
M/s. PEC Ltd. Vs Commissioner Of Service Tax (Adjudication)

Service Tax Appeal No. 55445 Of 2014

Court: Customs, Excise And Service Tax Appellate Principal Bench, New Delhi

Date of Decision: Jan. 21, 2022

Acts Referred:

Finance Act, 1994 & Section 77, 78

Hon'ble Judges: Anil Choudhary, J; Raju, Technical Member

Bench: Division Bench

Final Decision: Allowed

Judgement

Sr.

No.", Nature of Service, Period, Service Tax (Rs.).

1., "Banking and other Financial Services,

Business Auxiliary Services.", 2007-08 to 2009-10, "2,56,27,858/-

2., "Erection, Commissioning or installation

services", 2006-07, "4,21,58,314/-

3., "Banking and other financial services

imported & "ST under Reverse Charge

Mechanism.", 2006-07 to 2010-11, "52,21,830/-

4., "Business Auxiliary Service imported

& "ST under Reverse Charge

Mechanism.", 2006-07 to 2010-11, "23,41,210/-

, Total, "7,53,49,212/-

9.2. As regards the confirmation charges, we hold that the appellant, being initiator of letter of credit, is the receiver of the benefit on such opening of",,,

the letter of credit and accordingly, they are liable to pay the confirmation charges and accordingly, they have received the banking services from the",,,

foreign bank, through the bank in India. Accordingly, we find that the appellant is required to pay service tax on such confirmation charges under",,,

Reverse Charge Mechanism",,,

9.3. So far the SWIFT charges are concerned, the privity of contract is between the Indian Bank and the SWIFT society. Thus, the receiver of the",,,

services is the Indian Bank, and not the appellant/assessee.",,,

9.4. Under the facts and circumstances, the appellant/assessee only have reimbursed such SWIFT charges to the Indian bank. Accordingly, we hold",,,

that the appellant is not the receiver of SWIFT services, hence not liable to pay service tax on the same.",,,

9.5. However, we remand this issue to the Id. Commissioner for re-calculation of the tax liability (on confirmation charges) in view of our findings.",,,

10. Further, Rs.23,41,210/- is towards Business Auxiliary Services received by the appellant under RCM. Such service, admittedly, has been",,,

rendered by the service provider located outside India and have been received by the appellant in India. The appellant have been involved in this",,,

business being from the year 2006-2007 to 2010-2011. The said taxability (under RCM) was highly debatable and was under litigation. The issue was",,,

finally decided by the ruling of the Bombay High Court in the case of Indian National Shipowners Association - 2009 (13) STR 235 (Bombay)",,,

wherein by judgement dated 11.12.2008, it was held (in the writ petition) that an assessee is required to pay service tax under Reverse Charge",,,

Mechanism for the specified services, w.e.f. 18.04.2006 only, when Section 66 A was introduced in the Finance Act. This decision was further",,,

affirmed by the Hon'ble Supreme Court as reported in 2010 (17) STR J-57 (SC). We further find that the appellant/assessee was entitled to credit",,,

credit on payment of such service tax under Reverse Charge Mechanism. Thus, there is no incentive for them to evade payment of tax. Accordingly",,,

we uphold this service tax liability, but at the same time, we set aside the penalty.",,,

11. Similarly, in the case of banking and financial charges, as the credit is available for the payment of service tax, under Reverse",,,

Charge Mechanism, the penalty imposed is set aside.",,,

12. Having considered the rival contentions and under the facts and circumstances, our aforementioned findings, we allow this appeal in part and",,,

remand on the issue as stated hereinabove. All the penalties stand set aside. The appellant shall be entitled to consequential benefits in accordance",,,

with law",,,

13. Appeal is allowed for statistical purposes",,,

[order dictated & pronounced in open court]",,,