

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41714 of 2013

(Arising out of Order-in-Original No. 12/2013 dated 25.02.2013 passed by the Commissioner of Service Tax, Newry Towers, 2054-I, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Madras Security Printers Private Limited : **Appellant**
72, (Old No. 781), Thiruvottiyur High Road,
New Washermenpet,
Chennai – 600 081

VERSUS

The Commissioner of Service Tax : **Respondent**
Newry Towers, No. 2054-I, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Smt. K. Komathi, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40305 / 2023

DATE OF HEARING: 12.04.2023

DATE OF DECISION: 26.04.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief undisputed facts, as could be gathered from the impugned Order-in-Original, are that the appellant, engaged in printing of security documents and papers, had paid agency commission to its foreign agents who were engaged by the appellant for procuring export orders to the appellant.

2.1 Entertaining a doubt, based on intelligence, that the appellant had not paid Service Tax on the commission paid to its foreign agents and further entertaining a doubt from the nature of transaction that the payment of commission for providing the business to the appellant was classifiable under 'business auxiliary service', a Show Cause Notice dated 21.10.2011 came to be issued proposing, *inter alia*, to demand the Service Tax on the commission paid by the appellant to its foreign agents under reverse charge basis under the category of 'business auxiliary service'.

2.2 It appears that the appellant filed a detailed reply thereby denying any liability to Service Tax on the payment of commission to its foreign agents *inter alia* claiming the benefit of exemption under Notification No. 14/2004-S.T. dated 10.09.2004, but however, the Adjudicating Authority i.e., the Commissioner of Service Tax, Chennai, having not accepted the contentions of the appellant, has vide impugned Order-in-Original No. 12/2013 dated 25.02.2013 confirmed the demands proposed against the appellant and it is against this order that the present appeal has been filed by the appellant before this forum.

3. Heard Shri M.N. Bharathi, Learned Advocate for the appellant and Smt. K. Komathi, Learned Additional Commissioner for the respondent.

4. We have perused the order of the lower authority and the documents placed on record; we have also gone through the orders relied upon during the course of arguments.

5. After hearing both sides, we find that the only issue to be decided by us is: whether the appellant is eligible for exemption in terms of Notification No. 14/2004-S.T. dated 10.09.2004?

6.1 The Learned Advocate for the appellant submitted, at the outset, that the above issue is no more *res integra*

as the same is settled in favour of the assessee in the following cases: -

- (i) *M/s. Texyard International v. Commissioner of Central Excise, Trichy [2015 (40) S.T.R. 322 (Tri. – Chennai)];*
- (ii) *M/s. K.P.R. Cotton Mills Pvt. Ltd. v Commissioner of Central Excise, Coimbatore [2017 (10) TMI 344 – CESTAT, Chennai];*
- (iii) *M/s. Aviram Knitters v. Commissioner of G.S.T. & Central Excise, Coimbatore [2019 (2) TMI 92 – CESTAT, Chennai];*
- (iv) *M/s. Maxican Exports v. Commissioner of Central Excise & Service Tax, Tiruchirappalli [2018 (8) TMI 819 – CESTAT, Chennai];*
- (v) *M/s. Arvind A. Traders v. Commissioner of C.Ex. & S.T., Trichy [2016 (44) S.T.R. 264 (Tri. – Chennai)]*
- (vi) *M/s. Aruppukottai Sri Jayavilas Ltd. & ors. v. Commissioner of Central Excise & Service Tax, Madurai [2015 (9) TMI 732 – CESTAT, Chennai];*
- (vii) *M/s. Sunbeam Infocomm Pvt. Ltd. v. Commissioner of C.Ex., Pune-II [2015 (37) S.T.R. 129 (Tri. – Mumbai)]*

6.2 The Learned Advocate would invite our attention to the discussion in *M/s. Texyard International (supra)* wherein a more or less similar issue was considered in the light of Notification No. 14/2004 (*supra*). He would refer to paragraph 4 of the said order where the facts of the case have been captured. From this, we find that the appellants therein were the manufacturers-exporters and in order to procure orders, they engaged overseas commission agents, to whom commission was paid, and consequently, they had claimed exemption relying upon Notification No. 14/2004 (*supra*). The authorities appear to have denied the exemption, against which the said appeal was filed before the Tribunal. After considering the rival contentions, this Bench has held as under: -

"6.1 We have carefully considered the submissions of both sides and also examined the records. The assessee filed appeals contesting the service tax demanded under reverse charge on the commission paid to the overseas agents for export of finished goods. The Revenue filed appeal against setting aside of penalties by Commissioner (Appeals). The main issue in the present appeals is whether appellant-assessee is eligible to the benefit of exemption of service tax under Business Auxiliary Service under Notification No. 14/2004-S.T., dated 10-9-2004 and whether assessee is liable for penalty as contended by Revenue. Prima facie, we find that there is no dispute on the fact that the appellants are manufacturer-exporters and they manufacture textile made ups and export to overseas. They have engaged overseas agents and paid commission for procurement of export orders and the commission agency service is covered under the Business Auxiliary Service. The appellants claimed the exemption under Notification No. 14/2004-S.T., dated 10-9-2004 as applicable during the relevant period before appellate authority and he rejected their plea on the ground that the said exemption is applicable to the input services related to textile processing. The period involved in all these appeals relates to post 18-4-2006. It is relevant to reproduce the Notification No. 14/2004-S.T., dated 10-9-2004 as under :-

"Service tax exemption to specified services in relation to Business auxiliary service

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service provided to a client by any person in relation to the business auxiliary service, insofar as it relates to, -

- (a) procurement of goods or services, which are inputs for the client;*
- (b) production or processing of goods for, on behalf, of the client;*
- (c) provision of service on behalf of the client; or*
- (d) a service incidental or auxiliary to any activity specified in (a) to (c) above.*

and provided in relation to agriculture, printing, textile processing or education, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

6.2 The lower authorities denied the exemption merely on the ground that the said services are not used for textile processing. On careful reading of the above

notification, it is evident that service tax was exempted during the relevant period for the services provided under Business Auxiliary Service if it relates to agriculture, printing, textile processing or education. The appellants are Textile manufacturer and exporters. The word "textile processing" referred in the notification is to be understood in a broader sense. The dictionary meaning of "textile processing" means sequence of operations or changes undergone and the definition of "textile" includes fabrics, fibre, yarn suitable for weaving into fabric. The exemption of service tax under BAS was allowed in relation to four industries namely agriculture, printing, textile processing and education. Therefore, the appellant being textile industry, it is covered under the category "textile processing" in the notification.

6.3 Commission paid to the overseas agents is in respect of service provided by that agent to the appellant to export its goods and thereby sales is promoted. That is an activity incidental or auxiliary to processing of textile goods and covered by Business Auxiliary Service and Clause (d) of the notification extracted above covers the case of the appellant bringing the export promotion activity abroad as incidental and auxiliary to the activity of production as is meant by Section 65(19) of Finance Act, 1994. Appellants are accordingly entitled to the benefit of exemption Notification No. 14/2004 and not liable to the payment of service tax under reverse charge.

7. *It is also relevant to state that appellants being the exporter of textile made ups as per the Foreign Trade Policy are not expected to export the taxes. Appellants pleaded that there was no suppression of facts with deliberate intention to evade payment of service tax. As payment of service tax by the recipients was under dispute for a long period till that was settled by the decision of Apex Court in the case of UOI v. Indian National Shipowners Association - 2011 (21) S.T.R. 3 (S.C.) there was no deliberate intention to make suppression of facts. Appellants were under bona fide belief that as per the EXIM Policy at para 2.482 of the Policy Period 2009-10 issued by Notification No. 1/(RE/2008)/2004-2009 dated 11-4-2008 all goods and services exported from India, services received/rendered abroad wherever possible shall be exempted from service tax. Therefore, the demand is also hit by limitation and the extended period cannot be invoked."*

(Emphasis added by us in bold)

7. *Per contra*, the Learned Additional Commissioner for the respondent has relied upon the findings of the lower authority.

8. After hearing both sides, we find the assertion of the Learned Advocate for the appellant to be correct, as a more or less similar issue has been considered in the light of the very same Notification No. 14/2004-S.T. dated 10.09.2004 by this very Bench in the case of *M/s. Texyard International (supra)*. We also find that the ratio laid down therein has been followed in the other orders relied upon by the Learned Advocate.

9.1 In the Order-in-Original, it has been held by the Adjudicating Authority that the foreign agents of the appellant did not render any taxable service classifiable under Notification No. 14/2004 (*supra*), after observing that the said foreign agents only arranged / booked orders but did not involve in producing any input or input service. Notification No. 14/2004 (*supra*), which is reproduced in the earlier paragraphs [part of the order in the case of *M/s. Texyard International (supra)*] exempts taxable service provided to a client by any person **in relation to** business auxiliary service insofar as the same related to: -

- (a) procurement of goods or services, which are inputs for the client;
- (b) production or processing of goods for, or on behalf of, the client;
- (c) provision of service on behalf of the client; or
- (d) a service incidental or auxiliary to any activity specified in (a) to (c) above.

9.2 The scope of the services rendered by the foreign agents in the case on hand, as observed by the

Adjudicating Authority at paragraph 2.0 of the impugned order, reads as under: -

"2.0

..... During the course of verification of the details and documents furnished by the assessee, it appeared that the assessee had engaged Agents in foreign countries who book orders, liaison with customers for designing, approval of proofs, co-ordinate with customers, help in providing other sales services for execution of the contract for printing of security documents and papers relating to the foreign Governments. ..."

9.3 From the above, we find that liaising with customers and getting export orders is itself a 'procurement of service' within the meaning of (a) under Notification No. 14/2004 (*supra*) and the same would also amount to provision of service on behalf of the client as per (c) of the above Notification.

10. Hence, we do not agree with the findings arrived at by the lower authority that the activities of the foreign agents would not amount to any taxable service under Notification No. 14/2004 (*supra*).

11. We find that the Chennai Bench of the Tribunal in the case of *M/s. Texyard International (supra)* has interpreted the applicability of Notification No. 14/2004-S.T., which is extracted by us in the above paragraphs, which ratio squarely applies to the present case also.

12. In view of this, we are of the view that the denial of the benefit of exemption under Notification No. 14/2004 (*supra*) by the lower authority is not sustainable, for which reason the same is set aside.

13. In the result, the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **26.04.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd