

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, BANGALORE**

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 2238 of 2010

[Arising out of Order-in-Original No.54/2010 dated 31.08.2010 passed by
the Commissioner of Service Tax, Bangalore]

Hanuman Weaving Factory

'Hanuman House'
Plot No. 10 'B' 1st Stage
Peenya Industrial Area, Peenya
Bangalore - 560 058

.....**Appellant**

Versus

Commissioner of Service Tax

No. 16, S.P Complex
Lalbagh Road
Bangalore - 560 027

.....**Respondent**

APPEARANCE:

Ms. Srividhya, Advocate for the Appellant
Mr. Rajesh Shastry, Authorised Representative for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No.: 20519 / 2024

Date of Hearing: 11.06.2024
Date of Decision: 28.06.2024

Per:Pullela Nageswara Rao

M/s. Hanuman Weaving Factory, the appellants are engaged in
the manufacture and export of silk fabrics and embroidery fabrics.

2. The brief facts of the case are that the appellants have
appointed agents in foreign countries for promotion and marketing
of their finished goods, identifying the buyers for the finished goods,
obtaining export orders, sale of goods on behalf of the exporter,
collection of sale proceeds, providing guarantee for payments for the

finished goods exported, etc. The appellants paid commission to such agents for the services rendered outside India. The appellants did not pay service tax on the commission paid to the agents outside India.

3. in this regard when the appellants were directed to provide with the details of the commission paid to the agents outside India and appraised about the service tax laws and directed to pay the service tax amount due to the Government account, they submitted statement showing the details of the commission paid for the period from 09.07.2004 to 27.12.2008 on 17.06.2009 enclosing the copy of the letter dated 29.12.2008 wherein they have deposited the service tax amount of Rs. 40,98,147/- along with interest of Rs. 5,12,891/- for the period from 18.04.2006 to 27.12.2008.

4. The appellants paid commission to the agents to the tune of Rs. 5,55,19,867/- and on which service tax amount works to Rs. 63,22,829/- for the period from 09.07.2004 to 27.12.2008. Consequently, a show cause notice dated 21.10.2009 was issued alleging that; the appellants had paid commission to the agents located in different countries for providing services as detailed in Para 2, supra. Hence the services come under the category of 'Business Auxiliary Services' as defined in Section 65(19) of the Act and liable to service tax w.e.f 09.07.2004; as per Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, if the service provider is a non-resident or from outside India and do not have any office in India, then the service tax has to be discharged by the service receiver; the appellant has not informed the Department of their activity of payment of commission and receiving taxable services till it is

noticed by the Department thereby, suppressed the fact and contravened the provisions of Act, with intent to evade payment of service tax, thereby the extended period under 73(1) is invokable for recovery of service tax and Sections 76, 77 & 78 of the Act was invokable for imposition of penalties. The case was adjudicated and the demand was confirmed with interest and penalties were imposed as proposed. Aggrieved by the impugned order this appeal was filed.

5. The appellant in the appeal contended that; CBEC vide Circular No. 36/4/2001 dated 08.10.2001 clarified that levy of service tax extends to whole of India except State of Jammu & Kashmir and that the services provided beyond the territorial waters of India are not liable to pay service tax; Notification No. 36/2004-ST dated 31.12.2004 introduced Rule 2(1)(d)(iv) in Service Tax Rules, 1994 from 01.01.2005. An explanation was also introduced under Section 65(105) from 16.06.2005 and later the explanation was omitted and Section 66A was incorporated in the Finance Act, 1994 from 18.04.2006; the liability to pay service tax was not well defined and there was confusion whether the exporter of finished products in India was required to pay service tax on the services of commission agents situated outside India; however, after insertion of Section 66A of Finance Act, 1994, the appellants voluntarily paid service tax of Rs. 40,98,147/- along with interest of Rs. 5,12,891/- for the period from 18.04.2006 to 31.12.2008 and the same was informed to the Assistant Commissioner of Service Tax vide letter dated 29.12.2008 and requested that the intimation to be considered as intimation under Section 73(3) of the Finance Act, 1994 for having fully discharged the service tax liability along with

interest and requested that no notice as contemplated under Section 73(1) may be issued and treat the matter as closed.

6. The appellant submitted the following before the original authority that; the impugned order is patently in error holding that the taxability of services received in India is from 01.01.2005; CBEC Circular No. 36/04/2001 dated 08.01.2001 clarified that the services provided beyond the territorial waters of India are not liable to pay service tax; Section 66A is inserted in the Finance Act, 1994 through the Finance Act, 2006 w.e.f 18.04.2006, hence, the charging section for services provided outside India and imported into India was thus brought on the statute on 18.04.2006; the Taxation of Services (provided from outside India and received in India) Rules, 2006 in exercise of powers conferred by Section 93 & 94 read with Section 66A of the Finance Act, 1994 was brought on statute from 18.04.2006.

7. The learned advocate during the hearing submitted that Section 66A was inserted in Finance Act, 1994 through Finance Act 2006 w.e.f 18.04.2006 providing for levy of service tax on services received in India. Hence, the charging section for services provided outside India and imported into India was brought on statute on 18.04.2006. In this regard, they have cited the following judgments:

- a. *Indian National Shipowners Association V. Union of India – 2009 (13) STR 235 (Bom.)*
- b. *Union of India Vs. Indian National Shipowners Association – 2010 (17) S.T.R. 157 (S.C.)*
- c. *Unitech Ltd. V. Commissioner of Service Tax, Delhi – 2009 (15) S.T.R 385 (Del.)*

d. CST, Bangalore V. SKF India Ltd. – 2010 (18) S.T.R. 388

(Kar.)

8. Further, the learned Advocate contended that; services provided by commission agents from outside India become liable to service tax under Section 66A of Finance Act 1994 from 18.04.2006 under reverse charge. Therefore the demand of service tax for the period prior to 18.04.2006 is without authority of law; the show-cause notice was issued on 21.10.2009 proposing service tax demand for the period 09.07.2004 to 27.12.2008 and the Commissioner confirmed the demand of service tax for the period 01.01.2005 to 31.12.2008; they have paid the service tax on 26.12.2008 for the period 18.04.2006 to 27.12.2008 which was acknowledged and appropriated in the impugned order; the fact of payment of service tax for the period 18.04.2006 to 27.12.2008 along with interest was intimated to the Department with a request not to issue show-cause notice as provided under Section 73(3) of the Finance Act, 1994; the confirmation of the demand for the period prior to 18.04.2006 for the commission paid to the commission agents is not proper. The service tax with interest was voluntarily paid for the period 18.04.2006 to 27.12.2008 and was intimated to the proper officer vide letter dated 29.12.2008. Thus issuance of show-cause notice dated 21.10.2009 is contrary to the provisions of Section 73 (3) of the Finance Act, 1994 and the penalties imposed are unsustainable; in this regard the appellant has relied on the following judgments:

a. Commr. of S.T., Bangalore Vs. C Ahead Info Technologies

India P. Ltd. – 2017 (47) S.T.R. 125 (Kar.)

b. *C.C.E. & S.T., LTU, Bangalore Vs. Adecco Flexione Workforce Solutions Ltd. – 2012 (26) S.T.R. 3 (Kar.)*

c. *Commissioner of Service Tax, Bangalore Vs. Master Kleen – 2012 (25) S.T.R. 439 (Kar.)*

9. The learned advocate further submits that in view of the above, since the service tax and interest was paid voluntarily for the period 18.04.2006 to 27.12.2008 and informed the proper officer the issuance of show-cause notice dated 21.10.2009 and imposition of penalties under Sections 76, 77 & 78 are contrary to the provisions of Section 73(3), the same are required to be set aside.

10. The learned Authorized Representative (AR) for Revenue has reiterated the findings in the impugned order and further he has cited the case-law of ***Union of India Vs. Aditya Cement – 2008 (10) S.T.R. 228 (Raj.)*** wherein it is held as under:

"2. We have carefully read the provisions of Sections 65, 66, 66A and 68, including the Notification issued under Section 68(2). In our view, the learned Tribunal has rightly found that at the time when the tax was paid, the liability could not be fastened on the recipient of the services as even [vide](#) Notification, the liability was ordered to be fastened only since 1-1-2005. Thus, we do not find any error, or substantial question of law involved. The appeal is, therefore, dismissed summarily."

This was affirmed by the Hon'ble Supreme Court -2010 (20) S.T.R. J141 (S.C).

11. Heard both sides and perused the records.

12. The issue involved in this case is whether service tax is leviable under reverse charge for the services provided by an agent

residing outside India from 01.01.2005 or from 18.04.2006. We find that the charging section was introduced by insertion of Section 66A vide Finance Act, 2006 into Finance Act, 1994. Prior to the insertion of Section 66A service tax was demanded under Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, however with the insertion of Section 66A in the Finance Act, 1994 this is the charging section under the Act. The appellant relied on the following case laws in support of their contention;

(i) Indian National Shipowners Association Vs. Union of India – 2009 (13) S.T.R 235 (Bom.)

“20.....it is only after enactment of Section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of Section 66A, there was no such provision in the Act and therefore, the Respondents had no authority to levy service tax on the members of the Petitioners-association.”

The above decision was affirmed by the Hon'ble Supreme Court reported in- ***“Union of India Vs. Indian National Shipowners Association – 2010 (17) S.T.R. J57 (S.C)]]***

(ii) Unitech Ltd. V Commissioner of Service Tax, Delhi – 2009 (15) S.T.R. 385 (Del.)

“5.2 The answer to the question is squarely covered by the judgment of the Bombay High Court in the case of Indian National Shipowners Association (supra) with which we are in respectful agreement.....”

(iii) CST, Bangalore V SKF India Ltd. – 2010 (18) S.T.R.

388 (Kar.)

13. In view of the above decisions of the Hon'ble Apex Court and the Hon'ble High Court of Karnataka, we find that service tax on commission paid to the foreign commission agents is payable under reverse charge only from 18.04.2006 and not from 01.01.2005. We find in this case the appellant has discharged the service tax for the period from 18.04.2006 to 27.12.2008 and also intimated the same to the Department to consider the intimation as intimation under Section 73(3) of the Finance Act, 1994. Further, we find that in the facts and circumstances of the case, the invocation of the penal provisions under Section 77 & 78 of the Finance Act, 1994 is not tenable.

14. In view of the above discussion and the decision of the Hon'ble Supreme Court and the Hon'ble High Court, the appeal filed by the appellant is sustainable. Hence, the demand for the period 01.01.2005 to 18.04.2006 is not sustainable and also the penalties imposed under Section 77 & 78 are also not tenable.

15. Accordingly, the appeal is allowed with consequential relief, if any, as per law.

(Order was pronounced in Open Court on 28.06.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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