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

Date of Hearing/Decision:12/04/2017

Service Tax Appeal No.59176/2013

[Arising out of Order-in-Original No.14/SG/DIV-II/2012 dated 31.12.2012 passed by the Commissioner of Central Excise (Appeals), Delhi-II]

M/s.Welspring Universal Appellant

Vs.

CST, Delhi Respondent

Appearanc

Rep. by Shri A.K. Batra, CA and Ms. Shikha Bhardwaj,Advocate for the appellant.
Rep. by Shri Sanjay Jain DR for the respondent.

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

Final Order No.52949/2017

Per B. Ravichandran:

The appeal is against order dated 3.5.2013. The appellant is registered as a 100% EOU. The dispute in the present appeal relates to correctness of usage of cenvat credit for payment of service tax on reverse charge basis by the appellant paid in terms of Section 66 A of the Finance Act, 1994. The appellants engaged commission agents located outside India, in terms of contracts, to act on behalf of the appellants, for marketing their products abroad. They have paid commission for such services. The said services are liable to service tax under the category of "Business Auxiliary Service" in terms of Section 65(19) of the Finance Act, 1994. On being pointed out about their service tax liability, the appellant discharged the same by debiting the amount in their cenvat credit account, under protest. Show cause notice dated 28.03.2011 was issued to the appellant to appropriate the amount paid through cenvat credit and to impose various penalties. The Original Authority confirmed the service tax liability. He held that the appellant should not have paid the liability of service tax using cenvat credit. He also imposed equal amount of penalty under Section 78 and further penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) upheld the original order.

2. Ld. Consultant appearing for the appellant submitted that the show cause notice was issued only for appropriating the service tax already paid by debit entry in the cenvat credit account. The Original Authority as well as first Appellate Authority had gone beyond the scope of the show cause notice and questioned the payment by the appellant, through cenvat credit. This is not legally tenable. The appellant is not contesting their service tax liability under BAS on reverse charge basis in terms of Section 66 A. However, they are contesting the findings of the lower authorities to the effect that such liability cannot be discharged by using cenvat credit and instead the same has to be paid only by cash.

3. Ld. Consultant relies on various decided cases to say that when the appellant is put to service tax liability, they are entitled to pay tax by using cenvat credit account also. As such, it is submitted that the payments made by the appellants are correct and proper and there is no ground for imposing penalties on them.

4. Ld.AR reiterated the findings of the lower authorities.

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

6. The service tax liability of the appellant under BAS is not contested. We note that the appellants have discharged the said liability by debit in their cenvat credit account. Correctness of such payment of service tax liability by the recipient of service while discharging service tax in terms of Section 66 A has been upheld by the Tribunal in similar set of facts. In **Paramount Communication Ltd. – 2016 (12) TMI 287 (CESTAT-DELHI),** the Tribunal relying on the decision of the Punjab & Haryana High Court in STA 38 of 2010 dated 24.08.2010 in the case of **Nahar Fibers** and also a Tribunal's decision in the case of **Kansara Modler Ltd. – 2013 (32) STR 209 (T-Delhi)** held that wherever the service recipient discharges service tax liability on reverse charge basis, he has to be considered as output service provider, thus entitling the utilization of payment of such service tax by credit. Reference can be made to the decision of the Tribunal in **Shree Rajasthan Syntex Ltd. Vs. CCE - 2015 (3) TMI 1241 (CESTAT-DELHI),** wherein the Tribunal relying on the decision of the Hon'ble Karnataka High Court in **Arvind Fashions - 2012 (25) STR 583 (Karnataka)** held that the appellants are eligible to utilize the cenvat credit for payment of service tax for services received from abroad.

7. In view of the above decided cases and following the ratio, we hold that the impugned order rejecting the payment of the appellant by cenvat credit is not

legally sustainable. The penalties imposed on the appellants are also not sustainable. Accordingly, we allow the appeal by setting aside the impugned order limited to this effect. Tax liability is upheld and is not contested.

[Operative portion already pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.