CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Date of Hearing: 18.10.2016

Excise Appeal No.ST/396/2011

[Arising out of Order-in-Appeal No.426(CB)ST/JPR-II/2010 dated 27.10.2010 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipour-II]

M/s. Selection Synthetics Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Ms.Rinki Arora, Advocate for the appellant
Ms. Neha Garg,Advocate for the respondent

Coram:
Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Ashok K. Arya, Member (Technical)

Final Order No.56429/2016 /Dated:

Per Ashok K.Arya :

The appellant is aggrieved by the order dated 20.10.2010 of Commissioner of Central Excise (Appeals), Jaipur-II only with reference to penalty imposed on them. The appellants have engaged various agents in foreign countries to procure export orders and they were paying commission to them for such services. They have not paid service tax on the said commission, during the period April, 2007 to Feb. 2008. Proceedings were initiated against them to demand and recover service tax under the category of "Business Auxiliary Service" in terms of Section 65(19) of the Finance Act, 1994 read with Section 66 A of the Act. The Original Authority confirmed the service tax demand of Rs.1,24,544/- and imposed penalties under Section 76 and 77 of the Act. On appeal, vide the impugned order, the Commissioner (Appeals) confirmed the original order.

2. Ld. Consultant for the appellant submitted that they are not contesting the tax liability as they are covered under the provisions of Section 66 A to discharge service tax as a recipient of service. He only pleaded for waiver of penalties. It is his case that the liability to pay service tax as a recipient of service was settled only after the introduction of Section 66 A and the decision of the Hon'ble Bombay High Court in the case of **Indian National Shipowners Association Vs. Union of India – 2009 (13) STR 235 (Bombay).** There is a bonafide belief on the part of the appellant to the effect that the services rendered abroad are not liable to tax. The period involved is shortly after the introduction of the new scheme of taxation on reverse charge basis in 2006. Accordingly, he prayed for waiver of penalties imposed on the appellant.

3. Ld. AR reiterated the findings of the lower authorities and submitted that there is no ground for waiver of penalties imposed on the appellant.

4. We have heard both the sides and perused the appeal records.

5. The liability of the appellant to pay service tax on reverse charge basis is not in dispute. It is also admitted that the liability is consequent upon the introduction of new Section 66 A w.e.f. 1.5.2006. We find that the services, though provided by the foreign agent aboard, the benefit accrues to the appellant and hence, tax liability also falls on the appellant. The concept of place of provision of service or the consumption of service was subject to legal interpretation and the tax liability on reverse charge basis itself is a new concept introduced in 2006 for such services

rendered by foreign service provider, where the benefit accrues to the Indian service recipient. We also refer to the decision of the Tribunal in **Needle Industries (I) Pvt.Ltd. – 2010 (17) STR 525 (Tribunal-Chennai)**, wherein referring to the Board's Circular dated 8.10.2001, the Tribunal accepted the plea of the appellant regarding bonafide belief for non-imposition of penalty.

6. In view of the factual position discussed as above, we find sufficient force in the plea of the appellant for non-imposition of penalties in the present case invoking section 80. Accordingly, we set aside the penalties imposed on the appellant and allow the appeal only to that extent. The duty demand along with interest, as already confirmed, is upheld.

[operative portion already pronounced in the open court]

(Archana Wadhwa)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)