# Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

**Service Tax Appeal No. 292 of 2011**

[Arising out of Order-in-Appeal No OIA-COMMR-A-/419/VDR-I/2010 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I]

**M/s Helix Life Sciences Inc** **.... Appellant**

401, Professional Plaza,
17, Punit Nagar, Old Padra Road,
Vadodara
Gujarat

*VERSUS*

**C.C.E. & S.T. Vadodara-i** **.... Respondent**

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

**APPEARANCE :**

Sh. Dhaval Shah, Advocate for the Appellant
Sh. K.J. Kinariwala (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**
**HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/ 11622/ 2019**

DATE OF HEARING : 23.08.2019
DATE OF DECISION: 23.08.2019

**RAMESH NAIR**

The appellant have received foreign sales agent service for the period 09.07.2004 to 31.01.2007 on which the service tax was not paid at relevant time, therefore, the demand of service tax on reverse charge basis under Section 66A was raised.

2. Sh. Dhaval Shah, Ld. Counsel appearing on behalf of the appellant submits that Section 66A was enacted on 18.04.2006, therefore, for the prior period the service tax is not payable on reverse charge basis in respect of the service received from outside India. This issue has been settled by Hon'ble Supreme Court in Indian National Shipowners Association 2011 (21) STR 3 (SC). He submits that demand only for the period 18.04.2006 to 31.01.2007 will be payable as against which the appellant had already paid Rs. 125,580/- + interest of Rs. 24,950/-, therefore, the appellant have paid much more than the actual liability. He submits that since the issue was under litigation in various cases and

finally the same was decided by Hon'ble Supreme Court in the case cited above, the penalty should not be imposed.

3. Sh. K. J. Kinariwala, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. Heard both the sides and perused the records. We find that there is no doubt as of now that the service tax on reverse charge basis on service received from foreign person is taxable w.e.f. 18.04.2006 when Section 66A was enacted therefore, for the prior period service tax demand is not sustainable. As was also held by the Hon'ble Supreme Court in the case of Indian National Ship Owners Association (supra), therefore, the demand is only sustainable for the period 18.04.2006 to 31.01.2007. Accordingly, we set aside the demand for the period from 09.07.2004 to 18.04.2006. The adjudicating authority is directed to re-quantify the demand for the period 18.04.2006 to 31.01.2007 and the amount which already paid be appropriated against such demand. Since the issue was controversial and finally decided by Hon'ble Supreme Court, no malafide intention can be alleged against the appellant. Hence the penalties imposed by the lower authorities are set aside. The appeal is allowed by way of remand to the adjudicating authority.

*(Dictated and pronounced in the open court)*

**(Ramesh Nair)**
**Member (Judicial)**

**(Raju)**
**Member (Technical)**

**Neha**