IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/610/2009-CU[DB]

(Arising out of Order-in-Appeal No.86-ST/APPL/KNP/2009 dated 23/04/2009 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur)

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s Virola International (Unit-II) **Respondent**

Appearance:

Shri Rajeev Ranjan (Joint Commr.) AR for Appellant
Shri A. K. Prasad (Advocate) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/05/2018
Date of Decision : 02/05/2018

FINAL ORDER NO. - **72284/2018**

Per: Anil Choudhary

The respondent - Virola International (Unit-II), Agra are manufacturer and exporter of footwear and had made payment of commission to overseas agents for services provided by the overseas agents under the category of 'Business Auxiliary Services'. They have availed the services for procuring export orders. The respondent deposited Rs.1,13,60,708/- towards the liability of Service Tax (on reverse charge basis) involved on amount paid for procuring said services for the period from 16/06/2005 to 30/10/2007. The respondent later on vide application dated 30/01/2008 filed in the Revenue Office on 01/02/2008, filed a refund claim for refund of aforesaid amount on the grounds that in the case of All India Federation of Tax Practitioners vs. UOI 2007 (10) S.T.R. 166 (SC), the Apex Court has held that Service Tax is leviable on the services provided within the country. Under Section 66A (inserted by the Finance Act, 2006), service tax is leviable only on the services received in India (on reverse charge basis). They have paid tax under the erroneous understanding of the law, and they were not liable to pay Service Tax under the Finance Act, 1994.

2. The issues involved herein are as follows:-

(i) Whether in terms of Rule 2(I)(d)(iv) of the Service Tax Rules, 1994, and the explanation inserted in Section 65(105) on 16/06/2005, the appellants are liable to pay service tax in respect of services of Commission Agents (Business Auxiliary Services) provided to them by non-resident foreign service providers, during the period from 16th June, 2005 to 17th April, 2006.

(ii) Whether after the insertion of provisions of Section 66A in the Finance Act, 1994, the appellant were liable to service tax for the period from 18th April, 2006 to 30th October, 2007.

(iii) Whether the refund claim by the appellants was admissible to them.

3. The respondent – assessee in their defence reply (before court below) submitted that they were not liable to pay Service Tax in respect of services availed by them from the foreign based 'Commission Agents' in as much as the services were availed out of the Indian territory and the Service Tax law cannot be made applicable out of the Indian border as mentioned under Section 64 of the Finance Act, 1994. In the process they availed services of overseas commission agents under 'Business Auxiliary Services'. A show cause notice was issued dated 27/03/2009 to respondent for demand of Service Tax for the period from June, 2005 to October, 2007 and asking the respondent to show cause as to why they should get refund claim.

4. Vide the Order-in-Original the refund claim filed by the respondent – assessee was rejected under Section 11B of Central Excise Act read with Section 83 of the Finance Act, 1994. Being aggrieved the respondent preferred appeal before learned Commissioner (Appeals) who vide the impugned order have been pleased to hold that in view of law pronounced by Hon'ble Bombay High Court in the case of Indian National Shipowners Association 2009 (13) S.T.R. 235 (Bom.), no Service Tax is leviable on reverse charge basis, on receipt of services from the service provider located outside India for the

services received in India. Accordingly, he was pleased to hold that the respondents – assessee is not liable to pay Service Tax on reverse charges prior to 18th April, 2006 and accordingly, the order denying refund for the period prior 18th April, 2006 is not legal and proper and was accordingly set aside to that extent.

5. Being aggrieved Revenue is in appeal. The learned A.R. for Revenue have relied on the grounds of appeal filed by Revenue.

6. Learned advocate appearing for respondent – assessee said that there is no error in the order of learned Commissioner (Appeals) following the order of Hon'ble Bombay High Court in the case of Indian National Shipowners Association (Supra) which have been further confirmed by Hon'ble Supreme Court in appeal filed by Revenue.

7. Having considered the rival contentions, we find that there is no merit in this appeal filed by Revenue as no error has been pointed out in the order of learned Commissioner (Appeals) or in the order of Hon'ble Bombay High Court in the case of Indian National Shipowners Association which is a binding precedent. Accordingly, we hold that there is no merit in this appeal filed by Revenue and same is dismissed. Further we direct the Adjudicating Authority to grant the

refund of Service Tax deposited by the respondent – assessee relating to the period prior 18th April, 2006 within a period of 75 days from the date of receipt of copy of this order along with interest as per Rules.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Lks