CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SZB, CHENNAI

REGIONAL BENCH - Division Bench B3

Service Tax Appeal No. ST/40510 of 2019

(Arising out of Order-in-Appeal No. 14/2019 (CTA-II) dated 31.01.2019 passed by the Commissioner of GST & CE (Appeals-II), Chennai).

M/s. Solverminds Solutions and Technologies Pvt. Ltd. Appellant
Plot 2 – B4 Seventh Cross Street, SIPCOT Park,
OMR, Siruseri, Kancheepuram, Tamilnadu-603 103.

Vs.

The Commissioner of GST & CE (Appeals-II) Respondent
Newry Towers, 2054/1, II Avenue, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri K. Meenatchi Sundaram, Consultant, for the appellant

Ms. T. Usha Devi, DC, Authorized Representative for the Respondent

CORAM:

HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER No. 40797/2019

Date of Hearing: **10.05.2019**
Date of Decision**: 10.05.2019**

The brief facts are that the assessee is a 100% software exporter and during the financial year 2014-15 they paid an amount of Rs. 17,08,885 to M/s. Amazon, USA, for cloud-hosting their software for the purpose of marketing and demonstration to its customers located abroad. Since the assessees had not paid service tax on the same claiming that the said activity will not be covered under import of service, a Show Cause Notice dated 22.06.2018 came to be issued proposing service tax of Rs.2,39,244/- under Reverse Charge Mechanism (RCM) with applicable interest and also proposing imposition of penalty under Section 78 of the Finance Act, 1994. On adjudication, the adjudicating authority confirmed the demand together with applicable interest and imposed equal penalty under Section 78 ibid. Aggrieved, appellant appealed before the Commissioner (Appeals), who upheld the order of the adjudicating authority in toto. Hence, this appeal.

2. Shri K. Meenatchi Sundaram, Consultant submits that the demand of service tax under reverse charge mechanism is not permissible in view of the Hon'ble Supreme Court decision in the case *of Nirlon Ltd. Vs. CCE – 2015 (58) Taxmann.com* 28 (S.C). He further submits that demand is also not sustainable since SCN is hit by limitation under Section 73. Secondly, the demand of service tax under reverse charge mechanism is not sustainable since it is a revenue-neutral situation, in view of the decision of the Chennai Bench of the Tribunal in the case of *CCE Vs. Coca Cola India Pvt. Ltd.* 2007 (203) ELT 490 and *Texyard International Vs. CCE* – (2015) 60 taxmann.com 394 (Chennai CESTAT). He further submits that interest under Section 75 does not arise since the demand of service tax is liable to be deleted. He prays that if the demand of service tax itself goes, there should not be any penalty imposed on them.

3. Per contra, Ms. T. Usha Devi, DC, supports the findings of the lower authorities.

4. After hearing both sides, I find favour with the appellant's contention that the entire situation is Revenue neutral. Admittedly, the assessee is discharging its Service Tax liability in respect of software services exported by them. The present demand confirmed against them, was admissible to them as Cenvat credit, which could have been further utilised for discharge of their Service Tax liabilities. Admittedly, the demands stand raised by invoking the longer period of limitation. Reliance of the judgment of the Apex Court in Nirlon Ltd. (supra) wherein it has been held that "when entire exercise is revenue neutral ie., credit of duty paid on captive consumption is available to assessee itself, extended period cannot be invoked, as assessee could not have achieved any purpose to evade duty". In Texyard International (supra) it has been interalia held that if service tax, if any, payable under reverse

charge mechanism was otherwise allowable as Cenvat credit or refund, said service tax cannot be demanded, as entire exercise is revenue-neutral. Assessee was under bonafide belief that service tax was not payable as per foreign trade policy. As per the EXIM policy all goods and services exported from India, services received/rendered abroad wherever possible shall be exempted from service tax. Therefore, the demand is also hit by limitation and the extended period cannot be invoked.

5. In view of the above, the demand of service tax under reverse charge confirmed against the appellants is set aside. As regards penalty, since demand of tax itself is set aside, the question of imposing penalty does not arise.

6. Appeal of the assessee is allowed.

(Operative part of the Order dictated in the Open Court)

(P.DINESHA)
JUDICIAL MEMBER

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