

Mspl Ltd. Vs. the Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Sep-25-2008

Reported in : [2009]16STJ252(CESTAT-Bangalore); 2009[13]S.T.R.554; [2009]20STT384

Judge : S.L. Peeran (J) and T.K. Jayaraman (T), Members

Acts : [Finance Act, 1994](#) - Sections 65, 68(2), 75, 76, 77 and 78; Service Tax Rules, 1994 - Rule 2(1); [Factories Act, 1948](#); [Companies Act, 1956](#); [Societies Registration Act, 1860](#); [Central Excise Act, 1944](#)

Appeal No. : Appeal No. ST/118/2008 (Arising out of Order-in-Appeal No. 207/2007-CE Dated 13.12.2007 Passed by the Commissioner of Central Excise, Belgaum)

Appellant : Mspl Ltd.

Respondent : The Commissioner of Central Excise

Advocate for Def. : Joy Kumari Chander, JCDR

Advocate for Pet/Ap. : M.S. Nagaraj, Adv.

Judgement :

ORDER

T.K. Jayaraman, Member (T)

1. This appeal is filed against the Order-in-Appeal No. 207/2007-CE dated 13.12.2007 passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. Mr M.S. Nagaraj, the learned Advocate appeared on behalf of the appellants and Ms. Joy Kumari Chander, the learned JCDR, for the Revenue.

3. We heard both sides.

4. The appellants are actually manufacturers of Oxygen and Nitrogen. They transport the cylinders to their buyers in their own vehicle and collect the transportation charges. Revenue proceeded against them on the ground that they are providing the services of "Goods Transport Agency". Therefore, they are liable to discharge the service tax on the freight charges collected by them from their buyers. The Original Authority in his order confirmed the demand of service tax on the appellants. He demanded an amount of Rs. 12,11,140/- on the ground that the appellants are a Goods Transport Agency rendering taxable service. He demanded interest under Section 75. Penalties were also imposed under Section 76, 77 & 78 of the Finance Act. The appellants were aggrieved over the order of the lower authority. Hence, they approached the Commissioner (Appeals). The Commissioner (Appeals) after examining the issue in the light of law set aside the original order, remanded the matter to the Adjudicating Authority to determine the liability of the appellants in the light of provisions of Section 68(2) of the Finance Act read with Rule 2(1)(d)(v) of Service Tax Rules, 1994.

5. The learned Advocate made several submissions. The gist of them are given below:

a) The appellants use their own vehicles. They are the owners of the vehicle and they are not the Goods Transport Agency. The service provided by a Goods Transport Agent to a customer in relation to transportation of goods is a taxable service. The transportation of goods by road per se is not a taxable service. There must be service provided to a customer by a goods transport agent in relation to transportation of goods by road. The measure of the tax is a freight charges paid,

but the measure of tax cannot alter the incidence or scope and nature of levy of service tax. The appellants being manufacturer consigner of goods and owner of vehicles cannot provide to themselves as customer the service in relation to transportation of goods. The appellants being the owners of the motor vehicles or goods carriage cannot be said to be their own agents providing the services of GTA to themselves as customers in relation to transportation of goods by road in goods carriage.

b) The CBEC vide Circular No. 95/6/2007-ST dated 11.06.2007 has clarified in para 1, the nature and scope of the service of GTA. The CBEC has clarified that consignment notice document issued by a goods transport agency against receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported. It was submitted that Notification No. 29/2008-ST dated 26.06.2008 exempts the taxable service or supply of a goods carriage provided by any person to a goods transport agency for use by the goods transport agency to provide any service, referred to in Sub-clause (zzp) Clause (105) of Section 65 of the [Finance Act, 1994](#) to a customer in relation to the transport of goods by road in the said goods carriage.

6. The learned Advocate invited our attention to the speech of the Union Minister of Finance while presenting the Union Finance Bill 2004-05 which reads under:

58 services have been brought under the net so far. I propose to add some more this year. These are business exhibition services; airport services; services provided by transport booking agents; transport of goods by air; survey and exploration services; opinion poll services; intellectual property services other than copy right; brokers of forward contracts; pandal and shamiana contractors; outdoor caterers; independent TV/radio programme producers; construction services in respect of commercial or industrial constructions; and life insurance services to the extent of the risk premium. I may clarify that there is no intention to levy service tax on truck owners or truck operators. Nor, as was clarified by my predecessor, is there any intention to levy service tax on the savings part of the premium collected

by an insurer.

6.1. From the above, it is very clear that the legislative intent is to tax only the services provided by a Goods Transport Agent to a customer and not the owner. Further, the learned Advocate referred to our attention Rule 2(1)(d)(v) of the Service Tax Rules, 1994 wherein the person liable to pay service tax is defined. Person liable to pay service tax means the person who pays or is liable to pay the freight. Rule 2(1)(d)(v) is reproduced herein 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 there under; 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;]

7. It was argued that the appellants are a factory registered under the Factories Act and the company incorporated under the Companies Act 1956 and have obtained Central Excise Registration Certificate as manufacturer of excisable

goods. The appellants being the consignor of the goods is one of the seven persons prescribed under the above Rule 2(1)(d)(v) and therefore the liability to pay service tax is on the person paying the freight irrespective of whether the consignee/customer is one of the seven specified persons or not. The use of the word 'or' between the terms "consignor" and "consignee" shows that if either the consignor or consignee falls under the category specified therein, then any person who pays or is liable to pay freight is the person liable to pay Service Tax. Therefore, it was argued there was no need for the Commissioner (Appeals) to remand the matter when the law is clear that the liability is on the person who pays the freight.

8. The learned JCDR reiterated the contentions in the impugned order.

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 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.

(Pronounced in open Court on 25.09.2008)

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