CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Division Bench

Appeal No. ST/1854/2011-CU(DB)

[Arising out of Order-in-Appeal No. 226-ST/Applicant/NOIDA/11 dated 29.09.2011 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax- NOIDA]

MIRC ELECTRONICS LTD Appellant

Vs.

C.C.E. NOIDA Respondent

Appearance:
Present for the Appellant: Shri Jitendra Singh, Advocate
Present for the Respondent: Shri Mohd. Altaf (Asstt. Commissoner) A.R.

Coram: Hon'ble Shri Archana Wadhwa, Judicial Member
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Date of Hearing/Decision: 23/05/2018

<u>FINAL ORDER NO.- 70963/2018</u>

Per: Archana Wadhwa

As per facts on records the appellant is engaged in the manufacture of washing machine and Electronic Tuners and is registered under service tax. On the basis of scrutiny of records, it was found by the department that the applicant had made payments of Rs.64.89 lakh, Rs.47.97 lakh, Rs. 26.49 lakhs, Rs. 38.32 Lakhs and Rs.40.46 lakh during the year 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 respectively to foreign service providers as professional fees on account of "Management and Business Consultancy Services". It was also observed that applicant has also made payments during the aforesaid years to the foreign service providers as Royalty on account of "Intellectual Property Rights". Accordingly a Show Cause Notice was issued to the applicant which was confirmed by the lower authority alongwith interest and equal amount of penalty was also imposed. The applicant challenged the order-in-original before the Commissioner (Appeals) who dropped the demand for the period prior to 18.04.2006 and confirmed the demand after 18.4.2006.

2. The Ld. Advocate submits that the authorities in Noida have no jurisdiction to decide the liability of service tax as they had their centralized service tax registration at Mumbai. He also submits that the applicant company is having branch/office in Dubai, China & Russia and their professionals are appointed there to provide information about the overseas market, to get new customers, follow up with the overseas parties and also taking care of quality of their products. Their professionals were also taking delivery of the goods and rendering service to the customer abroad. He submits that payment of remuneration to their employees through remittances from India can not be construed as taxable service e rendered either by employees abroad to company or branch offices abroad. As regards Royalty charges paid to the overseas service providers, he submits that they have paid a service tax of Rs. 15.50,778/- at Mumbai and the same demand can not be raised again in Noida.

3. The learned Commissioner (DR) appearing for the revenue reiterates the findings of the lower authority and submits that applicant is charging professional fees and as much liable to service tax under Management & Business Consultancy Service.

4. After considering the submission made by both the sides, we find that appellant had taken a categorical stand before the authorities below that they have centralized registration at Mumbai and as such there jurisdictional authorities at Noida have no jurisdiction to raise the demands. While dealing with the said plea of the appellant, Commissioner (Appeals) has observed as under:-

> 4.6 As regards the claim of the appellants that they had Centralized Service Tax Registration at Mumbai, the copy of Service Tax Registration, as enclosed by the appellants with the appeal, indicates to the contrary. It nowhere supports their contention. Thus, I find that their said contention is devoid of merit.

5. The appellant is aggrieved with the said observation of the appellate authority. He has drawn over attention to the centralized registration certificate issued by the Mumbai Commissionerate. As such we find that the above observation of Commissioner (Appeals) is factually incorrect. We, accordingly set aside the impugned order and remand the matter to Commissioner (Appeals) for fresh decision on the issue of Jurisdiction. Needless to say that the appellant would be given an opportunity to put forth their defence in person. All other issues are kept open. Appeal is thus allowed by way of remand.

(Dictated and pronounced in the open Court)

Sd/- **Sd/-**

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(K. Gupta)