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

ST/00047/2010

[arising out of Order-in- Appeal No.88/2009 (M-III)ST, dated 05.11.2009 passed by the Commissioner of Commissioner of Central Excise (Appeals), Chennai]

M/s. VELLORE SHOE FABRIK APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-III RESPONDENT

Appearance:

For the Appellant None
For the Respondent Shri Arul Duriraj, Supdt.

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar , Member (Technical)

Date of hearing/decision **29-09-2017**

FINAL ORDER NO. 42391/2017

Per Bench:

The appellants, M/s. Vellore Shoe Fabrik [hereinafter referred to as "M/s. VSF"] are manufacturers and exporters of "Leather Shoe Uppers" under Chapter No.6409910 and are registered with the service tax department. As a proof of their export, the appellants submitted shipping bills and connected documents along with ARE-1. In this regard, they have been paying commission to the agents in respect of the exported goods. Hence, the services as a Commission Agent is liable to service tax, as Business Auxiliary Service' under section 65(19) of the Finance Act, 1004. The period of dispute is July, 2006 to March, 2007. The department was of view that the commission paid to foreign agent is liable to levy of service tax under reverse charge mechanism and sought from the appellant the details

Customs, Excise & Service Tax Appellate Tribunal of commission paid to agents both in India as well as abroad for the period from July, 2006 to March, 2o07, for initiating further necessary action and the same was furnished by the appellants.

2. As per the definition in Rule 2(1)(d)(iv) of Service Tax Rules, 1994, "*a person liable for paying service tax means, - in relation to any taxable service provided by a person, who is a non-resident or is from outside India, does not have any office in India, the person receiving taxable service in India*".

2.1 The above definition is effective from 01.08.2002 with the insertion of Notification No.12/2002-ST, dated 01.08.2002.

2.3 As per section 67 of Finance Act, 1994, value of any taxable service shall be the gross amount charged by the service provider for such services rendered by him.

2.4 From the above definition, it is clear that the liability of service tax with regard to commission paid to overseas agent lies with M/s. VSF, the service recipient and hence, they are liable to pay service tax on the gross amount paid by them to foreign agents, who rendered the services to M/s.VSF. Hence, the demand of service tax, interest and imposition of penalty by original authority, which was upheld by Commissioner (Appeals) as well. Aggrieved, the appellants are before us.

3. The decision whether appellant is liable to pay service tax with regard to commission paid to overseas agent prior to 18.04.2006 is settled by the judgment in the case of Union of India Vs *Indian National Shipowners' Association 2011 (21) S.T.R.3 (S.C.)*. As the period of dispute in the instant case is post 18.04.2006, the appellants submitted that they are not contesting the service tax liability and confining their contest only on the penalties imposed.

Customs, Excise & Service Tax Appellate Tribunal

4. The Ld. AR Shri Arul Durairaj reiterated the findings in the impugned order.

5. Heard both sides. The period involved (7/2006 to 3/2007) being post 18.04.2006 the appellants have submitted that they are contesting only the imposition of penalties. The issue whether assesse is liable to pay service tax under reverse charge mechanism on the commission paid to foreign agents was under much dispute during the relevant period. Section 66A was introduced with effect from 18.04.2006 and the Hon'ble Bombay High Court in the case of *Union of India* Vs. *Indian National Ship Owners Association* reported in *2011 (21) S.T.R.3 (S.C.)* observed that assesse is not liable to pay service tax prior to introduction of Section 66A. The said judgment was maintained by Hon'ble Apex Court in the case of *Indian National Ship Owners Association Vs. Union of India* reported in *2009 (13) S.T.R. 235 (Bom.)* Thus it is clear that during the relevant period there was much confusion as to the levy of service tax on commission paid to foreign agent. Being an interpretational issue, we are of the view that the penalties imposed, except that of Section 77 are unwarranted, and requires to be set aside, which we hereby do. In the result, the impugned order is modified to the extent of setting aside the penalties imposed except that imposed under Section 77 without disturbing the demand of service tax and interest thereon. The appeal is partly allowed in above terms with consequential reliefs, if any as per law.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
25-10-2017