# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## WEST ZONAL BENCH AT MUMBAI
## COURT No. I

### APPEAL No. ST/86355/2015

(Arising out of Order-in-Appeal No. 01/COMMR.(WLH)/LTU-M/ST/2015 dated 9.4.2015 passed by Commissioner of Central Excise, Mumbai-I)

**Glen Mark Pharmaceuticals Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise & ST, Mumbai** **Respondent**

Appearance:

Shri R.M. Patkar, Consultant, for appellant
Shri M.K. Sarangi, Additional Commissioner (AR), for respondent

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**
**Hon'ble Mr. Raju, Member (Technical)**

Date of Hearing: 18.4.2018
Date of Decision: 08.5.2018

ORDER No. **A/86301/2018**

Per: Ramesh Nair

The facts of the case are that the appellant has received services from International Regulatory Authorities of various countries like FDA of USA, TGA of Australia etc. to obtain approval/certification. The authorities sent their teams to the Indian Pharma Manufacturers for certification of Good Manufacturing Process, which include testing of raw materials, process of manufacture, feasibilities etc. to confirm the safety norms. Then only, the approval of the same is given. All these services fall under the category of technical inspection and certification and technical testing and analysis services received during the period 1.10.2003 to 31.3.2007. The appellant was issued show cause notice proposing demand of service tax under reverse charge mechanism. The adjudicating authority has confirmed the demand.

2. Shri R.M. Patkar, learned Consultant appearing on behalf of the appellant, submits that all the services were received from abroad for the period 2003 to 2007. In the case of *Indian National Shipowners Association vs. UOI – 2009 (13) STR 235 (Bom.)*, which was upheld by Hon'ble Supreme Court reported as *UOI vs. Indian National Shipowners Association – 2010 (17) STR J57 (SC)*, the service tax on the receipt of foreign services under reverse charge mechanism is payable only from 18.4.2006 after the enactment of Section 66A of the Finance Act, 1994. He submits that the service tax liability for the period 18.4.2006 onwards has been discharged by the appellant along with interest much before the issuance of show cause notice. Therefore, the penalty is also not imposable.

3. Shri M.K. Sarangi, learned Additional Commissioner (AR) appearing on behalf of the Revenue, reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides. We find that the service tax on the reverse charge basis from receipt of invoices from abroad has become taxable only with effect from 18.4.2006 when Section 66A of the Finance Act, 1994 was enacted. This has been decided by the Hon'ble Bombay High Court in the case of *Indian National Shipowners Association* (supra) and the same was upheld by the Hon'ble Supreme Court. Accordingly, the demand pertaining to the period upto 18.4.2006 is set aside. As regards the demand of service tax after 18.4.2006, the same is not disputed by the appellant. Accordingly, the service tax along with interest for the said period was deposited. The appellant is only contesting the penalty imposed under Section 78. In this regard, we find that the issue of taxability of service provided from abroad was highly debatable issue and finally it was settled by the Hon'ble Supreme Court in 2009 which was reported in 2010. Therefore, till that time the issue was under litigation. Therefore, it cannot be said that the appellant had any *mala fide* intention to evade the service tax. It is also noted that the appellant has discharged the service tax for the period after 18.4.2006 along with interest much before the issuance of show cause notice. Therefore, the appellant has made sufficient cause for non-payment of service tax in time. Accordingly, they are not liable for penalty under Section 78. We, therefore, set aside the penalty imposed under Section 78 and also set aside the

demand of service tax for the period from 1.10.2003 to 18.4.2006. Appeal is partly allowed in the above terms.

(Pronounced in court on 8.5.2018)

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| **(Raju)** | **(Ramesh Nair)** |
| **Member (Technical)** | **Member (Judicial)** |

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