

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.531 of 2012

(Arising out of OIA-SRP/316/VDR-I/2012 dated 20/09/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Weatherford Drilling & Production Services (india) Pvt Ltd.....Appellant

Block No. 74, Pld R.S. No. 147/1, 147/2, Village-Manjusar, Taluka-Savli,
VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-i

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

.....Respondent

APPEARANCE:

Shri Mitesh Jain, Chartered Accountant for the Appellant
Shri. G.Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11160 /2022

DATE OF HEARING: 19.09.2022
DATE OF DECISION: 23.09.2022

RAMESH NAIR

This appeal is directed against the Order-In-Appeal No. OIA-SRP/316/VDR-I/2012 dated 20.09.2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I whereby, the learned Commissioner (Appeals) upheld the demand from 18.04.2006, interest and penalty under Section 78 in respect of services received from overseas under reverse charge mechanism in terms of Section 66A of the Finance Act, 1994. The appellant in the present appeal is challenging only upholding of penalty under Section 78. The demand of service tax for the period post 18.04.2006 and interest thereon has been paid prior to issue of show cause notice.

02. Shri Mitesh Jain, learned Chartered Accountant appearing on behalf of the appellant submits that the issue involving the levy of service tax on reverse charge mechanism in respect of services received from foreign country were under serious dispute and a lot of litigations taken place and finally the case has been decided by the Hon'ble Supreme Court in the case

of Indian National Ship Owners Association- 2010 (17) STR J57 (S.C.) wherein, it was held that on the service in question, the service tax is leviable only from 18.04.2006 and not prior to that. He submits that the issue involved was interpretation of the provision of Section 66A and rule made thereunder. There was no mala fide intention on the part of the appellant to avoid payment of service tax. He further submits that the appellant have been otherwise paying service tax on other services and were filing ST-3 returns regularly. He submits that the appellant have paid the service tax for the period post 18.04.2006 along with interest therefore, their case is covered by Section 73(3) of the Finance Act, 1994 accordingly, the department was not suppose to issue show cause notice consequently, no penalty could have been imposed. He placed reliance on the following judgments:-

- CCE & ST. vs. Adecco Flexione Workforce Solutions [2011 (9) TMI 114] - Karnataka High Court
- Ych Logistics (India) Pvt. Ltd. vs. C.C. E. & C.S.T.- CESTAT- Bangalore
- M/s. C.C.I Logistics Limited vs. Commissioner Of CGST & Cx, Kolkata - CESTAT Kolkata
- M/s. Krishna polymers. vs. CCE & ST, Raipur - CESTAT New Delhi
- Hindalco Industries Limited vs. Commissioner of C. Ex., Allahabad - Tribunal - DELHI
- Jaipur Jewellery Show vs. Commissioner of C. EX. & S.T., CESTAT - New Delhi
- Mahindra holiday and resorts India Ltd vs. Commissioner of LTU - CESTAT Chennai
- Uniworth Textiles Ltd. vs. Comm. Central Excise, Raipur - Supreme Court
- Tamil Nadu Housing Board vs. CCE - Supreme Court
- M/s Padmini Products vs. Collector of Central Excise - Supreme Court
- Commissioner Vs. Meghmani Dyes & Intermediates Ltd- Gujarat High Court
- K.S. Murali Mohan vs. Commissioner of Service tax, Bangalore - CESTAT-Bangalore
- CCE vs. Pepsi Foods Limited - Supreme Court
- Akbar Badruddin Jiwani versus Collector of Customs - Supreme Court
- Bharat Hotels Limited vs. Commissioner of C. Ex (Adjudication) - Delhi High Court
- Vinay Bele & Associates - Mumbai High Court
- Ashish Patil - Mumbai High Court

- Shreenath Motors Pvt Ltd - Mumbai High Court

03. Shri G. Kirupanandan, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present appeal limited issue related to imposition of penalty under Section 78 is for consideration before us. We find that the appellant have admittedly paid the service tax on the service received from foreign country in terms of Section 66A on reverse charge basis and interest thereupon was also paid before issuance of show cause notice. The issue on merit is whether there is levy of service tax on reverse charge mechanism on the service received from the overseas. This issue has undergone litigation in various cases before various forums. Finally, the hon'ble Supreme Court in the case of Indian National Ship Owners Association (supra) held that the levy of service tax is not legal on the said service prior to 18.04.2006 on the ground that Section 66A was enacted on 18.04.2006 only therefore, prior to this stage the levy was not legal and correct. Since the issue involved grave interpretation of law, there cannot be any mala fide intention on the part of the appellant. Moreover, the appellant paid the service tax and interest for the period from 18.04.2006 onwards before issuance of show cause notice therefore, the case of the appellant is squarely covered under the provision of Section 73(3) of Finance Act, 1994 accordingly, the revenue was not suppose to issue show cause notice therefore, there was no question of imposition of penalty.

05. As per our above view, the penalty is not imposable on the appellant hence, the penalty imposed under Section 78 and upheld by learned Commissioner (Appeals) is set aside. The appeal is allowed to the above extent, remaining part of the order is upheld.

(Pronounced in the open court on 23.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)