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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11709 of 2016-DB

[Arising out of Order-in-Original/Appeal No CCESA-VAD-APP-II-MM-98-2016-17 dated 28.06.2016 passed by Commissioner of Central Excise and Service Tax-Bharuch]

GRP Limited **.... Appellant**
(formerly Known As Gujarat Reclaim & Rubber
Products Ltd)Plot No.8, GIDC,
ANKLESHWAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST,Bharuch .... Respondent
Vadodara-II,GST Bhavan, Subhanpura, Vadodara
Vadodara, Gujarat -390023

APPEARANCE :

Shri VinayKansara, Advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING: 06.03.2024
DATE OFDECISION: 05.06.2024

FINAL ORDER NO. 11166/2024

RAMESH NAIR:

The issue involved in the present case is that during the audit, on scrutiny of the balance sheets for the FY 2006-07 & 06 Mar 2007-08, it was observed that foreign bank charges have been paid and thereby, it was concluded that such service falls under the category business auxiliary services and the service tax was required to be paid under reverse charge mechanism. The said audit objection was communicated vide letter dated 28.01.2009 and in response to the same, the appellant had submitted reply dated 29.05.2009 & 09.04.2010. Thereafter, ashow cause notice dated 21.09.2011 was issued proposing to demand of Service Tax on the ground that the assessee is liable for making payment of Service Tax on the foreign bank charges.

2. The said demand was confirmed vide order-in-original dated 31.05.2015. The appellant preferred appeal before the Commissioner

(Appeals), however, the same was rejected hence, the present appeal is filed.

3. Shri VinayKansara, learned Counsel appearing on behalf of the appellant, at the outset submits that in the undisputed facts of the present case, the appellant is not recipient of service if any provided by the foreign bank as the appellant had no dealing with the foreign bank. The dealing, as regards the service was between the foreign bank and the Indian bank and the Indian bank is the service recipient. He submits that if there is any tax liability, it is on the Indian bank being the service recipient. He submits that Indian bank also charge service tax from the appellant which imply that the Indian bank as a service recipient has paid the service tax therefore, no service tax demand exists on the appellant. He placed reliance on the following judgments:-

(a)Kalptaru Power Transmission vs. CCE - 2023 (69) GSTL 54 (Tri.-Ahmd.)

(b) Raymond Limitedvs. CCE - 2018 (19) GSTL 270 (Tri.)

(c) Dileep Industries Pvt. Limited vs. CCE - 2017-TIOL-3755-CESTAT-DEL

(d) Theme Exports Pvt. Limitedvs. CCE - 2019 (26) GSTL 104 (Tri.)

(e) Green Ply Industries Limitedvs. CCE 2015 (38) STR 605 (T)

He also submits that the demand is not sustainable on limitation also as the appellant was entitled for Cenvatif at all they are liable to pay service tax. Therefore, being Revenue neutrality, no extended period can be invoked hence, demand is barred by limitation.

3. Shri P. Ganesan, learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the service tax was demanded by the department on the bank charges debited by the foreign bank. As per the fact, the appellant had no dealing or contract or agreement with the foreign bank. The appellant have received the proceed from foreign buyer and while

remitting payment by the foreign bank to Indian bank, certain banking charges were deducted. Since the dealing of banking activity is strictly between the foreign bank and Indian bank, at the most, any taxable service involve, it is between the foreign bank and the Indian bank and Indian bank is liable to pay service tax. As per the submission of the appellant, the Indian bank has discharged service tax and collected from the appellant. As regards the appellant's status is concerned, the appellant is not recipient of service. Identical issue has been considered in the following judgments:-

(a) In the case of Raymond Limited vs. CCE (supra) – The Tribunal has held as under :-

"The brief facts of the case are that the appellant had incurred expenditure in foreign currency as amounts were deducted from export proceeds by the banks towards their charges. They were issued show cause notice alleging that the charges were taxable in respect of service received in India under Section 66A of the Finance Act, 1994 as the same were provided from foreign country and payment were made by them as the amount was debited from their due amount and the appellants are liable to pay service tax along with interest and penalty. The demands were confirmed against the appellant along with imposition of penalty u/s 76, 77 and 78 of the FA, 1994. The adjudication order was upheld by the Appellate Commissioner. Hence the present appeal before us.

2. Heard Shri Prasad Paranjape, Ld. Advocate for the appellant and Shri VivekDwivedi, Ld. Asstt. Commr. (AR) for the Revenue who reiterated the findings of the Commissioner (Appeals).

3. We find that the issue is no more disputed and stands resolved by the order of the Tribunal in case of *Dileep Industries Pvt. Ltd.* - 2017-TIOL-3755-CESTAT - DEL. The relevant portion of the Tribunal's order is as under :

"4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up [before] the Tribunal in the case of Greenply Industries Ltd. v. CCE, Jaipur (Final Order No. 50149/2014, dated 3-1-2014) where it was observed that -

"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged vide Section 66A read with Rule 2(1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the

Commissioner (Appeals), vide his order-in-appeal dated 12-11-2008 has set aside that order and as per the appellants' counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed.

5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."

4. In view of above order passed by the Tribunal and following the ratio of same we hold that the demand and penalties imposed against the appellant in present case is not sustainable. We therefore set aside the impugned order and allow the appeal with consequential reliefs, if any.**"**

(b) In the case of Greenply Industries Limited (supra) – the Tribunal passed the following order:-

"The appellants are exporters. They receive the export proceeds through ING Vyasa Bank. The foreign bank through which the payment had given channelised charged some amount from the appellant's bank ING Vyasa Bank which in turn recovered the same from the appellant. The department demanded Service Tax on the amount which the foreign bank charged from ING Vyasa Banker which, in turn, was recovered from the appellant. On this basis, Service Tax demand of Rs. 96,392/- was confirmed against the appellant along with interest and penalties were imposed under Sections 76 and 78. This order of the Asstt. Commissioner was upheld by Commissioner (Appeals) vide order-in-appeal dated 17-4-2008 against which this appeal has been filed.

2. Heard both sides.

3. Shri R.S. Sharma, learned Counsel for the appellant pleaded that similar demand has been confirmed against the appellant for the previous period by the original adjudicating authority which had been set aside by the Commissioner (Appeals) vide Order-in-Appeal No. 114/DK/S.T./JPR-I/2008, dated 12-11-2008, that in any case since the appellants have neither received any service from the foreign bank nor has directly paid any amount to the foreign bank, they cannot be treated as service recipient and no Service Tax can be charged from them under reverse charge mechanism and that it is ING Vyasa Bank which has received the services, from the foreign bank for which the Service Tax cannot be demanded from the appellant. He, therefore, pleaded that impugned order is not correct.

4. Shri R. Puri, learned DR defended the impugned order by reiterating the finding of the Commissioner (Appeals).

5. We have considered the submissions from both sides and perused the records. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no Service Tax can be charged from them under Section 66A read with Rule 2(l)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in Appellant's own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide order-in-appeal dated 12-11-2008 has set aside that order and as per the appellant's counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable. The same is set aside and the appeal is allowed.**"**

5. In view of the above judgments and the facts of the present case, the issue is no longer *res-integra.* Accordingly, the demand in the present case is not sustainable hence, the impugned order is set-aside, appeal is allowed.

(Pronounced in the open court on 05.06.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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