CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

Service tax Appeal No. 10892 of 2019

[Arising out of Order-in-Original/Appeal No -VAD-EXCUS-002-APP-615-2018-19 dated–27/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Lucy Electric Manufacturing and Technologies India Pvt. Ltd. .... Appellant
Survey No 26-30, Noorpura
Halol-baroda Road, Post Baska, Tal- Halol
PANCHMAHAL
GUJARAT

VERSUS

C.C.E & S.T. Vadodara-ii .... Respondent
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA,
GUJARAT
390023

WITH

Service tax Appeal No. 12065 of 2019

[Arising out of Order-in-Original/Appeal No -VAD-EXCUS-002-APP-615-2018-19 dated–27/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

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1ST FLOOR... ROOM NO.101,
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390023

APPEARANCE :

Ms. Vanashri Kalbhor & Shri S.R. Dixit, Advocate for the Appellant
Shri V. Lukose, Authorised Reprensentative for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/12400-12401 / 2019

DATE OF HEARING/ DECISION : 05.12.2019

RAMESH NAIR

The brief fact of the case is that the appellants are receiving the reimbursements towards the services of the manpower and other miscellaneous costs incurred on behalf of the Overseas Group Company in connection with the supply of goods by Indian Companies to their group companies. The case of the department is that the reimbursements received by the appellant from their group companies is towards the service of manpower supply by overseas to the appellant company, therefore, the same is taxable under section 66A of Finance Act, 1994 and Rules made thereuder on Reverse Charge Mechanism.

2. Ms. Vanashree Kalbhor and Shri S.R. Dixit, Learned Counsel appeared on behalf of the appellant. Ms. Kalbhor submits that in their own case for the earlier period, the same issue has been decided in the favour of the appellant by the Tribunal reported at M/s Lucy Electric India Pvt. Ltd., M/s Lucy Electricals Pvt ltd. vs C.C.E & S.T., Vadodara-II 2019 (9) TMI 749- CESTAT Ahmedabad wherein the appeals were allowed.

3. Shri V. Lucose, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have heard both the sides. We find that absolutely identical issue of the appellant for the earlier period has been decided by this Tribunal in the judgment cited above wherein the following order was passed:

4. Heard both the sides and perused the records. We find that as per the facts of the present case there is no dispute that the appellant have received the reimbursement towards salary and other miscellaneous expenses from their group companies located outside. This reimbursement was received in connection with some support service provided by the appellant, in connection with supply of goods by Indian supplier to their overseas group companies. In this transaction, it is the appellant who are providing the service to the overseas group companies. The demand was made invoking Section 66A and Rules made there under which is reproduced below:-

<u>Section 66A of the Finance Act, 1994</u>

"(1) Where any service specified in clause (105) of section 65 is, - 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."

<u>Rule 2(1)(d) of Service Tax Rules 1994</u>

"Person liable for paying service tax:-(i) in respect of the taxable services notified under sub-section(2) of section 68 of the Act, means,-

(G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service".

5. From the reading of the above Section 66A and Rule 2 (1) (d) (iv) of service tax Rules 1994, it is absolutely clear that the service tax liability under the above provision is only on the recipient of service in those cases when the Indian person is receiving the service from abroad and the service provider is not having any office in India. As stated above since the appellant are not receiving any service, on the contrary, they are providing services to overseas group companies, the provision of Section 66A and Rule made there *under is absolutely not applicable, therefore, the demand is also not maintainable. The similar issue has been considered by this Tribunal in the case of BMW India Pvt. Ltd-2017 (10) TMI 905 (CESTAT- Chandigarh) wherein the demand in the identical issue has been set aside. The same issue has also been considered by this Tribunal in the case of Sumitomo Corporation India P. Ltd. Wherein the Tribunal has given the following finding:-*

"8. We have heard both the sides and perused the appeal records. On the first two issues relating to liability of appellant/ assessee for service tax under the category of BAS we note that the service tax liability and the activities similar to the ones undertaken by the appellant/assessee were subject matter of decision by the Tribunal in earlier cases. In Paul Merchants Ltd. (supra) it is recorded that Export of Service Rules, 2005 are in accordance with Apex Court's ruling to the effect that service tax is a value added tax which in turn is a destination based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but a charge on the consumer. We note in the present case, the recipient of 7 ST/3973 of 2012 service are foreign entities and they are the consumers of these services provided by the appellant/assessee from India. The various persons in India to whom the goods were sold by the foreign entities or from whom various details and information were collected were not to be considered as recipient of service provided by the appellant/assessee. In Airbus Group India Pvt. Ltd. vs. CST, Delhi reported in 2016 – TIOL – 2312 – CESTAT – DEL., the Tribunal after referring to the decisions in Paul Merchants Ltd. (supra), Microsoft Corporation (I) (P) Ltd. vs. CST, New Delhi reported in 2014 (36) S.T.R. 766 (Tri. – Del.) and Gap International Sourcing India Pvt. Ltd. reported in 2014 – TIOL – 465 – CESTAT – DEL. held that what constitutes export of service is to be determined strictly in accordance with the Export of Service Rules, 2005. It is the person who requested for the said service and is liable to make payment for the same, who has to be treated as recipient of service and not the person affected by *the performance of the service. The destination has to be decided based on place of consumption not the place of performance of service in the case of Category III, Business Auxiliary Service. The appellant/ assessee were engaged in promoting market for foreign entities in India. This will amount to export of service. 9. In view of the settled position of law as discussed above, we find no merit in the impugned order in so far it confirms the demand against the appellant under BAS. "*

6. As per our above discussion and judgments cited hereinabove which are directly supporting the case of the appellant, We are of the view that the demand is not sustainable. Accordingly, the impugned orders are set aside, appeals are allowed."

5. In view of the above decision of the Tribunal in the appellant's own case, the impugned order is not sustainable. Accordingly, the same is set aside and appeals are allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha