CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

Date of Hearing/Decision:22.11.2018

Service Tax Appeal No.941/2011-SM

[Arising out of Order-in-Original No.27/2011(CE)Commr. Dated 7.3.2011 of the Commissioner, Central Excise, Jaipur]

M/s.Paramount Communication Ltd. …Appellant
Rep. by Shri Bipin Garg, Advocate for the appellant.

Vs.

CCE, Jaipur ….Respondent
Rep. by Shri K.K. Podar, DR for the respondent.

CORAM **: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

Final Order No.53372/2018

PER ANIL CHOUDHARY:

The facts giving rise to this appeal is that the appellant is a manufacturer of wire & cables having their factory at Bhiwadi, Rajasthan, under the jurisdiction of the Commissioner of Central Excise, Jaipur-I. They have got their head office at New Delhi within the jurisdiction of the Commissionerate of Central Excise, Delhi-I.

2. The appellants have set up another unit at United Kingdom. For this purpose, the appellant required finance in the year 2006-2007 and they raised capital by issuing external commercial borrowing and foreign currency convertible bond (FCCB) and by offering share to procure subscribers for Global, Depository Receipt (GDR). The appellant received the services of Eloro Capital London, Foreign Bankers and other service provider, who are located outside India. The said finance was arranged outside India and received by the appellant outside India and the same was utilized in purchasing shares of AEI Cables Ltd.,

London and no part of the said finance was remitted and received in India.. So far as the charges for financial/banking service is concerned, part of the payment was made from the funds received outside India through the financiers and in four cases, the payment had been made through Indian Bank by way of remittance from India.

3. The appellant did not pay any service tax being under the belief that the service s have been received and consumed outside India. As such, they are not liable to pay service tax under the provisions of Section 66 A of the Finance Act under Reverse Charge Mechanism. Pursuant to the Audit in their factory office on 15.07.2018 and 19.07.2018, on the basis of the Annual Report for the financial year 2006-2007, the objection was raised that the service tax was required to be paid on the services received from foreign based providers with respect to the finance arranged as aforementioned. The appellant debited the amount of Rs.47,83,744/- as pointed out by the Audit on 22.09.2008. However, on advice of their Consultant that they are not liable to pay service, they re-credited the said amount in November, 2008. In subsequent audit dated 6.1.2009, the appellant was again required by the Department to reverse an amount of Rs.57, 09,199/- with respect to the aforementioned service received, under Reverse Charge Mechanism. in US Charge Mechanism. The appellant objecting to the audit objection further mentioned that the issue was earlier take up by DGCEI at Chennai and Mumbai, but after their reply to the notice, the matter was closed.

4. The show cause notice dated 25.09.2009 was issued to the appellant by the Central Excise Commissionerate at Jaipur, demanding service tax of Rs.57,09,199/- and also objecting to the reversal and/suo moto credit was taken of

Rs.47,83,744/- . Another show cause notice (for the same transaction) was issued by the Central Excise Commissioinerate, Delhi-I at the Head Office of the appellant dated 27.04.2010 demanding service tax of Rs.48,79,542/-.

5. In the impugned order-in-original passed by the Commissioner of Central Excise, Jaipur-I, the Commissioner has been pleased to drop the proceedings with respect to the demand of the service tax in view of the parallel show cause notice issued by the Addl. Commissioner of Service Tax, Delhi-I. However, the ld. Commissioner, Jaipur observed that the cause of action, being part of the show cause notice relating to the suo moto taking of the re-credit of Rs.47,87,744/- survives for adjudication and accordingly, he held that the said suo moto credit is bad and ordered for recovery of the same and further imposed penalty of Rs.50,000/- under Rule 5(1) of CCR, 2004.

6. Sofar as the show cause notice issued by the Service Tax Commissionerate, Delhi-I is concerned, the said issue came up before the Division Bench of this Tribunal in ST Appeal No.60498 of 2013. Vide Final Order No.52925/2018 dated 10.09.2018, the Division Bench has held that the appellant is liable to pay service tax under the Reverse Charge Mechanism. The relevant operative paragraph – 5 and 6 are given hereinbelow for ready reference:-

> "5. We have heard both the sides and have perused the record of appeal. It is a matter of record that the appellant assessee have availed services of certain foreign based agencies for receiving external foreign commercial borrowings (ECB) from abroad. It is also a matter of fact that during 2006 to 2007, certain payments in the form of commission have been paid by the appellant assessee to the service provider in foreign exchange. It has not been denied by the appellant that services received by them are classifiable under

the category of Banking and Financial Services as provided under section 65 (105) (zm). We find that as per the provisions of Section 66A of the Finance Act, 1994 read with Rule 3 of Taxation of Services (provided from Outside India and received in India) Rules, 2006, the ST/60498/2013 5 recipient of services of above mentioned category needs to discharge their service tax liability as if such services have been performed in India. It is categorically been provided that even if a part of borrowings have been used abroad for the business purposes, the facts remain that recipient of services is based in India and therefore, as per the provisions Section 66A of Finance Act, 1994 read with relevant rules, the appellant assessee should have discharged their service tax liability in India, on the amount of commission paid by them as the value of services received by them from abroad. Thus, we hold that appellant assessee are legally liable to pay service tax on the service of foreign institutions availed in getting their ECBs. 6. Coming to the second question whether the demand is barred by limitation, in view of the fact that there was certain correspondence with the department in 2007 and as the show cause notice has been issued in April, 2010 by Central Excise & Service tax Commissionerate, Jaipur. In this regard, it is a matter of fact that the assessee is individually registered with various Commissionerates of Central Excise and Service tax and every Commissionerate / Directorate perform its designated function with the mandate given by Government of India to them within their respective jurisdictions. And more often than not, they are not concerned with the activities undertaken by other Commissionerate or Directorates. In view of this, we are of view that it cannot be inferred that since a particular ST/60498/2013 6 office of a specific jurisdiction came to know of certain facts and therefore, the office where cause of action actually rests, has also became aware about the whole issue. As per the provisions of law, the appellant should have discharged their service tax liability in time after the law became very clear on

> enactment of Section 66A of Finance Act, 1994. Since the noticee is already registered with the Central Excise department and is also regularly filing his Excise and Service tax returns, they cannot plead ignorance about the provisions of reverse charge mechanism for payment of service tax on the services received from abroad. We do not subscribe to the arguments of the appellant that because they have written certain letters, only because of that extended time proviso is not invokable in their case. So far as the show cause notice pertains to Jaipur II Commissionerate, it had apparently been dropped saying that "the activity in question was enacted at Delhi and for which the concerned Commissionerate has already issued Show cause notice and therefore, the show cause notice issued for same period on same issue for Bhiwadi Unit has been withdrawn. This fact, in our opinion goes against the argument of appellant that even after coming to know that service tax is apparently payable by them on the services availed by them from abroad, however, they chose not to take any proactive steps in discharging their service tax liability. The Section 68 of Finance Act casts a responsibility on the service ST/60498/2013 7 provider to pay service tax. In this case, even when the assessee has become aware that in July, 2007 itself that there may be certain legal issues regarding service tax liability on the services availed by them from abroad, however, we find that they have not stirred themselves to final take certain conclusive steps, in making compliance of service tax law. We find that there are valid grounds with the department to invoke the extended time proviso under Section 73(1) of Finance Act, 1994.

7. The issue before me is whether the part of the cause of action, with regard to suo moto re-credit taken by the appellant and the show cause notice issued by the Jaipur Commissionerate survives, in the facts and circumstances.

8. The ld. Counsel for the appellant states that no part of the activity is related to the Jaipur Commissionerate as the Head Office of the appellant is located at

New Delhi. The service in question taken from the service provider located outside India is received outside India and utilized outside India. Further, in view of the show cause notice issued by the Delhi Commissionerate, which has got jurisdiction on the Head Office of the appellant, the show cause notice of the Jaipur Commissionerate be held not maintainable and accordingly, the appeal may be allowed.

9. On the other hand, ld. AR appearing for Revenue has argued that taking of suo moto credit of already debited amount for discharge of service tax pursuant to the audit objection, is bad and against the Scheme & the Provisions of the Act & Rules.

10. As the said reversal was found recorded in the books of accounts maintained at their factory office at Bhiwadi and also shown in their returns filed with the Jaipur Commissionerate, the adjudication done by the Jaipur Commissionerate, vide its show cause notice objecting to the suo moto credit survives and does not merge with the show cause notice issued by Delhi Commissionerate, and the final order of this Tribunal, hereinabove mentioned.

11. Having considered the rival contentions, I find that neither the transaction is relating to the Bhiwadi Unit nor there were any account of said transaction maintained in the books of accounts maintained at Bhiwadi factory office. The Audit objection was raised on the basis of the annual accounts or report, a copy of which was available at the Bhiwadi Unit and the said audit objection was raised as per the balance sheet and Director' report, etc. Further, the provisions of Central Excise and Service Tax Act & Rules thereunder do not provide for multiplicity of the proceedings. I hold that the ld. Commissioner has rightly

dropped the demand and erred in upholding the part of the show cause notice and also erred in objecting the part of the show cause notice relating to the suo moto taking of the re-credit by the appellant. In this view of the matter, I set aside the order of the Commissioner, Jaipur and hold that the issue does not survive in part. Accordingly, this appeal is allowed for statistical purposes only as the main issue having been held against the appellant/assessee by the Division Bench of this Tribunal.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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