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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76728 of 2016

(Arising out of Order-in-Appeal No.160/ST-I/KOL/2016 dated 19.07.2016 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Ludlow Jute & Specialities Ltd.
6, Little Russel Street, 4th Floor,
Kolkata-700071

Applicant (s)

VERSUS

CST-I, Kolkata
25, Princep Street, 3rd Floor, Kolkata-700072

Respondent (s)

APPERANCE :

Shri Anirban Ghosh, Advocate for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.76547/2019

DATE OF HEARING : 22.07.2019

DATE OF PRONOUNCEMENT : 14.11.2019

PER P.K.CHOUDHARY :

The instant appeal has been filed by the assessee, M/s Ludlow Jute & Specialities Ltd, against demand of service tax of Rs. 9,89,709/- alongwith interest and penalty, for the period June 2005 to March 2009 confirmed by the Ld. Addl. Commissioner, Service Tax, Kolkata vide adjudication order dated 03.11.2011 which has been further upheld by the Ld. Commissioner (Appeals), Kolkata, vide Order-in-Appeal dated 19.07.2016, against which the assessee is in appeal before us.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture and export of jute products outside India. For the purpose of obtaining export orders, the appellant is incurring

commission amount for payment to the selling agents located outside India which is liable to service tax under the category of Business Auxiliary Services. Enquiry was initiated by the Department with regard to non-payment of service tax under reverse charge mechanism on commission amount paid by the appellant to the service provider located outside India. The appellant upon receipt of the communication from the Department deposited the entire service tax amount alongwith interest and pleaded ignorance about the liability/applicability of service tax on commission amount paid outside India. Show Cause Notice dated 27.09.2010 (SCN) was issued and the demand of service tax was confirmed alongwith interest and penalty vide adjudication order dated 03.11.2011. The service tax amount already paid by the appellant before the issuance of SCN was appropriated in the adjudication order which has been upheld by the Ld. Commissioner (Appeals), Kolkata.

3. Sri Anirban Ghosh, Advocate appeared for the appellant and Sri S. Mukhopadhyay, Supdt, appeared for the Revenue.

4. The Ld. Advocate appearing for the appellant submitted that the demanded service tax was initially not paid as they were not aware of their tax liability on commission amount paid to service provider outside India. He submitted that the foreign remittances made outside India towards commission amount is duly recorded in the books and therefore there is no reason to suppress the same form the department. He further submitted that as soon they became aware about their liability to pay service tax under reverse charge mechanism on the said foreign remittances, they deposited the entire service tax and applicable interest and accordingly informed the department about the said payment of tax liability. He also submitted that in any case, the service tax amount was available as input service credit and / or refund since the same has been used in procuring of the export orders and that the goods have been exported outside India. He pleaded that since service tax stood deposited well before the issue of SCN, penalty be waived considering the applicability of principle of revenue neutrality in the absence of wilful suppression or fraud. He further submitted that it is a settled legal position that when tax remains unpaid, the same cannot be attributed merely on account of fraud or suppression with intent to

evade payment of service tax. He relied on the decision of the Hon'ble Andhra Pradesh High Court in the case of CCE Visakhapatnam vs. Tirupathi Fuels Pvt Ltd 2017 (7) GSTL 142 (A.P) wherein penalty has been held to be not imposable when service tax and interest have been paid before the issuance of SCN.

5. The Ld. Departmental Representative submitted that the service tax was paid only after the enquiry was initiated by the Department. Had the enquiry not been made by the department, the non payment of tax would have remained unearthed. He accordingly submitted that penalty has been rightly imposed and prayed that the appeal filed by the assessee be rejected.

6. Heard both sides and perused the appeal records.

7. We find that in the instant case, the applicability of service tax on commission amount paid to the service provider located outside India is not in dispute. The assessee has already deposited the service tax with applicable interest well before the issue of SCN. It is their submission that they did not have any intent to wilfully evade payment of service tax and that the tax amount was initially not paid out of ignorance.

In our view, the levy of service tax on services received from outside India was a new concept and the same was made applicable only w.e.f. April 2006. There was an ignorance on the part of the assessees regarding the service tax liability on import of services from outside India. The appellant herein immediately discharged payment of service tax on being pointed out without disputing the tax liability. The co-ordinate Bench of Ahmedabad in Sterlite Telelink Ltd. vs. CCE Vapi 2014 (312) ELT 353 (Tri-Ahm.) has observed that though ignorance of law cannot be pleaded as a valid ground, yet it is not sufficient alone to prove wilful suppression.

We agree with the submissions made by the Ld. Advocate that service tax amount if paid would have been available as credit or refund since the same has been used in making export of goods and the situation would have been revenue neutral. The Hon'ble Supreme Court in Nirlon Ltd vs. CCE, Mumbai 2015 (320) ELT 22 (SC) has held that there cannot be willful suppression in the case of revenue neutral situations. Moreover, since the service tax amount with interest have already been paid before the issue of SCN, in our view, there is no justification to impose penalty and the appellant is entitled to waiver of same in view of the dispensation provided in Section 80 of the Finance Act, 1994. The Tribunal in case of Ipca Laboratories Ltd vs. CCE Mumbai 2019 (21) GSTL 502 (Tri-Mum) has set aside the penalty imposed on the assessee under Section 76 and 78 invoking the provisions of Section 80 considering the reasonable cause for non-payment of service tax on import of services from outside India.

8. In view of the above discussions, the penalty amount imposed in the impugned order is set aside. The appeal is partially allowed in the above terms.

(Pronounced in the open court on 14.11.2019)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(P.V.SUBBA RAO)
Member (Technical)

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