CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

APPEAL No. ST/496/2011

(Arising out of **Order-in-Original** No. 6/2009-ST (Commr.), dated 30.12.2009 passed by CCCE&ST, Hyderabad-IV Commissionerate)

INDIAN IMMUNOLOGICALS LIMITED	..	APPELLANT
	Vs	
CCCE&ST, Hyderabad-IV	..	RESPONDENT

Appearance

Ms. Swetha, Consultant for the appellant

Shri P.S. Reddy, Dy. Commissioner/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: 17.01.2019

Date of Decision: 17.01.2019

FINAL ORDER No. A/30106/2019

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

1. This appeal is directed against Order-in-Original No. 6/2009-ST (Commr.), dated 30.12.2009.

2. The relevant facts that arise for consideration are appellant herein is a wholly owned subsidiary of National Dairy Development Board engaged in the manufacture of veterinary vaccines and animal health products and also vaccines for human health. Appellant, besides selling their products in India, also sells them in foreign markets. In order to capture foreign markets, they engaged services of consultants in those countries to help them to comply with the statutory requirements related to the products marketing there. On receiving such consultancy, appellant paid consultancy charges to them. Revenue authorities are of the view that the payment made by appellant to the consultants situated abroad during the period 1.7.2003 to 31.03.2008 is liable to be taxed under reverse charge mechanism. Coming to such a conclusion, a show cause notice was issued for the demand of service tax and interest and also for imposing penalties.

3. Adjudicating authority, after considering the contentions raised by the appellant, did not agree and after following due process of law, confirmed the demands so raised.

4. Ld. Counsel submits that the period involved in this case can be split into two i.e. for the period prior to 18.04.2006 on the date when Section 66A of the Finance Act, 2006 came into statute and post 18.04.2006, wherein the tax liability is to be discharged by the recipient of the services. It is his submission that the issue as to period pre 18.04.2006 was settled by the judgment of Hon’ble High Court of Bombay in the case of Indian

National Ship Owners' Association vs. Union of India [2009(14)S.T.R. 289 (Bom.)] and she submits that it has been upheld by Apex Court. As regards the tax liability post 18.04.2006, it is her submission that they have paid the tax liability during the proceedings and have paid the interest as has been sought by the Bench and produces copy of the challan. It is her submission that the penalty imposed may be set aside as the entire issue of taxability under reverse charge mechanism was settled by Hon'ble High Court of Bombay in 2009 and the period involved in this case is more or less the same as it was during the relevant period. It is also her submission that the appellant being a Government Company, would not have any intention to evade the service tax and the service tax which is paid under reverse charge mechanism is eligible to be availed as CENVAT Credit as it is used for clearance of the final products.

5. Ld. DR reiterates the findings of the lower authorities. At the same time, he brings to the notice of the Bench that the appellant herein initially denied of engaging any consultants abroad, subsequently confirmed the same in another letter which indicates that they intend to hide something in order not to pay service tax liability.

6. After considering the submissions made, we find that service tax liability demanded for the relevant period in this case is on the commission paid to an entity situated in abroad for the consultancy received in respect of the products to be and manufactured and cleared by the appellant.

Undoubtedly the tax under reverse charge mechanism holding that appellant, though being recipient of services, is liable to pay tax.

7. We find that prior to 18.04.2006, the law is now clearly settled, that no service tax liability arises on the assessee under reverse charge mechanism for the payments made to foreign entities who render services to assessee. Following the ratio of the law settled by the judgment in the case of Indian National Ship Owners' Association (supra), we hold that service tax liability, interest thereof and penalties imposed for the payments made to foreign consultants prior to 18.04.2006 is not sustainable and liable to be set aside and we do so.

8. As regards the service tax liability post 18.04.2006, we find that the provisions of Section 66A of the Finance Act, 1994 are very clear and unambiguous in the case in hand, post 18.04.2006 the service tax liability needs to be discharged by the appellant as per the provisions of law. We do find that appellant had discharged the tax liability and on our direction, has also discharged the interest on 14.01.2019. We uphold the tax confirmation along with interest. As regards the penalty on this point, we do find that appellant being a Government undertaking, would have been under the bonafide impression that tax liability may not arise. It is also to be noted that during the period in question, the law was in a flux situation, inasmuch as various litigations were pending before various Courts and the matter was settled by Hon'ble High Court of Bombay and Apex Court in 2009. On this point itself, appellant has made out a case for setting aside

of the penalties. By invoking the provisions of Section 80 of the Finance Act, 1994, we set aside the penalties imposed.

9. Appeal stands disposed of as indicated herein above.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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