IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87990/2017

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/212/ 17-18 dated 09/08/2017passed by the Commissioner of GST & Central Excise (Appeals), Nagpur.]

Commissioner of GST & Central Excise
Nagpur …*Appellant*

versus

Malu Electrodes Pvt. Ltd. ***…Respondent***

Appearance:

Shri D. Shinde, Assistant Commissioner (AR) for appellant

None for respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 20/03/2018
Date of decision: 20/03/2018

<u>ORDER NO: A/86110 / 2018</u>

This appeal is directed against Order-in-Appeal No: NGP/EXCUS/000/APPL/212/ 17-18 dated 09/08/2017passed by the Commissioner of GST & Central Excise (Appeals), Nagpur.

2. None appeared on behalf of respondent despite notice. On perusal of the records it transpires that the issue lies in a very narrow compass. Accordingly, the appeal is taken up for disposal even in the absence of any representation from the respondent.

3. Heard the Learned Authorised Representative.

4. It is his submission that Revenue is aggrieved by the order on the ground that the first appellate authority has reversed the order-in-original that confirms the tax liability on the respondent. It is his submission that as per the Notification No. 30/2012-ST dated 20/06/2012 it is the duty cast upon the recipient for discharge of service tax liability under reverse charge mechanism for the services received for 'manpower supply agency services' and the tax liability has to be on the 75%of the value of the services rendered. It is his submission that the respondent has not discharged the same and the tax liability needs to be fastened on them along with interest and penalty.

5. On careful consideration of the submissions made, I find that the first appellate authority in the impugned order has in paragraph 28 and 30 categorically recorded the finding which is reproduced.

> "28. Whereas, the appellant has submitted that the Man

Power Supply Agencies had paid service tax on 100% of the gross amount charged and hence the entire amount of service tax leviable was paid to the credit of the Central Government. The Appellant had reimbursed them the total amount of gross amount charged for the service + the amount of service tax paid by them. As such recovery of service tax again from the Appellant would amount to double taxation, which is not considered by the lower authority. The appellant have also cited judgments of various higher forums in their support as mentioned in their appeal.

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30. Thus, it is observed that during the period from 01-07-2012 to 01-11-2012, though the liability to discharge Service tax on 75% of the value of Manpower Services received was lying on the appellant, the same was already paid by the service providers and hence demanding the same from the appellant again would tantamount to double taxation which is not permissible in view of the law settled by the Hon'ble Apex Court as mentioned above. I also observe that the Reverse charge mechanism was just introduced from 01.07.2012 and it did take some time for the appellants as well as their vendors to take note of the same and understand this new form of levy. Therefore the instant demand of Service tax as per Annexure-A of the instant SCN appears to be not sustainable. Since the basic demand does not sustain there shall be no question of interest and penalty under Section 78 ibid. However, it is observed that in the entire chain of events, there is a definite violation of legal provisions in this regard during the said period. Accordingly penalty imposed by the lower authority under Section 77 ibid

is being kept intact."

6. Thus, the above said factual findings of the first appellate authority that the service providers have discharged the entire service tax due for the services provided is not controverted by Revenue in the grounds of appeal in any form. In the absence of any evidence to controvert the factual finding that the amount of service tax due to the Government is discharged by the service providers, I have no hesitation to hold that the impugned order is correct and legal, and does not require any interference.

7. The impugned order is upheld and the appeal stands rejected.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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