IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.214 of 2012

(Arising out of Order-in-Appeal No. 18/2012 (MST) dated 13.1.2012 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Indian Additives Ltd. **Appellant**
Express Highway
Manali, Chennai – 600 068.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
No. 2054-I, Newry Towers
II Avenue, Anna Nagar
Chennai – 600 040.

APPEARANCE:

Smt. Radhika Chandrasekar, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. SulekhaBeevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. **42344 / 2021**

Date of Hearing : 24.09.2021
Date of Decision: 24.09.2021

Per Ms. Sulekha Beevi C.S.

The appellants are engaged in the manufacture of additives. They entered into technical assistance agreements with M/s. Chevron Oronite Company LLC, USA. As per the agreement, the appellant is paying royalty to the foreign company on the basis of net sales of the products manufactured by them. Since the foreign company does not have any establishment in India, the appellant registered themselves with the Service Tax Department for payment of service tax under reverse charge mechanism. During the scrutiny of accounts, it was noted that for the period April 2007 to March 2008, appellants did not pay service tax on the TDS portion of the royalty paid by them to the

foreign company. Show Cause Notice was issued proposing to demand service tax on the TDS portion of the royalty. After due process of law, the original authority confirmed the demand, interest and imposed penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. The learned counsel Smt. Radhika Chandrasekar appeared and argued for the appellant. She submitted that the appellant has discharged service tax on the entire consideration paid to the foreign service provider. TDS was paid separately by the appellant in terms of agreement entered by the appellant with foreign company. As per the agreement, the running royalty shall be the net of Indian income tax which shall be borne by the appellant. The demand of service tax on the TDS amount is incorrect as the TDS is borne by appellant. She relied upon the decision of the Tribunal in the case of Magarpatta Township Development and Construction Co. Ltd. Vs. CCE, Pune – 2016 (43) STR 132 as well as the decision of this Bench in the appellant's own case vide Final Order No. 40878/2018 dated 2.3.2018.

3. The learned AR Shri Arul C Durairaj supported the findings in the impugned order.

4. Heard both sides.

5. The issue to be decided is whether the levy of service tax on the TDS portion borne by the appellant is legal and proper. The issue stands decided by the order of the Tribunal in the appellant's own case for a different period. The Tribunal had relied upon the decision in the case of Magarpatta Township Development and Construction Co. Ltd. (supra). The relevant portion of the order is reproduced as under:-

> "8. Service Tax Valuation Rules, 2006 before amendment by Notification No. 24/2012-S.T., specifically Rule 7 needs to be read to arrive at the

correct value of taxable service provided from outside India relevant Rule is reproduced : -

"7. Actual consideration to be the value of taxable service provided from outside India

(1) The value of taxable service received under the provisions of Section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

(2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India."

It can be seen from the above reproduced Rule that for the purpose of discharge of Service Tax for the service provided from outside India, the value is equal to the actual consideration charged for the services provided or to be provided. In the case in hand, we specifically asked for the invoice/bill raised by the service provider and on perusal of the same, we find that appellant had discharged the consideration as raised in the said invoice/bill. There is nothing on record that indicates that the appellant had recovered that amount of Income Tax paid by them on such amount paid to the service provider from the outside India and any other material to hold that this amount is paid as consideration for services received from service provider.

9. In our considered view, the plain reading of Section 67 with Rule 7 of Service Tax Valuation Rules, in this case in hand, Service Tax liability needs to be discharged on amounts which have been billed by the service provider."

6. From the above, we hold that the levy of service tax on the TDS portion borne by the appellant cannot sustain and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

Rex