CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86604 OF 2015

[Arising out of Order-in-Original No:7/PR.COMMR(WLH)/LTU-M/S.TAX/ 2015 dated 21st May 2015 passed by the Principal Commissioner of Central Excise & Service Tax (LTU), Mumbai.]

Sonata Information Technology Ltd
APA Trust Building, 1st Floor, Bull Temple Road
NR Colony, Bangalore – 560019 … ***Appellant***

versus

Principal Commissioner of Central Excise & Service Tax
Large Tax Payer Unit
29th Floor, World Trade Centre, Cuff Parade
Mumbai - 400005 …***Respondent***

APPEARANCE:

Shri KS Ravishankar with Shri Anand N, Advocates for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87644 / 2019

DATE OF HEARING: 19/11/2019
DATE OF DECISION: 19/11/2019

PER: C J MATHEW

This appeal arises from confirmation of demand of ₹ 4,74,70,902 under section 73 of Finance Act, 1994, along with interest of ₹ 8,33,425 under section 75 of Finance Act, 1994, besides imposition of penalty of ₹ 4,74,70,902 under section 78 of Finance Act, 1994 in order in-original no. 7/PR. COMMR (W LH)/LTU-M/S. TAX/2015 dated 21st May 2015. The appellant was held as liable to pay tax, under section 66 A of Finance Act, 1994, on the consideration for procurement of 'information technology software service' in January 2012 and in February 2012. It would appear that the notice issued to the appellant computed tax liability of ₹11,59,70,902 of which ₹ 6,50,00,000 was deposited and the remaining ₹5,09,70,902 was discharged by debit of CENVAT credit account. Acknowledging the delayed discharge of the former by 25 days on 30th March 2012, the appellant herein also paid interest of ₹ 8,33,425 by 28th December 2012.

2. Learned Counsel for appellant submits that the issue has been settled by the decision of the Tribunal in *Kansara Modler Ltd v. Commissioner of Central Excise, Jaipur-II [2013 (32) STR 209 (Tri-Del)]* that was upheld by the Hon'ble High Court of Rajasthan in *Union of India v. Kansara Modler Ltd [2018 (15) GSTL 255 (Raj)]* and the special leave petition of Revenue was dismissed by the Hon'ble Supreme Court. It is further submitted that the Hon'ble High Court of Bombay had, in *Commissioner of CGST & Central Excise, Belapur v. GTL Infrastructure Limited [2019 (29) GSTL 650 (Bom)]*, dismissed the appeals of Revenue on the same issue against the order of the

Tribunal upholding the correctness of debit of CENVAT credit account for discharge of such liability.

3. Learned Authorized Representative drew our attention to F no. B 1/4/2006-TRU dated 19th April 2006 issued by Government of India in Department of Revenue which, at paragraph no. 4.2.13, clarified that such services procured from abroad were not to be treated as taxable service for the purpose of CENVAT Credit Rules, 2004. He drew attention to the contents of section 66A of Finance Act, 1994 and the definitions in CENVAT Credit Rules as well as rule 3(4) of CENVAT Credit Rules, 2004.

4. In *re Kansara Modler Ltd*, it was held by the Tribunal that

> *'6. If we read Rule 2(q) of Cenvat Credit Rules with Rule 2(1)(d)(iv), we find that appellant is a person liable to Service Tax. Once appellant is person liable to service tax, he becomes provider of taxable service under Rule 2(r) and consequently becomes output service provider under Rule 2(p) of the Cenvat Credit Rules. Revenue is also relying on Rule 5 of Taxation of Services (Provided from Outside India and Received in India) Rules. We find that Rule 5 refers to availing of Cenvat credit and not to utilization of credit. We are therefore of the view that the finding of the Commissioner not treating the appellant as output service provider, is not correct and accordingly we set aside the impugned order and allow the appeal.'*

5. The Hon'ble High Court of Bombay, in *re GTL Infrastructure Limited*, has held that

'5. On being asked, Mr. Dwivedi appearing for the Revenue states that the decision of the Mumbai Bench of the Tribunal on the same issue in HDFC Standard Life Insurance Co. Ltd. - 2014-TIOL-1405- CESTAT-Mumbai and Aquapharma Chemicals Private Limited - 2015-TIOL-2776-CESTAT-Mumbai, holding in favour of the respondent have been accepted by the Revenue. This for the reason that it has not been challenged before this Court. Thus, on the above ground itself this appeal is liable to be dismissed as there is no justification pointed out in filing this appeal against the impugned order when the same has been accepted earlier by the Revenue.

6. In any case, the issue now stands concluded against the Revenue by the decisions of the Gujarat High Court in the case of Commissioner of C. Ex. & Customs v. Panchmahal Steel Ltd. - 2015 (37) S.T.R. 965 Punjab and Haryana High Court in the case of Commissioner of C. Ex., Chandigarh v. Nahar Industrial Enterprises Ltd. - 2012 (25) S.T.R. 129 and Delhi High Court in the case of Commissioner of Service Tax v. Hero Honda Motors Ltd. - 2013 (29) S.T.R. 358.

7. The only distinction which Mr. Dwivedi, for the Revenue seeks to make in respect of the above decisions is that the above cases were concerned with discharge of service tax liability on reverse charge basis in respect of GTA service. In this case, it is discharge of tax liability on services received from foreign bank. In this case also, the respondents discharge the tax liability on reverse charge basis under Section 66A of the Finance Act, 1994. Thus, this distinction sought to be made out is not a distinction to hold otherwise in the present facts. Thus, as the issue stands concluded by the above decisions, the questions as proposed do not give rise to any substantial question of law. Thus, not entertained.'

6. In view of these decisions, we find that the impugned order is not consistent with the law. Accordingly, it is set aside and appeal allowed with consequential relief.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*