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

Service Tax Appeal No. ST/4147/2012-[DB]
[Arising out of Order-In-Original No. 78/AKM/CST/ADJ/2012 dated 28.09.2012 passed by CST, New Delhi]

M/s. Jindal Polyfilms Ltd. ...Appellant

Vs.

C.S.T. – Delhi …Respondent

Appearance:
Mr. Hit Chawla (CA) for the Appellant
Mr. Sanjay Jain (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.19.04.2017

Final Order No. 54784/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 28.09.2012 passed by the Commissioner (Adjudication), Service Tax, New Delhi.

2. Brief facts of the case are that the appellant is engaged in the manufacture of BOPP/BOPET films. During the disputed period, the appellant availed external commercial borrowing facilities in foreign exchange and paid certain fees/ charges to the overseas service provider. The department entertained the view that the appellant is liable to pay service tax on banking and other financial services as recipient of service under reverse charge mechanism. The SCN issued in this regard was adjudicated by the Ld. Commissioner of service tax vide the impugned order, wherein he has dropped the

demand of service tax in respect of services received by the appellant prior to 18.04.2006 and confirmed the demand for the period after insertion of Section 66A in the Finance Act, 1994, w.e.f. 18.04.2006. Besides, penalties were also imposed under Section 76, 77 and 78 ibid.

3. The Ld. Advocate appearing for the appellant submits that the service tax along with interest attributable to the taxable service was paid by the appellant on 11.06.2009 and thereafter, the SCN was issued on 21.10.2009. Thus, he submits that on deposit of the entire amount of service tax and interest, there was no requirement of issuance of any SCN in terms of sub-section (3) of Section 73 ibid and accordingly, the penalties imposed in the adjudication order are required to be set aside. He also prays for waiver of penalties in terms of Section 80 ibid.

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

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

6. We find that the entire amount of service tax alongwith interest was paid by the appellant before issuance of the SCN. The issue as to whether the recipient of the taxable service was required to pay service tax under reverse charge mechanism was highly contentious and the same was resolved in the year 2008 by the Hon'ble Bombay High Court in the case of Indian National Shipowners Association- 2009 (13) STR 235 (Bombay), holding that w.e.f. 18.04.2006, the recipient of service is liable to pay service tax under reverse charge mechanism. Since there were confusion with

regard to payment of service tax under reverse charge mechanism, it cannot be said that non-payment of tax within the stipulated time was due to suppression, fraud etc. on the part of the appellant to evade such payment. Further, the service tax and interest amount having been paid before initiation of show cause proceedings, there was no requirement of issuance of any SCN for imposition of the penalties in question. Thus, we are of the view that the benefit of Section 80 ibid can be extended in this case for non-imposition of penalties on the appellant.

7. Therefore, after setting aside the impugned order, we allow the appeal to the extent of imposition of penalties by the authorities below. The appeal is disposed of in above terms.

(Operative portion of the order pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha