IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: ST/00363/2011

(Arising out of Order-in-Original No. 04/2011 (ST) dated 15.03.2011 passed by The Commissioner of Central Excise & Service Tax, Tiruchirappalli.)

M/s. Renold Chain India (P) Ltd. : Appellant

Vs.

Commissioner of Central Excise & Service Tax, Tiruchirappalli : Respondent

Appearance:-
Shri. Santhana Gopalan D., Advocate
for the Appellant

Shri. S. Govindarajan, AC (AR)
for the Respondent

CORAM:
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision:**31.07.2018**

Final Order No. 42200 / 2018

Per Bench,

Brief facts are that the appellants are registered with the Central Excise Department for manufacturing of Industrial Chains and has also taken service tax registration for various services. On investigations initiated by the Department, it was revealed that the appellants had received taxable services from various foreign service providers but had not paid service tax on such services under reverse charge mechanism. Show Cause Notice was issued proposing to demand the service tax along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the demand along with interest and also imposed penalties. Aggrieved, the appellant is now before the Tribunal.

2.1 On behalf of the appellant, Ld. Counsel Shri. Santhana Gopalan D. appeared and argued the matter. He submitted that the appellant was incorporated in India only on 01.05.2008. The appellant is a Joint Venture Company with 75% shareholding by M/s. Renold International Holdings Ltd. (hereinafter referred to as ‘. RIHL’) and 25% shareholding by M/s. L. G. Balakrishnan & Bros Ltd. (referred to as ‘LGB’). M/s. RIHL is a company incorporated in the United Kingdom and does not have any place of business in India. On 29.09.2008, the appellant took over the Industrial Chain Division from M/S. LGB. Prior to their investment in India, M/S. RIHL had engaged M/s. Ernst & Young, U.K., for due diligence and other agencies like M/s. Fox Mandal & Co, India. M/s. Agilisys Ltd., U.K., etc., to ascertain the feasibility or otherwise investment in India. The invoices were raised by these service providers (foreign companies) on M/s. RIHL and not on the appellant. Thus, the payments were also made by M/s. RIHL to the service providers.

2.2 In addition to the above, M/s. RIHL incurred the expense towards travel by air travel in relation to the acquisition of chain business from M/s. LGB. They also incurred registration charges for share capital fee.

2.3 Thus, the total expenditure incurred by M/s. RIHL was Rs. 5,26,05,993/-. The total acquisition cost was charged to the appellant by M/s. RIHL by way of debit note/invoice which is booked in the appellants accounts as 'Goodwill'. Basing upon this debit entry, the Department has alleged that the appellant has received services from the foreign service providers in relation to acquisition of Industrial Chain Division of M/S. LGB and therefore, is liable to pay service tax on the said amount.

2.4 He argued that service tax under Section 66A is only by the service recipient only. In the present case, M/s. RIHL which is a foreign company has received the services from the service providers and not the appellant. The contract for services were entered into by M/s. RIHL and the service providers. The payment of consideration was also made by M/s. RIHL and therefore, the Department cannot demand service tax merely because the amount has been debited in the books of the appellant.

2.5 It is also argued by him that the demand is raised invoking Rule 5(1) of the Valuation Rules and that, in any case, this amount has to be considered as a reimbursable expense and is not leviable to service tax, as decided by the Apex Court in the case of ***Union of India Vs Intercontinental Consultants and Technocrats Pvt. Ltd. – 2018 (10) G.S.T.L. 401 (S.C.).***

2.6 The Ld. Counsel also argued on the ground of limitation. He submitted that there is no positive evidence produced by the Department to allege suppression on the part of the appellant. Further, the entire issue is revenue neutral in as much as the appellant would have availed CENVAT Credit on the service tax paid on the alleged services. It is settled legal position that no suppression can be alleged when the entire exercise is revenue neutral.

3. The Ld. AR Shri. S. Govindarajan supported the findings in the impugned order.

4. Heard both sides.

5.1 We have perused the records carefully. The entire allegation is raised because the amount of Rs. 5,26,05,993/- is debited in the accounts of the appellant as "Goodwill". Thus, it is the case of the

Department that the amount is the consideration received by the appellant for services provided by foreign service providers. Undisputedly, the services are in respect of due diligence, legal compliance requirements, market analysis, etc., made by the foreign service providers before incorporation of the appellant-company. The appellant-company has been issued certificate of incorporation only on 01.05.2008. These services are provided much prior to the date of incorporation. The details of services provided is tabulated by the appellant as under :

S. No.	Name of Service Provider	Amount in GBP	Amount (in Rs.)
1.	Ernst & Young, U.K.	1,01,753.50	84,25,189.8
2.	Eversheds, U.K.	1,11,533.73	92,34,992.844
3.	Fox Mandal & Co., India	3,32,762	2,75,52,693.6
4.	Agilisys, U.K.	7,000	5,79,600
	TOTAL	**5,53,049.23**	**4,57,92,476.24**

5.2 A letter dt. 08.02.2008 issued by one of the service providers, M/s. Ernst & Young, U.K., is placed as part of the appeal records. It is categorically stated in this letter that the services are provided by them to M/s. RIHL (the foreign company) with regard to the overall due diligence in connection with the proposed acquisition of industrial chains business of M/s. LGB. In the very same letter, it is agreed that the fees has to be paid by M/s. RIHL to M/s. Ernst & Young. It is very much clear from the records that the appellants have not paid any amount to the foreign service providers. There has been no agreement between the appellant and the foreign service providers for providing service. It is actually M/s. RIHL which is the foreign company who has required the service providers to provide various services of due diligence before acquisition. In such event, merely because the said amount is shown in the books of the appellant, the activity cannot be considered as service provided to appellant so as to attract the levy of service tax.

5.3 To levy service tax, the activity/transaction should involve a relationship of service provider and service recipient. In CBEC Education Guide (T.R.U.- Circular 20/ 2012), the Board has clarified the necessity to look into the *quid pro quo* in a transaction. It is explained therein that the concept of 'activity for consideration' involves an element of contractual relationship, wherein the person doing an activity does so on the desire of the person for whom the activity is done in exchange of consideration. In the present case, there is no desire on the part of appellant to the service providers that they should do any service to the appellant. Neither is there an offer nor an agreement by the service providers to provide service to the appellant. The consideration has also not been passed by the appellant to the service providers. In such event, we are of the opinion that the activity does not attract levy of service tax and the demand cannot sustain. The impugned order therefore requires to be set aside, which we hereby do.

6. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order was pronounced in open Court)

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S.)**
Member (Technical)	Member (Judicial)

Sdd