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

Service Tax Appeal No. ST/53206/2014-[DB]
[Arising out of Order-In-Appeal No. IND/CEX/000/APP/071/2014 dated 28.02.2014 passed by Commr. (Indore)]

C.C.E. & S.T. Indore ...Appellant

Vs.

M/s. Cummins Technologies India Ltd. …Respondent

Appearance:
Mr. Sanjay Jain (DR) for the Appellant
Mr. Karan Sachdev (Advocate) for the Respondent

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

Date of Hearing/ Decision.21.04.2017

Final Order No. 55163 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 28.02.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax (Indore).

2. Brief facts of the case are that the appellant is engaged in the manufacture of turbo chargers and parts thereof. During the disputed period, the appellant had entered into an agreement with M/s Holset Engineering Co. Ltd., UK, for providing necessary technical assistance and technical knowhow for manufacturing various licensed products. As per the terms of the agreement, the appellant paid royalty amount to the overseas service provider and also discharged appropriate service tax liability thereon after availing the benefits provided under the Notification No. 17/2004-ST dated 10.09.2004.

The appellant is duly registered with the service tax department under the category of 'intellectual property services'. The department entertained the view that the benefit of Notification dated 10.09.2004 is not available to Respondent, as the same applies only to service provider and not to the service receiver, who pays the service tax as a recipient of service under reverse charge mechanism. Accordingly, the department initiated Show Cause proceedings against the respondent, seeking confirmation of the service tax demand. The matter was adjudicated vide order dated 04.01.2013, wherein the Ld. Adjudicating Authority has confirmed the service tax demand of Rs. 13,14,241/- along with interest and imposed penalties under Section 76 and 78 of the Finance Act, 1994. In appeal, the Ld. Commissioner (Appeals) has set aside the adjudication order and allowed the appeal in favour of the respondent.

3. The Ld. DR appearing for the Revenue reiterated the submission made in the grounds of appeal and further submitted that since the exemption in respect of the taxable service namely, 'intellectual property' right has been provided to the service provider, the same is not available to the respondent, who has discharged the service tax liability in the capacity of receiver of such service under Section 66 A *ibid.*

4. On the other hand, the Ld. Advocate appearing for the respondent submitted that since as per the deeming fiction provided under Section 66A *ibid* the Respondent had discharged the service tax under reverse charge mechanism, it has to be construed as the service provider and the provisions of Chapter V of the Finance Act should be applicable, including the exemption contained in the

Notification dated 10.09.2004 to the recipient of service. To support the stand that the respondent should be eligible for exemption Notification No. 17/2004-ST dated 10.09.2004, the Ld. Advocate has relied on the decision of this Tribunal in the case of United News of India vs CST New Delhi, Final Order No. 50320/2017 dated 04.01.2017.

5. Heard both the sides and perused the records.

6. Section 66 of the Finance Act, 1994 is the charging Section, which provides that in respect of taxable services mentioned therein, service tax shall be levied and collected in such manner as may be prescribed. Even for the import of service, the service tax has to be levied under Section 66 ibid. Since a deeming fiction was created in Rule 66A ibid, providing for payment of service tax by the recipient of service, such levy is in consonance with the charging provisions contained in Section 66 ibid. Thus, the provisions of Chapter V of the Finance Act should also be applicable in respect of the service tax paid under Section 66A ibid. In the present case, since the appellant is liable to pay service tax as a recipient of the taxable service, the provision of Section 66 ibid should also be applicable to it. In other words, upon fixing the responsibility for payment of service tax under reverse charge mechanism, no distinction can be placed between the service receiver and service provider for the purpose of Section 66 ibid. Therefore, we are of the view that the benefit of exemption Notification No. 17/04-ST dated 10.09.2004 should also be available to the respondent. We find that the Tribunal in the case of United News of India (supra) while interpreting the provisions of Section 66A ibid, has held that the benefit of the exemption should also be

available to the recipient of service. The relevant paragraph in the said order is extracted herein below:

> *"5. Heard both sides and perused the appeal records. The only dispute in the case is that the eligibility of the appellant for the exemption under Notification cited above as a recipient of service. A plain reading of Section 66A brings out the legal obligation of the recipient of service in certain situations. The said Section stipulates that taxable service shall be treated as if provided by the recipient of service in India and accordingly, all the provisions of Chapter V shall apply. We find that the tax liability is put on the appellant on such legal fiction. It is not legally tenable to hold that such legal fiction will have limited application only for payment of service tax and not with reference to any concession available to such service tax. No such implication can be read from the provisions of Section 66 A. Further, we also note that the conditions mentioned in the Notification 13/2010 have been fulfilled and there is no dispute on that score. When the provider of service is put to liability to discharge service tax as per provisions of Section 66 A all the provisions of Chapter V shall have full force for charge and collection of service tax. The exemption now claimed is part and parcel of the provisions of service tax as the Notification 4 ST/58841/2013-ST [DB] has been issued under the powers vested under Section 93 of the said Act. Section 68 (2) specifies the person to pay service tax as per the rate prescribed under Section 66. We note that Section 66A is applicable to all services which are specified under clause (105) of Section 65. However, no rates are specified. Considering the legal position as stipulated clearly in Section 66A, we find that the legal fiction cannot be restricted only to collection of tax without applying any concession of the notification applicable thereto when the conditions of the said Notifications are fulfilled by the recipient of such service. Accordingly, the finding in the impugned order on this issue is not sustainable. The appeal is allowed on this issue."*

7. In view of above, we do not find any infirmity in the impugned order passed by the Ld. Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is dismissed.

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

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

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

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