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

ST/191/2008

(Arising out of Order-in-Appeal No.20/2008-ST dated 27.5.2008 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Rajshree Sugars & Chemicals Ltd. Appellant

Vs.

Commissioner of Central Excise, Coimbatore Respondent

Appearance

Shri R. Parthasarathy, Advocate for the Appellant
Shri K.P. Muralidharan, 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: **28.07.2017**

Final Order No. 41498/2017

Per Bench

Brief facts are that based on intelligence received by officers of DGCEI that appellants had obtained commercial loans referred to as "Extra Commercial Borrowings" (ECB) from international bank / financial companies based abroad, who do not have office in India and paid certain service charges namely, agency fee and fee for arranging loan amount to such foreign lending arrangers for arranging ECBs. The department

Customs, Excise & Service Tax Appellate Tribunal was of the view that the fees paid for arranging / obtaining ECG loans would fall under the category of Merchant Banking Services under Banking and Other Financial Services and was liable to service tax with effect from 16.7.2011. Since appellant haven not discharged service tax on such fees paid to foreign financial institutions, show cause notice was issued demanding service tax along with interest and also imposed penalties. After due process of law, the original authority confirmed the demand of Rs.21,61,584/- along with interest thereon and also imposed penalties under sections 76, 77 and 78 of the Finance Act, 1994. Against this, appellant filed appeal before the Commissioner (Appeals) and vide order impugned, the Commissioner (Appeals) upheld the order. Hence this appeal.

2. At the time of hearing, the learned counsel Shri R.Parthasarathy appearing on behalf of the appellant submitted that the appellant is not contesting the demand of service tax or interest thereon and is confining the challenge in the present appeal only on the penalties imposed. He submitted that the service tax for services rendered by foreign agents / parties became taxable under reverse charge mechanism after introduction of Section 66A in the Finance Act, 1994 and the Hon'ble High Court of Bombay in the case of Indian National Shipowners Association Vs. Union of India as reported in 2009 (13) STR 235 (Bom) has held that such services are taxable

only with effect from 18.4.2006. He added that the appellant having paid the entire service tax demand, is not contesting the service tax demand and is contesting only the imposition of penalties. Though in the show cause notice, department has alleged suppression, there is no basis for the same. It is vaguely alleged in the show cause notice that appellant had incurred liability to pay service tax on certain "lending services" received by them on reverse charge basis under section 65(12) (Banking and Other Financial Services) read with Section 66A of the Act. The statement of the Deputy Manager Shri R. Kannan would show that he was not aware of the legal position of liability to pay service tax under the reverse charge mechanism and there is no evidence in the show cause notice to establish that appellants had indulged in deliberate suppression. He also argued that the issue whether the assessee is liable to pay service tax under reverse charge mechanism prior to introduction of 66A was under much doubt and confusion and there were several judgments holding in favour of the assessee as well as Revenue. That the appellant had not discharged service tax only on the ground that they were not aware of the provisions of law introduced making them liable to pay service tax by reverse charge mechanism. He argued that the department has taken the necessary details for quantification of service tax from the accounts maintained by the appellant. He also submitted that the demand was paid by the appellant on 23.7.2007 even before issuance of show cause notice dated 6.11.2007. That as per sub-section (3) of Section 73, no penalties can be imposed when the service tax along with interest has been paid prior to issuance of show cause notice. That there was no deliberate suppression of willful mis-statement of facts and therefore penalties may be set aside.

3. Against this, the learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order. He adverted to the statement recorded and submitted that the issue would not have come to light but for the investigation conducted by DGCEI. The loan agreement revealed that the appellant has paid agency fee as well as arrangement fee to the foreign financial institutions for ECBs. The appellant have paid service tax along with interest only when the same was pointed out by the department. Therefore, the penalties imposed are sustainable.

4. Heard both sides.

5. The learned counsel for the appellant has submitted that they are contesting the penalties imposed only. The period involved is February 2007. The demand of service tax is on the fee paid by appellant to foreign ~~insurance~~ institutions for arranging loans, in the nature of arrangement fee ad agency

fee. It is submitted by learned counsel that they bonafidely believed since the banks are of Indian origin, they need not pay service tax. On being pointed out by the department, the appellant has cooperated and furnished all details. So also appellant had paid entire service tax demand along with interest. Hence, we are of the opinion to extend the benefit of section 80 as the appellant has put forward reasonable cause for non-payment of service tax. We find that the appellant has paid the service tax demand along with interest prior to issuance of the show cause notice and also find that there is no sufficient allegations in the show cause notice for suppression of facts with intent to evade payment of service tax. It is an admitted fact that the very issue of taxability in respect of commission paid to foreign banks had been in confusion, which was laid to rest only after the judgment of the Hon'ble High Court of Bombay in the case of Indian National Shipowners Association on 11.12.2008 (supra) and which on appeal to the Hon'ble Apex Court was affirmed on 14.12.2009 as reported in 2010 (17) STR J57 (SC). Viewed in this light, there has been sufficient cause for the appellant in his failure to discharge ~~to~~ tax liability and as such the beneficent provisions of section 80 could be very well invoked in this case so as to waive the penalties imposed under section 76 and 78 of the Finance Act. So ordered. However, we do not interfere with the service tax demand along with interest and penalty imposed under section 77 of the Finance Act.

6. In the result, appeal is partly allowed in the above terms.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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23/8
सहायक पंजीकार/Asst. Registrar
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