highest rate offered for each lot was displayed. On confirmation from the Principal on the price offered, the sale was confirmed. Thereupon, the buyer took delivery of the goods.

16. As far as maintenance of records were concerned, there is no denial of the fact that the assessee maintained records on receipt of the amount and the stock received and available after the sale. On a reading of the nature of activity thus rendered by the assessee, it is clear that except for receiving the goods which were brought to its door steps by its Principal and displaying the goods received for sale, practically, nothing else was done by the assessee in the matter of taking the goods from the Principal and for further despatching of the goods to the buyer by engaging transporter or on its own transporter. The conduct of the assessee, handling the goods on receipt raising invoices on sale or maintaining of the records as to the stock availability, at best, showed it only as an agency offering storage facility. This act, per se, does not convert the assessee?s transaction as that of a clearing and forwarding agency. Thus, when the burden is on the Revenue to prove that the assessee, in fact, received the goods from the premises of the Principal and arranged despatch of goods as per the directions of the Principal by engaging transporter on its own or through various transporters, we have no hesitation in accepting the submission of the assessee that the nature of transactions viz., despatching of goods and offering storage facilities by the assessee, does not fit in with the criteria given in the circular to treat the assessee as a clearing and forwarding agent. As pointed out by the learned counsel appearing for the assessee, the nature of activity is a composite one, enabling the Principal to bring the products to the assessee?s premises and the assessee giving financial facility to the members, so that, ultimately on the sale of sago, on the receipts received by the assessee on behalf of the Principal, the same was settled after deducting whatever amounts were due to the assessee on the advance payment made by the assessee to the principal. Thus, providing a platform for the sellers and buyers to meet in a common place, providing a storage facility to the manufacturer, the financial help rendered to the members and organising of the sale of the products, per se, do not, in any manner take the assessee anywhere near the activities discharged by a clearing and forwarding agent. Thus, going by Section 65A(2) of the Finance Act, the essential predominant character of the activity being one of facilitating the sale of the products, apart from providing storage facilities, the view of the Revenue that the nature of activity, per se, has to be tested from the point of facilitating the sale, thereafter, could not be sustained . In any event, even as per the conditions prescribed in the circular dated 11th July 1997, we do not find that the nature of activity undertaken by the assessee could be brought under ? clearing and forwarding agency?. Thus, the incidental services offered in the transaction in arranging the transporting of the goods to the buyer would not, however, decide the nature of the transaction as one of clearing and forwarding agency.

17. As far as the present case is concerned, as already pointed out, there is no evidence to show that the assessee had the responsibility of arranging the despatching of goods purchased by the buyer in the auction nor had responsibility undertaken to collect the goods from the Principal?s premises to

hold that the assessee is a clearing and forwarding agency under the provisions of the Act. Thus, the assessee?s business was never that of a clearing and forwarding agency.? (emphasis supplied)

8. We find that the facts of the present case are more or less akin to the facts of CCE, Salem Vs. Salem Starch & MFR?s Service Ind. Co-Op Society Ltd. (supra), wherein also the Hon'ble High Court has held that there is no question of clearing and forwarding agents service involved and consequently there was no liability to service tax under the said category. Further, we find that the other decisions / orders (supra) relied upon by the learned Advocate are almost on the same lines.

9. In view of the above discussions, following the ratio laid down by the Hon'ble High Court of Madras, we are of the view that demand of service tax on the appellant under the category of ?Clearing and Forwarding Agents? Service is not sustainable, for which reason, the impugned order cannot sustain. Resultantly, we set aside the impugned order and allow the appeals with consequential benefit if any, as per law.