CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/hearing: 08.05.2017

S.T. Appeal No. 56020 of 2013-SM
(Arising out of order in appeal No. 74(ST)/RPR-I/2012 dated 21.12.2012 passed by the Commissioner (Appeals-I), Central Excise, Raipur).

CCE, Raipur Appellant-Revenue

Vs.

M/s Sarda Energy & Mineral Limited Respondent -Assessee

Appearance:

Sh. G. R. Sharma, AR for the Revenue
Sh. J. M. Sharma with Ms. Puja Agarwal, Advocates for the assessee

Coram:

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.53194/2017

Per: B. Ravichandran:

The Revenue is in appeal against the order dated **21/12/2012** of Commissioner (Appeals-I), Raipur. The respondents are engaged in the manufacture of Ferro Alloys liable to Central Excise duty. They were having facility for generation of electricity within their factory. They were also availing cenvat credit of duty paid on inputs, capital goods and tax paid on input service in terms of Cenvat Credit Rules, 2004. On verification of the accounts of the respondent for the year **2005-2006**, the Revenue entertained the view that the respondents have not discharged the service tax in respect of import of service under the category of **"Scientific Technical**

Consultancy" service from **M/s Shandong Metallurgical Institute, China**, with reference to setting up of iron ore pelletisation project by the respondent. The dispute is with reference to non-payment of service tax on the amount of US $ 3,50,000 alleged to have been paid by the respondent to the foreign company, for rendering the said taxable service. The original authority confirmed service tax liability of Rs. 15,54,734/- and also imposed equal amount of penalty along with penalty under Section 76 on the appellant. On appeal, vide the impugned order, the Commissioner (Appeals) set aside the original order and allowed the appeal by the respondent.

2. Aggrieved by the above order, the revenue is a appeal.

3. The Ld. AR, elaborating the grounds of appeal, submitted that the respondent have received scientific or technical service in terms of agreement and the performa invoice issued by **M/s Shandong Province Metallurgical Design Institute, China** for an amount of US D 3,50,000 has to suffer service tax at the hands of the respondent. He further submitted that the Commissioner (Appeals) erred in dropping the demand by relying on the submissions of the respondent regarding non-payment of any amount towards designs to the foreign supplier of equipments. It is his submission that the respondent failed to substantiate their claim of non-payment with supporting evidence.

4. The Ld. Counsel for the respondent submitted that the para 5.1 of the impugned order brings out the position clearly. The payment made by the

respondent is only for supply of equipments. The proforma invoice, which the Department is relying, was issued by **M/s Shandong Province Metallurgical and Engineering Company Ltd**. and the said invoice was not given effect. No payment was made for any design, charges to a foreign company and this aspect has been asserted by them before the lower authorities also. It is for the Revenue to establish that they did make payment and respondent could not establish non-payment of the said amount.

5. I have heard both the sides and perused the order.

6. The dispute is relating to liability of respondent for payment of the service tax on reverse charge basis. The liability of the respondent has to be specifically linked to a taxable service received by them from abroad. In the present case, the revenue contends that the respondent received taxable service in terms of the agreement, from **China**. The respondent refuted the charge stating that they have only imported equipments and paid money towards that import. The agreement for design was later amended and there was no payment, for other than the equipments, to their contracting parties in China. This aspect has been noted by the impugned order. In fact, the Commissioner (Appeals) advised the Revenue to verify any payments towards the disputed proforma invoice, to confirm the tax liability of the respondents. He instructed that the matter can be verified with RBI for any payment in foreign currency. I find no such verification was done. The

impugned order is challenged only on the ground that the agreement talks about design and engineering and there was a performa invoice. I find that this assertion alone is not sufficient to confirm the tax liability on reverse charge basis. First of all, the show cause notice itself is not specific about the amounts alleged to have been paid for receipt of taxable service by the respondent. Later, the specific proforma invoice was taken into account, which is issued after almost 4-5 years of the period which was under examination in the show cause notice also. I find no verification or follow up details were ascertained by the Revenue before the proceedings were initiated with the allegation of non-payment of service tax. The respondent categorically asserted that they did not make any payment to the Chinese supplier, for anything other than import of equipments. They are asserting that this is based on amended agreement. In the absence of evidence of actual payment towards taxable service, there can be no confirmation of tax liability against the respondent. Accordingly, I note that no case has been made out to challenge the findings recorded in the impugned order.

7. In view of the above discussions and analysis, there is no merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Order dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

Ckp.