

2012 (25) S.T.R. 481 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

[COURT NO. III]

Ms. Archana Wadhwa, Member (J) and Shri Mathew John, Member (T)

RAJ RATAN CASTINGS PVT. LTD.

Versus

COMMISSIONER OF CUS. & C. EX., KANPUR

Final Order No. ST/574/2011(PB) and Stay Order No. ST/740/2011(PB), dated 18-10-2011 in Application No. ST/Stay/653/2011 in Appeal No. ST/353/2011

DEPARTMENTAL CLARIFICATION CITED

C.B.E. & C. Circular No. 96/7/2007-S.T., dated 23-8-2007

REPRESENTED BY : Shri Sheshank Shekhar, Advocate, for the Appellant.

Shri K.K. Jaiswal, SDR, for the Respondent.

[Order per : Archana Wadhwa, Member (J) (for the Bench) (Oral)].

- After dispensing with the condition of pre-deposit of Service Tax and penalty, we proceed to decide the appeal itself inasmuch as only a short issue is involved.

2. The appellant is a distributor of mutual fund units and receives commission from mutual fund companies or asset management companies. The commission received by the appellants from the said companies stand taxed by the authorities below on the ground that they have provided Business auxiliary services to the mutual fund company.

3. Learned advocate appearing for the appellants draws our attention to the definition appearing under Rule 2(1)(d)(vi). For better appreciation the Rule is being reproduced as under :-

"Definitions.

2(1) In these rules, unless the context otherwise requires, -

(d) "Person liable for paying the service tax "means, -

(vi) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be, the mutual fund or asset management company, as the case may be, receiving such service;]"

4. By referring to the above provisions, the learned advocate submits that it is recipient of such services, which is liable to pay service tax in terms of the above rule. He submits that though the above submission was raised before Commissioner (Appeals), he has not dealt with the same learned advocate fairly agrees that the said legal issue could not be raised before the adjudicating authority as no reply was filed by them.

5. Learned DR for the revenue draws our attention to the Board's Circular No. 96/7/2007-S.T., dated 23-8-2007 which stands reproduced in the impugned order by the Commissioner (Appeals) as under :-

Reference Code	Issue	Clarification
(1)	(2)	(3)
048.01/ 23-08-07	Whether commission received by distributors for distribution of mutual fund units is liable to service tax under business auxiliary service?	Distributors receive commission from mutual fund for providing services relating to purchase and sale of Mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [Section 65(105)(zzb)]

As such, submits the learned DR the commission received by the mutual fund distributor is liable to Service tax under the category of business auxiliary services, as clarified by the Board. He also draws our attention to the observations made by Commissioner (Appeals) laying down that the appellant has not produced any evidence to show that mutual fund company has discharged the service tax.

6. After careful consideration of the submissions made by both the sides, we find that there is no legal dispute about the taxability of the commission earned by mutual fund distributor. The core question required to be decided is as to whether the same is to be paid by mutual fund distributor or the mutual fund companies. In terms of provisions of Rule 2(1)(d)(vi), we find that such liability stands shifted to the recipient of the services i.e. the mutual fund company. We agree with the learned advocate that the said legal issue does not stand dealt with by the learned Commissioner (Appeals).

7. Further, the observations of the appellate authority that there is no documentary evidence produced on record reflecting payment of Service tax by mutual fund companies is not appropriate inasmuch as in terms of the above rule, the liability to pay service tax is that of mutual fund company. If that does not stand paid by the company, proceedings have to be started against the companies itself and the fact whether they have paid or not paid will not transfer the liability to the mutual fund distributor. As such, nothing turns in favour of the Revenue, on the basis of the above observations made by Commissioner (Appeals).

8. In any case, we find that the views of the authorities below on the above legal issues are not available. As such, we deem it fit to set aside the impugned order and remand the matter to the original adjudicating authority for *de novo* decision. The appellants are at liberty to raise the above issue before the original adjudicating authority. Needless to say that appellants would be given the opportunity to hear them.

9. In view of the above, the stay petition and appeal gets disposed of.
(Pronounced in the open court)
