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

Division Bench - Court – I

SERVICE TAX APPEAL No. 30053 OF 2017

(*Arising out of Order-in-Original No. HYD-EXCUS-004-COM-035-16-17, dated 28.09.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)*

OMICS ONLINE PUBLISHING PVT. LTD. .. **APPELLANT**
Building No. 20, Floor No. 9, Office No. 1,
Survey No. 64, Raheja IT Park, Mindspace,
Madhapur,
HYDERABAD – 500 081.

Vs.

Commissioner of Central Tax, .. **RESPONDENT**
Ranga Reddy GST **Commissionerate,**
Posnett Bhavan,
Tilak Road, Ramkote,
HYDERABAD – 500 001.

AND

SERVICE TAX APPEAL No. 30054 OF 2017

(*Arising out of Order-in-Original No. HYD-EXCUS-004-COM-035-16-17, dated 28.09.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)*

G.V. Ramana Murthy .. **APPELLANT**
Building No. 20, Floor No. 9, Office No. 1,
Survey No. 64,
Unit in Sundew Properties Pvt. Ltd.
Raheja IT Park, Mindspace, Madhapur,
HYDERABAD – 500 081.

Vs.

Commissioner of Central Tax, .. **RESPONDENT**
Ranga Reddy GST **Commissionerate,**
Posnett Bhavan,
Tilak Road, Ramkote,
HYDERABAD – 500 001.

APPEARANCE:
Shri P. Rosi Reddy, Advocate for the appellant.
Shri V.R. Pavan Kumar, Superintendent/AR for the respondent

CORAM: HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30863-30864/2020

DATE OF HEARING: 21.01.2020
DATE OF DECISION: 21.01.2020

[ORDER PER: P. VENKATA SUBBA RAO)

1. These two appeals are filed against the same impugned order and hence are being disposed together. Appeal No. ST/30053/2017 has been filed by the appellant assessee while the appeal No. ST/30054/2017 has been filed by Shri G.V. Ramana Murthy, Director of the appellant firm against the personal penalty imposed upon him.

2. Heard both sides and perused the records.

3. The appellants are engaged in providing assistance in online publishing and are conducting conferences for their clients. They are registered as service providers under the categories of "Business Auxiliary Service" and "Online Data Access and Retrieval Services." On receiving intelligence that the appellants were engaged in providing taxable services from 2010-11 onwards, Revenue requisitioned relevant details from the appellant, recorded statements of the concerned persons, completed the investigation and issued a show cause notice on 16.10.2015 to both the appellants demanding service tax amounting to Rs. 4,60,14,452/- under the head "Business Support Service" invoking the proviso to Section 73 (1) of the Finance Act, 1994. Service tax of Rs. 1,46,88,259/- was demanded under the head of "Event Management Service" , Rs. 56,759/- under the head "Legal Services", Rs. 4,450/- under the head "Security Service" and Rs. 349/- under the head "Renting of cab service". On all these amounts, interest was also demanded under section 75 and penalty was proposed to be imposed upon them under section 77 for not obtaining registration within the specified period, under section 78 for suppression of facts with an intent to evade payment of service tax. It was further proposed to recover late fee under section 70 of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994 for not filing the returns. As far as Shri G. Ramana Murthy is concerned, it was proposed to impose a penalty upon him under section 78A of the Finance Act, 1994. Another show cause notice was issued on 15.04.2016 demanding service tax of Rs. 3,85,39,571/-

under the head "Business Auxiliary Services", Rs. 2,07,52,077/- under the category of "Event Management Service", Rs. 50,690/- under the category of "Legal Service" and Rs. 54,428/- under the category of "Security Service" along with interest. Imposition of penalty was also proposed upon the appellant.

4. After following due process, the Ld. Adjudicating authority, by the impugned order, confirmed demands under both show cause notices as proposed except to the extent of demand under "Rent a Cab Service" as proposed in the show cause notice dated 15.04.2016. He also imposed penalties upon the appellant under sections 76, 77 & 78 of the Finance Act, 1994. He also ordered recovery of late fee under section 70. Further, he also imposed a penalty of Rs. 1.00 lakh on Shri G. Ramana Murthy, Managing Director of the appellant firm.

5. Ld. Counsel for the appellant would submit that they were rendering service to M/s Omics publishing group, Hyderabad until mid 2011. He would submit that they do not dispute the tax liability up to this date. Thereafter, Omics publishing group, Hyderabad has been merged with M/s Omics Group Inc., USA and therefore the services post November 2011 were provided to M/s Omics Group Inc., USA, an overseas client. He would, therefore, submit that after November 2011, the services rendered by them were in the nature of export of services and therefore are not chargeable to service tax. However, during the personal hearing before Ld. Adjudicating authority, they were not able to provide requisite documents demonstrating realisation of foreign exchange for verification and computation of tax liability, interest and penalty for the entire period. Therefore, the Ld. Commissioner in the impugned order has confirmed the demands for the entire period as per the show cause notices.

6. Ld. Counsel further submit that now they are in a position to produce all documents necessary to prove that the services during the period post November 2011 were rendered to an overseas client and consideration for these services has been received in the form of convertible foreign exchange.

7. Ld. DR supports the impugned order.

8. We have considered the arguments on both sides and perused the records. The appellant is not disputing the demand of service tax up to November 2011 as the services were rendered to a client based in Hyderabad and consideration for these services was received in Indian Rupees. They are only disputing the services rendered post November 2011 on the ground that the services were rendered to a foreign company and the receipts were in foreign currency. They now claim to have documents to show that remittances in respect of all these services were received by them in fully convertible foreign currency. He fairly admits that they were not able to produce these documents before the adjudicating authority. We, therefore, are of the view that the Ld. Adjudicating authority must have an opportunity to consider all the evidence which the appellant now claims to possess and determine the service tax liability and penalties if any. We, therefore, remand the matter to the adjudicating authority without passing any remarks on the merits of the case, with a direction to give the appellant reasonable opportunity for being heard and presenting documents in their support. After considering such documents, the Ld. Adjudicating authority may pass a reasoned order, re-determining the service tax liability and penalties, if any.

9. The appeal is allowed by way of remand to the adjudicating authority.

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

(Dr. D.M. MISRA)
(MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg