CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

Service Tax Appeal No. 10432 of 2017-DB

[Arising out of OIA-KCH-EXCUS-000-APP-048-16-17 dated 25.11.2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT(Appeal)]

Chinubhai Kalidass & Bros .... **Appellant**
102-103, Anam Commercial Centre,
Plot No. 37, Sector-9,
Gandhidham (Kutch)
Gujarat

VERSUS

C.C.E.-Kutch (gandhidham) .... **Respondent**
Central Excise & Service Tax Commissionerate,
Centeral Excise Bhavan Plot No. 82, Sector 8,
Gandhidham(Kutch)
Gujarat

APPEARANCE :

Shri Puloma Dalal, Advocate for the Appellant- Assessee
Shri Sanjay Kumar, Superintendent (AR) for the Respondent-Revenue

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO.10118/2024

DATE OF HEARING : 21.12.2023
DATE OF DECISION: 09.01.2024

RAJU :

This appeal has been filed by M/s. Chinubhai Kalidass & Bros. against the demand of Service Tax.

2. The appellants are service provider under the category of customs agent and also under the head of "Business Auxiliary Service". The appellant organized transportation of their clients and got reimbursement from their clients. A notice was issued to the appellants for the amount spent on transportation. The appellants were recovered transportation expenses along with Service Tax paid thereon from their clients. The invoices also mentioned the consignment note number raised by the transporter on which their

clients directly paid service tax on reversed charged basis. The revenue noticed that, the consignment note was not issued by the appellants but by the transporter and therefore, came to conclusion that the appellants cannot be as good transport agency. The Revenue notice that, this income was shown in the balance sheet of the appellant has transport revenue. The appellant had recorded the difference between the amount charged from the clients and amount paid to the goods transport agency under the head of transport revenue. Consequently, the revenue sought to charge service tax on this income as commission under the head of "Business Auxiliary Service".

2.1 Commission agent has been defined as follows:

> *Whereas, Section 65 (19) of the Act, provides for definition of "business auxiliary service" which reads as under;*
>
> *(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
> *(ii) Promotion or marketing or service provided by the client; or*
> *(iii) Any customer care service on behalf of the client; or*
> *(iv)* ***Procurement of goods or services, which are inputs for the client; or*** *[Explanation. – for the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client)*
> *(v) production or processing of goods for, or on behalf of the client; or]*
> *(vi) Provision of service on behalf of the client' or*
> *(vii) A service incidental or auxiliary to any activity specified in sub-clauses(i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, 5(but does not include any activity*
>
> *that amounts to "manufacture" of excisable goods)*
> *[Explanation. – for the removal of doubts, it is hereby declared that for the purposes of this clause, -*

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or

Receipt of services, for a consideration, and includes any person who, while acting on behalf of another person –

(i) Deals with goods or services or documents of title to such goods or services; or

(ii) Collects payment of sale price of such goods or services; or

(iii) Guarantees for collection or payment for such goods or services; or

(iv) Undertakes any activities relating to such sale or purchase of such goods or services;

(b) Excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(c) "manufacture" has the meaning assigned to it clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

3. The Revenue seeking to classify this revenue as under the head of 'procurement, of goods of services, which are inputs for the clients'. The explanation to clause (iv) of section 65 (19) of the act clearly prescribed that inputs included all goods or services intended for use by their clients. The Revenue is of opinion that in this case the transport services are inputs for their clients. The subsection also defines the commission agent to mean any person to acts on behalf of the another person and causes sale or purchase of goods or provision or receipt of services for a consideration, and includes any person to while acting on behalf of another person undertakes any activity relating to sale or purchase of goods or services. In the instance case, it is clear that the appellants were organizing the transport service for their clients and were charging a certain amount in the excess of the actual expenditure on transport. This excess amount collected by the appellant is sought to be charged to service tax as commission income under the category of "Business Auxiliary Service".

4. We are considered that rival submissions, we find that the entire operation is conducted in following manner. The appellant engaged a

transporter. The transporter issues the 'consignment note'. The transporter charges the appellant a certain amount. The appellant charged a certain amount from their clients. The amount charged by the appellant to their clients is in excess of the amount. The appellant paid to the transporter. The clients discharged service tax liability on the amount charged by the appellant to the clients. From above sequence, it is obvious that the entire amount including the commission charged by the appellant over and above the actual amount paid to the transporter has suffered service tax liability on reserves charged basis at the hands of the clients of the appellants. In such circumstances there cannot be another demand of service tax on the commission retain by the appellants. The said commission, being part of the final amount charged by the appellant to their clients, has already suffered the service tax liability at the hands of the clients. In these circumstances, the demand of service tax made under the "Business Auxiliary Service" cannot be sustained.

4.1 It is also notice that subsequently, Commissioner (Appeal) has observed following while dropping the demand for a different period:

> *"I find the appellant arranged for transportation on behalf of their clients and made value addition over and above the freight charged by the transport operator. I also find that the clients of the appellant i.e. consignee of the GTA service discharged service tax on the enhanced value of the bills raised by the appellant. So, service tax has been discharged on the gross value, including the said additional consideration received by the appellant. This fact has been categorically mentioned by the adjudicating authority in the para reproduced supra. So, the confirmation of service tax demand, again on the said additional consideration, would tantamount to double taxation, as there cannot be two incidence of tax on same transaction or same ser of service.*
>
> *It is pertinent to mention here that though the appellant acted on behalf of their clients, the entire transactions were on principal to principal basis. First, the appellant booked trucks from the respective transport operators and then provided the same to their clients and*

raised bills. The clients of the appellant, in turn, paid service tax on the transportation charges raised by the appellant, in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994. So, in the entire transaction, the appellant acted Goods Transport Agency and service tax liability was duly discharged by the clients of the appellant.

In view of the above discussion, I hold that the appellant is not liable to pay service tax under the category of "Business Auxiliary Service" on the additional consideration received by them for arranging transportation on behalf of their customers. I therefore allow the appeals of the appellant and set aside the service tax demand and consequent penalties imposed under Sections 76, 77 and 78 of the Finance Act, 1994."

5. In this background, we do not found any merit of the impugned order. The appeal is allowed.

(Pronounced in the open court on 09.01.2024)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Dharmi