केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

केंद्रीय कर भवन,
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50267050030

क फाइल संख्या : File No : V2(ST)8/Ahd-South/2018-19
Stay Appl.No. /2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-019-2018-19**
दिनाँक Date : **28-06-2018** जारी करने की तारीख Date of Issue 9/7/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST-VI/Ref-90/SNL/17-18** दिनाँक: **05.02.2018** issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

SNL Financial India pvt Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such orcer, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्तालय
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिन भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए--8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेष्ति दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ--20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(i) amount cetermined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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।

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

This order arises on account of an appeal filed by M/s. SNL Financial (India) Pvt. Ltd., SNL Office, 5 Sunrise Park Society, Nr. Sales India, Drive-in-Road, Ahmedabad (hereinafter referred to as the *'the appellants'* for sake of brevity) against Order-in-Original number CGST-VI/REF-90/SNL-Finance/17-18 dated 05.02.2018 (hereinafter referred to as the *'impugned order'* for the sake of brevity) passed by the Assistant Commissioner, CGST, Division-VI (Vastrapur), Ahmedabad (South) (hereinafter referred to as the *'adjudicating authority'* for the sake of brevity).

2. Briefly facts of the case are that the appellants are registered with the Service Tax Department under the category of "Business Auxiliary Service, Rent-a-Cab Service, Security Agency Service, Legal Consultancy Service and other taxable services" and holding Registration No. AAICS5093ESD001. They filed a refund claim of ₹40,30,976/- on 29.09.2017 for the period October 2016 to December 2016 under Notification number 27/2012-C.E.(NT) dated 18.06.2012 (hereinafter referred to as *'the said Notification'* for sake of brevity) before the proper authority in prescribed format. The adjudicating authority, vide the impugned order, rejected the refund of ₹40,30,976/- in terms of Notification number 27/2012-C.E.(NT) dated 18.06.2012 read with Section 11B of the Central Excise Act,1944 made applicable to the Service Tax matter vide Section 83 of the Finance Act,1994 on the ground that the provisions of the services provided by the appellants are in the taxable territory of India and hence, the services provided by them are not covered under the definition of export as per Rule 6A of the Service Tax Rules, 1994.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have submitted that the services, provided by them to their overseas client, do not fall under the category of Online Information and Database Access service. The services provided by them are merely in the nature of data collection and feeding into the software of M/s. SNL, USA who, in turn, use the said data, fed on their server, to provide output services to their customers. Also, the server, on which the appellants feed the data, is owned by M/s. SNL, USA. Thus, as the appellants do not own the server, they don't have any right for distribution and providing access of any data. They argued that the services, they are providing, qualify as Business Support Service (BSS) and as the place of provision of BSS is outside India, the services provided by them amount to export of services. The appellants further contended that the impugned order is a non speaking one as it has not been supported with appropriate reasoning for the rejection.

4. Personal hearing in the case was granted on 17.05.2018 wherein Shri Pathik Desai, Shri Maulin Gaglani and Smt. Zil Ramani appeared on behalf of the appellants and reiterated the contents of the appeal memorandum. Shri Gaglani claimed that the entire data is owned by the US based client and the appellants are merely providing Business Support Service.

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. When I looked at the impugned order, I found that no material is placed there in support of the claim of the adjudicating authority. No justification, at all, has been recorded in the impugned order which could confirm the fact that the services provided by the appellants are of the nature of Online Information and Database Access service and not the Business Support Service. The portion of "Discussion & Finding" of the impugned has no substance at all and it seems that the adjudicating authority has jumped to the conclusion only for the sake of rejecting the refund claim. In this regard, I agree with the plea of the appellants that the impugned order is a non-speaking one and did not follow the principle of natural justice. The adjudicating authority should have issued a speaking order in the interest of justice. Just stating that the appellants are not entitled for the refund as "the services are not what they are declared" does not suffice the purpose unless reasons have been clearly quoted (along with various judgments and citations) in the impugned order.

6. Now, in their grounds of appeal, the appellants have claimed that they are not providing Online Information and Database Access service to their clients. In support of their claim, they have submitted before me a copy of agreement entered into between them and M/s. SNL, US. Going through the said agreement, I found the Exhibit-A portion where the scope of services has been agreed upon. In the said section, the services to be provided by the appellants to M/s. SNL, US are Data Collection, Data Storing/Collating, Data Analysis, Data Feeding/ Data Entry, Quality Reviewing and various other services. Online Information and Database Access Services are provided in electronic form through computer network. Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention. Examples of such services are (i) online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites; (ii) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports; (iii) Web-based services providing access or download of digital content. It is also important to know that what is not covered under the category of the said service. As per the guidance note, released by the CBEC in 2012, the following services will not be treated as "Online Information and Database Access service"; (i) Sale or purchase of goods, articles etc. over the internet; (ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing; (iii) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail; (iv) Repair of software, or of hardware, through the internet, from a remote location; (v) Internet backbone services and internet access

services. Thus, I find that the services, as mentioned in Exhibit-A of the said agreement, are nowhere related to the services described in the category of Online Information and Database Access Services. The inclusive parts of the definition of "Online Information and Database Access service" are only indicative and not exhaustive. To determine if a particular service is an OIDAR service, the following test can be applied:

Service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in the absence of information technology	OIDAR Service
PDF document manually emailed by provider	YES	NO	NO
PDF document automatically emailed by provider's system	YES	YES	YES
PDF document automatically downloaded from site	YES	YES	YES
Stock photographs available for automatic download	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	YES	NO	NO
Individually commissioned content sent in digital form e.g., photographs, reports, medical results	YES	NO	NO

From the above, it can be very clearly deduced that the services provided by the appellants, to their overseas client, are not related to the services as mentioned in the category of "Online Information and Database Access Service". Besides, I would like to quote, below, the relevant contents from the CBEC Circular number B-11/1/2001-TRU dated 09.07.2001, which has clarified the nature of Online Information and Database Access Service;

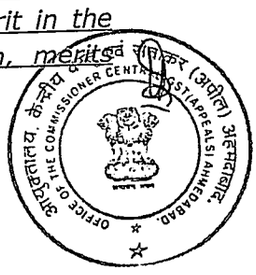
"3. In the context of this service, it may be relevant to point out the manner in which on-line information and database access/retrieval is generally made available. First the function of what is commonly known as Internet Service Providers (ISP). The ISPs provide telecommunication network or gateway necessary to access messages and databases and other information holdings of

content providers. The second element is on-line information provision services which includes database services, provision of information on web-sites, provision of on-line data retrieval services from data bases and other information, to all or limited number of users and provision of on-line information by content providers.

4. Internet Service Providers (ISPs) provide access to the web-sites through the computer network and the web-sites. Web-sites, in turn, provide the database or information. Some of the well-known ISPs operating in India are VSNL, MTNL, Satyam Online, Bharti, TATA, RPG, HCL, Wipro, BPL, Mantra Online, Dishnet. They normally charge the customers on the basis of usage of time (hours). They also provide dedicated lease lines on lump-sump payment basis. Clearly, ISPs providing service in relation to on-line information and database access or retrieval. They are an integral part of the internet operations and without their service, the data or information can neither be accessed nor retrieved. They are, therefore, liable to pay Service Tax on the amount charged from the customers whether on usage time basis or on lease line basis."

In the case of M/s. THOMSON REUTERS INDIA PVT. LTD. versus the Commissioner of Service Tax, Mumbai-I [2015 (38) STR 1014 (Tri-Mumbai)], The Tribunal, West Zonal Bench, Mumbai, held that in the case of collecting, collating, verifying data and transmission of same to foreign sister concern either electronically or otherwise and consideration paid on cost plus basis in convertible foreign exchange, the services rendered not in nature of management or repair service but merits classification under business support services. The concerned content of the said judgment is reproduced, verbatim, below for more clarification;

*"**5.** We have carefully considered the submissions made by both the sides. We have also perused the agreement entered into by the appellants with Reuters Ltd. U.K. As per the agreement Reuters Limited, U.K. are engaged in producing news and financial information and related products compiled by the Reuters Group situated all over the world and the appellant, the Indian entity, is required to collect and provide data for inclusion in the Reuters products. For the services rendered Reuters Ltd., UK has agreed to compensate the appellant for performing such activities and for the related financial risks. As regards the 'editorial services' the appellant is required to collect from all sources including but not limited to journalists, photographers and cameraman and supply to Reuters Ltd., U.K., a file of general, political and economic and financial news reports and pictures and news film of its standard suitable for use in the Reuters Group media products and other information products. Such file has to be supplied to the foreign entity by electronic or other means. In consideration for the services rendered, the foreign entity, Reuters Ltd., U.K., is required to pay a fee to the appellant in an amount equal to 108% of the costs and expenses incurred by the appellant in providing those services. Thus, as per the agreement, the services rendered is one of collecting, collating, verifying data and transmission of the same to the foreign-sister concern of the appellant. The information has to be transmitted either electronically or otherwise and the consideration is paid on cost plus basis. Thus, the services rendered by the appellant does not seem to be of the nature of any management or repair services as alleged in the show cause notices and as concluded in the impugned order. The data furnished by the appellant is used by the foreign entity for inclusion in their products for dissemination to the customers situated worldwide. In other words, the activity of the appellant supports the business undertaken by the foreign entity abroad. Thus, we find there is merit in the argument of the appellant that the activities undertaken by them, merits classification under 'Business Support Services'.*



5.1 *It is also a fact that the appellant has received consideration for the services rendered in convertible foreign exchange. 'Business Support Services' merit classification under Rule 3(1)(iii) of the Export of Services Rules and if the services were rendered from India and consideration is received in convertible foreign exchange, then the transaction would amount to exports. In the present case, there is no dispute that the appellant has rendered the services from India and the appellant has received the consideration in convertible foreign exchange. In view of the above factual position, the services rendered by the appellant would merit classification as 'export of services' from India. On export of services, Service Tax liability is not attracted. The argument of the department that the appellant has repatriated the export proceedings by declaring dividends is unsustainable in law for the reason that declaration of dividends is out of the profits made by the appellant and has nothing to do with the exports undertaken by the appellant. This Tribunal in the case of Maersk India Pvt. Ltd., cited supra, has held that declaration of dividends is not equivalent to repatriation of the consideration for the export of services.*

5.2 *Further, we have perused the balance sheet of the appellant during the impugned periods. From the balance sheets it is evident that during the periods i.e. 2003-04 to 2011-12, the appellant had not declared any dividend whatsoever. Thus, factually also the impugned order is incorrect inasmuch as no dividends have been declared by the appellant during the impugned period and therefore, the question of repatriation would not arise at all. Thus, the impugned orders lack merits."*

In light of the above discussion, I consider that the place of provision of service, in this case, is outside India and the facts of the above case are very similar to the present case under consideration. The ratio of M/s. Thomson Reuters is very much applicable to the present case.

7. As per the above discussion, I reject the impugned order and allow the appeal filed by the appellants. Thus the appeal filed by the appellants is disposed off in above terms.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the appellants stands disposed off in above terms.

(उमा शंकर)

आयुक्त (अपील्स)

CENTRAL TAX, AHMEDABAD.

ATTESTED

(S. DUTTA)

SUPERINTENDENT (APPEALs),

CENTRAL TAX, AHMEDABAD.

To,

M/s. SNL Financial (India) Pvt. Ltd.,
SNL Office, 5 Sunrise Park Society,
Near Sales India, Drive-in-Road,
Ahmedabad

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad.
2) The Commissioner, Central Tax, Ahmedabad (South).
3) The Dy./Asst. Commissioner, CGST, Division-VI (Vastrapur), Ahmedabad (South).
4) The Asst. Commissioner (System), Central Tax Hq, Ahmedabad (South).
5) Guard File.
6) PA File.

केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्तालय, अहमदाबाद. OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD.