CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL <u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 700 of 2012

[Arising out of Order-in-Appeal No. 59/BK/GGN/2012 dated 29.02.2012 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

Ambadi Enterprises Ltd ......**Appellant**
Plot No. 554, Udyog Vihar, Phase V,
Gurgaon, Haryana 122016

VERSUS

Commissioner of Central Goods & Service Tax, Gurugram ......**Respondent**
Plot No. 36-37,
Sector 32, Gurugram
Haryana 122001

<u>APPEARANCE:</u>

Present for the Appellant: Sh. Ved Parkash Batra, Consultant

Present for the Respondent: Sh. Ravinder Jangu, Authorized Representative

<u>CORAM:</u>

HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Sh. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60407/2024

DATE OF HEARING: 03.07.2024
DATE OF DECISION: 08.07.2024

PER : S. S. GARG

The present appeal is directed against the impugned order dated 29.02.2012 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly stated facts of the present case are that the appellant was registered under the category of 'Goods Transport Agency' and had received the services of 'Business Auxiliary Service', 'Market Research Agency Service' & 'Management Consultancy Service' and had made foreign remittances to its overseas service providers but had not paid the service tax along with education cess on such foreign remittances as the same was taxable under Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 read with Section 66A of the Finance Act, 1994. On these allegations, a show cause notice dated 16.10.2008 was issued to the appellant and the appellant filed detailed reply to the show cause notice. After following the due process, the Additional Commissioner confirmed the demand of service tax amounting to Rs.5,02,562/- under Section 73(1) of the Finance Act, 1994 along with interest; penalty of Rs.1,000/- under Section 77 and equivalent penalty under Section 78 of the Finance Act, 1994 were also imposed. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who vide the impugned order rejected the same. Hence, the appellant has preferred the present appeal.

3. Heard both the parties and perused the records.

4.1 Sh. Ved Parkash Batra, Consultant for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.2 He further submits that the appellant had been issued show cause notice dated 16.10.2008 alleging non-payment of service tax on the foreign remittances made to their overseas service providers on the services of 'Business Auxiliary Service', 'Market Research Agency Service' & 'Management Consultancy Service' under Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 read with Section 66A of the Finance Act, 1994.

4.3 He further submits that the Commissioner (Appeals) has wrongly confirmed the demand w.e.f. 01.01.2005 by holding that the appellant's case is not covered by the decision of Hon'ble Bombay High Court in the case of ***Indian National Ship Owners Association vs. Union of India – 2009 (13) STR 235 (Bom.)***. Further, the learned Consultant submits that the above said decision of Hon'ble Bombay High Court is fully applicable to the present case wherein it has been held that any service received from abroad was only taxable w.e.f. 18.04.2006 after the amendment of Section 66A of the Finance Act, 1994. He also submits that the department had filed appeal against the decision of the Hon'ble Bombay High Court and their appeal was dismissed by the Hon'ble Supreme Court. It was further held that the person providing service alone regarded as an assessee as per Chapter V of the Finance Act, 1994 and Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 cannot be framed as not to carry the purpose of Chapter V.

4.4 Further, he places reliance on the decision of Hon'ble Supreme Court in the case of ***Commissioner vs. Unitech Ltd – 2011 (24)***

STR J135 (SC), wherein the Hon'ble Apex Court had dismissed the appeal filed by the department and upheld the decision of the Hon'ble Bombay High Court.

4.5 He further submits that after relying upon the decision of Hon'ble Apex Court, Chandigarh Bench of this Tribunal in the case of ***DSM Sinochem Pharmaceuticals India Pvt Ltd vs. C.C.E, Chandigarh – 2016-TIOL-2789-CESTAT-CHD***, wherein it was held that regarding appellant's liability to service tax on reverse charge basis, when the services are provided by a foreign service provider having no office in India, the legal position has been settled by the Hon'ble Bombay High Court in the case of ***Indian National Ship Owners Association*** (supra) and affirmed by the Hon'ble Apex Court, hence no merit in the impugned order upholding the demand of service tax for the period prior to 18.04.2006.

4.6 He further submits that the business exhibition service falls under Section 65(105)(zzo) as existed then. He also submits that under the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the business exhibition service falling under Section 65(105)(zzo) as existed then falls under second category under Rule 3 i.e. Rule 3(ii) of the above Rules, according to which only when the services are wholly performed in India or partly performed in India, the service is taxable. He submits that in the present case, admittedly the business exhibition service was conducted wholly outside India, hence, not taxable at all and the demand related to business exhibition service for the period from 18.04.2006 to 10.05.2007 is also not sustainable.

4.7 He further submits that penalty under Section 78 cannot be imposed mechanically because the issue relates to interpretation and the law was settled after the decision of the Hon'ble Bombay High Court in the case of ***Indian National Ship Owners Association*** (supra), which was affirmed by the Hon'ble Supreme Court.

5. On the other hand, the learned AR for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the issue involved in the present case is no more *res integra* and has been settled by the Hon'ble Bombay High Court in the case of ***Indian National Ship Owners Association*** (supra) and further affirmed by the Hon'ble Apex Court by dismissing the appeal of the department. Therefore, in view of the settled position, we hold that demand of service tax on the services received from abroad prior to 18.04.2006 is set aside.

7. Further, we find that the demand of service tax on business exhibition service which falls under Section 65(105)(zzo) as it existed then was under second category of the Rule 3 of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. As per the said rule, the service tax can be demanded only when the services are wholly performed in India or partly performed in India, whereas in the present case, admittedly the business

exhibition service was conducted wholly outside India, hence demand of service tax is not sustainable for the period from 18.04.2006 to 10.05.2007.

8. Further, as the demand is not sustainable, the penalty under Section 78 of the Act cannot be imposed because the issue relates to interpretation and the position of law was not clear then. In view of this circumstance, imposition of penalty under Section 78 is not sustainable.

9. In view of our above discussion, we are of the considered view that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the court on 08.07.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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