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

Division Bench
Court – I

Service Tax Appeal No. 620 of 2012
(Arising out of OIO No.22/2011-Adjn (ST) Commr dated 01.12.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Hetero Drugs Ltd.
Industrial Estate, Sanath Nagar,
Hyderabad – 500 018
......Appellant

VERSUS

Commissioner of Central Tax
Hyderabad - II
LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004
......Respondent

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri M. Anukathir Surya, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30338/2023

Date of Hearing: 12.10.2023
Date of Decision: 12.10.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The issue involved in this Appeal is whether the Appellant has been rightly denied the benefit of closure under Sec 73(3) of the Finance Act and further, whether penalty under Sec 77 & 78 has been rightly imposed.

3. The brief facts are that the Appellant is manufacturer of drugs and are registered with the Service Tax department for the purpose of providing output services viz., Scientific or Technical Consultancy service, Business Auxiliary Service, etc. The Appellant is also registered as Input Service Distributor as the Appellant have got more than one manufacturing units.

4. During verification of the accounts of the assessee at their registered office at Sanath Nagar, Hyderabad, by the officers of the Internal Audit of the Department, it was observed that the assessee had received certain Taxable service providers, on which apparently, Service Tax was not paid. The Assessee

is a manufacturer of bulk drugs and had engaged foreign agencies for promotion of their product sales, for which payments were made in foreign currency.

5. Under Sec 66A, which was introduced w.e.f 18.04.2006, Service Tax under reverse charge basis was made applicable. Prior to 18.04.2006, service tax under reverse charge was admitted to be imposed by Revenue through Rule 2(1)(d)(iv) of Service Tax Rules. However, the same was held to be ultra vires by the Hon'ble Bombay High Court in the case of International Shipping Services, which was subsequently confirmed by the Hon'ble Supreme Court. Thereafter, Sec 66A was brought on statute by way of amendment providing for levy on reverse charge basis. SCN dated 23.04.2010 was issued pursuant to audit alleging suppression and invoking extended period of limitation, demanding service tax of Rs.1,11,21,187/- along with interest and further penalty was proposed under Sec 77 & 78 of the Act.

6. Prior to issue of SCN, the Appellant had admitted the liability to payment of service tax under reverse charge basis and had also paid the same along with interest vide different challans which have also been mentioned in the SCN, informing vide letter dated 15.04.2010 to the Adjudicating Authority that they have deposited the tax with interest. However, there is small balance remaining of Rs.9,46,471/-, which they were ready to deposit within 3 to 4 days, in view of the weekend. The Appellant also prayed that the matter be closed under Sec 73(3), as they are not disputing and have paid the amount with interest. However, SCN was issued, wherein, there is proposal to appropriate almost matching amount of tax already paid. SCN was adjudicated on contest and the truncated amount of Rs.99,62,570/-, as reduced by the demand for the period prior to 18.04.2006, was also appropriated from the deposits made prior to issue of SCN. Further, penalty was imposed under Sec 77 – Rs.10,000/- and under Sec 78 – Rs.99,62,570/-. Being aggrieved, the Appellant is before this Tribunal.

7. Learned Counsel for the Appellant prays that the benefit of closure was arbitrarily denied by the Revenue. There is no case of suppression as the transaction is duly recorded in the books of accounts. There is no incentive to evade or not pay tax under reverse charge basis and the same occurred due to lack of communication or error in accounts between Accounts department and Tax department. Further, as the Cenvat credit is available to them for the tax

paid under reverse charge, there is no incentive to evade. Accordingly, he prays for allowing the Appeal with consequential benefits.

8. Learned AR for Revenue relies on the Impugned Order and further states that Appellant should have been vigilant in making tax compliance. In spite of Sec 66A being introduced w.e.f 18.04.2006, Appellant appears to have been careless in making tax compliance. It is further alleged that for closure under Sec 73(1A), the Appellant was required to further pay 25% of the service tax as penalty for closure, as there is case of wilful suppression under the facts and circumstances.

9. Having considered the rival contentions, we find that admittedly, transaction has been duly recorded in books of accounts maintained in the normal course of business. Further, as the Cenvat credit of the tax paid under reverse charge mechanism is available to the Appellant, as they are manufacturing dutiable goods as well as rendering dutiable services, there is no incentive to evade. Further, admittedly, Appellant had paid the tax with interest as pointed out by the audit without disputing the same and have even paid the tax for the period even prior to 18.04.2006, which on the face of it is not payable.

10. In view of the aforementioned findings and observations, we allow the Appeal and hold that Appellant was entitled for closure of dispute relating to the demand, under Sec 73(3) of the Act. We further set aside the penalties imposed. Accordingly, Appeal is allowed and the Impugned Order is set aside.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda