CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 667 of 2009

(Arising out of Order-in-Revision No. 07/09 dated 26/05/2009 passed by CCE&C, Kochi)

Nitta Gelatin India Ltd
Kinfra, Kakkanad P.o. Cochin - 682030
COCHIN

Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Respondent(s)

Appearance:

Shri Thomas Vellapally, Advocate
MARKOS & CO
#3527, 1st Cross,
13th H Main Road, HAL 2nd Stage,
Indiranagar
BANGALORE - 560008
KARNATAKA

For the Appellant

Shri Rama Holla, Superintendent(AR)

For the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20212 / 2020

Date of Hearing: 19/02/2020

Date of Decision: 19/02/2020

Per : ANIL CHOUDHARY

Heard the parties.

2.1. The issue involved in this appeal is whether the appellant has rightly availed the abatement of R&D Cess (for intellectual property services) for the services availed from the principal located abroad, under Notification No.17/2004-ST dt. 10/09/2004.

2.2. The appellant was issued show-cause notice dt. 19/03/2007 proposing to demand service tax on the abatement taken on the ground that the holder of intellectual property right(IPR) is the person who has the right to transfer or give any other person right to use such IPR. Accordingly, service tax was demanded for extended period, under reverse charge mechanism amounting to Rs.1,85,446/- relating to the period 10/09/2004 to 31/03/2005.

2.3. The show-cause notice was adjudicated and in the Order-in-Original, the Deputy Commissioner held in favour of the appellant dropping the proposal in the show-cause notice. Thereafter appellant received notice issued by the Commissioner of Central Excise proposing to revise the Order-in-Original on the ground that the stand taken by the Deputy Commissioner in dropping the demand is not proper. Consequent to the objections filed by the appellant, the learned Commissioner passed Order-in-Revision dt. 26/05/2009 confirming the demand of service tax of Rs.1,71,297/- + cess and with interest and penalty under Section 76. Being aggrieved, appellant is before the Tribunal.

3. Having considered the rival submissions, we find that the issue of liability under reverse charge mechanism has been considered by the Hon'ble Bombay High Court in the case of Indian National Shipowners Association Vs. UOI [2009(13) STR 235 (Bom.)] wherein it has been held that prior to 18/04/2006 when Section 66A was brought on statute (for charging tax under reverse charge mechanism), no tax

can be demanded under the reverse charge mechanism. Accordingly, this appeal is allowed and impugned order is set aside.

(Order was pronounced and dictated
in Open Court on **19/02/2020**)

(ANIL CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...