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

Service Tax Appeal No. ST/1523/2010-ST[DB]

[Arising out of Order-In-Appeal No. 282-283-(DKV)ST/JPR-I/2070 dated 27.07.2010 passed by Commissioner, Customs, & Central Excise Jaipur.]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Skipper Electricals India Ltd. ...Appellant

Vs.

C.C.E. Jaipur I …Respondent

Appearance:
Mr.Manish Gaur, Advocate for the Appellant
Mr. Sanjay Jain, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing.31.10.2016
Date of Decision 21.02.2017

Final Order No. 51904 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 26.07.2010 passed by the Commissioner (Appeals), Customs of Central Excise, Jaipur.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Electrical Transformers. The appellant supplies transformers to domestic as well as foreign buyers. The agreements entered into between the appellant and its buyers provide the clause that the appellant will also undertake the activities of erection, commissioning and installation work of the transformers at the buyers

premises, so that the complete transformer is erected at the site. As regards the exported transformers, the appellant had entrusted such work on sub-contract basis to the parties situated abroad. The Department initiated proceedings against the appellant for confirmation of service tax demand on the ground that the appellant in the capacity of recipient of service is liable to pay service tax under reverse charge mechanism for the services provided by the persons, who were residing in foreign country. The matter was adjudicated vide order dated 14.10.2009, wherein service tax demand of Rs. 17,38,176/- was conformed along with the interest against the appellant. Besides, penalties were imposed under Section 77 and 78 of the Finance Act, 1994. Felling aggrieved with the adjudication order dated 14.10.2009, both the assessee-appellant and the Revenue have preferred appeals before the Commissioner (Appeals), Central Excise, Jaipur. The appeals were disposed of by the ld. Commissioner (Appeals) vide impugned order, in rejecting the appeal filed by the assessee-appellant and allowing the appeal in favor of the Revenue. Hence, the assessee-appellant has filed this appeal before the Tribunal.

3. Heard both sides and examined the case records.

4. The question involved in this appeal for consideration by the Tribunal is, as to whether, the appellant in the capacity of recipient of service is liable to pay service tax when the entire services were performed outside India.

5. The taxation of services (provided from outside India and received in India) Rules, 2006 was enacted to identify which services could be taxable under Section 66A of the Finance Act, 1994. It is a fact on record that the services namely, erection commissioning and installation have been provided outside India and not performed in

India. Such services falling under Sec. 65(105) (zzd) find place in Rule 3(ii) wherein service tax will be payable on reverse charge basis only if such services are performed in India by a service provider from abroad. Thus in our view, Rule 3(ii) of the rules, 2006 will not be applicable to the services in question, which were rendered outside India. Thus, service tax demand cannot be fastened on the appellant for such services provided from the foreign country. We find that the case in hand is squarely covered by the decision of this Tribunal in the case of Intas Pharmaceuticals Limited Vs. Commissioner of Service Tax reported in 2009(16) STR 748(Tri-Ahmd.) and KG. Denim Vs. Commissioner of Service Tax Salem reported 2015(37)STR 616 (Tri-Chennai).

6. In view of above, we do not find any merits in the impugned order and accordingly, after setting aside the same, we allow the appeal filed by the appellant.

(Pronounced in the open court on __21.02.2017_)

(V. Padmanabhan) (S. K. Mohanty)
Member(Technical) Member (Judicial)

Sakshi