केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय कर शुल्कभवन, सातवीं मंजिल,पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

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क फाइल संख्या : File No : **V2(ST)79 to 83/A-II/2017-18** 417 to 421

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP-263 to 267-17-18**

दिनाँक Date : **11-01-2018** जारी करने की तारीख Date of Issue 23-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **AHM-SVTAX-000-JC-041 TO 45-16-17** Dated **29.03.2017** Issued by **JC SVTAX,** Service Tax, Div-HQ , Ahmedabad

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s. Quintiles Research India Pvt Ltd
Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:–
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:–
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद–380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar,Ahmedabad – 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी– 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की माग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

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crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम,1994 की धारा 86 की उप–धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त,, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA)(उसमें से प्रमाणित प्रति होगी) और अपर
आयुक्त, सहायक / उप आयुक्त अथवा A2l9k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/– पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है –

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇨ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇨ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) **इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।**

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

ORDER IN APPEAL

M/s. Quintiles Data Processing Centre (I) Private Limited, a company incorporated under the Company Act, 1956, having their registered office at 404/A, B-Block, Shapath IV, Opp-Karnavati Club, Sarkhej-Gandhinagar Road, Ahmedabad-380051 *(hereinafter referred to as the 'appellants')* have filed the present appeals against the following Orders-in-Original *(hereinafter referred to as 'impugned orders')* passed by the Joint Commissioner, Service Tax, Ahmedabad Hqrs, 1st Floor, Central Excise Bhavan, Ambawadi, Panjarapole, Ahmedabad *(hereinafter referred to as 'adjudicating authority')*;

Sr. No.	OIO No.	OIO date	Period Covered	Appeal No.	Amount Confirmed in OIO (₹)
1	AHM-SVTAX-000-JC-041 TO 045-16-17	29.03.2017	April 2006 to March 2011	V2(ST)80/Ahd-II/2017-18	ST- Rs. 66,42,944/-, Interest- at appropriate rate on Rs. 66,42,944/-, Penalties- Rs. 66,42,944/- + Rs. 10000/-
2	AHM-SVTAX-000-JC-041 TO 045-16-17	29.03.2017	April 2011 to March 2012	V2(ST)81/Ahd-II/2017-18	ST- Rs. 14,62,777/-, Interest- at appropriate rate on Rs. 14,62,777/-, Penalties- Rs. 1,46,278/- + Rs. 10000/-
3	AHM-SVTAX-000-JC-041 TO 045-16-17	29.03.2017	April 2012 to June 2012	V2(ST)82/Ahd-II/2017-18	ST- Rs. 4,79,168/-, Interest- at appropriate rate on Rs. 4,79,168/-, Penalties- Rs. 47,917/- + Rs. 10000/-
4	AHM-SVTAX-000-JC-041 TO 045-16-17	29.03.2017	July 2012 to March 2013	V2(ST)83/Ahd-II/2017-18	ST- Rs. 15,49,553/-, Interest- at appropriate rate on Rs. 15,49,553/-, Penalties- Rs. 1,54,955/- + Rs.

					10000/-
5	AHM-SVTAX-000-JC-041 TO 045-16-17	29.03.2017	April 2013 to March 2014	V2(ST)79/Ahd-II/2017-18	ST- Rs. 38,63,591/-, Interest- at appropriate rate on Rs. 38,63,591/-, Penalties- Rs. 3,86,359/- + Rs. 10000/-

2. The facts of the case, in brief, are that the appellants are engaged in the business of Information Technology (IT) enabled services Processing and Analysis of Data from Electrocardiograms, Scans, etc., from clinical trials, in connection with research and development activities pertaining to the global pharmaceutical industry and other IT support services provided to group companies. The company of the appellants had STP approval by Software Technology Parks of India, Mumbai vide their letter No. STPI/MUM/VIII(A)(899)/2001(12)/3769. The Company was a subsidiary of Quintiles Trans National Corporation, a USA based company. The appellants are holding Centralized Service Tax Registration No. AAACQ0698MST001 under the category of ' Business Auxiliary Service' under Section 65[105] of the Finance Act, 1994 with Service Tax Commissionerate, Division III, Range 13, Ahmedabad.

3. During the course of CERA Audit, it was noticed that there was a difference of Rs. 190.87 lakhs between the income reflected in the Balance Sheet of the year 2006-07 vis-à-vis figures reflected in the ST-3 returns filed by the appellants. Further, the department during Scrutiny of ST-3 returns vis-à-vis the profit and loss account for the period 2006-07, 2007-08 and 2008-09 found that the appellants had shown combined receipt/expense figures, in foreign currency, in their ST-3 returns whereas they had shown separate income and expenditure in their profit and loss accounts. Therefore, it was not possible to compare the same. The appellants were therefore requested by the department to provide reconciliation of the figures of Income/Expenditure in Foreign Currency shown in the ST-3 with the figures shown in profit and loss accounts, which were produced by them, vide their letter dated 30.03.2011.

4. The appellants, vide their letter dated 30.03.2011 to the department, explained the following reasons for difference in income figures mentioned in the ST-3 returns vis-à-vis profit and loss account:

(a) the profit and loss account has shown income on accrual basis whereas income figures taken in ST-3 returns were the actual receipt during the said period.

(b) Combined figures i.e. income + expenditure were mentioned in the ST-3 returns whereas the profit and loss account contained income on accrual basis.

(c) Difference in foreign currency expense was because of the fact that all foreign currency expenses were not liable to Service Tax under Section 66-A read with import of Service Tax Rules, 2006.

5. On perusal of the reconciliation statement produced by the appellants, it was found by the department that they had shown only a part of the actual expenditure incurred by them during the period 2006-07 to 2008-09. The appellants had paid Service Tax only on Rs. 99,17,674/- instead of paying Service Tax on Rs. 5,24,43,745/-. They had thereby not paid Service Tax on Rs. 4,25,26,071/- incurred as expenditure under the heads Management Fees, Legal and Prof. Fees and Computer Supply and Maintenance Service.

6. Further the appellants letter dated 11.04.2011 to the department revealed that expenditure in foreign currency in the Balance Sheets for the year 2006-07 to 2008-09 was under three heads namely:

Sl. No.	Heads	Amount shown as expenditure in P & L A/c (in foreign currency)
1	Management Fee	Rs. 79,68,852/-
2	Legal & Professional Fees	Rs. 28,12,172/-
3	Computer Supply & Maintenance Service	Rs. 57,16,501/-

In addition to the aforesaid details of expenditures, the appellants also submitted that during the period 01.04.2009 to 31.12.2009 they had incurred expenditures under the head of "Management Fees" as under:

April' 2009 to Sept' 2009 – Rs. 21,60,944/- ,

Oct' 2009 to Dec' 2009 – Rs. 92,49,246/-.

On being asked to furnish the details of aforesaid expenditure for the period Dec'2009 onwards, the appellants informed that with effect from 01.01.2010 their company had not paid any amount towards Management Fees. So far as details of expenses incurred under the head of Legal & Professional Fees as well as Computer Supplies for the period April 2009 to March 2010 was concerned, they would require time and would submit the same. The appellants submitted the break-ups of Management Fees and Computer for the period 01.04.2006 to 31.03.2011 and it was found that

they had incurred an expenditure of Rs. 2,92,84,543/- under the head 'Management Fees' and Rs. 2,77,35,605/- under the head Computer Link during the period 01.04.2006 to 31.03.2011.

7. Further, the appellants vide their letter dated 18.04.2011 submitted that the figures for expenditure incurred by them under the head "legal and professional fees" for the period 2009-10 and 2010-11. As per the said details they had incurred a total expenditure of Rs. 64,51,936/- during the period 2009-10 and 2010-11. Out of the said expenditure, they had reflected Rs. 52,57,566/- in their ST-3 returns and had paid Service Tax on the same. The balance amount of Rs. 11,94,370/- was not declared by them in their Service Tax returns and no Service Tax was paid on the said amount.

8. The appellants, vide their letter dated 1[illegible].04.2011, submitted that with regard to Management fees, legal and professional fees, computer supply and maintenance fees they were not paying Service Tax in respect of above services for the reasons reproduced herein below:

(a) Management Fee: These are basically allocation of expenses incurred by their parent company at USA and has been charged to all associate companies across the world which include Quintiles Data Processing Centre (India) Private Limited. The word "Management Fees" used in the profit and Loss account are only for Nomenclature purpose but actually its nothing but allocation of expenses incurred by parent company. These allocations consist of departmental cost. Company submit that said matter has already been scrutinized in detail by Honourable Joint Commissioner, Service Tax and has passed an order dated 21st May 2007 declaring that "Management Fees" are services but are allocation of expenses and hence no service tax is payable by the company. Company believes that above order still hold good and hence not paying Service Tax on the same.

(b) Legal & Professional fees: This consist of two parts: (1) Audit fees allocation charged by parent Company and (2) other consultancy services received from overseas third party service providers, Company submit that since Audit fees is nothing but cost allocation of audit fees paid by parent company for getting their consolidated accounts audited as per US laws, no Service Tax is payable. So far as payment under the head other consultancy services is concerned, the company has been paying service tax on the same as per Import of Service Rules and is duly reflected on ST-3 returns.

(c) Computer supply & Maintenance service: These payments are mainly on account of allocation of expenses incurred by parent company for providing Link charges to the company for its data communication. Company submit that since the payment made by them are mere cross charge of payment

made by parent company to ultimate vendor, no element of services are involved and hence is not liable to pay Service Tax on the same.

9. The appellants, vide their letter dated 18.04.2011, submitted as below to the department in respect of Computer Charges:

Computer Charges: These are allocations made by parent company for payment by them for private Enterprise leased Lines across several geographies (under sea cables) connections through which Quintiles India offices are linked directly with U S offices. This connectivity is used for transfer of data between offices and is called MPLS Circuit payment (Multi Protocol Label Switching). This has no co-relation whatever with Internet Services. The cross charge happens on a monthly basis between Parent Company in the US and Quintiles by raising an invoice.

10. The department noticed that the appellants had not declared the expenditure incurred in foreign currency towards Management Fees, Legal and Prof. Fee and Computer Supply and Maintenance Service during the period 2006-07 to 2010-11. Therefore, Show Cause Notices were issued to the appellants for the said period. The adjudicating authority vide impugned orders confirmed the demand. These show cause notices were adjudicated vide the aforementioned OIOs wherein the adjudicating authority confirmed the demand on the following findings-

(a) Expenses incurred by the appellants as 'Management Fees' are nothing but consideration paid towards services received in the areas falling under management or business consultancy.

(b) In respect of legal fees, the same has been paid by the appellants as sharing costs involved in auditing/consolidation of accounts of various subsidiaries across the world. The expenses incurred by the appellants are in the nature of legal or professional charges against certain advice/or audit/ or consultancy/ or technical assistance to meet the requirement of law, thereby qualifying as consideration against Legal Consultancy Services.

(c) Computer Supply and Maintenance charges are nothing but allocation of expenses incurred by Quintiles Transnational Corp. for enabling communication and transmission of data between all the affiliates, which are included in the description of internet telecommunication services. Therefore, expenses incurred on account of Computer Supply and Maintenance or Data Linkages are liable to service tax.

(d) It is not in dispute that the services mentioned such as Management & Business Consultancy Service, Legal Consultancy Services, Internet Telecommunication Services & Business Support

Services were received by the appellants from the service provider who are not having fixed establishment in India.

(e) All the three Services i.e. Management & Business Consultancy Service, Legal Consultancy Services, Internet Telecommunication Services are to be treated as provided from outside India and received in India and consequently, became taxable services under Section 66A of the Finance Act, 1994 and would be treated as if the recipient had himself provided the services in India.

(f) From 01.07.2012, all the three services are 'Services' in terms of Section 65 B(44) and for all these Services the place of provision of service as per the default rule 3 of place of provision of service rules(POPS), is the location of the recipient of service i.e. the appellants location i.e. India. Hence, Service Tax payable under reverse charge.

(g) The appellants have suppressed the material facts from the Department by not declaring the value of services received from abroad under Management & Business Consultancy Service, Legal Consultancy Services, Internet Telecommunication Services in ST-3 returns.

11. Aggrieved of the same, the appellants filed these Appeals. In the grounds of appeal the appellants mainly submitted that:

(a) They have not received any services from their foreign group companies.

(b) Cost allocation as per agreement does not amount to receipt of service.

(c) Hon'ble Mumbai Tribunal in JM Financial Services Pvt. Ltd. Vs CST Mumbai-I 2004(36) STR 151 (Tribunal) held that office expenses incurred commonly by the appellant as received by way of share of expenses, would not be liable to service tax since no service has been rendered. They further relied upon the case of Reliance ADA Group Pvt. Ltd. Vs CST, Mumbai-IV 2016(43) STR 372(Tri.-Mumbai). They referred also various case laws in support of their claims.

(d) The foreign company makes payment to the foreign service provider and allocates costs to the appellants, does not mean that such foreign company has rendered service to the appellants.

(e) When service is not received by the appellants and the costs incurred and paid to the foreign expenses have no connection to any service received by the appellant. Therefore, demand of service tax on cost allocation is not sustainable.

(f) Expenses incurred towards Rewards and recognition for employees is not consideration.

(g) Impugned orders have been passed without analyzing the master cost allocation agreement.

(h) Tax planning and tax avoidance cannot be considered as illegal.

(i) No interest is payable and not any penalty is imposable.

(j) Prayed to set aside the impugned orders.

12. Personal hearing was conducted on 01.12.2017, wherein Shrimati Disha Gursahaney, Advocate, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. She pleaded that earlier period was already audited and litigated; hence extended period can't be invoked. She also submitted additional written submissions and copy of two Case laws i.e. Reliance ADA Group Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai IV [2016 (43) S.T.R. 372 (Tri. – Mumbai)] and M/S JM Financial Services Pvt. Ltd vs. Commissioner Of Service Tax, Mumbai I [2014 (36) S.T.R. 151 (Tri. – Mumbai)] in support of their claims.

13. I have carefully gone through the records of the case, the submissions given in the grounds of appeal and citation referred in the appeal. I have also gone through the additional written submissions and referred Case laws. The issue to be decided by me is that whether the expenditure incurred in foreign currency towards Management Fees, Legal and Prof. Fee and Computer Supply and Maintenance Service during the period 2006-07 to 2010-11 is applicable for service Tax or no.

14. Before enactment of section 66A of the Finance Act, 1994 with effect from April 18, 2006, there was no authority vested by law in the authorities to levy service tax on a person who is a resident in India but who receives services outside India. It is only after the enactment of section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. I would like to reproduce the section 66A of the Finance Act, 1994 for ease of reference:

"66A. Charge of service tax on services received from outside India –

(1) Where any service specified in clause (105) of section 65 is—

(a) ***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

(b) ***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 accordingly all the provisions of this Chapter shall apply:***

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.— A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2.—Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted. **" (Emphasis supplied)**

15. From the above, it is evident that-

(i) Because of the enactment of Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service outside India from a person who is non-resident or is from outside India.

(ii) After 18.04.2006, by virtue of the introduction of Section 66A, if any service specified in Section 65(105) of the Finance Act, 1994, 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 such service is received by a person, who has his place of business, fixed establishment, permanent address or usual place of residence in India, then, such service shall, for the purposes of the said section, be the taxable service and such taxable service shall be treated as if the recipient had himself provided the service in India and accordingly all the provisions of Chapter V would apply.

16. I find that the appellants in their submission to the department have explained the nature and description of costs incurred by the parent company and allocated to the appellants as follows (the adjudicating authority has mentioned under Para 3 in his impugned orders)-

(a) Regarding Management Fees: Costs incurred for activities such as quality assurance, human resources, CEO administration, finance, corporate communications, website, business development, marketing and such other activities on yearly basis are allocated to the appellants and referred to as Management Fees.

(b) Regarding Legal and Professional Charges: These are of two types-(i) allocation of audit fees paid by the parent company for consolidation of accounts audited as per US laws; and (ii) other consultancy services received from overseas third party service provider, on which they are paying service tax under section 66A and such charges are not part of the show cause notice.

(c) Regarding Computer supply and maintenance services: These are allocation of expenses incurred by the parent company and paid to overseas service provider for enabling communication and transmission of data between all the group entities across the world through undersea cables.

I find that the adjudicating authority has rightly classified the above services under 'Management or business consultancy services, Legal Consultancy Services and Internet Telecommunication Services (refer para 21 to 23 of the impugned orders).

17. In view of the facts and discussion herein above, I find that the appellants are subsidiaries of a multi-national company Quintiles Trans National Corporation, a USA based company. M/s Quintiles Trans National Corporation (USA based company) was a parent company and facilitated or manage to facilitate the subsidiaries with the taxable services and charged them specific amount towards Management Fees, Legal and Prof. Fee and Computer Supply and Maintenance Service during the period 2006-07 to 2010-11 and the same has been reimbursed in foreign currency by the appellants. I find that the appellants were receiving taxable services from Quintiles Trans National Corporation (USA based company), which does not

have any office in India. As per the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 as notified vide Notification No. 11/2006-Service Tax, dated 19.04.2006, The appellants were incurring expenditure in foreign currency towards the various taxable services which were being paid directly or indirectly to their overseas suppliers of the services and these expenditure has not been shown correctly in their ST-3 returns.

18. Further, I find that the appellants with view to evade payment of service tax suppressed the facts and did not incorporate the proper value in the service tax returns filed by them. Hence, extended period of limitation has rightly been invoked by the department by means of the proviso to Sec. 73(1).

19. I have gone through the copy of Master Cost allocation agreement submitted by the appellants, but without any supportive documents and proof to substantiate and co-ordinate their claim, I do not find it as sufficient document to protect their claim. The appellants have to be very clear on when it is mere sharing of expense [not liable] and when is it treated as taxable service liable to service tax. When such expenses incurred are excluded from service tax, the appellants should submit the proper documents in their support.

20. The appellants have placed reliance on the Case laws i.e. Reliance ADA Group Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai IV [2016 (43) S.T.R. 372 (Tri. – Mumbai)], M/S JM Financial Services Pvt. Ltd vs. Commissioner Of Service Tax, Mumbai I [2014 (36) S.T.R. 151 (Tri. – Mumbai)] and others in support of their claims.

In the case law of Reliance ADA Group Pvt Ltd Vs CST, Mumbai IV (2016-TIOL-603-CESTAT-MUM), Reliance ADA Group Pvt. Ltd., a Guarantee Company under Section 27 of erstwhile Companies Act, 1956, entered into a contractual agreement with its participating group companies to procure certain services on their behalf so as to share the cost among the participating Group Companies. The expenses/cost incurred in procuring the specified services on behalf of the participating group companies are separately charged to and reimbursed by the participating group companies. The appellant merely carries out the agency function of procurement of services for the participating Group Companies which share the costs and expenses thereon. Held no taxable service is provided and, in absence of rendition of such service by the appellant to the participating group companies, the demand of service tax cannot sustain. Held that the Appellant completely satisfies the conditions of a 'Pure Agent' as set out in Rule 5(2) of the Valuation Rules.

In the present appeals, I find that the appellants are not fulfilling the conditions prescribed for 'pure agent' under rule 5(2) of the Service Tax (Determination of value) Rules, 2006. I have also gone through the other case laws referred by the appellants. I find that those referred case laws are not relevant to the situation in question.

21. The Hon'ble Gujarat High Court in the appellants' earlier case i.e. Commissioner, Service Tax Vs. Quintiles Data Processing Centre (I) Pvt. Ltd. [2012] 54 VST 398 (Guj) held that-

"In view of the above judicial pronouncement and in view of the facts on record, we do not find that the Tribunal committed any error in setting aside the service tax demand. When **we find that the charging section making service recipient liable to pay service tax, in certain circumstances was introduced by virtue of section 66A of the Finance Act, 1994 with effect from April 18, 2006, any demand of service tax prior to the said period, merely relying on rule 2(1)(d)(iv) of the Service Tax Rules was wholly impermissible.** The Tribunal correctly ruled in favour of the assessee." **(Emphasis supplied)**

22. In the light of the above, I find that the appellants are liable to pay Service Tax with effect from April 18, 2006 for the expenditure incurred by them in foreign currency towards Management Fees, Legal and Prof. Fee and Computer Supply and Maintenance Service during the period 2006-07 to 2010-11, under Section 73(1) of the Finance Act, 1994. I also find that they are liable to pay interest in terms of Section 75 of the Finance Act, 1994 for delay in payment of Service Tax. I also find that imposition of the penalties by the adjudicating authority is justified.

23. Accordingly, as per the above discussion, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

24. In view of the above, the appeals filed by the appellants are rejected.

25. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

25. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Attested

(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY SPEED POST TO:

M/s. Quintiles Data Processing Centre (I) Private Ltd.,
404/A, B-Block, Shapath IV, Opp-Karnavati Club,
Sarkhej-Gandhinagar Road, Ahmedabad-380051.

Copy to:

(1) The Chief Commissioner, Central Tax, Ahmedabad Zone.

(2) The Commissioner, Central Tax, Ahmedabad South.

(3) The Assistant Commissioner, Central Tax Division-VII, Ahmedabad South.

(4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)

(5) Guard file