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

ST/MISC/CT/41494/2017 & ST/329/2010

(Arising out of Order-in-Appeal No. 77/2010 (MST) dated 31.03.2010 passed by the Commissioner of Central Excise (Appeals), Chennai).

M/s. Gemini Industries & Imaging Pvt. Ltd. : Appellant

Vs.

CCE & ST, Chennai : Respondent

Appearance

MS. A. Sivaranjini, Advocate,
for the Appellant

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

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **05.07.2018**

FINAL ORDER No. **42211 /2018**

Per Madhu Mohan Damodhar

The appellants are providing services in relation to photography. Among other charges they were also collecting amounts towards Threading charges, Negative Storage charges and Lab Conformation charges from their customers. It appeared to the department that the service tax liability is required to be paid in respect of these charges also.

Accordingly, SCN dated 07.04.2007 was issued interalia, proposing demand of service tax of Rs,1,15,028/- in respect of Threading charges, Rs. 14,033 in respect of Lab confirmation charges, Rs. 1,03,097 in respect of Storage and warehouse charges totally amounting to Rs. 2,32,158/- with interest thereon and another SCN dated 28.09.2007 in respect of subsequent period July 2001 to March 2006 proposing to demand a total amount of Rs. 87,925/- in respect of the very same charges. In adjudication, vide order dated 24.03.2008 the original authority confirmed total liability of Rs. 3,13,551/- proposed in both the notices along with interest and also imposed penalties under Sections 76 & 78 of the Finance Act. In appeal, the Commissioner (Appeals) vide impugned order No. 77/2010 dated 31.03.2010 set aside the penalty under Section 76 ibid, however, upheld the remaining portion of the adjudication order. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate A. Sivaranjini put forth various submissions in respect of each of the charges as under"-

i) In respect of the demand under Lab charges the appellants are not contesting the same.

ii) In respect of Threading charges, the same are nothing but cost of the film on which they have discharged VAT liability. However, they are not in a position to produce the documentary evidence in respect of the same at this stage.

iii) In respect of Negative Storage charges, these too are in the nature of reimbursements of rent and electricity charges incurred on behalf of their clients for preserving negatives in A/c storage space below the room temperature. However, the appellants do not have the necessary corroborative evidence at this stage to produce in support of their contention.

iv) Ld. Advocate submits that the entire issue was one of interpretation and hence there is no case for imposition of penalty.

3. On the other hand, Ld. AR, supports the impugned order.

4. Heard both sides and have gone through the facts.

5.1 The demands in respect of Lab Confirmation charges have not been contested and are therefore upheld. So ordered.

5.2 Ld. Advocate has contended that the threading charges are nothing but cost of the film and the VAT has been discharged on the same. So also in respect of Negative Storage charges, she avers that these relate to reimbursement of electricity charges and rent recovered from the clients. It is noted that right from the initial adjudication proceedings and even at this stage appellants have not been able to produce the necessary evidence in support of these claims. This being so, the demand confirmed by the original authority and upheld in the impugned order will sustain and no interference is made in respect of the same.

5.3 However, coming to the matter of penalty, we find that the entire issue is one of interpretation. It is also to be kept in mind that had the appellant been able to produce the necessary evidence, they may well have got relief in respect of service tax liability on Threading charges and Negative Storage charges. Keeping all these mitigating factors in mind, we set aside the penalty imposed under Section 78 ibid. So ordered.

6. The miscellaneous application seeking change of cause-title of the respondent is filed by the department due to change in jurisdiction and address of the respondent. The present jurisdiction and address of the respondent is as follows:-

> The Commissioner of GST & Central Excise,
> Chennai South Commissionerate,
> MHU Complex, 692, Anna Salai,
> Nandanam, Chennai – 600 035.

Accordingly, the miscellaneous application is allowed and the jurisdiction and address of the respondent is changed from CST, Chennai to The Commissioner of GST & Central Excise, Chennai South Commissionerate.

7. In the result, the appeal is partly allowed in above terms. The miscellaneous application for change of cause title filed by the Revenue also gets disposed of.

(Order dictated and pronounced in the open Court)

(P.DINESHA)	(MADHU MOHAN DAMODHAR)
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

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