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

| Appeal No. | Appellant | Respondent | Impugned Order No. & Date |
|---|---|---|---|
| ST/303/2009 | CCCE&ST, Hyderabad-I | Parker Markwel Industries Pvt. Ltd. | O-I-O No. *01/2009 (ST)-Commr. Dated 19.01.2009 passed by CCCE, Hyderabad-I Commi-ssionerate* |
| ST/420/2009 | Parker Markwel Industries | CCCE&ST, Hyderabad-I | .do. |

**Appearance**
Shri B. Venugopal, Advocate for the Appellant Assessee.

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

**Coram:**
**Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)**

**Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing: 02.01.2019
Date of Decision: 16.01.2019

FINAL ORDER No. A/ 30051 – 30052/2019

[Order per: Mr. M.V. Ravindran)

1. These two appeals are filed by Revenue as well as assessee against the same Order-in-Original No. *01/2009 (ST)-Commr. Dated 19.01.2009.*

2. The relevant facts that arise for consideration are on gathering intelligence that there was escapement of tax in th functioning of M/s Parker Markwel Industries, the premises were visited by the officers and after

recording various statements, came to the conclusion that the assessee appellant herein has not discharged the service tax liability on the services received from abroad in respect of Management Consultancy Services and also on the job work undertaken by them in respect of their own export oriented unit in the form of collection of testing, inspection and extraction charges. To come to such a conclusion, the authorities found that there was accounting adjustment taking place between EOU and the DTA unit. On conclusion of the investigation, a show cause notice dated 04.01.2008 was issued to the appellant assessee for the demand of service tax along with interest, for the period 2004-05 to 2006-07 by invoking the extended period. Appellant assessee, inter-alia, contested the matter on merits as well as on limitation. The adjudicating authority, after following due process of law, set aside the demands raised on job work charges but confirmed the demands raised on Management Consultancy Services, Export Sales Commission and GTA services. The assessee filed this appeal against that portion of the order which is against him in Appeal no. ST/420/2009 while Revenue is in appeal against that portion of the order which has dropped the demands.

3. Ld. Counsel after taking the bench through the case records submits that as regards the demand of Goods Transport Agency, the question is that appellant used the CENVAT Credit for discharge of GTA services and the tax liability which according to Revenue, is incorrect. It is his submission that as regards the tax on GTA services prior to 18.04.2006,

utilisation of CENVAT Credit for discharge of service tax liability was accepted and is a settled law. Post 18.04.2006, he submits that they are discharging the service tax liability with the authorities through CENVAT Credits and hence Department was aware of the fact, accordingly extended period cannot be invoked, for such demand. It is his further submission that as regards the Management Consultancy Services and Export Sales Commission, these amounts which were paid by the appellant to individuals situated abroad and the tax are to be demanded from appellant under Reverse Charge Mechanism. It is his further submission that under reverse charge mechanism, the tax liability arises only from 18.04.2006 when the provisions of Section 66A were brought into the Finance Act. It is the submission that this law is settled by the judgment of Hon'ble High Court of Bombay in the case of Indian National Ship Owners Associates as reported at [2008-TIOL-633-HC-MUM-ST] and upheld by the Apex Court as reported at [2010 (17) S.T.R. J57 (SC)]. As regards the period post 18.04.2006, he would submit that in respect of Management Consultancy Services and Export Sales Commission, both services are for self consumption and hence on the concept of revenue neutrality, demand should not have been raised. He submits that this law is also settled by the decision of the Tribunal in the case of Jet Airways India Limited vs. CST [2016(44)S.T.R. 465 (Tri.-Mumbai) and upheld by Hon'ble Supreme Court as reported at [2017(7)G.S.T.L. 135 (S.C.)]. It is his further submission that the demands may be set aside.

4. As regards the appeal filed by Revenue, it is his submission that the Revenue's appeal is against the activity undertaken by the appellant for their own unit. It is his further submission that the demand of the Revenue is that there is a transaction between DTA and EOU which is totally incorrect inasmuch the entire operations of the appellant (DTA to EOU) is under one name i.e. Parker Markwel Industries. Hence, there is no service rendered by DTA unit to any other person, it is a self service. For this proposition, he relies upon the decision of Hon'ble High Court of Gujarat in the case of Commissioner vs. Larsen & Toubro Ltd. [2016(44)S.T.R. 391 (Guj.)] and Tribunal's decision in the case of Precot Mills Limited vs. CCE, Tirupati [2006(2)S.T.R. 495 (Tri.-Bang.)] and Indian Oil Corporation vs. CCE, Patna [2007(8)S.T.R. 527 (Tri.-Kolkata)] and CCE Hyderabad vs. Universal Travels [20109(18)S.T.R. 157 (Tri.-Bang.)].

5. Ld. DR while opposing the submissions made by Ld. Counsel submits that service tax liability on the GTA services being discharged under reverse charge mechanism has to be paid by the appellant assese herein through PLA and he cannot utilise the CENVAT Credit available with him to discharge such tax liability. He says that this has been the view of the Revenue and fortified BY adding explanation to the definition of GTA services and the output services. It is his submission that accordingly service tax paid by the appellant assessee through CENVAT Credit account is incorrect. As regards the service tax liability under reverse charge mechanism, for Management Consultancy Services and Export Sales

Commission, he would submit that the appellant assessee has accepted that they have received the services and made payments to the entities situated abroad. If that be so, service tax under reverse charge mechanism applies from 01.01.2005.

6. As regards Revenue's appeal, it is his submission that the goods transferred from DTA Unit to EOU for further activity and receiving back is recorded in the accounts of DTA unit, as well as EOU unit, as a transaction of sale. It is his submission that the Tribunal in the case of Modern Food Industries (India) Limited as reported at [1988 (37) ELT 294 (Tribunal)] has laid down that transfer of goods to sister concern by book adjustment would also tantamount to sale transaction. It is his further submission that if this is sale transaction and the services rendered by GTA are in the form of various services, tax liability arises though it is recorded as job charges.

7. We have considered the submissions made at length by both sides and perused the records.

8. On perusal of records, we find that both sides are not disputing the facts as recorded herein above, are accepted by both sides being correct.

9. As regards the service tax liability on GTA services for the period in question, we find that the appellant has accepted the liability and discharged the same through CENVAT Credit available to him in the

records. It is also undisputed that the returns were filed by the appellant with the authorities indicate such debits made towards service tax liability on GTA services. As was the law during the relevant period i.e. upto 18.04.2006, service tax liability on GTA services needs to be discharged by the service recipient. A clarity as to whether the said service tax has to be discharged by debit in CENVAT Credit account or by cash was made by an explanation inserted on 18.04.2006. We find that Ld. Counsel for the appellant assessee was correct in stating that the issue on this point is now well settled i.e. an assessee can use the available CENVAT Credit for discharge of service tax liability on Goods Transport Agency under reverse charge mechanism upto 18.04.2006. This being the law, we find that the demands raised against the appellant on this point are unsustainable upto 18.04.2006 on merits itself. As regards the amount of tax liability post 18.04.2006, which the appellant assessee should have paid through PLA or cash, we do find that appellant has been keeping the department informed about the discharge of tax liability in their returns. It cannot be said that appellant had suppressed or misstated any information or evaded tax. Having debited the amount in CENVAT Credit, the intention of the assessee is very clear that he wanted to discharge the service tax. This being the factual position, we hold that the demand of service tax liability under GTA services post 18.04.2006 is hit by limitation.

10. As regards the service tax liability on Management Consultancy Services and Export Sales Commission, there is no dispute as to the fact

that these services were rendered by entities situated abroad. It is a well settled law that prior to 18.04.2006, no service tax liability arises on the recipient of services in India as provisions of Section 66A were brought into statute w.e.f. 18.4.2006. In view of this, the demands raised on the appellant for the period pre 18.04.2006 is unsustainable and liable to be set aside. For the demand of the tax liability post 18.4.2006, it is seen from the records that appellant is a manufacturer of various excisable products and have availed the expert knowledge of Management Consultancy and paid export sales commission to various agents for marketing their goods abroad. These two services are directly related to the manufacture and clearance of the products, hence appellant can avail the CENVAT Credit of the service tax paid on these services, even under reverse charge mechanism. If that be so, we find strong force in the contentions raised by the appellant's Counsel and there would be no intention to evade the service tax on this post 18.04.2006. He was right in bringing to the knowledge of the Bench that this particular issue as to there cannot be any intention to evade the tax when CENVAT Credit is available, is settled by the Tribunal in the case of Jet Airways (supra) and upheld by Hon'ble Apex Court as reported herein above. Accordingly, the demand of service tax liability for the period post 18.4.2006, we hold that it is hit by limitation but at the same time we hold that the demand for service tax liability if any within the period of limitation from the date of issuance of show cause notice is liable to be discharged with interest and appellant is liable to avail the credit of tax amount. Since the issue involved in this case was purely of interpretation, we hold that no penalty is leviable on appellant.

11. As regards the appeal filed by Revenue, we find that there is no dispute as to the fact that the DTA unit and EOU unit are situated within the same premises and functioning under the name style of "Parker Markwel Industries". It is also undisputed that the records/balance sheet of the appellant assessee clearly indicate that the transactions of DTA and EOU are reflected under one balance sheet. If that be so, any activity undertaken between DTA and EOU units cannot be considered as services rendered to any outsider, in fact it would amount to self service. We find that the adjudicating authority was correct in coming to such a conclusion and we do not find any reason to interfere in reasoned findings given by him to drop the demands raised on this account. In short, Revenue's appeal is devoid of merits and stands rejected.

12. In sum, assessee's appeal is allowed as indicated herein above and Revenue's appeal stands rejected.

***(Pronounced in open court on 16.01.2019)***

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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