IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:20/02/2017

Appeal No.ST/1705/2010

[Arising out of Order-in-Appeal No.324(DKV)ST/JPR-I/2010 dated 27.08.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur]

M/s. Paramount Communication Ltd. Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:

Rep. by Ms. Rinky Arora, Advocate for the appellant.
Rep. by Ms. Neha Garg,DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52142/2017

Per B. Ravichandran:

The appellant is aggrieved by the order dated 27.08.2010 of Commissioner of Central Excise (Appeals), Jaipur. The appellants are engaged in the manufacture of excisable items. They have availed services of foreign bank for mobilizing funds by way of foreign currency. The period involved in dispute is 2007-2008. As recipient of banking and financial services, the appellants were called upon to discharge the tax liability on such services availed by them. A notice was issued on 19.08.2009. The amount involved in dispute is Rs.44,368/-. The lower authorities confirmed the service tax liability and also confirmed penalty of equivalent amount under Section 78 of the Finance Act, 1994.

2. Ld. Counsel appearing for the appellants submitted that on merits, the tax liability will arise in terms of Section 66 A introduced on 18.04.2006. However, there were litigations on the issue of service tax liability on reverse charge basis in respect of the services rendered by the foreign entities to an Indian assessee. It is submitted that the matter was resolved by the Hon'ble Bombay High Court in the case of **Indian National Shipowners Association Vs. Union of India – 2009 (13) STR 235 (Bombay).** Ld. Counsel prayed for waiver of penalty imposed on the appellant.

3. Ld. AR submitted that after introduction of Section 66 A, there is no ambiguity of confusion regarding service tax liability of Indian recipient. The period involved is 2007-2008 and the relevant section was introduced in April, 2006 itself. As such, ld. AR submitted that the tax liability cannot be questioned. Regarding penalty, ld. AR submitted that the facts of the case may be examined for decision.

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

5. On the liability of the appellant for service tax, in the present case, there is no dispute on merit. However, we find that imposing equal amount of penalty on the appellant is not justifiable, considering the facts and circumstances of the case. Admittedly, prior to April, 2006, reverse charge mechanism for service tax was governed by Rule 2 (1)(d)(iv) of the Service Tax Rules, 1994 and with introduction of Section 66 A, substantive legal provision was introduced. We also note that inquiries on this issue were conducted by the Department in Chennai and Mumbai offices of the appellant in July/August, 2007 itself. In a way, the final clarity on the tax liability based on reverse charge mechanism was brought in by the decision of the Hon'ble Bombay High Court in the case of **Indian National Shipowners Association (supra)**. Considering all these facts, we find that the penalty imposed on the appellant can be waived invoking Section 80 of the Act. We order accordingly. The appeal is allowed partly.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.