CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 50810 of 2019

(Arising out of Order-in-Appeal No. 33(AB)ST/JPR/2017 dated 28.03.2017 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

Aksh Optifibre Ltd. **Appellant**
F-1075-1081, Phase-III,
RIICO Industrial Area,
Bhiwadi, Rajasthan

Versus

Commissioner of Central Excise & CGST, Alwar **Respondent**
NCR Building, Statue Circle,
Jaipur – 302005.

Appearance:

Present for the Appellant: Ms. Jwaria Kainaat, Advocate

Present for the Respondent: Shri Aejaz Ahmad, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing : 09/12/2024
Date of Decision : 13.03.2025

Final Order No. 50397/2025

Dr. Rachna Gupta:

The present appeal is filed to assail the Order-in-Appeal No. 33/2017 dated 28.03.2017. The facts in brief resulting into the said decision are as follows:

2. That M/s Aksh Optifibre Ltd.[1] herein is the manufacturer of Optical Fiber and Optical Fibre Cables however is also holder of service tax registration. During the course of audit of appellant's record, department observed that the appellant had made payment to foreign based service providers for managing, for acting as process agents, for 'Foreign Currency Convertible Bonds'[2] Global Depository Receipt[3] globally/convertible etc. The department alleged that in terms of Rule 3 of the Taxation of Services Rules 2006 read with Section 66A(1) of the Finance Act 1994, the appellant being the recipient of service in India is liable to pay tax on the amount paid or remitted to the foreign based service provider under the Banking and Financial services on Reverse Charge Mechanism[4] basis.

2.1 It is observed that service tax amounting to Rs. 1,93,968/- has been evaded on these services received by the appellant during the period from December 2012 to September 2013. The appellant was found not discharging the said liability even for the prior period also starting from the year 2006-2007 to 2011-2012. Accordingly, a show cause notice bearing No. 34/2013/117 dated 2.01.2014 was served upon the appellant proposing the recovery of service tax amounting to Rs. 1,93,968/- along with the proportionate interest and the appropriate penalty under Section 76 and 77. The said proposal was initially confirmed vide Order-in-Original No. 08/2014-15 dated 28.01.2015. Appeal against the said order has been rejected/dismissed vide the impugned order in appeal as

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1 **the appellant**
2 **FCCB**
3 **GDR**
4 **RCM**

mentioned above. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Ms. Jwaria Kainaat, learned counsel for the appellant and Shri Aejaz Ahmad, learned Authorised Representative for the Revenue.

4. Learned counsel for the appellant has foremost objected the validity of the show cause notice as the demand for the period post 01.07.2012 has still been raised under Section 66 and 66A of the Finance Act which stands deleted from the statute with effect from 01.07.2012. In addition, the demand was proposed to be recovered vis-à-vis one service i.e. 'Business Exhibition Service'. However, the departmental authorities below have confirmed the demand under Banking and Financial Services. Hence even the order under challenge are not in tune with the basic show cause notice.

4.1 Learned counsel further submitted that the activity rendered by the appellant cannot be categorized as Banking and Financial Services. The appellant is receiving Business Exhibition Service from the foreign service providers (located outside the taxable territory). The taxability of such service has to be determined as per Rule 6 of Place of Provision Rules, 2012. According to which the place of provision shall be the place where event is held. In the present case, the exhibitions are held abroad i.e. outside the taxable territory. Accordingly, the place of provision will be the outside taxable territory due to which the appellant was under bona fide belief that it is not liable to pay any service tax. Otherwise,

also the activities stands exempted in terms of Notification No. 25/2012 dated 20th June 2012. The demand is alleged to have wrongly been confirmed. The penalties are also liable to be set aside as the appellant was acting under the bona fide belief about no liability to pay tax and is otherwise not liable to pay tax. Learned counsel has relied upon the decision of Hon'ble Supreme Court in the case of **J.K. Synthetics Ltd. Vs. Commercial Taxes Officer**[5] and the decision of **Star India (P) Ltd. Vs. CCE**[6]. Above all the issue herein involved the interpretation of the Provision of service tax law. Seen from this prospective also the penalty has wrongly been imposed upon the appellant. Decision of this Tribunal Principal Bench in the case of **Haldia Petrochemicals Ltd. Vs. CCE**[7] is relied upon along with the decision of CESTAT Mumbai Bench in the case of **Siyaram Silk Mills Ltd. Vs. CCE**[8]**.**

4.2 Finally, it is submitted that the department has been issuing similar show cause notices for the previous period also with effect from year 2006-07 and the department's own order i.e. Order-in-Original bearing No. 17/2013-14 dated 29.03.2014 has dropped the demand in terms of Notification No. 5/2011 dated 01.06.2011. Learned counsel has impressed upon that the said decision has wrongly been ignored by the present adjudicating authorities. The Supreme Court decision in the case of **Vishnu Traders Vs. State of Haryana and Others**[9] is relied upon. With these submissions, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

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5 (1994) 4 SCC 276
6 2006 (1) STR 73 (SC)
7 2006 (197) ELT 97 (Tri.-Del.)
8 2006 (195) ELT 284 (Tri.-Mumbai)
9 1995 Suppl. (1) SCC 461

5. While rebutting these submissions, learned Departmental Representative has, at the outset, has reiterated the findings of the adjudicating authority is below. It is submitted that the undisputed fact is that the appellant has received services from the foreign based service providers. Since appellant is in taxable territory, it was liable to pay service tax under Reverse Charge Mechanism. Since the value/cost of Business Exhibition Service is liable to tax and that the appellant has not discharged the said service tax liability, there is no infirmity in the order when the demand of said amount of service tax has been confirmed. Further ignorance of law can never be an excuse, the appellant itself is service tax registration holder. Hence the plea of any bona fide belief about no liability to pay service tax on the services received in the taxable territory by the appellant, is an afterthought. The act is rightly held to be an act of evading tax. Hence there is no infirmity when the interest have been imposed to be paid by the appellant and the penalties are also been imposed upon the appellant. Endorsing all the findings arrived at by Commissioner (Appeals) and denying any technical flaw in the show cause notice, as alleged by the appellant, the order under challenge is prayed to be upheld and the appeal is prayed to be allowed.

6. Having heard both the parties and perusing the entire record we observe that the impugned show cause notice is not the first in line as was served upon the appellant proposing the demand of

service tax on the same allegations. Following have been the earlier Show Cause Notices[10]:

(i) Show cause notice No. 01/2010/139 dated 13.04.2011 as issued by Commissioner, Central Excise Commissionerate, Jaipur for demanding service tax amount of Rs. 1,00,66,441/- for the period from 5.04.2006 to 31.12.2010.

(ii) The show cause notice No. 76/2011/14723 dated 30.12.2011 amounting to Rs. 91,006/- for period from January 2011 to November 2011.

(iii) Show cause notice No. 136/12/589 dated 21.01.2013 demanding service tax amounting to Rs. 89,956/- for the period December 2011 to September 2012.

The present show cause notice is 4th in line. It has been brought to our notice that the SCN dated 21.01.2013 has been decided vide order in original No. 17/2013 dated 29.03.2014 wherein the Assistant Commissioner had dropped the demand in respect of 'Business Exhibition Service' received from the foreign service providers located outside the taxable territory holding that Notification No. 5/2011 dated 01.06.2011 exempts the taxable services specified in sub clause (zzo) of clause (105) of Section 65 of the said Finance Act, when provided by an organizer of Business Exhibition for holding a business exhibition outside India, from the whole of the service tax leviable thereon under Section 66 of the said Act. The impugned order has absolutely ignored the said

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10 SCN

decision. It has been the settled law that once an order has been passed allowing full relief to the assessee then it would not be proper for the department to take a different view on same issue provided there are no factual difference in two situations. The Hon'ble Apex Court in **Vishnu Traders** (supra) has held as under:

> "In the matters of interlocutory orders, principle of binding precedents cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except when factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach."

7. This decision has been followed by Hon'ble Delhi High Court in the case of **Sayajit Hotels Ltd. Indore Vs. Union of India, New Delhi**[11] and it has been held that in the absence of change in the circumstances, the Tribunal should have maintained the consistency and uniformity while exercising the judicial discretion and should not have taken a different view than the view it had already taken in the petitioner's earlier appeals involving the identical issue. In the light of these observations, the impugned order being contrary to earlier order of department itself is not sustainable.

8. Coming to the submission vis-à-vis invalidity of the show cause notice demanding service tax under the omitted provisions, we observe that the impugned show cause notice has been issued after the amendment in Finance Act with effect from 01.07.2012. The said amendment as per Notification No. 19/2012 dated 05.06.2012 has made the erstwhile section i.e. Section 66 of

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11 **2010-TIOL-735-HC**

Finance Act 1994 as inoperative with effect from 01.07.2012 and Section 66B is incorporated as the new charging section of the service tax. The impugned show cause notice has demanded service tax under the erstwhile Section 66 of the Finance Act. The show cause notice is apparently invalid otherwise also as per newly incorporated Section 66B. The service tax with effect from 1.7.2012, is leviable on all services except those specified in the negative list of the services. Service tax shall be levied @ 12% on the:

(i) Value of service other than specified in negative list;

(ii) Provided or agreed to be provided by 1% to another.

(iii) In the taxable territory apparently and admittedly the service provider is not in the taxable territory.

It is the appellant's case which is not anywhere disputed nor denied, that the services were received for conducting Business Exhibitions that too abroad i.e. the exhibitions were conducted outside the taxable territory. Hence had the right provisions would have been invoked at the time of issuance of show cause notice, there was no necessity for the issuance. We hold that the show cause notice issued under inoperative erstwhile provision is not sustainable. We draw our support from the decision of this Tribunal in the case of **Viking Tours & Travels Vs. Commissioner of Service Tax, Chennai**[12] wherein it has been held that the law as it stood on the date of issue of show cause notice is relevant.

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12 2011 (22) STR 69 (Tri.-Chennai)

9. In the light of the above discussion about services being provided or received in the taxable territory, we observe that to determine as to whether it is taxable liability or not the Central Govt. while exercising its power under Section 66C read with clause (hhh) of Section 94 of Finance Act 1994 has introduced Place of Provision of Service Rules, 2012. We observe that Rule 6 thereof is relevant vis-à-vis the present controversy which reads as follows:

> "The place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held."

10. The bare perusal makes it clear that the Place of Provisions for holding any exhibition/events shall be the place where the event is held. The department's own Educational Guide dated 20.06.2012 has also clarified that the event held outside taxable territory is not covered under Finance Act, 1994. It is an undisputed fact of the present appeal that the Business Exhibition for which the appellant received services from the foreign agencies, were held outside the taxable territory. Resultantly, the Place of Provision of Services received by the appellant from the foreign service provider shall be outside the territory of India. Accordingly, we hold that appellant is not liable to pay service tax even under RCM.

11. We further observe that the Mega Exemption Notification No. 25/2012 dated 20th June 2012, clause (31) thereof, also exempts the services by an organizer to any person in respect of a Business Exhibition held outside India. The adjudicating authorities have miserably ignored the exemption notifications. From Section

66B also there is the tax liability for all services being not covered in the negative list. However, section itself clarifies any service shall not be liable to tax if same falls under any of the exemption notification. As discussed above two exemption notifications are there to the rescue of the appellant. Hence we hold that the demand of service tax has wrongly been confirmed.

12. With respect to imposition of penalty and demand of interest, we hold that since the service tax itself is not payable the question of charging any interest under provision of Section 75 of the Act does not at all arises. We draw our support from the decision of Hon'ble Apex Court in the case of **J.K. Synthetics Ltd.** (supra) wherein it was held that no interest can be levied which is not admitted to tax. We hereby hold that the appellant is not liable to tax. We further observe that it has been defence of the appellant, since beginning, that the appellant has bona fide belief that it is not liable to pay service tax even under reverse charge on the payment made to the foreign service provider. The said bona fide belief is held to be a reasonable cause for not discharging depositing the service tax. Resultantly, the appellant is held entitled for the benefit of Section 80 of the Finance Act, 1994. We draw our support from the decision of this Tribunal in Mumbai Bench in the case of **Commissioner of Service Tax, Mumbai Vs. Gama Consultancy Pvt. Ltd.**[13]. Accordingly, we hold that the penalty is also wrongly imposed upon the appellant.

13. In view of the entire above discussion, we hold that the order is not sustainable on technical grounds as well as on the

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13 2006 (4) STR 591 (Tri.-Mumbai)

merits of the case as discussed above. Resultantly, we hereby set aside the order. The appeal stands allowed with consequential relief to the appellant.

(Pronounced in open Court on 13.03.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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