
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : **V2(ST)052/A-II/2017-18**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-215-17-18**

दिनांक Date : 26-12-2017 जारी करने की तारीख Date of Issue 11-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD-04/26/AC/2016-17** Dated **14.03.2017**
Issued by Assistant Commr STC, Service Tax, Ahmedabad

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

M/s. CLIANTHA RESEARCH 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 मेंटल हास्पिटल कम्पाउण्ड, मेघाणी 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 विरुद्ध 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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 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



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 एव (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 A219k 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 शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 हैं -

- (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 अर्ज़ों एवं अपील को लागू नहीं होंगे।

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.Cliantha Research Ltd.(earlier known as M/s B.A.Research Ltd.), Opp. Pushpraj Towers, Nr. Judges Bunglows, Bodakdev, Ahmedabad-380 054 (STR No. No. AACCB 4535 AST001) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number SD-04/26/AC/2016-17 dated 14.03.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax Div-IV, APM Mall, Sattellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

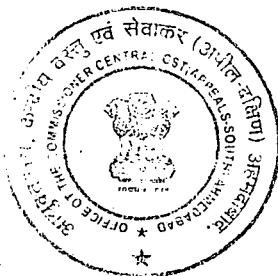
2.1 The facts of the case, in brief, are that, appellant, is having their subsidiary company abroad viz. M/s Hill Top Purchaser, USA for which appellant had acted as Guarantor on borrowing loan from BOB. Appellant had raised debit notes of Rs. 39,39,320/- (USD 77,000) and Rs. 33,12,079/- (USD 45,895 + 15,000) dated 31.03.2012 and 31.03.2013 respectively for period 2011-12 and 2012-13 respectively, on M/s Hill Top Purchaser, USA to-ward Corporate Guarantee fees @1% for loan amount. Therefore appellant had provided the service classified under category of "Banking and Other Financial Service" classified u/s 65(105)(zm) of FA, 1994. Appellant had shown commission income of Rs.. 39,39,320/- in FY 2011-12 and Rs. 33,12,079/- in FY, 2012-13 in their A/c and had not paid service tax on it.

2.2 Appellant was of view that Banking and financial Services u/s 65(105)(zzk) are covered under rule 3(iii) of Export of Taxable Service Rules and recipient of Service is located outside India, therefore, it is export of service, resultantly, they are not required to pay service tax. Department was of view that service of Guarantor was provided in, Gujarat, India, it is not export of service and appellant had provided the intermediary services in terms of Rule 9 of Place of Provisions Rule, 2012 (POPR, 2012),. SCN dt. 22.06.2015 for recovering Amount for Rs. 8,15,123/- [Rs. 4,05,750/- FY 2011-12 & Rs. 4,09,373/- for 2012-13], was issued.

Rule 9 of POPSR, 2012 is reproduced as below-

"9. *Place of provision of specified services.-*

The place of provision of following services shall be the location of the service provider:-



8

- (a) **Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;**
- (b) *Online information and database access or retrieval services;*
- (c) *Intermediary services;*
- (d) *Service consisting of hiring of means of transport, upto a period of one month."*

2.3 Demand of Rs. 8,15,123/- for period 2011-12 & 2012-13 was confirmed u/s 73(1) r/w 68 of FA, 1994 and it was ordered to recover with interest u/s 75 FA, 1994. Penalty of Rs. 8,15,123/- and Rs. 10,000/- was imposed u/s 78 and 77(1)(a)/77(2) of FA, 1994.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 08.05.2017 before the Commissioner Appeals (Ahmadabad) wherein it is contended that -

- I. Service tax has been demanded on ground that we have provided Banking and other financial services, defined u/s 65(12) r/w section 65(105)(zm) of FA, 1994. As per department it is taxable falling u/r 3(1)(ii) of the Export of service rules, 2005 as existed prior to 01.07.2012 and rule 9 of POPS, 2012 effective from 01.07.2012.
- II. A close scrutiny of definition of "Banking and other financial services", will clearly reveal that the person, providing such service must be Banking Company or Financial Institution or Non- Banking Financial Company or any Body Corporate or Commercial Concern, **authorized to provide Banking and other Financial Services.** Since we are not authorized Financial Institution, we are not liable to pay service tax.
- III. Assuming without admitting that it is "Banking and other financial services" still does not attract any service tax being export of service in terms of Export of service rules, 2005 as existed prior to 01.07.2012 and POPS, 2012 effective from 01.07.2012.
- IV. Service provided is covered under rule 3(1)(iii) of the Export of service rules, 2005 as existed prior to 01.07.2012. Service provided is to person out side India and payment being received in foreign currency, it is a case of export of Service and therefore



no service tax is payable. For period after 01.07.2012, if the service provided is taken as "Banking and other financial services", then it should be classifiable under rule 3 of POPSR, 2012 and place of provision of service is the location of service recipient, which is our subsidiary company, located in foreign country. Therefore no service tax is payable for period after 01.07.2012 also.

4. Personal hearing in the case was granted on 14.11.2017. Shree Sandeep Patel, CA, appeared before me and reiterated the grounds of appeal.

DISCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. Both pre-negative periods i.e. prior to 01.07.2012 and post-negative i.e post 01.07.2012 are covered in this case. I shall first take up pre-negative period.

7. Pre-negative period i.e. prior to 01.07.2012

Adjudicating authority has concluded that corporate guarantee agreement has been stamped and stamp duty has been paid to Government of Gujarat on 23.10.2010, therefore service as Guarantor were provided in India. Further it is concluded that it is intermediary service. I find that service rendered is not "Banking and other financial services", they are not **authorized to provide Banking and other Financial Services**. I find that ultimate beneficiary of service is located in non-taxable territory but the service is performed in taxable territory. Further regarding classification of service, I agree with the adjudicating authority that they are providing intermediary service. Definition of at rule 2(f) of Place of Provision of Service Rules-2012 is as below-

"(f) intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not



include a person who provides the main service on his account."

8. I find that place of performance of service is identifiable i.e. in taxable territory, therefore it is not export in terms of rule 3(1)(ii) of the Export of service rules, 2005 as existed prior to 01.07.2012. Appellant has contested that it is export of service under rule 3(1)(iii) of the Export of service rules, 2005. I find that rule 3(1)(iii) is not applicable as location of performance of service is identifiable.

9. Provision of Corporate Bank Guarantee service by appellant to Bank on behalf of foreign subsidiary proves that service is provided and performed in India; therefore it can not be termed as export of service. Performance of service is deciding factor for taxation. My view is supported by decision in case of MICROSOFT CORPN. (I) (P) LTD. [2009 (15) S.T.R. 680 (Tri. - Del.)]. Said judgment has been affirmed by Delhi HC [2009 (16) STR 545].

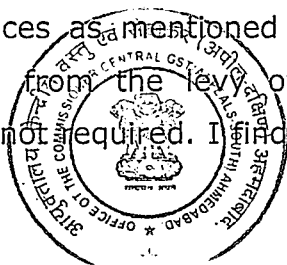
10. Para 26 of decision in case of MICROSOFT CORPN. (I) (P) LTD. [2009 (15) S.T.R. 680 (Tri. - Del.)] is reproduced as below-

*"26. The circulars hold that location of service receiver is relevant factor to decide export of service under Rule 3(1)(iii) of Export of Services Rules, 2005. This does not rule out that when ultimate outcome of service is consumed in India, the service exhausts or extinct thereat without being capable of exported, losing its utility. **Performance of service being decisive for taxation and to decide taxable event and incidence of tax, export of service pleaded by the appellant is inconceivable.**"*

In view of above, I hold that service rendered by appellant is not export and further hold that it is taxable for period prior to 01.07.2012. I up hold the OIO as far it relates to period prior to 01.07.2012.

11. **Post-negative period i.e. prior from 01.07.2012**

SERVICE tax is now payable on all services rendered in the taxable territory except the services as mentioned in the negative list and those granted exemption from the levy of Service tax. Therefore classification of service is not required. I find that service rendered by



Appellant is neither included in negative list of service provided under 66 D of the act and nor it is exempted.

12. The essence of Service tax in post negative period is that a service should be taxed in the jurisdiction of its consumption. The new charging section, Section 66B of the Finance Act, enables taxation of such services as are provided in the taxable territory. Thus, the services that are provided in a non-taxable territory would not be chargeable to Service tax.

13. At this juncture it, therefore, becomes essential to determine the "place" where the services have been provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided. I find that service is provided in India as stamp duty is paid in India and also it is executed in India, as discussed earlier in forgoing paras.

14. As per section 66B of Finance Act, 1994, service tax is payable if service is provided in a taxable territory. The Place of Provision of Service Rules (POPS) are primarily to determine whether or not service is provided in 'taxable territory'.

15. The Place of Provision of Supply Rules, 2012 (POPSR) introduced with effect from July 1, 2012 vide Notification No. 28/2012-ST dated June 20, 2012 replaces the erstwhile Export of Services, Rules, 2005 and Taxation of Services (Provided from outside India and received in India) Rules, 2006. The POPS rules are relevant for export of service but these rules themselves do not determine whether service is 'export'.

16. For period after 01.07.2012, adjudicating authority has concluded that appellant is neither financier nor borrower but merely guarantor, therefore their role is of intermediary in procuring Banking and financial services for their overseas subsidiary company. Said activity of providing corporate guarantee by them are covered under "intermediary service" as defined u/r 9 of POPSR, 2012, and accordingly the place of provision of service is place where Intermediary is located. Appellant being intermediary and being located in India, they are liable for service tax.



(Handwritten signature)

17. Appellant has claimed that it is export of service to their recipient subsidiary company as remittance has been received in foreign currency. I do not agree to this as all conditions, given in rule 6A of service tax rules, required to qualify service as "exports", are not satisfied. As per rule 6A [as inserted w.e.f. 1-7-2012] of service tax rules, the six essential conditions are to be fulfilled to be considered as export service:

- a. It must be a service under sub -section 44 of section 65B. in other words, service shall not be covered under negative list of service provided under 66 D of the act.
- b. The service provider must be located in taxable territory i.e. India.
- c. The service receiver is located outside India.
- d. The payment for such service is received by the service provider in convertible foreign exchange.
- e. The place of provision of the service is outside India as per the place of provision of service rules,2012.**
- f. The service provider and the service receiver are not merely establishment of a distinct person i.e. branches of assessee in two different tax jurisdictions.

Since the place of place of provision of the service is within India as stamp duty is paid and stamp is executed in India., it can not be termed as export of service for period from 01.07.2012. I hold that service tax is correctly demanded for period from 01.07.2012.

18. Appellant had suppressed the facts by not obtaining service tax Registration, not mentioning in ST-3 returns and not paying service tax, therefore, I agree that, adjudicating authority has correctly invoked extended period u/s 73(1), has correctly confirmed the demand of Rs. 8,15,123/- with interest u/s 75 and has correctly imposed penalty Rs. 8,15,123/- u/s 78 and Rs. 10,000/-77 of FA, 1994. I uphold the OIO, as far as it relates to issue regarding above corporate Bank Guarantee.

19. In view of above discussion and findings, I reject the appeal filed by appellant.



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

20. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

R.R. Patel

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s.Cliantha Research Ltd

Opp. Pushpraj Towers,

Nr. Judges Bungalows,

Bodakdev, Ahmedabad-380 054

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST, Ahmedabad-South,,Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner, GST Ahmedabad-South., Div-VI, Ahmedabad-I.
- 5) The Asst. Commissioner(System), GST, Ahmedabad- South, Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

