CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87271 of 2017

(Arising out of Order-in-Original No. 62/ST/COMMR/2017 dated 30.03.2017 passed by the Commissioner of Customs, Central Excise & Service Tax, Aurangabad)

M/s Harman Finochem Ltd. **.... Appellant**
E-7, 8 & 9 MIDC, Chikalthana,
Aurangabad

Versus

Commissioner of Customs, Central Excise & Service Tax, Aurangabad **.... Respondent**
N-5, Town Centre, CIDCO, Aurangabad

APPEARANCE:

Shri Ajay Telisara, Chartered Accountant for the Appellant

Shri Shashank Kumar Yadav, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86164/2025

Date of Hearing: 16.07.2025
Date of Decision: 16.07.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of bulk drugs, falling under Chapter 29 of the Schedule to the Central Excise Tariff Act, 1985. In furtherance, the appellants also procure various services, on which they use to discharge the Service Tax liability, under the reverse charge mechanism. During the course of verification of the records for the period August 2012 to September 2015, the Service Tax Department had observed that appellants had paid remuneration to their Directors, but did not discharge the service tax liability on such amount under the reverse charge mechanism. Accordingly, proceedings were initiated against the appellants, which culminated into the adjudication order dated 30.03.2017 (impugned

herein), wherein the learned Commissioner of Central Excise, Customs and Service Tax has confirmed the proposals made in the show cause notice dated 29.04.2016. Feeling aggrieved with the said impugned order dated 30.03.2017, appellants have preferred this appeal before the Tribunal. The appellants have contended in this appeal that the Directors were the employees of the appellants and since the relationship exists between them as that of the 'employer' and 'employee', such payment of salary to the employees cannot be subjected to levy of service tax.

3. On perusal of the case records, we find that the appellants had deducted tax at source and issued the certificate in terms of Section 203 of the Income Tax Act, 1961, mentioning the name of the Directors as employee(s). Further, we also find that the appellants had made the statutory deposit towards Provident Fund in the name of the Directors. Furthermore, the Directors have also filed the Income Tax Return before jurisdictional Income Tax authorities, showing earning of income under the taxable head of "Salary". On the basis of documents available on records, it transpires that there is no element of service exist between them, as service receiver / provider. Since the Director is employee of the company, they are outside the purview of service tax net in respect of the salary paid to them. Therefore, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants.

4. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha