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

COURT-IV

Date of hearing/decision: 06.03.2018

ST/MISC/50076/2018
IN
Appeal No. ST/51742/2017- [DB]
[Arising out of the Order-in-Original No. DLI-SVTAX-003-COM-103-16-17 dated 20/06/2017 passed by the Commissioner of Central Excise and Service Tax-Delhi-III]

CCE, GST, Delhi-III …Appellant

Vs.

Satake India Engineering Pvt. Ltd. … Respondent

Appearance:
Present Shri Rajveer Singh, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

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

FINAL ORDER No. 51086/2018

Per S.K. Mohanty

1. Heard both sides.

2. The applicant has filed this application for early hearing of appeal, on the ground that the issue arising out the present dispute is no more *res integra* and is covered under various decision of the Tribunal. On perusal of the Miscellaneous Application together with the relied upon case laws, we find that this is a fit case, where early hearing can be granted. Accordingly, the application filed by the appellant is allowed.

3. Since the issue involved in this appeal stands in a narrow compass, with the consent of both the parties, we take up this appeal for final hearing and disposal.

4. In this case, the respondent had provided taxable service to its associate enterprises located in Japan. The appellant did not pay Service Tax on the taxable service provided by it under the category of Business Auxiliary Service. Accordingly, the Department initiated show

cause proceedings against the appellant. The Adjudicating Authority has dropped the proposals made in the show cause notice for confirmation of Service Tax demand, on the ground that export of service will not be taxable under Business Auxiliary service. In support of such findings, the Adjudicating Authority has referred to the decision of this Tribunal in the case of ***Paul merchants V/s Commissioner of CE, Chandigarh*** reported in ***2013(29) STR 257 (Tri-Del)***.

5. The grievance of the Revenue in this appeal is that feeling aggrieved with the said decision of the Tribunal, the Department has filed appeal before the Higher Appellate Forum. On a query from the Bench, as to whether, the order of the Tribunal in the case of **Paul merchants (supra)** has been stayed or over ruled by the Higher Appellate Authorities, the Ld. DR did not produce any positive evidence. In view of the fact that the issue arising out of the present dispute is squarely covered by the decision of the Tribunal and also upheld by the Hon'ble Delhi High Court in the case of ***Verizon Communication India Pvt. Ltd. V/s Assistant Commissioner, Service Tax, reported in 2017-TIOL-1863-DEL- ST*** and has also followed by the Tribunal in the case of ***SBI Cards and Payments Service P. Ltd. V.s CST Delhi*** in Appeal No. ST/801/ 2011 (Delhi) decided on 28/11/2017, we are of the view that the appeal filed by the Revenue cannot be sustained. Therefore, the appeal of the Revenue is dismissed.

[Order dictated and pronounced in the open court]

(V. Padmanabhan) **Member (Technical)**	**(S.K.Mohanty)** **Member (Judicial)**

Rekha