

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

COURT No.

APPEAL No. ST/39/12-Mum

(Arising out of Order-in-Appeal No. P-II/RKS/133/2011 dated 23.11.2011 passed by Commissioner of Central Excise (Appeals), Pune-II)

For approval and signature:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Indian Oxalate Ltd.

Appellant

Vs.

Commissioner of Central Excise, Kolhapur

Respondent

Appearance:

Shri A.V. Naik, Advocate, for appellant

Shri A.B. Kulgod, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 16.1.2015

Date of Decision: 16.1.2015

ORDER NO.

The appeal is directed against order-in-appeal No. P-II/RKS/133/2011 dated 23.11.2011 passed by Commissioner of Central Excise (Appeals), Pune-II, wherein the learned Commissioner (Appeals) upheld the order-in-original No. RTNA/167/Adj/10/STC/02/10 dated 31.3.2011, to the extent of the confirmation of demand of service tax. However, the penalty imposed under Section 76 of the Finance Act, 1994 was dropped.

2. The fact of the case is that the appellant availed taxable services for supply of their goods to the consignee. They paid the freight to the transporter and took the reimbursement of transportation expenses from the consignee. The demand of service tax was confirmed by the adjudicating authority on the ground that as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the service tax is liable to be paid by the consignor or the consignee who pays or liable to pay the freight. In the present case, admittedly the freight was paid by the appellant though subsequently they have taken the reimbursement from the consignee. The appellant preferred an appeal before the Commissioner (Appeals) who upheld the demand of service tax and penalties under Sections 77 & 78 of the Finance Act, however, dropped the penalty under Section 76. Therefore the appellant is before me.

3. Shri A.V. Naik, learned counsel for the appellant, submits that the transportation charges towards the transportation of the goods supplied by them were supposed to be paid by the consignee. However, actually the transportation charges were paid by the appellant to the transporter and subsequently they have taken the reimbursement from the consignee. It is his submission that since the transportation charges was the liability of the consignee and they have only facilitated to the consignee and subsequently taken the reimbursement, the consignee is the person who is liable to pay the service tax and not the appellant. He has placed reliance on the judgment of the Tribunal in the case of S.R. Drugs Pvt. Ltd. vide order No. A/261/11/SMB/C-IV dated 30.6.2011, wherein the identical issue has been decided by the Single Member Bench in favour of the assessee.

4. On the other hand, Shri A.B. Kulgod, learned Assistant Commissioner (AR), appearing on behalf of the Revenue, reiterates the findings in the impugned order. He further states that as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the person who pays or liable to pay the freight is responsible for the payment of service tax in respect of GTA services. It is his submission that in the present case, it is the undisputed fact that the freight was admittedly paid by the appellant to the transporter and the appellant is clearly covered under the category, who is liable to pay the service tax as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994. Therefore, irrespective of any arrangement between the consignor and the consignee, the person who pays the freight is legally liable to discharge the service tax liability.

4.1 As regards the judgment in the case of S.R. Drugs (supra) relied upon by the learned counsel for the appellant, the learned AR submits that it is a Single Member Bench judgment and countering the same, he has placed reliance on the Division Bench judgment of this Tribunal in the case of Essar Logistics Ltd. vs. CCE, Surat reported in 2014 (33) STR 588 (Tri.-Ahmd.), wherein it is held that in terms of Rule 2(1)(d)(v), the person who pays the freight is liable to discharge the service tax liability in respect of GTA service.

5. I have carefully considered the submissions made by both the sides. As regards the service tax liability on the person in respect of GTA services, it is provided under Rule 2(1)(d)(v), which is reproduced below:-

(v) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is,-

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any company formed or registered under the Companies Act, 1956 (1 of 1956);
- (c) any corporation established by or under any law;
- (d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
- (e) any co-operative society established by or under any law;
- (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or
- (g) any body corporate established, or a partnership firm registered, by or under any law,

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage.

From the plain reading of the aforesaid Rule, it is unambiguous that if the person is covered under the category (a) to (g) of clause (v) of Rule 2(1)(d) above and if that person pays the freight towards the GTA services, he is that person who is liable to discharge the service tax. In the present case, it is undisputed fact that the GTA services were provided by the transporter for transportation of the goods to the appellant through its consignee. For the said GTA services it is the appellant who has paid the freight to the transporter. Under these facts there is no doubt that the appellant being a consignor is liable to discharge the service tax. As regards the submission of the learned counsel that though they have paid the freight to the transporter but there was an understanding that the freight was to be borne by the consignee and, therefore, they have taken reimbursement from the consignee after paying freight to the transporter. Therefore, since they were not liable to pay the freight to the transporter, they are not liable for service tax. It is the consignee who is liable to pay the service tax. I do not agree with the submission of the learned counsel because such option has not been provided under Rule 2(1)(d)(v) or any other provisions. Therefore, the appellant is legally responsible to discharge the service tax.

6. As regards the reliance placed by the learned counsel on the judgment of S.R. Drugs (supra), I am of the view that the Division Bench of this Tribunal in the case of Essar Logistics (supra) has taken a different view and held as under:-

9. On a very careful consideration of the entire issue, we find that the appellants transport the goods in their own vehicle to the buyer. The buyer is a person who actually pays the freight. It is very clear in terms of Rule 2(1)(d)(v) that the liability to pay service tax is cost (sic) (cast) on the person who pays the freight. In this case the person who pays the freight is the buyer. Therefore, the appellant has no liability to pay the service tax. In such circumstances, the action of the Commissioner (Appeals) in setting aside the original order is correct, but there is absolutely no need for remanding the matter. The appellant has no liability at all to pay the service tax. Hence, the appeal is allowed with consequential relief.

10. We also find that above said decision of the Tribunal was considered by co-ordinate bench of the Tribunal in the case of SICGIL India Ltd. (supra) wherein the issue involved was identical to the issue which is before us. The co-ordinate Tribunal Bench following the view taken in the case of MSPL Ltd. (supra) held in favour of the assess therein the same ratio will apply in the case in hand.

11. Accordingly, in view of the foregoing and the statutory provisions as reproduced hereinabove, we hold that the impugned order is unsustainable and is liable to be set aside and we do so. The impugned order is set aside and the appeal is allowed, with consequential relief, if any.

From the above judgment, it has been categorically held that only that person who pays the freight is liable to discharge the service tax.

7. In view of the above discussion and finding, I am of the considered view that the impugned order is sustainable, therefore, the appeal filed by the appellant is dismissed.

(Dictated in Court)

(Ramesh Nair)

Member (Judicial)