CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No. ST/987/2010
(Arising out of Order-in-Appeal No.15/2010 (H-II) S.Tax dated 11.02.2010 passed by CCCE & ST, Hyderabad - II)

Gland Pharma Ltd ….. Appellant(s)

Vs.

CCCE & ST, Hyderabad - II ….. Respondent(s)

Appearance
Shri K.V.R. Krishna Prasad, Advocate for the Appellant.
Shri Dass Thavanam, Superintendent/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 03.10.2018
Date of Decision: 03.10.2018

FINAL ORDER No. A/31266/2018

[Order per: M.V.Ravindran.]

1. This appeal is directed against the Order-in-Appeal No. 15/2010 (H-II) S.Tax dated 11.02.2010.

2. Heard both sides and perused the records.

3. The issue involved in this case is regarding the demand of service tax from the appellant under reverse charge mechanism under the category of "Business auxiliary service", "advertisement" & "management consultant". Both the lower authorities have upheld the demands along with interest and penalties.

4. It is seen from the records that demand is raised in the show cause notice dated 27.05.2009 on the amounts paid by the appellant to various individuals situated abroad. The demands were raised for the amounts paid from April, 2004, but the adjudicating authority confirmed the demands for the

period 01.01.2005 to 31.03.2008. The law on demand on service tax under reverse charge mechanism is well settled by the judgment of the Hon'ble High Court of Bombay in the case of Indian National Ship Owners Association [2009 (13) STR 235 (Bom.)] which has been upheld by the Supreme Court. The CBEC, vide Instruction No. 276/8/2009-CX.8A, dated 26.09.2011 has accepted that review petitions from the appeal filed by the Government have been dismissed and specifically stated that demand on service tax under reverse charge mechanism as per Sec.66A of the Finance Act, 1994 would arise from 18.04.2006 only. In view of this, the demands raised in the case in hand up to 18.04.2006 are unsustainable and liable to be set aside and so also the amount of interest and penalty.

5. As regards the amounts post 18.04.2006, we do find that appellant had discharged the entire service tax liability and interest thereof, prior to the issuance of show cause notice. On this point also the law is settled by the Hon'ble High Court of Karnataka in the case of Adecco Flexione India Pvt Ltd and various other decisions wherein it has been held that once the amount of service tax liability and interest thereof is paid before the issuance of show cause notice, provisions of Sec. 73(3) of the Finance Act, 1994 will come into play and penalty should not be imposed on the assessee. Respectfully following the same, we hold that the demand of service tax liability with interest, post 18.04.2006 is upheld but penalty imposed is set aside.

6. The appeal is allowed as indicated herein above with consequential relief, if any.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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