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

Date of Hearing/Decision: 17.03.2017

Service Tax Appeal No.56560/2013 (DB)

[Arising out of Order-in-Original No.10-11/AKM/2013 dated 31.01.2013 passed by the Commissioner of Service Tax, New Delhi]

M/s.Monnet Ispat Energy Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance:

Rep. by Ms. Aastha Gupta, CA for the appellant.
Rep. by Shri R.K. Misra, DR for the respondent.

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

Final order No.52451/2017

Per B. Ravichandran:

The appeal is against order dated 31.01.2013 of Commissioner of Service Tax, New Delhi.

2. The impugned order confirmed service tax liability against the appellant in respect of services received by the appellant in connection with "External Commercial Borrowings" with help of foreign banking institutions. Tax liability on reverse charge basis in terms of Section 66 A of the Finance Act, 1994 was confirmed under the category of "Banking and Other financial Services". Penalties were also imposed on the appellant. The Original Authority while deciding the case confirmed the demand of tax only w.e.f. 18.04.2006 holding that prior to that date, there was no charging section to tax the person, who is receiving the service.

3. Ld. Counsel appearing for the appellant is not contesting the appellant's liability to service tax w.e.f. 18.04.2006. They have discharged the service tax with interest, before issue of show cause notices. The only plea made in this appeal is regarding imposition of penalties on the appellant. It is submitted that the whole issue of scope and applicability of service tax on the recipient of service in respect of service rendered by foreign companies has been a subject matter of dispute. More so, in respect of "External Commercial Borrowings" as the tax liability of the said service itself was not clear. It is only after the Hon'ble Bombay High Court decided the case in **Indian National Shipowners Association – 2009 (13) STR 235 (Bombay)**, wherein the legal position was settled. In fact, the Board accepting the legal position issued the clarification after the confirmation of the said position by the Hon'ble Supreme Court in **2010 (17) STR J-57 (SC).** Further, it was submitted that the appellants, being a manufacturer of excisable goods, are eligible for credit of the said tax paid. On this ground also, the appellant pleaded that there could be no intention for non-payment of tax.

4. Ld. AR reiterated the findings in the impugned order. He submitted that the appellant did not pay the service tax even after the decision of the Hon'ble Bombay High Court in the case of **Indian National Shipowners Association** (supra)**.** The appellant did not provide the details readily and it is after detailed investigation and follow-up, the Revenue could get the required particulars for initiating the proceedings. As such, it is pleaded that the penalty is sustainable.

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

6. The tax liability of the appellant is not in dispute. The tax liability arises in terms of Section 66 A of the Finance Act, 1994. The Department issued two show

case notices to the appellants covering period from Jan. 2005 to October, 2009. The provisions of Rule 2(1)(d)(iv) read with Section 66 A were invoked in the demand. In fact, the two show cause notices had over lapping periods of demand, which was disposed by the impugned order. We agree with the submissions made by the appellant with reference to non-imposition of penalties, in the facts and circumstances of the present case. Admittedly, the legal position was settled after the decision of the Hon'ble Bombay High Court as affirmed by the Hon'ble Supreme Court. Admittedly also, during the period prior to the decision, there are many disputes and different views on the matter. Further, we also take note that the appellants, as manufacturer of excisable goods are entitled for full credit of the said tax paid on reverse charge basis. Considering these factual details, we hold that there is no justification in imposing penalties on the appellants. Accordingly, the appeal is allowed only to the limited extent of setting aside the penalties imposed on the appellants.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.