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

Service Tax Appeal No.220 of 2009

(Arising out of Order-in-Original No.03/Commr./ST/Kol/2009-10 dated 15.06.2009 passed by Commr. of Service Tax, Kolkata)

CST, Kolkata
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Applicant

VERSUS

M/s ITC Ltd.
37, J.L.Nehru Road, Kolkata-700071

Respondent

Appearance:

Shri K.Chowdhury, Authorized Representative for the Appellant
Shri J.P.Khaitan, Sr.Advocate for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

FINAL ORDER NO...76927/2019

DATE OF HEARING : 09.08.2019
DATE OF DECISION : 09.08.2019

PER P.K.CHOUDHARY :

The instant appeal is preferred by the Revenue against Order-in-Original No.03/Commr./ST/Kol/2009-10 dated 15.06.2009, dropping the proceeding initiated under show-cause notice dated 04.04.2008. The period in dispute is from October,2002 to 18.04.2006 and from 18.04.2006 to 31.03.2007. In the review order dated 12.09.2010, it is observed that the appeal is directed against dropping of the demand only on respect of following claims :

Service Tax Appeal No.220/09

Sl.No.	Category under which claimed	Amount pertaining to period prior to April 18,2006 (Rs.)	Amount pertaining to period prior from April 18,2006 (Rs.)
1.	Management Consultancy Service	14,64,607/-	-
2.	Courier Service	26,11,265/-	-
3.	Advertising Service	70,83,862/	37,47,412/-
4.	Reimbursement of Expenses	3,84,435/-	-
		Total : 1,15,44,169/-	**37,47,412/-**

2. Heard both sides and perused the appeal records.

3. We find that in so far as the amount of Rs.1,15,44,169/- pertaining to the period prior to April,18, 2006 is concerned, it is now well settled that the reverse charge mechanism became effective only from 18.04.2006, when Section 66A was enacted and inserted in the Finance Act, 1994. The Hon'ble Bomay High Court in Indian National Shipowners Association Vs. Union of India : 2009 (13) STR 235 (Bom.), which was followed by the Hon'ble Delhi High Court in Unitech Ltd. Vs. Commissioner of Service Tax, Delhi : 2009 (15) STR 385 and by the Hon'ble Punjab & Haryana High Court in the case of CCEx., Ludhiana Vs. Bhandari Hosiery Exports Ltd. : 2010 (18) STR 713. The Board has also issued Instruction F.No.276/8/2009-CX.8A dated 26.09.2011 accepting that the reverse charge mechanism became effective from 18.04.2006. In such a scenario, it is not necessary to go into the question as to whether the payments aggregating to Rs.1,15,44,169/-, were on account of any service or taxable service. The Revenue cannot argue in respect of the aforesaid amount on the ground that no proceeding can be initiated claiming service tax on reverse charge basis for the period prior to 18.04.2006, when Section 66A of the Finance Act, 1994, was enacted and the reverse charge mechanism became effective.

4. The remaining amount for the period from 18.04.2006 is Rs.37,47,412/- in respect of which tax was demanded under the category of "Advertising Agency Service". The Commissioner in his

order dated 15.06.2009 at internal page 10, paragraph-16, observed that the respondent exported its goods to foreign customers, who in turn traded the goods and distributed free samples to different parties for the purposes of marketing. The foreign buyers raised debit notes in respect of the cost of the free samples, which was reimbursed by the respondent. The Commissioner has analyzed the provisions of the Finance Act, 1994 relating to taxation of "Advertising Agency Service" and held that reimbursement of cost of free samples, was not taxable under the said category. It would appear from the grounds (iii) of appeal that the Revenue now seeks to tax the amount under "Business Auxiliary Service" upon the basis that the non-resident was the agent of the respondent and distributed the samples in order to promote the product.

5. It has been argued by the Ld.Sr.Advocate, Shri J.P.Khaitan, appearing on behalf of the respondent-assessee that the Revenue has sought to change the classification from "Advertising Agency Service" to "Business Auxiliary Service". Not only that, the change of classification, is based on the new factual allegation that the non-residents were the respondent's agent. No such case on facts was made out in the show-cause notice. We find that the respondent sold its goods to overseas customers, who paid the full value of the invoices. The overseas customers provided some of the goods free to their customers as samples and raised debit notes upon the respondents for reimbursement of such free samples. Such reimbursement by the respondent in effect amounted to providing discount to the customers, who had already paid for the goods purchased from the respondents. It is vehemently argued by the Ld.Sr.Advocate that no service tax can be levied/charged, on the discount, allowed to the customers, who had purchased the respondent's goods. We find that the overseas customers merely sold the goods purchased from the respondent and gave free samples to their customers as part of their selling effort. The overseas customers

did not thereby render any service to the respondent and the question of any consideration for any service does not arise. The overseas customers only sought reimbursement of the cost of the goods provided free to their customers. It is now well settled law, in view of the decision of the Hon'ble Supreme Court in the case of Union of India Vs. International Consultants and Technocrats Pvt. Ltd. : 2018 (10) GSTL 401 (SC) that prior to 14.05.2015, the service tax was not payable in respect of reimbursements. In the present case, the period involved is 2006-07.

6. In view of the above discussions, we do not find any reason to interfere with the impugned order and accordingly, the same is sustained.

7. In the result, the appeal filed by the Revenue is rejected.

(Operative part of the order was pronounced in the open court)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Bijay Kumar)
Member (Technical)

mm