IN THE CUSTOMS, EXCISE & SERVICE TAX

APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram, New Delhi - 110 066.

Date of Hearing : 21.08.2013
Date of Decision : 21.08.2013

CCE, Chandigarh

Vs.

M/s Pioneer Financial Services


[Arising out of Order-in-Appeal No. 128/CE/CHD-I dated 31.08.2010 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

CCE, Chandigarh Appellant

Vs.

M/s Pioneer Financial Services Respondant

Appearance:

Shri Govind Dixit & M.S. Dixit, DR - for the appellant

Shri Sanjay Tiwari, Adv - for the respondent

Coram:
Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Mr. Sahab Singh, Member (Technical)

Final ORDER NO. 57422/2013

“Activity of the Respondents is arranging loans from various financial institutions like LIC Housing, IDBI Bank and HDFC Bank. They are procuring customers for these institutions and get the loan sanctioned to these customers and in lieu of this service they receive the Commission from these institutions and his way they are promoting or marketing the services of these institutions and are squarely covered under clause (ii) of definition of Business Auxiliary Service.” [Para 7]

Per Sahab Singh, Mr.:

1. This appeal is filed by Revenue against Order-in-Appeal No: 128/CE/CHD-I-dated 31.08.2010 passed by the Commissioner Appeal), Customs and Central Excise, Chandigarh-II.

2. Brief facts of the case are that M/s Pioneer Financial Services (hereinafter referred to as Respondents) are registered with Department for providing Business Auxiliary Service with effect from 03.12.2004. They did not file any Service Tax Return during the period 12/2004 to 3/2007. Respondents are arranging loans for the customers from various financial institutions like LIC Housing, IDBI Bank and HDFC bank and promoting and marketing the services of these financial institutions Department felt that this activity of the Respondents is covered under Business Auxiliary Service as defined under Section 65(19) of the Finance Act. Accordingly a Show Cause Notice dated 14.08.2008 was issued to the Respondents demanding Service Tax with interest and also proposing penalties on them. This Show Cause Notice was adjudicated by the Deputy Commissioner vide’ order in Original No. 66/2010 dated 20.01.2001, who confirmed the service tax of Rs. 1,81,819/- along with interest after invoking the extended period. He imposed the penalty under Section 76, 77 and 78 of the Act on the Respondents. Respondents filed an appeal before the Commissioner (Appeal), who vide impugned order has reduced the demand to Rs. 26,862/- and upheld the penalty under Section 76 and 77 of the Finance Act but dropped the penalty under Section 78 of the Act. Revenue has challenged the impugned order in the present appeal. Respondent also filed cross objection to the appeal.
3. Ld. DR for Revenue submits that Show Cause Notice was issue to the Respondents demanding service tax from them under Business Auxiliary Service as they are promoting and marketing service of L.I.C Housing/HDFC Bank etc., but the Commissioner (Appeal) has held that the Respondents are providing Business Auxiliary Service on behalf of the client and are therefore eligible for exemption under Notification 25/2004 dated 10.09.2004 and 14/2004 dated 10.09.2004. He submits there Notifications are not applicable to the Respondent as they are covered under clause (ii) of the definition of Business Auxiliary Service for promotion or marketing of service. He submits order of the Commissioner (Appeal)) needs to be set aside.

4. Ld Authorised Representative for Respondents submits that Respondents are doing documentation, and verification work for their client and therefore they are eligible for benefit of exemption Notification 14/2004 and 25/2004 both dated 10.09.2004. Since they were providing services on behalf of their client, they are eligible for exemption under these Notifications.

5. After hearing the both sides, we find that there is no dispute that activity of the Respondents is under Business Auxiliary Service. Only issue involved in this case is whether Respondents are promoting or marketing the services of financial institution or providing services on behalf of the client and are eligible for exemption under Notification 14/2004 and 25/2004 dated 10.09.2004.

6. For sake of convenience, we reproduce below provisions of Business Auxiliary Service as under:

   "Business Auxiliary Services" means any service in relation to,

   (i) Promotion or marketing or sale of goods produce or provided by or belonging to the client; or

   (ii) Promotion, or marketing of service provided by the client; or

   (iii) Any customer care service provided on behalf of the client; or

   (iv) Procurement of goods or services, which are inputs for the client;
Explanation: For the removal of doubt, 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;

(vi) Provision of service of behalf of the client; or

(vii) A service incidental or auxiliary to any activity specified in sub-clause (i) to (iv), 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, but (does not include any activity that amounts to manufacture of excisable goods.)

Further Notification 14/2004 and 25/2004 both dated 10.09.2004 read as under:


"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 that portion of the value of following taxable services, namely-

(a) Services provided to a customer, by a commissioning and installation agency in relation to erection;

(b) Services provided to any person, by a sub-broker in connection with the sale and purchase of securities listed on a recognized stock exchange;

(c) Services provided to any person by a multisystem operator in relation to cable services;
(d) Services provided to a client by a commercial concern in relation to the following business auxiliary services namely,

(i) Procurement of goods or services, which are inputs for the client;

(ii) Production of goods on behalf of the client,

(iii) Provision of service on behalf of the client, or

(iv) A service incidental or auxiliary to any activity specified in (i) to (iii), above;

e) Services provided to a customer by anybody corporate or commercial concern, other than a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services,

f) Service provided to a customer by a banking company or a financial institution including a non-banking financial company in relation to financial services namely lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; providing bank guarantee, over draft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts;

(g) Services provided to any person by a tour operator, other than a tour operator engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or rules made thereunder, in relation to a tour; and

(h) Service provided to a policy holder, by an insurer carrying on life insurance business in relation to the risk cover in life insurance,

From the whole service tax leviable thereon under section 66 of the said Act, which is received by the service provider prior to the 10" day of September, 2004.


"In exercise of the power conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994), the Central
Government, being satisfied that it is the public interest so to do, hereby exempts taxable service provided to a client by a Commercial concern in relation to the business auxiliary service, in so far as it relates to,-

(a) Procurement of goods or services, which are inputs for the client;
(b) Production of goods 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.

From the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that nothing in this notification shall apply to.

(i) A factory registered under or governed by the Factories Act, 1948 (63 of 1948);
(ii) A company established by or under the Companies Act, 1956 (1 of 1956);
(iii) A partnership firm, whether registered or not registered;
(iv) A 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;
(v) A co-operative society established by or under any law;
(vi) A corporation established by or under any law; or
(vii) A body corporate established by or under any law,

Unless such factory, partnership firm, society, co-operative society, corporation or body corporate, as the case may be, provides any business auxiliary service in respect of any activity specified in (a) to (b) above in relation to agriculture, printing, textile processing or education.

7. We find that activity of the Respondents is arranging loans from various financial institutions like LIC Housing, IDBI Bank and HDFC Bank. They are procuring customers for these institutions and get the loan sanctioned to these customers and in lieu of this service they receive the Commission from these institutions and his way they are promoting or marketing the services of these institution and are squarely covered under clause (ii) of definition of Business Auxiliary Service.

8. The Commissioner (Appeal) has held the Respondents are providing the services on behalf of the client. We find that loans are sanctioned by the Financial Institutions only. It is not the case of Respondents that they are giving the loan amount to the customers and getting the same reimbursed from these Banks Services provided by the Respondents can not be said to have been provided on behalf of the client and accordingly they also become ineligible for exemption under Notification 14/2004 and 25/2004 dated 10.09.2004. We therefore set aside this finding of the Commissioner and restore the Order-in-Original with regard to confirmation of service tax, interest and penalties under Section 76 and 77 of the Act. We, find that Revenue has not challenged dropping of penalty under section 78 of the Act by the Commissioner (Appeal). We therefore do not interfere with this finding of the Commissioner (Appeal). We also find that Respondents in cross objects have pointed out calculation mistake of Rs. 5948/- in computing the demand. Revenue also agrees to this mistake. Accordingly tax amount gets reduced to Rs 1,81,819/- - Rs. 5948/- = Rs.1,75,871.

9. Revenue's appeal is allowed.