IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/229/2010

(Arising out of Order-in-Original No. 53/Commr/ST/Kol/2009-10 dated 29/03/2010 passed by Commissioner of Service Tax, Kolkata.)

M/s. Philips Carbon Black Ltd. Appellant (s)
Vs.

Commissioner of Service Tax, Kolkata Respondent (s)

Appeal No. ST/240/2010

Commissioner of Service Tax, Kolkata Appellant (s)
Vs.

M/s. Philips Carbon Black Ltd. Respondent (s)

Appearance
Shri Rahul Dhanuka, CA for the Appellant
Shri D. Haldar A. C. (A.R.) for the Revenue
CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-27.11.2018
ORDER NO. FO/77003-77004/2018

Per Bench

The present cross appeals are against the Order in-Original No. 53/Commr/ST/Kol/2009-10 dated 29/03/2010.

2. The assessee is a manufacture of Carbon Black, having their manufacturing facility at Durgapur. During the period 2005 to September 2008, the appellant availed External Commercial Borrowing (ECB) from outside India in order to meet their capital requirement. For the purpose of availing ECB, the assessee approached the ICICI Bank Ltd. (Hong Kong Branch) through their Head Office at Mumbai. The service charge payable to the Bank in foreign currency was

deducted by the Bank out of the funds raised. Revenue took the view that the asseesee was liable to make payment of Service Tax on Reverse Charge Basis under the Category of "Banking and Financial Services" on such service charge paid.

2. The DGCEI initiated an enquiry into the affairs in the year December 2008 which resulted in the issue of Show Cause Notice dated 17/02/2009. However, on becoming aware of Service Tax liability, the assessee discharged the entire Service Tax liability along with applicable interest by means of challans before the issue of the Show Cause Notice. The SCN was adjudicated with the issue of the impugned order in which the Adjudicating Authority appropriated the Service Tax and amount paid towards the Service Tax dues. In addition, he also ordered payment of penalty under Section 78 of the Finance Act, 1994. The order is challenged by assessee in the present proceedings. The Revenue has also challenged portion of the impugned order in which the Adjudicating Authority has refrained from imposition of penalty under Section 76.

3. In this connection, we heard Shri Rahul Dhanuka, CA as well as Shri D. Haldar, Ld. DR representing the Revenue.

4. The Ld. CA submitted that the assessee is not disputing the liability of Service Tax, which has also been paid along with applicable interest. However, he submitted that no penalty is liable to be paid by the appellant either under Section 76 or 78, since the payment of

Service Tax as well as interest has been made before the issue of the Show Cause Notice.

5. Ld. DR justified the grounds of appeal.

6. As per the facts of the case, the assessee resorted to External Commercial Borrowing to meet their business needs. For such borrowing, Service Charges were paid in foreign currency to ICICI Bank, Hong Kong Branch. Under Reverse Charge Basis, the assessee will be liable for making payment of Service Tax under the category of "Banking and Financial Service". The liability for Service Tax has not been disputed by the asseessee. We note that the entire Service Tax due along with applicable interest has also been paid even before the issue of Show Cause Notice. In terms of the provisions of Section 73 (3) where Service Tax has been levied or paid, the person chargeable with the Service Tax may pay the amount of such Service Tax chargeable on the basis of their own assessment or on the basis of Tax ascertained by the Central officer. The Sub section makes it clear that once the tax is paid there will be no need to issue notice under Section 73. Accordingly, there was no need to issue SCN in this case.

7. We have also considered carefully the decisions cited on behalf of the assessee. The Tribunal in the said decisions has taken the view that the entire exercise is revenue neutral because in case, the Service Tax is paid the same will be available to the same assessee, by way of Cenvat Credit.

8. In view of the above discussions, we find no reason to impose penalty on the assessee. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is rejected.

(Dictated and Pronounced in the Open Court)

Sd/-	Sd/-
(P. K. CHOUDHARY)	**(V. PADMANABHAN)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

Pooja