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

Appeal No. ST/1883/2012-ST(DB)

[Arising out of Order-in-Appeal No. 87/S.Tax/DII/2012 dated 20.04.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Cherry Hill Interiors Ltd. **....Applicants**

Vs.

C.S.T. Delhi-II **....Respondent**

Appearance:

Shri S.K. Pahwa, Advocate for the Applicants
Ms. Neha Garg, DR for the Respondent

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

Date of Hearing: 02.12.2016

FINAL ORDER NO. 56468/2016-CU(DB)

Per S.K. Mohanty:

After hearing both the sides duly represented by Shri S.K. Pahwa, DR for the Applicants and Ms. Neha Garg, DR for the Respondent, we find that the appellant, apart from their other activities, are also engaged in providing marketing services to their foreign principals to sell their products in India. For the said activity they received commission from their foreign principal in convertible foreign currency. By treating the said activity as "business auxiliary services" provided in India, demands were raised against the appellant for confirmation of service tax by invoking longer period of limitation. The said show cause notice culminated into an order by the original adjudicating authority confirming the demand of service tax to the tune of Rs.1,22,670/- along with confirmation of interest and imposition of penalty also. The lower authorities rejected the appellant's stand that the said services undertaken by them, in India, on behalf of their foreign principals amount to export of services and as such would not attract the service tax liability.

2. At this stage, both sides agree that the issue stands decided by the Larger Bench decision of the Tribunal in the case of ***Microsoft Corporation (I) (P) Ltd. Vs. CST New Delhi-2014 (36) STR 766 (Tri-Del).*** It stands held that in as much as marketing operations in India were not at the behest of any Indian customer and the same were being provided to foreign recipients, the same has to be treated as export of services and not liable to service tax. To the same effect is another Larger Bench decision of the Tribunal in the case of ***Paul Merchants Ltd. Vs. CCE Chandigarh-2013 (29) STR 257 (Tri.-Del).*** The said decision further stands followed by the Tribunal in the case of ***Gap International sourcing (I) Pvt. Ltd. Vs. CCE-2015 (37) STR 757 (Tribunal)*** as also in the case of ***A.T.E. Enterprises Pvt. Ltd. Vs. CST Mumbai- 2015 (39) STR 81 (Tri.-Mum).*** The ratio of all the above decisions is that the procurement of orders in the Indian market, on behalf of the foreign principal for which payment is received in foreign exchange from the principal, would not be taxable as no service is considered to have been provided in India.

3. In view of the above, we find no justifiable reasons to uphold the impugned order. Accordingly the same are set aside and appeal is allowed with consequential relief to the appellant.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

Bhanu