IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 10/03/2017.
DATE OF DECISION : 10/03/2017.

Service Tax Appeal No. 59889 of 2013

[Arising out of the Order-in-Original No. 122/GB/2013 dated 03/07/2013 passed by The Commissioner of Service Tax, New Delhi.]

M/s HAL Offshore Ltd. Appellant

Versus

CST, Delhi – I Respondent

Appearance

Shri A.K. Batra, C.A. – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 52346/2017 Dated : 10/03/2017

Per. B. Ravichandran :-

The appeal is against order dated 03/07/2013 of Commissioner of Service Tax, New Delhi. The appellants are engaged in providing various types of taxable services and registered with the Department for discharging service tax. The dispute in the present case relates to appellant's liability to pay service tax on reverse charge basis in terms of Section 66A of the Finance Act, 1994, in respect of services received from foreign provider. The services sought to be taxed are under the category of "Manpower Recruitment and Supply Services" covered under Section 65 (105) (k).

2. The learned Consultant appearing for the appellant submitted that the impugned order has been passed without hearing them and without taking into account all the defence submissions made by them. Though the impugned order mentions about personal hearing having been conducted, no personal hearing was conducted and none appeared on behalf of the appellant. On the merits of the case, he submitted that there were serious factual infirmity as well as legal issues, which were not considered in correct prospective by the Original Authority. Firstly, it is submitted that there is no tax liability on reverse charge basis prior to 18/04/2006, before the introduction of the said Section 66A. The demand for the considerations paid prior to that date cannot be sustained. Further, for the year 2006-2007 taxable amount shown is not towards receiving any service as the contract has been executed only during the year 2007-2008. The Revenue has mistakenly taken the foreign exchange expenditure in the balance sheet to confirm the tax liability. It is also submitted that there is an error in calculating the tax liability for the year 2007-2008, 2008-2009 and 2009-2010. In fact, for the

year 2008-2009, the liability of the appellant is much higher than what is confirmed in the proceeding. The said amount has already been discharged by the appellant. It is also submitted that the appellants have discharged Rs. 25.5 Crores towards the tax liability in respect of regular services rendered in India. The tax liability, if confirmed on reverse charge basis is available for discharging the said liability of the appellant. Hence, it is the plea of the appellant that suitable adjustment and appropriation should be made while arriving at the final liability of the appellant.

3. The learned AR reiterated the findings in the impugned order and submitted that certain factual details now asserted by the appellant requires re-verification, as the details are not available.

4. We have heard both the sides and perused the appeal records. From the facts narrated, as above, we find that the impugned order, which is passed ex-parte, cannot be sustained. The various factual and legal issues raised by the appellant requires cross-verification with original records as well as detailed submissions being made by the appellant. Accordingly, we set aside the impugned order and remand the matter back to the Original Authority for a fresh decision. All the issues are kept open. The appellant shall be given adequate opportunity to

present their case before a decision is taken afresh. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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