

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

APPEAL No. ST/1739/2010-CU[DB]

(Arising out of Order-in-Appeal No. 284-ST/APPL/NOIDA/10 dated 31/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Uflex Limited

Appellant

Vs.

Commissioner, Central Excise, Noida

Respondent

Appearance:

Shri B.L. Narasimhan (Advocate) &

Shri Utkarsh Malviya (Advocate)

Shri Pradeep Kumar Dubey (Superintendent) AR

for Appellant

for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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

Date of Hearing : 26/12/2018

Date of Decision : 26/12/2018

FINAL ORDER NO **72925 / 2018**

Per: Ashok Jindal

The appellant is in appeal against the impugned order and praying for waiver of the penalty imposed on them under Section 78 of Finance Act, 1994.

2. The facts of the case are that the appellant is engaged in the manufacturing of flexible packaging plastic materials used in packing of various consumable goods and obtained loans from abroad by means of external commercial

borrowings in the form of FCCBs. As appellant received sanctioned loans from abroad, therefore, they were liable to pay service tax under the Reverse Charge Mechanism under the category of 'Banking and Other Financial Institution Services'. In these set of fact, a show cause notice was issued for the period from 01 February, 2007 to 31 March, 2007 for demand of service tax under the Reverse Charge Mechanism. The appellant paid the service tax (on pointing out) during the course of investigation itself but did not pay interest. The show cause notice also invoked the extended period of limitation. In adjudication the demand of service tax was confirmed along with interest and penalty equivalent to service tax was also imposed. Against the said order the appellant is before us.

3. Learned Counsel for the appellant submits that the show cause notice has been issued by invoking extended period of limitation, therefore, the penalty is not imposable in the light of the decision of the Hon'ble High Court of Bombay in the case of Indian National Shipowners Association reported at 2009 (13) STR 235 (Bom.).

4. Heard the learned counsel.

5. Considering the fact that during the impugned period the dispute was going on whether under Section 66A of Finance Act, 1994, the appellant is liable to pay service tax

under Reverse Charge Mechanism or not? The said issue has been settled by the Hon'ble Bombay High Court in the case of Indian National Shipowners Association vs. Union of India reported in 2009 (13) STR 235 (Bom.) which has been affirmed by the Hon'ble Apex Court reported in 2010 (17) STR j 57 (S.C.) wherein it was held that in such a situation, the extended period of limitation is not invokable.

6. Admittedly in this case, the show cause notice has been issued by invoking the extended period of limitation. Therefore, relying on the decision in the case of Indian National Shipowners Association (supra), we hold that penalty on the appellant is not imposable.

7. In these terms, we set aside the penalty imposed on the appellant and the appeal is also disposed in the above manner.

(Dictated and Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

Ankit