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

Appeal No.ST/288/2012

[Arising out of Order-in-Appeal No.39/2012 dt. 10.02.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Adwaith Lakshmi Industries Ltd. Appellant

Versus

Commissioner of Customs, Central Excise & ST
Coimbatore Respondent

Appearance :

Shri J. Shankarraman, Advocate
For the Appellant

Shri R. Subramaniyan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 16.10.2018

FINAL ORDER No. 42652 / 2018

Per Shri Madhu Mohan Damodhar

The appellants are manufacturers of textile machinery parts, bright bars and terry towels etc. During the course of audit, it was noticed that they had incurred certain expenses towards Business Exhibition conducted abroad during the period from April 2008 to November 2008. Department took the view that appellants received Business Exhibition Service as defined in Section 65 (105) (zzo) of the Finance Act, 1994 by not discharging service tax liability on reverse charge basis. Accordingly, show cause notice dt. 19.02.2009 was issued, inter alia proposing demand of service tax liability of Rs.64,068/-, Rs.1281/- towards Education Cess and Rs.641/- towards Secondary and Higher Education Cess with interest thereon as also imposition of penalty under various provisions of law. In adjudication, the original authority vide an order dt. 28.01.2011 confirmed the tax demands as proposed in the SCN with interest and also imposed penalty under Section 76, 77 & 78 of the Act. In appeal, Commissioner (Appeals) vide impugned order dt. 10.02.2012 set aside the penalty under Section 76 however upheld the remaining part of the order of original authority. Hence appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri J. Shankarraman submits that the issue is no longer *res integra* and has been settled in their own case for an earlier period by CESTAT Chennai in Final Order No.42941/2017 dt. 13.11.2017.

3. On the other hand, Ld. A.R Shri R. Subramaniyan supports the impguend order.

4. Heard both sides and have gone through the facts. We find that the Ld. Advocate is correct in his assertion that the matter has already been decided by this Tribunal in appellant's own case referred to by him supra. In the said decision dt.13.11.2017, the Tribunal found as follows :

> "5. After hearing both sides, we note that Business Exhibition Service received by the appellant is fully performed outside India by the foreign service provider and is clearly covered under category (ii) of Rule 3 of the 2006 Rules. The lower authorities erred in holding that since recipient of service is located in India, the service should be construed as 'consumed/performed in India'. In view of clear provision

> of 2006 Rules, we find no justification for such conclusion. We also refer to the decision of Tribunal in *Intas Pharmaceuticals Ltd. Vs CST Ahmedabad* - 2009 (95) RLT 111 (CESTAT-Ahmd.) holding that when service is fully provided outside, there is no applicability of reverse charge mechanism. Accordingly, we hold that the impugned order is not sustainable and the same is set aside. Appeal is allowed with consequential relief, if any, as per law."

We do not find any reason to take a different view in the instant case. Hence following the ratio already laid down by this Tribunal, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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