

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001  
Regional Branch, Allahabad

Dated: 30/01/2018

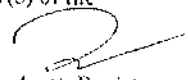
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70273/2018-CU[DB] dated 23/01/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

  
Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|-------------|--------|-------------------------------|
|-------------|--------|-------------------------------|

|   |                                  |                                                                               |
|---|----------------------------------|-------------------------------------------------------------------------------|
| 1 | ST/MISC/70403/2017 ST/70562/2017 | <b>Indo Solar Ltd</b><br>3c/1, ecotech-ii, udyog Vihar<br>GREATER NOIDA<br>UP |
|---|----------------------------------|-------------------------------------------------------------------------------|

Name and Address of  
Respondent

|   |  |                                                                                                                           |
|---|--|---------------------------------------------------------------------------------------------------------------------------|
| 2 |  | C.C.E. & S.T.-Ghaziabad<br>202...WING A C.G.O.<br>COMPLEX-II, KAMLA NEHRU<br>NAGAR,<br>GHAZIABAD,<br>UTTAR PRADESH-201002 |
|---|--|---------------------------------------------------------------------------------------------------------------------------|

Copy To

3 Advocate(s) / Consultant(s)

**A. P. Mathur**  
**167, TAGORE TOWN,**  
**Allahabad,**  
**Uttar Pradesh**

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Cemax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

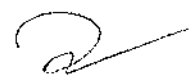
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

12 The ICAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD Ground, Near Karkardooma Court, Delhi-110032

14 C.D.R.      15 Office Copy      16 Second Folder Copy      17 Guard File

  
Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
REGIONAL BENCH : ALLAHABAD  
COURT No. I  
ST/MISC/70403/2017  
APPEAL No.ST/70562/2017-CU[DB]

(Arising out of Order-in-Original No. 09/Commr./Audit-II/Ghaziabad/2017-18 dated 21/05/2017 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

M/s Indo Solar Ltd.

Appellant

Vs.

Commissioner of Central Excise & S.T., Ghaziabad

Respondent

Appearance:

Shri A.P. Mathur, Advocate

for Appellant

Shri Mohammad Altaf, Assistant Commissioner (AR),

for Respondent

CORAM:

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

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



Date of Hearing : 23/01/2018  
Date of Decision : 23/01/2018

FINAL ORDER NO. 70273/2018

Per: Anil Choudhary

The appellant have filed Early Hearing application on the ground that they are 100% EOU and they are not liable to pay service tax on the foreign expenditure and they are 100% exporter of their products. They are not liable to pay service tax under Reverse Charge Mechanism for services imported from outside India and received in India rendered by the service provider from outside India. Vide impugned order service tax of Rs.2.18 crores have been demanded along with the equal amount of penalty. Further, the issue is recurring



in nature, accordingly, the learned counsel for appellant prays for allowing the early hearing of appeal.

2. The issue in this appeal is whether the appellant is liable to pay service tax under Reverse Charge Mechanism of services imported from outside India and received in India rendered by the service provider located outside India. With the consent of both the parties, we take up the appeal for hearing and disposal. As the appellant is a 100% EOU and liable to pay service tax on Reverse Charge Mechanism on receipt of services rented foreign concerned from outside India to the appellant legal charges, commission, expenses, maintenance, repair charges, legal aid profit etc. for the period 2011-12 to 2013-14.

3. The brief facts of the case are that during the course of audit conducted in December, 2013, for the period from April, 2010 to March, 2013, as per audit note dated 20<sup>th</sup> February, 2014, it appeared to revenue that the appellant had not paid service tax on legal charges, testing charges, commission, advertisement and sales promotion expenses, maintenance and repair charges, under Reverse Charge Mechanism during the period from 2010-11 to 2012-13. The appellant was asked by the Range Superintendent by letter dated 21<sup>st</sup> February, 2014 to deposit the service tax, as mentioned in the audit note. The appellant vide their letter dated 06/03/2014 submitted that they were in the process of depositing the service tax on domestic services. However, the appellant



contested the issue of payment of service tax in respect of their foreign expenditure and/or services received from outside India, rendered by the service providers located outside India. The appellant further on requisition, by their letter dated 24<sup>th</sup> April, 2015 submitted the details of payment made in respect of import of services. It further, appeared to revenue that the appellant is liable to pay service tax on the basis of Reverse Charge Mechanism on payment made to foreign concerns for the aforementioned services. It further appeared that although the appellant is a 100% EOU and their contention is that they are not liable to pay service tax on the foreign expenditure, appeared to be not tenable, as the appellant was located in Udyog Vihar, Greater Noida, which is a taxable territory in view of the Service Tax Notification No.30/2012 dated 20/06/2012 read with Section 65B(52) read with Section 68(2) of the Finance Act, 1994. Accordingly, vide show cause notice dated 16.10.2015, invoking the extended period of limitation, service tax was demanded with further proposal to imposition of penalty under Section 78 of the Act. The appellant contested the show cause notice and it was adjudicated vide Order-in-Original dated 21<sup>st</sup> May, 2017 and the proposed demand was confirmed along with equal amount of penalty under Section 78 of the Act. Being aggrieved, the appellant is before this Tribunal.

4. It is urged by the learned Counsel that no services have been received by the appellants under dispute from the



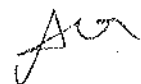
taxable territory. The entire services have been provided from outside India, a non taxable territory. The learned Commissioner has wrongly held that in terms of Rule 3 of Sub-rule (ii) of the Import of Service Rules, 2006. The benefit of exemption from levy of service tax on the ground of being provided outside India is not available to the appellants, as according to him, details of exhibitions held abroad, correspondence related to the said exhibitions, Bills/vouchers regarding payment made to foreign entities. In respect of such exhibition, bank statement showing such payment to organizer companies from abroad were not produced, ignoring the fact that the show cause notice itself refers to exhibitions abroad and participation in such exhibitions by the appellant. Further, the entire amount of service tax is time barred. On the very first raising of demand by the Range Superintendent in February, 2014, the appellant by their letter dated 06<sup>th</sup> March 2014 had taken a categorical stand that they are not liable to pay service tax on the services provided to them by service providers located outside India. Admittedly, the show cause notice have been issued on 16<sup>th</sup> October, 2015 which is more than One year Six months, after the date, the stand of non-taxability was taken by the appellant and made known to the Department. Further, there is no case of any suppression or any contumacious conduct on the part of the appellant, as evidently all the information with regard to the demand under dispute was found by the revenue during audit, recorded in



the books of accounts maintained in the ordinary course of business. The entire demand of Rs.22,08,467/- relates to amount spent on foreign trips by the directors and Managing Director in relation to business activities and cannot be termed as services provided by a person and hence does not attract service tax liability. The said expenses are been booked under the Head Business Promotion. So far the contention of learned Commissioner that for availing the benefit of an exemption including Notification No.18/2009-S.T. dated 07.07.2009, the same should have been claimed from the Department, otherwise the benefit is not available. This contention ignores the fact that the appellants are not paying the service tax on the amount of Rs.44,56,907/- which was payment of commission for the sales abroad. They had claimed the exemption from levy of tax under Notification No.18/2009-ST. Further, the issue is wholly revenue neutral, as the appellants are not liable to pay service tax on clearance of the finished products cleared for export. Thus, they are entitled to refund of whatever service tax, they have paid.

5. The learned A.R. for revenue have relied on the impugned order.

6. Having considered the rival contentions, we find that the show cause notice is barred by limitation, as the appellant had taken a categorical stand, as early as on 06/03/2014 that they are not liable to pay service tax with respect to services received from outside India and most of



such services were received and consumed outside India. We hold that the show cause notice dated 16.10.2015 is not maintainable and the same is hit by limitation.

7. Accordingly, we allow this appeal and set aside the impugned order. The appellant shall be entitled for consequential benefits, in accordance with law. The Miscellaneous Application filed for Early Hearing of appeal also stands disposed of.

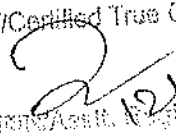
(Dictated in Court)

-Sd/-   
(ANIL G. SHAKKARWAR)  
Member (TECHNICAL)

akp

-Sd/-  
(ANIL CHOUDHARY)  
Member(JUDICIAL)

प्रमाणित प्रति/Certified True Copy

  
रजिस्ट्रार प्रदीप/Asstt. Registrar  
सीमापुरी, इलाहाबाद एवं सीमा  
अधीन ऑफिस/Offices  
38, रा.जी.मार्ग, इलाहाबाद-211001  
38, M. C. MARG, ALI AHABAD-211001

