

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.**

Appeal No. ST/89440/2014

(Arising out of Order-in-Original No.
185/MAK/(185)COMMR/RGD/2013-14 dt.28.02.2014 passed by
the Commissioner of Central Excise, Raigad)

M/s. Zenith Birla (India) Ltd. : Appellant

VS

Commissioner of Central Excise, Raigad : Respondent

Appearance

Shri H.G. Dharmadhikari, Advocate for Appellant

Shri M.P. Damle, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of hearing : 13/12/2018

Date of decision : 13/12/2018

ORDER NO. A/88182/2018

Per : Dr. D.M. Misra

This is an appeal filed against Order-in-Original No.
185/MAK/(185)COMMR/RGD/2013-14 dt.28.02.2014 passed by
the Commissioner of Central Excise, Raigad.

2. Briefly stated the facts of the case are that during the relevant
period i.e. 2007-08 to 2011-12, the appellant had incurred
expenditure in foreign currency, relating to Commission, Interest,

Bank Charges and Other Misc. cheque amounting to Rs.589.24 lakhs as reflected in the respective balance sheet. Show cause notice was issued to them alleging non-payment of service tax of Rs. 2,60,35,000/- under reverse charge mechanism in accordance with Section 66A of the Finance Act, 1994 and proposed recovery of the same with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the Ld. Advocate Shri H.G. Dharmadhikari for the appellant has submitted that during the relevant period 2007-08 to 2011-12, the accounts of Foreign Commission Agents were maintained on accrual basis and not on actual receipt basis. It is his contention that similarly in the case of expenditure in foreign currency towards bank charges, it is equivalent to interest charges on the finance provided by foreign banks and the said bank charges were deducted by the foreign bank while remitting the export consideration to the overseas buyers. He submits that the detailed remittance made and the reasons thereof could not be substantiated by filing a proper reply to the show cause notice as their factory was under lockout. He submits that since now they could able to collect the relevant documents, therefore, they are in a position to file a proper reply to the allegation in the show cause notice. He prays that the matter may be remanded to the adjudicating authority.

4. Ld. AR for the Revenue has no objection.

5. Heard both sides and perused the records.

6. We find that in response to the show cause notice dt. 22.10.2012. The appellant could not file a proper reply narrating their defense to the allegation leveled in the show cause notice. The reason for non-filing of reply as submitted by the appellant was due to lock out of their factory. Now the appellant filed a Chartered Accountant Certificate making out a prima facie case that the amount alleged in the show cause notice is not correct. In these circumstances, we are of the view that the appellant be provided an opportunity to submit their reply to the show cause notice. Consequently, the impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority. All issues are kept open. Appeal is allowed by way of remand. The Ld. Advocate undertakes to co-operate and file their reply within six weeks from the date of communication of the order.

(Operative portion of the order pronounced in court)

(C.J. Mathew)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

SM.