CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 595 of 2011-DB

[Arising out of Order-in-Original/Appeal No 03-STC-BRC-I-MP-COMMR-I-2011 dated 29.06.2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I]

Org Informatics Limited **.... Appellant**

Abhishek Complex, 3rd Floor, Akshar Chowk, Old Padra Road, VADODARA, GUJARAT-390020

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent

1st Floor, Central Excise Building,
Race Course Circle, Vadodara,
Gujarat-390007

APPEARANCE :

None for the Appellant
Shri R P Parekh, Superintendent (AR) for the Revenue.

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING : 21.07.2022
DATE OF DECISION: 15.11.2022

FINAL ORDER NO. A/11385 / 2022

RAMESH NAIR :

This appeal is directed against Order-in-Original No. 03/STC/BRC-I/MP/Comm-I/11 dated 29.06.2011 passed by the Commissioner of Central Excise& Customs, Vadodara.

2. The relevant facts that arise for consideration are that the appellant availed services of the foreign based companies for raising/ collecting financial funds through External Commercial Borrowings (ECB) and Foreign Currency Convertible Bonds (FCCB). In the course of raising funds i.e. foreign borrowings, the appellant had received services from the service providers based outside India. Revenue is of the view that the amount paid

by the appellant to said foreign service provides is liable to be taxed under reverse charge mechanism for service tax under 'banking and other financial services'. The show cause notice was adjudicated after following due process of law, the demands were confirmed along with interest and penalty has been imposed vide impugned order. Therefore the present appeal.

3. When the matter was called, none appeared for the appellant.

4. Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue defended the Order passed by the Original Adjudicating Authority and submits that the issue in this case on merits is squarely decided against the appellant and produced a copy of the majority decision in the case of *Tata Steel Limited vs. CST, Mumbai- I reported at 2016 (41) STR 689 (Tri. Mum.)*.

5. After considering the grounds of appeal, arguments of departmental representative and perusal of records, we find that appellant has not contested the service tax demands on merits. Out of total service tax demand of Rs. 54,48,437/- they disputed only service tax demand of Rs. 2,26,213/- and penalties in this matter. It is categorical submission of the appellant that when the impugned matter was pointed out by the concerned service tax authority, they deposited the service tax of Rs. 52,22,624/- alongwith interest of Rs. 8,19,354/- during the investigation and much before the issuance of show cause notice. We also find that appellant only disputed the service tax demand of Rs. 2,26,213/- on the ground that amount was refunded by the Foreign Financial Institution to the Appellant and they have not received the services to that extent. Appellant also submitted the documents in support of their claim in this matter. We have

gone through the said documents and find force in submission of appellant, accordingly the service tax demand of Rs. 2,26,213./- is not sustainable.

6. As regard the penalty imposed, we find that the submission of appellant is that penalty is not imposable as the Service Tax demand along with interest was paid before the issue of show cause notice. Such matter cannot be taken as evasion of service tax, the matter is revenue neutral as the Cenvat credit of service tax is always admissible and it is a fit case, for invocation of Section 80 of the Finance Act, 1994. In this connection appellant also placed reliance on the decisions of *Essar Steel Ltd. vs. CCE Surat –I- 2009 (13) STR 579 (Tri. Ahmd)*. We find that it is evident from the records that the appellant discharged the service tax liability along with interest thereon as soon as they came to know about the liability of service tax in this matter and they also paid the same much before the show cause notice. It is also a fact that they have not disputed to service tax liability on merits and the disputed transactions were reflected in the balance sheets of the appellant for the relevant years. These evidences available on records indicate that the appellant had no intention to suppress any information or withhold any information from the department with an intention to evade payment of service tax. Further whatever Service Tax was required to be paid by the appellant, was available to them as Cenvat credit and there was no need for them to evade any payment of tax. As such, the entire situation is revenue neutral, in which case, no *mala fide* can be attributable to the appellant. In these facts and circumstances, the decision of the Tribunal in the case of *Essar Ltd.*, cited supra squarely applies. Accordingly, we are of the view that the penalty is not imposable on the appellant under the provisions of Sections 77 & 78 of the Finance Act, 1994, in view of Section 80 of the Finance Act, 1994. We also observed that the Hon’ble Gujarat High

Court in the matter of Commissioner of Central Excise vs. Dineshchandra R. Agrawal - 2013 (31) S.T.R. 5 (Guj.) also held that

> ***"6.*** *As indicated earlier, the Tribunal below, by the orders impugned has set aside the penalty and we are convinced by the reason given by the Tribunal below that as the appellant was providing services to the central excise assessee, the service tax paid by him was available as Cenvat credit and, therefore, payment of service tax would be Revenue neutral exercise and in such case, there was no deliberate intention to evade tax. In our opinion, the Tribunal, in such circumstances, rightly exercised its discretion under Section 80 of the Act. We do not find any reason to interfere with the discretion exercised by the Tribunal below in the facts of these cases. We, accordingly, find no merit in these appeals and those are summarily dismissed. No costs."*

The Hon'ble Andhra Pradesh High Court in the case of *CCE, Guntur* vs. *Narasaraopet Municipality* [2015 (39) S.T.R. 800 (A.P.)] has also upheld the Tribunal's order vide which penalties were set aside by invoking the provisions of Section 80.

7. Without prejudice, as regard penalty imposed under Section 76 and 78, we are of the view that simultaneous penalty under Section 76 and 78 cannot be imposed as held by Hon'ble Gujarat High Court in the case of *Rawal Trading Company*-2016 (42) S.T.R. 210 (Guj.), therefore, the penalty imposed under Section 76 is also not sustainable.

8. As per our above discussion and finding, impugned order is modified to above extent and Appeal is allowed in the above terms.

(Pronounced in the open court on 15.11.2022*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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