(2021) 11 CESTAT CK 0025

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20474 Of 2018

Commissioner Of Central Tax Bangalore North West Commissionerate — APPELLANT

Vs

M/s. ABB Limited — RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0025

Hon'ble Judges : S. K. Mohanty, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Revenue has filed this appeal against the impugned order dated 29.12.2017 passed by the learned Commissioner of Central GST, Bangalore.

2. Heard both sides and perused the records.

3. This Tribunal vide Final Order dated 2.2.2016 had remanded the matter to the original authority to quantify the service tax demand pertaining to the period prior to 18.4.2006 and the period after such date. Pursuant to the direction of the Tribunal, the original authority took up the de novo adjudication proceedings and dropped the demand proposed for recovery from the respondent therein. In support of dropping of the proposed adjudged demands, the learned adjudicating authority vide the impugned order at para 16.1 has recorded the following observations:-

"16.1. In view of above discussions, I conclude that the charge of service tax on services received from outside India is provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and received by a person hereinafter referred to as the recipient who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India and the same is applicable with effect from 18.4.2006. I find that the services other than technical know how service under Intellectual Property Right Service rendered by the Noticee are prior to 18.04.2006, when reverse charge mechanism came into effect. Therefore, I hold that Service Tax demanded on these services merits to be dropped."

3. We find that as a recipient of taxable service, the appellant was not liable to pay service tax under reverse charge mechanism prior to the period 18.4.2016 as per the judgment of Hon'ble Bombay High Court in the case of Indian National Ship Owners Association vs. UOI: 2009 (13) STR 235 (Bom.), which was subsequently been affirmed by the Hon'ble Supreme Court, reported in 2010 (17) STR J57 (SC). Considering the factual matrix, the original authority has not only dropped the demand for the period prior to 18.4.2006 but also dropped the proposed demand towards IPR service received by the respondent after such effective date, holding that, such service was not liable for payment of service tax prior to the period 1.7.2012.

4. On careful examination of the case records, we do not find any infirmity in the impugned order passed by the learned adjudicating authority. Hence, we are of the considered view that there is no merit in the appeal filed by the Revenue against the impugned order. Accordingly, the appeal filed by the Revenue is dismissed.

(Order pronounced and dictated in the open court on 12.11.2021.)