IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal Nos. 518 & 1750 /2010
Service Tax Appeal No. 511 /2011

[Arising out of Order-In-Appeal No. 402 (KKG)ST/JPR-II/2009 dated 13.1.2010, 295 (CB)ST/JPR-II/2010 dated 10.9.2010, 528 (CB)ST/JPR-II/2010 dated 13.1.2011 all passed by Commissioner of Customs & Central Excise, (Appeals II) Jaipur]

M/s. Mangalam Yarn Agencies **Appellants**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur II

Appearance:
Shri Kumar Vikram, Advocate for the Appellants
Shri Ranjan Khanna and Shri Sanjay Jain, DR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing/ Decision: 30.01.2017

FINAL ORDER NO . 50559 - 50561 /2017

Per B Ravichandran :

These three appeals are filed by the appellants on same facts and accordingly are taken up for disposal together. At the outset, learned Counsel for the appellant submitted that they are not contesting the Service Tax liability of the appellant under the category of Business Auxiliary services. The only plea in these appeals is penalty imposed under section 76 of the Finance Act, 1994 may be waived invoking the provisions of section 80 of the Act. It is submitted by the Counsel that they have provided business promotion service for clients located outside India and the services were infact exported. However, they could not get the benefit of exemption on export of services as they received consideration for such service in Indian rupees. Thus, they could not fulfill the conditions for exemption. Learned Counsel pleaded for waiver of penalty only.

2. Learned AR contested the submissions of appellant stating that the appellant has been receiving the consideration only in Indian rupees and it is well settled position that for exemption on export of services consideration received should be in convertible foreign exchange. There could be no bonafide belief in this regard to the contrary. Infact, all these three appeals were initially filed challenging the liability of Service Tax on merits. However, based on the decision of the Tribunal in the case of ***Gap International Sourcing (India) Pvt. Ltd. vs. Commissioner of Service Tax Delhi [2015 (37) STR 757 (Tri-Del]*** the appellant now is not pressing for the grounds on merit. As such, it is the submission of the Revenue that there is nothing coming out in the grounds of appeal for the Tribunal to interfere.

3. We have heard both the sides and perused the records. Admitted facts are that the appellant are not eligible for exemption for export of service as they have not fulfilled one of the main conditions for such exemption. All along they have been receiving the consideration in Indian rupees only. No grounds for bonafide belief have been satisfactorily explained to us. Hence, the basis for invoking section 80 has not been made out by the appellant. When asked specifically regarding the payment of service tax as confirmed in the impugned proceedings, the learned Counsel submitted the details of payment are not with him. He is not able to confirm as to whether the appellants have deposited the tax liability with applicable interest and if so, the date of such payment.

4. In view of the above position, we find no merits in the present appeals and accordingly, same are dismissed.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(B Ravichandran)
Member(Technical)

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