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

ST Appeal No. ST/323/2012-[DB]
[Arising out of Order-In-Appeal No. 38-ST/PKJ/CCE/ADJ/2011 dated 08.12.2011 passed by CST-New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Airport Authority of India Ltd. ...Appellant

Vs.

C.C.E. & S.T. New Delhi …Respondent

Appearance:
Mr. Anil Kr. Kathuria, (Advocate) for the Appellant
Ms. Neha Garg (DR) for the Respondent

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

Date of Hearing/ Decision.24.05.2017

Final Order No. 53433 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 09.12.2011 passed by the Commissioner of Central Excise, New Delhi.

2. During the disputed period, the appellant had entered into the contract with M/s Raytheon for procuring various services for modernization of air traffic control in India. Since the service provider is a non-resident, the service tax liability was confirmed on the appellant under reverse charge mechanism. The period involved in this case is from 26.04.2003 to 25.04.2006.

3. The Ld. Advocate appearing for the appellant submits that the service received prior to 18.04.2006 will not be leviable to service tax under reverse charge mechanism, in view of the fact that Section 66A

was inserted by Finance Act, 2006 dated 18.04.2006 with effect from 01.05.2006. Thus, he submits that services received after 18.04.2006 will only be liable for payment of service tax under reverse charge mechanism.

4. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides and perused the case records.

6. We find that the adjudicating authority has confirmed the service tax demand of Rs. 73,28,335/- on the ground that the payment towards the taxable service was made by the appellant to the overseas service provider on 29.06.2006 which was after the date of insertion of Section 66A in the Act. To such findings of the adjudicating authority, the Ld. Advocate submits that date of making payment to the service provider is not the relevant factor to decide the leviability of service tax. He further, submits that since most of the services were provided by the service provider prior to 18.04.2006, the services provided before such date will not be subjected to levy of service tax. On going through the impugned order at page 18 (para 21.1), we find that the Ld. Adjudicating Authority has considered the date of payment to be the relevant date for computation of service tax liability. Since leviability of service tax is related to the provision of service, it is required to be ascertained when exactly the services were received by the appellant. Since this particular aspect has not been specifically addressed by the adjudicating authority, we are of the view that the matter should go back to the original authority for necessary verification of the date, when the services were received by the appellant.

7. Accordingly, after setting aside the impugned order, we allow the appeal by way of remand to the adjudicating authority for

ascertaining the period of receipt of service by the appellant and thereafter to decide the service tax liability. The appellant is at liberty to submit additional evidence, if any, in context with the case matter and the same should be considered by the adjudicating authority while adjudicating the matter afresh.

(Dictated and pronounced in the open court)

(V. Padmanabhan)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha