CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. IV

SERVICET AX APPEAL No. 50870 of 2019

(Arising out of Order–in-Appeal No. 279-CENTRAL-TAX-APPEAL-II-DELHI-2018 dated 04.01.2019 passed by COMMISSIONER OF CENTRAL EXCISE-Delhi)

Earlysail Software Pvt. Ltd. **...Appellant**
Unit No. 6, Third Floor, Vasant Arcade,
Nelson Mandela Road,
Vasant Kunj-110070

Versus

Commissioner of Central Goods, **....Respondent**
And Service Tax, Customs &
Central Excise, Delhi
2nd & 3rd Floor, EIL Annexe Building,
Plot 2-B, Bhikaji Cama Place,
New Delhi

APPEARANCE:
Ms. Simmi Madhok, Authorised Representative for the Appellant
Mr. Yashvir Singh, Authorised Representative for the Respondent

CORAM : HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: **21.11.2019**

Date of Decision: **29.11.2019**

FINAL ORDER No.: 51573/2019

AJAY SHARMA

1. This appeal has been filed assailing the impugned order dated 04.01.2019 passed by the Commissioner of Central Tax (Appeals-II) Delhi in Order–in-Appeal No. 279/CENTRAL TAX/APPEAL-II/DELHI/2018.

2. The issue to be decided is whether the appellant is liable to pay service tax under reverse charge mechanism (RCM) along

with interest and penalties on the import of service and whether extended period is liable to be invoked in the present matter under the provisions of section 73(1) of the Finance Act, 1994?

3. I have heard learned Authorised representative for the Appellant and learned Authorised Representative for the Revenue and have also gone through the Memo of Appeal along with its annexures.

4. The main contention raised on behalf of the Appellant is that the duty cannot be demanded from the Appellant since the entire transaction is revenue neutral and had the appellants paid the tax, they are entitled to claim it in credits for refunds and therefore there was no loss to the exchequer. She further contended that since the transaction is revenue neutral therefore, there was no intention to evade tax on the part of the appellants and therefore, the extended period could not have been invoked, nor penalties can be imposed on the Appellants. She also submits that no proper opportunity of hearing was granted to the Appellant by the learned Commissioner. Per contra learned Authorised Representative for the Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the Appeal filed by the Appellant.

5. While going through the Appeal Memo, I find that the main thrust of the Appellant is about the revenue neutrality of the transaction in issue because according to the appellant once it is established that the transaction is revenue neutral then the entire case goes in favour of the appellant. But in the impugned order, the learned Commissioner only touched this issue and

without giving any detailed findings on this issue, he simply rejected the said contention at the end of the order while recording that the said contention about revenue neutrality does not appeal to him. When the entire case of the appellant depends upon revenue neutrality then the learned Commissioner ought to have given a detailed reasoning / finding for rejecting the same. Therefore, without going into other aspects of the matter, I am inclined to remand the matter to the learned Commissioner with a direction to decide the Appeal afresh on all the issues raised by the Appellant after giving a proper opportunity of hearing to the appellant. It goes without saying that the learned Commissioner while deciding the appeal apart from other issues, give a detailed finding on the issue of revenue neutrality.

6. The Appeal is therefore allowed by way of remand.

(order pronounced in the open court on 29.11.2019)

(AJAY SHARMA)
MEMBER (JUDICIAL)

Bhanu