

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 155 of 2011

(Arising out of OIA-8/2011/AHD-III/KCG/COMMR-A-/AHD dated 19/01/2011 passed by Commissioner of Central Excise-AHMEDABAD-III)

Messrs Nabros Pharma Pvt Ltd

N H No. 8, Opposite Kheda College,
At & Po,
Kheda, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat -380009

.....Respondent

APPEARANCE:

Shri Sudhanshu Bissa, Advocate for the Appellant

Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11093 /2022

DATE OF HEARING: 05.05.2022

DATE OF DECISION: 05.09.2022

RAJU

This appeal has been filed by M/s. Nabros Pharma Pvt Ltd against confirmation of demand of service tax, interest and imposition of penalty.

2. The appellant has engaged in the manufacture of Pharmaceutical products. The appellant availed the services of an overseas agent for procuring export orders and made payments to the overseas agent under the head of commission during the period 2003-2004 to 2006-2007. The appellant had discharged service tax liability during the period 2003-2004, 2004-2005 and 2005-2006 on the said services obtained from an overseas agent. For the period from 01.04.2006 to 31.03.2007 the appellant had made the provision for service tax liability in their balance sheet and said service tax liability along with applicable interest was paid in the month of October, 2007. The demand of Service tax was raised on the appellant amounting to Rs. 22,93,231/- invoking proviso to 73 of Finance Act, 1994

invoking the extended period of limitation alleging that the appellant is liable to pay on Reverse Charge basis service tax on the marketing and legal services obtained by the appellant from services providers located abroad.

3. The Learned Counsel for the appellant pointed out that the extended period of limitation has been invoked. The show cause notice has been issued on 28.06.2010 for the period 18.04.2006 to 31.03.2007. He pointed out that the extended period of limitation has been invoked though the issue regarding the liability to pay service tax on reverse charge basis was very new at the material time and there was a lot of confusion in the field formation as well as trade. He pointed out that the issue was settled by the decision of Hon'ble High Court of Mumbai in the case of Indian National Shipowners Association - 2009 (13) STR 235 (Bom.). He pointed out that they have a bona fide belief that no service tax is payable on a reverse charge basis. He further pointed out that whatever tax was paid by them on reverse charge basis on sales Commission and legal charges was admissible to them as cenvat credit and therefore, they could not have been possibly any intention to evade service tax and therefore extended period of limitation could not have been invoked. He relied on the decision of larger bench of tribunal in the case of Jay Yhushin Limited -2000 (119) ELT 718 (Tri. LB). He also relied on the decision of the Tribunal in the case of M/s Mark Bioscience Limited in the case of vide Final Order No. A/11070/2019 dated 04.07.2019 wherein invocation of extended period of limitation was set aside by the Tribunal.

4. Learned AR relies on the impugned order. He pointed out that the Hon'ble Apex Court of Bombay in the case of Indian National Shipowners Association - 2010 (17) STR J57 (SC) upheld the service tax liability on reverse charge basis w.e.f 18.04.2006. Thus, the demand w.e.f 18.04.2006 is payable by the appellant. He relied on the decision of the Tribunal in the

case of Jayshree Impex vide Final Order No. A/11884/2018 dated 06.09.2018 wherein under the similar circumstances the demand was confirmed.

5. We have gone through the rival submission, We find that there is no dispute that there is a liability of service tax on reverse charge basis on the services obtained by the appellant from the persons located abroad. The only issue before us is if an extended period of limitation can be invoked in these circumstances or not. The appellant has claimed that there was a bona fide doubt in their minds regarding liability to service tax in these circumstances. It is noted that the appellant were paying service tax during the period 2003 onwards on reverse charge basis on similar services obtained by them. The appellant thereafter did not pay service tax during the disputed period. It is fact that the decision in the case of Indian National Shipowners Association (Supra) clarified all doubts in the year 2009.

5.1 The Revenue has relied on the decision of the tribunal in the case of Jayshree Impex (Supra), wherein under similar circumstances the demand and penalty was upheld on the grounds that the appellant had failed to disclose their liability in their service tax returns. In the instance case the appellant had shown service tax liability in their balance sheet and the same has not been disputed. Also it is seen in the case of Jayshree Impex (Supra) relied by revenue the issue of revenue neutrality has not been raised by the appellant. It is seen that the services of the sales commission are ordinarily admissible as cenvat credit to manufacturers and therefore the present situation would be revenue neutral . In these circumstances the intention to evade duty cannot be alleged against the appellant and consequently the extended period of limitation could not be invoked. In similar circumstances, Tribunal in the case of M/s Mark Bio-Science (Supra) has granted the benefit by observation as follows:-

"5. We have carefully considered the submissions made by both the sides and perused the record. As conceded by the Id. Counsel, we are not going in the merits of the case. As per the submissions of the Id. Counsel, the demand is not sustainable for the extended period. We find that during the relevant period, in the light of the Hon'ble Punjab & Haryana High Court judgment in the case of Ambika Overseas (supra), the appellant was entitled for the Cenvat credit in respect of the service tax payable on commission paid to overseas commission agent. Therefore, even if the service tax was payable, there was a Revenue neutral situation hence, since there is no gain to the appellant, it cannot be said that there was malafide intention on the part of the appellant in non-payment of service tax. Therefore, extended period was clearly not invocable in the facts of the present case. Accordingly, we set-aside the demand for the longer period. The demand for the normal period is maintained, if any.

6. For the same reason, the penalty imposed under Section 78 is also not sustainable, accordingly the same is also set-aside. As regards, the penalty 4 Service Tax Appeal No. 235 of 2011 imposed under Section 76, the same is also not sustainable in the light of the judgment of Hon'ble Gujarat High Court in the case of Raval Trading Company – 2016 (42) STR 210 (Guj) and the same is also set-aside. The appeal is partly allowed in the above terms."

6. Consequently the demand is set aside and appeal is allowed.

(Pronounced in the open court on 05.09.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)