The Professional Couriers Vs. Commissioner of Service Tax

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-07-2007

Reported in : (2008)12STJ444CESTAT(Chennai)

Judge : P Chacko

Appellant : The Professional Couriers

Respondent : Commissioner of Service Tax

Judgement :

1. After examining the records and hearing both sides, I find that the appeal itself can be finally disposed of at this stage in view of the clear provisions of law cited before me by learned Counsel as also a decision of this Tribunal on the same issue. Accordingly, after dispensing with predeposit, I take up the appeal for disposal.

2. The appellants are a 'courier agency' as defined under Section 65(33) of the Finance Act, 1994. During the period from 15.03.2005 to 15.06.2005, they had collected a gross amount of Rs. 32,85,110/- as consideration for courier service rendered across the borders of India.

The lower authorities have demanded service Tax on this amount (along with education cess) and have also imposed penalties on them under various provisions of the Finance Act, 1994. They have taken the view that the nature of courier service cannot be determined or get altered solely on the fact that the person to whom the courier is sent is in India or outside India. It has been held that it is the nature of the service and not the means of delivery of service that determines whether export of taxable service has taken place or not. This decision is under challenge in the present appeal.

3. It was on 15.03.2005 that the Export of Services Rules, 2005 came into force. Rule 3 of the said Rules, as originally enacted, reads as under: (2) in relation to taxable services, specified in Sub-clauses (a), (f),...of Clause (105) of Section 65 of the Act, such services as are performed outside India: Provided that if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India; 4. The above provision was amended with effect from 16.06.2005 under Notification No. 28/2005-ST dated 07.06.2005. One of the amendments was insertion of a proviso after the first proviso to Sub-rule (2) of Rule (a) Such service is delivered outside India and used in business or any other purpose outside India; and (b) Payment for such service provided is received by the service provider in convertible foreign exchange.

5. Admittedly, in the present case, service tax was demanded on the amount received by the assessee as consideration for international courier service, which necessarily involved export of service. A part of that service was performed within India and the rest outside. On these facts, the appellants were entitled to exemption from payment of service tax in terms of Rule 4 of Export of Services Rules, 2005, which provision reads thus: Any service which is taxable under Clause (105) of Section 65 of the Act, may be exported without payment of service tax.

6. There was nothing in the Rules (as they stood during the material period) to indicate that the consideration for export of services should be received in convertible foreign exchange, for claiming the exemption under Rule 4. The view taken by the lower authorities may be good only for the period from 16.06.2005. Before that date, the appellants were not liable to pay service tax on the international courier service, part of which was performed in India and the rest outside. This view was taken by this Tribunal in the case of TNT India Pvt. Ltd. v. Commissioner of Service Tax, Bangalore 2007-TIOL-1038-CESTAT-BANG. also.

7. In the result, the impugned order is set aside and this appeal is allowed.