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

ST Appeal No. 55850 of 2013 SM

[Arising out of Order-In-Appeal No. 15/RDN/ST/JPR-II/2013 dated 23.1.2013 passed by Commissioner of Customs & Central Excise (Appeals II) Jaipur]

M/s. Imperial Arts **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur II

Appearance:

None for the Appellants
Shri R K Mishra, AR for the Respondent

<u>CORAM</u>:

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

Date of Hearing /Decision: 10.02.2017

ORDER NO . FO/ 50839 /2017-(SM)

<u>Per Ms. Archana Wadhwa :</u>

As nobody appeared for the appellant, I have heard the learned DR and have gone through the impugned order and the appeal memorandum.

2. The facts, briefly stated are as under:

The appellants are manufacturer-exporters of various types of handicraft/furniture. They engaged services of foreign agents and paid them Rs. 46,67,829/- as commission during the period 01.04.2005 to 31.01.2009. They were issued two Show Cause Notices one dated 15.04.2009 for the period 01.04.2008 to 31.01.2009 demanding service tax of Rs. 33,560/- and the other dated 02.09.2009 for the period 01.01.2005 to 31.01.2009 demanding the service tax of Rs. 5,37,464/-. Both these demands were confirmed by the original adjudicating authority but the original adjudicating authority did not impose any penalty in respect of Show Cause Notice covering the period 01.01.2005 to 31.01.2009 treating the issue to be interpretational. In respect of Show Cause Notice covering the period 01.04.2008 to 31.12.2009, penalty was imposed under Sections 77 & 78 of Finance Act, 1994, but not under Section 76 by invoking Section 80 ibid. The Commissioner (Appeals) set aside the demand for the period prior to 18.04.2006 as the legal basis for reverse charge mechanism came into effect from 18.04.2006 with the introduction of Section 66A in the Finance Act, 1994 and also deducted Rs. 33,560/- from the remaining demand in respect of Show Cause Notice dated 02.09.2009 as it was covered under the Show Cause Notice dated 15.04.2009.

3. The appellants have essentially argued that:

(1) When the original adjudicating authority found it fit not to impose penalty under Sections 76, 77 and 78 of Finance Act, 1994 with regard to the impugned demand pertaining to the extended period on the ground that the issue was interpretational, then the demand pertaining to the period beyond one year has to be held as time barred.

(2) the service tax on the commission paid to foreign agent is exempt from service tax by way of refund under Notification No. 41/2007-ST dated 0610.2007 and alternatively the same is also available to them as Cenvat credit.

(3) There was no willful mis-statement or suppression on their part.

4. I have considered the facts and submissions. It is seen that the appellants were issued two Show Cause Notices, one dated 15.04.209 covering the period 01.04.2008 to 31.01.2009 and the other dated 02.09.2009 covering the period 01.01.2005 to 31.01.2009. The original adjudicating authority confirmed the demands raised in both the Show Cause Notices although as is evident from the period, covered by them, the demand of Rs. 33,560/- raised under Show Cause Notice dated 15.04.2009 was included in the demand of Rs. 5,37,464/- raised in the Show Cause Notice dated 02.09.2009. It is seen that the impugned Order-in-Appeal corrected this mistake and

deducted the amount of Rs. 33,560/- from the demand relating to Show Cause Notice dated 02.09.2009. Further, when penalties under Section 76, 77 and 78 were not imposed in respect of the demand pertaining to the Show Cause Notice dated 02.09.2009 (which invoked the extended period under proviso to Section 73 ibid) on the ground that the issue was interpretational, it is difficult to fathom as to how the demand for the extended period can be sustained.

5. 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.

6. 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.

7. 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.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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