CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87636 of 2018

(Arising out of Order-in-Appeal No. CD/TR(APPEALS)/ME/158/2017-18 dated 01.03.2018 passed by the Commissioner of GST & Central Excise (Appeals), Thane Rural)

M/s Gartner India Research And Advisory Services P. Ltd. .... Appellant

2nd Floor, Raheja Towers, Commissioner-30, G-Block,
Bandra Kurla Complex, Bandra East, Mumbai-400012.

Versus

Commissioner of Central Goods And Service Tax-Mumbai East .... Respondent

9th Lotus Infocentre, Near Parel Station,
Parel East, Mumbai – 400012.

Appearance:

Shri Prasad Paranjape, Advocate for the Appellant

Shri S. B. P. Sinha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85521/2023

Date of Hearing: 05.04.2023

Date of Decision: 05.04.2023

Per: Anil G. Shakkarwar

Brief facts of that case are that the appellant are exporter of service under Market Research Agency Services. For the period from April 2012 to June 2012 appellant filed claim for refund of Service Tax paid on the services exported under Notification No. 11/2005-ST dated 19.04.2005. The claim was for an amount of Rs. 54,89,208/- and the same was filed on 04.03.2013. The appellant were issued with a show cause notice dated 30.01.2014 on the

ground that the export proceeds were received on 16.07.2012 and that the said notification was not having any effect after 01.07.2012. It was contended in the said show cause notice that the export proceeds were received after 30.06.2012 and therefore, refund was not admissible to the appellant. The appellant contested the said show cause notice. The original authority through refund order dated 12.08.2014 sanctioned refund of Rs. 13,77,971/- and rejected refund of Rs. 41,11,837/-. Out of the said amount, Rs. 27,33,267/- were disallowed on account of the fact of receipt of proceeds of export after 01.07.2012. An amount of Rs. 13,77,971/- was rejected stating that 50% of the export proceeds were received in INR. The appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) has upheld the said Order-in-Original dated 12.08.2014. Aggrieved by the impugned Order-in-Appeal appellant is before this Tribunal.

2. Heard the learned Counsel for the appellant. He has submitted that so far as a rejection of refund of Rs. 13,77,971/- is concerned, the same was not included in the show cause notice. His contention is that the show cause notice did not put the appellant on notice that the amount of Rs. 13,77,971/- would be rejected for the reason that the export proceeds contained 50% in the form of INR. He has submitted that since he was not put on notice for the same, he could not explain to Revenue that their understanding that 50% of the export proceeds were in INR is misplaced. He further argued that since the principles of natural justice were not followed that part of the order is not sustainable. Insofar as the amount of Rs. 27,33,267/- is concerned, he has

contended that the requirement of notification is that the export should take place in terms of Rule 3 of Export of Service Rules, 2005 to be eligible to avail benefit of refund under the said Notification No. 11/2005-ST. He has submitted that the invoice for the export related to the present refund claim was raised on 30.06.2012 and in terms of Rule 3 of Export of Service Rules, 2005, export was completed on 30.06.2012 and therefore, the appellant is entitle for refund under the said notification though the said notification has no effect after 01.07.2012. He has submitted that his case is covered by sub-clause (c) under clause (iii) of sub-rule 1 of Rule 3 of Export of Service Rules, 2005.

3. Heard the learned AR. Learned AR has supported the impugned order.

4. I have carefully gone through the records of the case and submissions made. There are two points to be determined in the present appeal. One is whether refund can be rejected without putting the appellant on notice for the ground on which refund was rejected. Another one is what is the date of export of service. Insofar as the rejection of refund of Rs.13,77,971/- is concerned, the appellant were not issued with a show cause notice for the ground on which the same was rejected. The appellant did not get opportunity to present their case. Therefore, I hold that, that part of the order is not sustainable since the appellant could not present their case and adjudicating authority has made up his mind without taking into consideration the facts and contention of the appellant on the issue.

5. Insofar as the rejection of refund of Rs. 27,33,267/- is concerned, it is to be examined whether the export took place on 30.06.2012 or after that. It is crucial to examine the issue because after 01.07.2012 the said Notification No. 11/2005-ST did not have force of law. I have carefully gone through the said notification. The notification states that the services should be exported in terms of Rule 3 of Export of Service Rules, 2005 to be eligible to avail the benefit of said notification. The applicable provision of Export of Service Rules, 2005 under Rule 3 can be summarized as follows:-

> *"export of taxable service shall, in relation to taxable services, specified in clause (105) of Section 65 of the Act, but excluding those specified in clause (ii) of said rule, when provided in relation to business or commerce, be provision of such services to a recipient located outside India at the time of provision of such service."*

Taking the relevant invoice into consideration which was raised on 30.06.2012, it is very clear under the said Rule 3 of Export of Service Rules, 2005 that export of service was provided on 30.06.2012. Therefore, I hold that the said Notification No. 11/2005-ST was applicable to the appellant for the subject export. Therefore, I set aside the impugned order and allow the appeal.

6. To sum up, the appeal is allowed.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha