CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 52981 of 2018-SM

(Arising out of order-in-appeal No. BHO-EXCUS-002-APP-144-18-19 dated 09.05.2018 passed by the Commissioner (Appeals), Central Goods, Service Tax & Central Excise, Raipur).

Commissioner of Central Excise and Service Tax, **Appellant**
Central Excise Building
Dhamtari Road, Tikrapara, Raipur
Chhattisgarh.

VERSUS

M/s Prakash Industries Limited **Respondent**
Vill. Birgahani, Champa, Distt-Janjgir
Champa, Chhattisgarh.

APPEARANCE:

Ms. Tamanna Alam, Authorised Representative for the appellant
Shri Rohit Choudhary & Ms. Preeti Khiwani, Advocates for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51480/2019

DATE OF HEARING: 08.07.2019
DATE OF DECISION: 08.07.2019

ANIL CHOUDHARY:

The issue in this appeal filed by Revenue is whether the Commissioner (Appeals) has rightly refused to impose penalty under Section 78.

2. Brief facts are that the respondent M/s Prakash Industries Limited are engaged in the manufacture of steel, power & mining industries and registered under the Central Excise and Service Tax. The respondent during the financial year 2009-10 entered into an

agreement with M/s Elara Capital Plc, London, not having any permanent establishment in India for raising fund through Foreign Currency Convertible Bonds (FCCBs)/ External Commercial Borrowing (ECB). As per the terms of agreement the said service provider has raised funds of 15 million plus 60 million US$ and after recover their service charges which included legal expenses, remitted the balance amount to the respondent in India under the agreement dated 05.06.2009. The fund were received in India in October, 2009. And further under the agreement dated 20.01.2010 the funds were received in April, 2010. As the respondent were advised that the said service does not fall under the category of service provided from outside India and received in India, they did not pay any service tax under reverse charge mechanism. Subsequently, the Revenue enquired the matter and after obtaining relevant information from the respondent –assessee, impressed upon the respondent that they should discharge service tax under reverse charge mechanism. Such facts are admitted in para 3.1 of the order-in-original, where it is recorded that on being objected by Revenue, the respondent therein stated that although they do not admit the service tax liability under the provisions of law, however in order not get into litigation with the Department, they paid the amount of tax as worked out by the Department at Rs. 1,90,58,090/- vide GAR-7 challans, and took cenvat credit being entitled to the same. Further, admitted fact is that the respondent has deposited the interest under Section 75. Subsequently, Revenue issued show cause notice for demand of penalty vide order-in-original dated 31.10.2017, the Joint

Commissioner has observed that the issue is wholly interpretational in nature and secondly the respondent deposited huge amount of excise duty through PLA during the relevant period. Thus, the situation is Revenue neutral, as they would have been entitled to cenvat credit and use the same for payment of tax. On such finding, the Joint Commissioner refrained from imposing penalty under Section 77 and 78 of the Finance Act.

3. Being aggrieved, Revenue preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) was pleased to reject the appeal of the Revenue by observing that the respondent was under bonafide belief that service tax was not payable, and further the demand was also barred by limitation. There is no element of fraud etc. Further, he held that the appellant was rightly entitled to cenvat credit on the tax payable under reverse charge mechanism. Thus, there is no case of suppression or any misconduct is made out against the respondent-assessee. He also observed that Department has not adduced any evidence, against the contention of the respondent assessee, that the dispute during the relevant time on taxability, on the service in question, was incorrect. It was also observed that the transaction is properly recorded in books of account maintained in the ordinary course of business. Accordingly, it was held that no penalty is imposable on the respondent assessee.

4. Being aggrieved, the Revenue is in appeal on the ground that the adjudicating authority have already held that the respondent did not disclose the transaction to the Department in respect of 'Banking

and Financial Services', from the provider located outside India. Further, had the DGCEI not enquired into the matter, the tax would have skipped. Accordingly, learned Authorised Representative for Revenue urges that penalty may be imposed on the respondent assessee.

5. Learned Counsel for the respondent opposes the contention and draws my attention to the aforesaid finding, recorded by the Court below.

6. Having considered the rival contentions, I find that the Revenue has nowhere established that the service in question is deemed to be received in India, under the 'place of provision of service rules'. Further, I find that the transaction was duly recorded in the books of accounts and the amount have been remitted by the service provider from outside India through normal banking channel. Further, I find that the respondent was entitled to pay and avail cenvat credit of the amount of tax, held payable by Revenue. Thus the situation is revenue neutral. Further, there is no reason for the respondent to evade payment of service tax. I also hold that no case of contumacious conduct is made out. The issue is wholly interpretational in nature. In this view of the matter I uphold the finding of the Court below. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant