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

ST Appeal No. 55879 of 2013 SM

[Arising out of Order-In-Appeal No. 22/RDN/ST/JPR-II/2013 dated 23.1.2013 passed by Commissioner of Customs & Central Excise (Appeals II) Jaipur]

M/s. Aztec Shiva Handicrafts & Arts P Ltd. — **Appellant**

Vs.

Commissioner of Central Excise Jaipur II — **Respondent**

Appearance:

Shri O P Agarwal, Chartered Accountant for the Appellants
Shri R K Mishra, AR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 08.02.2017

ORDER NO . FO/ 50783 /2017-(SM)

Per Ms. Archana Wadhwa :

After hearing both the sides I find that the service tax liability to the extent of Rs. 8,63,959/- stand confirmed against the appellant in respect of commission paid to their foreign agents for promotion of their exports, on reverse charge basis. The said liability is for the period 18.4.2006 to 30.9.2007 and the Show cause notice stand issued on 25.2.2010 i.e. by invoking the longer period of limitation.

2. It is seen that Additional Commissioner while confirming the demand against the appellant on reverse charge basis, has not imposed any penalty upon them by observing as under:

> *"4.10 Now coming to the penal action under Section 76, 77 and 78 of the Finance Act, 1994, as proposed in the impugned SCN, I find that there are several pronouncement of Hon'ble Tribunal having divergent views on the issue of imposition of penalty, especially in cases where service tax liability is fastened on the assessee receiving services of foreign based agents / agencies, on reverse charge basis prior to 18.4.2006 on account of insertion of Section 66A in the Finance Act – 1994. I therefore, prefer not to impose penalty as the issue was very much interpretational at the relevant time."*

3. It stand brought to my notice that the said part of the order has not been appealed against by the Revenue. As is seen the original adjudicating authority has not imposed penalty by taking into consideration the fact that the law during the relevant period was not clear and there were divergent views. If that be so, I really fail to understand as to how the appellant can be fastened with any malafide intention so as to invoke the longer period of limitation.

4. In any case, I find that an identical issue stand decided by the Division Bench of the Tribunal in the case of ***M/s. Paramount***

Communication Ltd. vs CST, Delhi I [2016-TIOL-1631-CESTAT-DEL] has considered the identical situation and has observed that the issue i.e. whether prior to introduction of section 66A with effect from 18.4.2006, any liability would arise against the recipient of service in India on reverse charge basis, which was the subject matter before Hon'ble Bombay High Court in the case of ***Indian National Shipowners Association vs. UOI [2009 (13) STR 235 (Bom)]*** which was decided ultimately in the year 2009. As such, during the relevant period, there was admittedly a lot of confusion in the field and law was not clear either to the assessee or to the Revenue itself and lot of litigation was going on legal issue of payment of tax on reverse charge basis.

5. Apart from that I also note that the Tribunal in the case of ***Royal Travels vs CCE, Vadodara [2011 (21) STR 31 (Tri-Ahmd)]*** has observed that once the penalty is not imposed or is set aside, the longer period of limitation cannot be invoked inasmuch as ingredients for both are same. In view of the above, I hold the demand to be barred by limitation and accordingly, set aside the impugned order and allow the appeal with consequential relief.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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