IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No. ST/75866/2017

Arising out of Order-in-Appeal No. 33/ST/HAL/2017 dated 31.01.2017 passed by the Commissioner of Central Excise & Service Tax (Appeal-I), Kolkata.

M/s RDB Rasayans Limited

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Haldia

…RESPONDENT (S)

APPEARANCE
Shri Bidhan Neogi, Employee for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (A.R.) for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

Date of hearing/Decision:-15.01.2018

Order No.FO/A/75192/2018

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of PP Woven Sacks, Fabrics, Liner etc. classifiable under Chapter 39 of the First Schedule to the Central Excise Tariff Act, 1985, which is cleared for home consumption and export. A Show Cause Notice dated 03.07.2012 was issued alleging that in the course of their business, they incurred expenditure to the tune of Rs.5,90,462.77 as foreign bank charges during the period 2007-08 and failed to discharge the Service Tax on the said amount for import of service under the category "Banking and Financial Services" under Reverse Charge Mechanism. The Adjudicating authority dropped the demand.

2. The Revenue filed appeal before the Commissioner (Appeals). By the impugned Order the Commissioner (Appeals) confirmed the demand of Service Tax of Rs.56,808/- along with interest and imposed penalty, Hence, the appellant filed this appeal.

3. Heard both the sides and perused the appeal records.

4. I find from the Adjudication Order that the bills in respect of the said amount were raised by the Indian Bank. Hence, the Adjudicating authority observed that the financial services were provided by the Indian Bank from India and therefore question of liability of payment of Service Tax under the category of "Banking and Financial Services" by the appellant does not arise. On the other hand, the Commissioner (Appeals) in his Order reproduced the copy of the Bank charges (foreign) ledger account provided by the appellant. It is observed by the Commissioner (Appeals) that the appellant has failed to produce any evidence that the amount paid to M/s. JBT Junbotainer Verpse Kumgs Gmbh are Indian and/or are of the Indian origin. The appellant contended that the Commissioner (Appeals) has taken a short

payment as the value of the foreign bank charges and did not consider the documents issued by the Indian Bank.

5. In my considered view, the Adjudicating authority should have examined the documents relied upon by the Commissioner (Appeals) in the interest of justice.

6. In view of the above, the impugned Order is set aside and the matter is remanded to Adjudicating authority for deciding afresh after considering the submissions of the appellant and to pass the Order in accordance with law. The appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open court.)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

T.K.