CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench - Court No. – I

Service Tax Appeal No 3133 of 2011

(Arising out of **Order-in-Appeal** No.26/2011 (T) ST, dated 06.09.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

Imperial Granites Pvt Ltd., .. **APPELLANT**
Velavadi (Village), Nagari,
Chittoor District,
Andhra Pradesh – 517 590.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Central Excise & Service Tax
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota,
Guntur, A.P.-520 004.

Appearance
Shri G. Prahlad, Advocate for the Appellant.
Shri Mir Anwar Mohiuddin, Assistant Commissioner for the Respondent.

Coram: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE Mr. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER No. A/30639/2019

Date of Hearing:18.09.2019
Date of Decision:18.09.2019

[Order per: P.V. SUBBA RAO]

1. The appellant herein is a 100% EOU engaged in manufacture and export of granite slabs and tiles. They are also registered with the service tax department for payment of service tax under GTA services. The department has found out that the appellant had engaged foreign commission agents in order to procure business for them. According to the Revenue promotion on marketing or sale of goods produced or provided by or belonging to a client is classifiable as "business auxiliary service" under Section 65 (19) of the Finance Act, 1994 and therefore it is chargeable to service tax. In this case, since the appellant had received these services from their oversees service provider, under Section 66A they were liable to pay service tax on the commission under reverse charge mechanism.

Accordingly, a show cause notice was issued to the appellant demanding service tax of Rs. 70,806 along with interest under Section 75 of the Finance Act 1994. It was also proposed to impose penalties under Section 78 and 77 of the Finance Act, 1994. After following due process, the Original Authority, confirmed the demand and interest and imposed equivalent amount of penalty under Section 78 and a penalty of Rs. 20,000 under Section 77 of the Finance Act, 1994.

2. Aggrieved, the appellant appealed with the First Appellate Authority, who, by the impugned order, upheld the order-in-original in toto and rejected the appeal. Hence this appeal.

3. Learned Counsel for the appellant submits that although they have contested the demand service tax in their appeal, he is not pressing for the same and he only prays for waiver of penalty imposed under Section 77 and 78 of the Finance Act, 1994.

4. Learned DR supports the impugned order and the findings of the lower authorities and asserts that both the demand and the penalties need to be upheld.

5. We have considered the rival contentions. We find that prima facie, the nature of service rendered by the foreign agent is that of promotion and marketing of the appellant's goods which appear to fall under the category of "business auxiliary services". In terms of Section 66A of the Finance Act, 1994 the appellant was liable to pay service tax under reverse charge mechanism being the recipient of the service. We further find that if the appellant had paid the service tax he could have availed cenvat credit of the same. They are already registered with the service tax department and could have used that cenvat credit for payment of service tax. Being a 100% EOU, if they are unable to utilise cenvat credit they could have applied for refund of unutilised cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. We therefore find that non-payment of service tax in this case was possibly due to a reasonable error or misunderstanding and there is no likely to be a motive to evade as they would not profit from such evasion.

6. In view of the above, invoking the provisions of Section 80, we set aside the penalty under Section 77 and 78 of the Finance Act, 1994 imposed by the impugned order.

7. The appeal is partly allowed to the extent of setting aside the penalties imposed under Section 77 and 78 of the Finance Act, 1994.

(Operative part of this order was pronounced in court
On conclusion of the hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

Jaya