

Customs, Excise and Gold Tribunal - Tamil Nadu

Lakshmi Mills Co. Ltd. vs Commissioner Of Central Excise on 3 September, 2003

Equivalent citations: 2003 (158) ELT 394 Tri Chennai, 2006 3 S T R 154, 2007 8 STT 401

Bench: S Peeran, R K Jeet

ORDER S.L. Peeran, Member (J)

1. For the purpose of hearing this appeal the appellant is required to pre-deposit balance of service tax of Rs. 4,00,000/-. The appellant has already deposited Rs. 8,67,930/-. They are challenging the service tax imposed on the commission paid to the brokers who have helped in selling the yarn on the ground that they do not come within the definition of "Clearing & Forwarding Agents" but they are selling agents. They have also challenging the imposition of penalty of Rs. 1,75,000/-. It is stated by the Id. Consultant that the findings of the Commissioner does not specifically lay down for imposition of service tax paid to the selling agents. The Commissioner has relied on the clarification issued by the Dy. Director of Service Tax, which is not binding and not statutory. He submits that under the Finance Act, 1994, there should be the criteria for imposing the service tax, but there is no jurisdiction to impose service tax. He submits that therefore, the appellants are not liable to deposit this amount.

2. Ld. DR, who reiterates the findings given by the Commissioner, established in paras 7 and 8 wherein the Commissioner has relied on the clarifications by the Dy. Director of Service Tax, Mumbai, vide his letter No. V/DG(ST)/09/CF AG/97/1582, dt. 29-6-98, which states that the service tax can be imposed on the brokers who procure orders for sending the goods directly to the customers and such services rendered by brokers would amount to services prescribed under the services of Clearing & Forwarding Agents under the Act, since they are connected with the clearing and forwarding operation of the goods.

3. Ld. Consultant submits that the brokers are not rendering their services as clearing and forwarding agents but they only help in procuring orders for selling the goods directly to the customers.

4. On a careful consideration, we notice that it is the case of Revenue that the selling agents of yarn are required to pay service tax under the Finance Act. The clarification issued by the Director General, Service tax states that the services rendered by the brokers are also covered by the terms "clearing and forwarding agents", who render services would amount to services prescribed under the clearing and forwarding agents under the Finance Act. Prima facie, the appellants have made out a case for grant of waiver of service tax. Hence, stay application is allowed and the balance stands waived and its recovery stayed till the disposal of the appeal. Appeal to come up in its turn.