IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 25.09.2017

Appeal No. ST/39/2011-ST[SM]

(Arising out of Order-in-Appeal No. 320 (DKV) ST/JPR-I/2010 dated 27.08.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-I)

SPX India Pvt. Ltd — Appellant

Vs.

CCE Jaipur-I — Respondent

Appearance

Shri Alok Kothari, Advocate - for the appellant

Shri R.K. Mishra, DR - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

<u>Final Order No. 57012/2017</u>

<u>Per Ashok Jindal:</u>

1. The appellant is in appeal against the impugned order wherein the demand of service tax along with interest were confirmed and various penalties have been imposed on appellant under Finance Act, 1994.

2. The facts of the case are that the appellant is availing services from abroad and as per Section 66 of the Finance Act, 1994 during the impugned period the appellant was required to pay service tax under reverse charge mechanism as there was no charging section and the same was amended by introduction of Section 66A of Finance Act, 1994 w.e.f. 18/04/2006 the assessee is required to pay Service Tax under reverse charge mechanism if the services are

availed from a foreign service provider. The case against the appellant was as they were required to pay service tax under reverse charge mechanism from services received from abroad from the period 2004-2005 to 2006-2007 on the basis of audit objection the appellant was required to pay service tax which was paid by the appellant along with interest and same has been appropriated and penalty under Section 76 and 78 of the Finance Act has been imposed on the appellant. Aggrieved from the said order, the appellant is in appeal before me.

3. The Ld. Counsel for the appellant submits that as the amount of service tax along with interest has been paid by them, therefore, the proceedings were not required to be initiated against the appellant in terms of Section 73(3) of the Finance Act, 1994. Therefore, the impugned order imposing penalties is to be set aside. It is further submitted that as there was a dispute whether the assessee is required to pay service tax under reverse charge mechanism as per Section 66A of the Finance Act, 1994 was under challenge before the Hon'ble High Court of Bombay in the case of *Indian National Shipowners Association V/s Union of India* (13) STR 2009 235 (Bom. High Court) and the same was held that as per Section 66A of the Finance Act, the assessee is required to pay service tax under reverse charge mechanism w.e.f. 18/04/2006. In that circumstances for the period prior to 18/04/2006 the appellant is not required to pay service tax and for post 18/04/2006 as the appellant has paid service tax along with interest, no penalty is imposable on the appellant. Therefore, he submitted that the excess amount paid by them is to be refunded.

4. On the other hand, Ld DR reiterated the findings of impugned order.

5. Heard the parties and considered submissions.

6. I find that in this case dispute is with regard to services received from abroad on which whether the appellant was required to pay service tax under reverse charge mechanism for the period 2004-2005 to 2006-2007 or not. Admittedly, as per the decision of the Hon'ble High Court of Bombay in the case of *Indian National Shipowners Association* (supra) prior to 18/04/2006 appellant was not required to pay service tax, therefore, demand of service tax for the period prior to 18/04/2006 is set aside.

7. For the period post 18/04/2006 the demand of service tax is confirmed along with interest.

8. As issue of taxability of service was in dispute before the Hon'ble High Court of Bombay in the case of *Indian National Shipowners Association* (Supra), therefore, no penalty is imposable on the appellant.

9. With these terms appeal is disposed off by way of remand to recalculate the demand payable by the appellant as discussed above.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha