CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 85333 Of 2016

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0151-15-16 dated 18.11.2015 passed by The Commissioner (Appeals-I), Central Excise, Pune)

M/s Thermax Ltd. **.....Appellant**
D-13, MIDC, Chinchwad,
Pune-411019.

VERSUS

Commissioner of CGST & Central Excise-Pune-I **.....Respondent**
ICE House, 41-A, Sasson Road,
Opposite Wadia College, Pune-411001.

Appearance:

Shri Jay Chhedha, Advocate for the Appellant
Shri Prabhakar Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S K MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86322/2022

Date of Hearing : 16.12.2022
Date of Decision: 16.12.2022

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein is engaged in providing the taxable services under the category of Consulting Engineer, Business Auxiliary and Intellectual Property Services. During the disputed period from 2008-09 to 2012-13, the appellant had received various taxable input services from the overseas service provider. The appellant had paid the service charges to the overseas entities on the basis of the invoices raised by them. The appellant had paid the service tax under reverse charge mechanism on the value of services indicated in the invoices issued by the service providers. Independently, the appellant had also paid TDS amount to the Income Tax department towards the remittances made in favour of the overseas service providers. Since, the appellant did not pay service tax on the TDS component, the department initiated show cause proceedings, seeking for recovery of the service tax amount. The matter arising out of the show cause notices was adjudicated by the Additional Commissioner of Central Excise, Pune in confirming the proposed demands made in the SCNs issued to the appellant. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 18.11.2015 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that as per the provisions of Section 67 of the Finance Act, 1994 read with Rule 7 of the Service Tax (Determination of Value) Rules, 2006 the appellant had duly discharged the service tax liability on the value of the services indicated in the invoices issued by the overseas service providers. He further submitted that since the amount of TDS paid by the appellant is in compliance of the Income Tax statute and does not form the part of gross amount charged by overseas entity for provision of the taxable output service, the appellant is not under any statutory obligation to discharge service

tax liability on such amount of TDS paid into the government exchequer. To strengthen the case of the appellant, learned Advocate has relied upon the following decisions rendered by the Tribunal:

(*a)* *Magarpatta Township Development and Construction Co. Ltd. – 2016 (3) TMI 811-CESTAT Mumbai*

(b) *Indian Additives Limited – 2021 (10)(TMI 487 – Cestat Chennai*

(c) *Garware Polyesters Ltd. - 2017 (5) TMI 1142 - Cestat Mumbai*

(d) *Centre for High Technology – 2018 (8) TMI 243 - Cestat New Delhi*

3. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and examined the case records.

5. Section 67 *ibid* provides that only the amount which has been charged by the service provider can be subjected to levy of service tax. The consideration, in this case, paid by the appellant to the overseas service provider was the value as indicated in the invoice and the said value was towards provision of the services only. To comply with the income tax statute, the appellant had deposited the tax at source into the Central Government account on the value of the taxable service received by it from the overseas entities. Since, the amount of TDS is not forming the part of the gross amount charged for provision of service, such amount paid into the

government exchequer by the appellant cannot be used to gross up the value of the service.

6. We find that the issue arising out of the present dispute is no more *res integara* in view of the aforementioned decisions relied upon by the learned Advocate for the appellant. It has been held in those deciding cases that service tax is payable only on the consideration is paid to the overseas service providers and the amount of TDS borne by the assessee cannot be subject to levy of payment of service tax.

7. In view of above discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands made on the appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Operative portion of order pronounced in the open court)

(C J Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

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