Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 11128 of 2013 -DB

(Arising out of OIO-02-05/STC/DEM/COMMR-I/2013 dated 17/01/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

C.C.E. & S.T.-Vadodara-i ....**Appellant**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat - 390007

VERSUS

Bst Sayona Automations Pvt Ltd ....**Respondent**
2302/1, Gidc, Phase-Iv,
Vithal Udhyognagar,
Anand, Gujarat

APPEARANCE:
Shri Rajesh K Agarwal, Superintendent (AR) for the Appellant
Shri Amal Dave, Advocate appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 12168 /2023

DATE OF HEARING: 11.07.2023
DATE OF DECISION: 27.09.2023

RAMESH NAIR

The brief facts of the case are that the appellant during the period from January, 2011 to December 2011 received amount of Rs. 39,78,584/- from the Foreign Companies against the services such as appraising Indian Companies about the product of foreign companies on the basis of which the Indian Companies were directly placing their purchase orders to the foreign companies. The case of the department is that the appellant had provided the service in India and the service receiver is also situated in India. Therefore, the said amount/ Income received by the appellant is liable to service tax under the category of Business Auxiliary Service. Accordingly, show cause notice dated 01.02.2012 was issued. The Adjudicating Authority i.e. the Commissioner of Central Excise, Customs and Service Tax-Vadodara –I after considering the detailed submission of the respondent dropped the proceeding initiated vide the said show cause notice. Therefore, the present appeal filed by the revenue.

2. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. In the ground of Appeal it is the submission of the Revenue that since the service of marketing and promotion of goods supplied by the foreign companies was provided in India and the receivable of service is located in India i.e. supplier of the goods to foreign companies. The service provided by the respondent was consumed within India. Therefore, there is no export of service. The same is rightly taxable under the category of business auxiliary service.

3. Shri Amal Dave, Learned Counsel appearing on behalf of the Respondent takes support of the impugned order and he placed reliance on the following judgments:-

- Blue Star Ltd – 2008 (3) TMI 32 – CESTAT BANGALORE
- CST, Mumbai –VII vs. Blue Star Ltd – 2018 (9) TMI 1421- Bombay High Court
- CST, Mumbai – VI vs. ATE Enterprises Pvt Ltd – 2018 (8) GSTL 123 (Bom.)
- CST vs. Warstila India Ltd – 2019 (24) GSTL 547 (Bom.)
- CST vs. Life Care Medicals Systems – 2018 (18) GSTL 587 (Bom.)
- IBM India Pvt Ltd vs. CST, Bangalore – 2020 (34) GSTL 436 (Tri.Bang)
- IBM India Pvt Ltd vs. CST, Bangalore – 2018 (17) GSTL 268 (Tri. Bang)
- Principal Commr. vs. Wartsila India Ltd – 2019 (24) GSTL J166 (SC)
- Commissioner vs. ATE Enterprises Pvt Ltd – 2018 (13) GSTL J101 (SC)

3.1 He submits that in view of the catena of case laws as cited above the issue is no longer res- integra and the services of marketing and sales promotion provided to foreign companies is clearly an export of service. Hence, the impugned order is legal and proper which deserves to be upheld.

4. We have carefully considered the submission made by both sides and perused the records. We find that the Adjudicating Authority has held that the service provided by the appellant is export of service relying on the decision in the case of Blue Star Ltd – 2008 (3) TMI 32 – CESTAT Bangalore and the same was upheld by the Hon'ble Bombay High Court reported at CST, Mumbai - VI vs. Blue Star Ltd - 2018 (9) GSTL 1421 (Bom.). On perusal of the fact of the Blue Star Ltd it is observed that the fact in that case and fact of the present case are absolutely identical. Therefore, the Adjudicating Authority has rightly relied upon this decision.

4.1 As regard the said judgment the Revenue in their appeal submitted that since the Revenue has filed the appeal before the Supreme Court, the same cannot be relied upon. We find that in the Revenue's appeal except the filing of appeal against Blue Star Ltd Judgment no comments on the merit was made which clearly shows that the merit and the facts of the case is directly applicable to the present case. Merely by filing appeal before the Hon'ble Supreme Court the sanctity of the judgment of Tribunal which was upheld by the Bombay High Court would not diminish. Therefore, the judgment of the Bombay High Court is clearly applicable.

4.2 As regard the ground in the Revenue's appeal that the service of marketing and sales promotion was provided by the respondent in India and the same was consumed in India on the pretext that the service was received by the persons in India is absolutely contrary to the clear facts of the present case. The respondent has provided the services to the foreign companies in relation to sales promotion and marketing of the goods of foreign company, therefore the service was received by not an Indian supplier of goods but the foreign companies who exported goods to India. In this case the Indian customers who purchased the goods from foreign companies are not the recipient of services of business auxiliary provided by the respondent. Therefore, it is incorrect to contend that service was consumed within India.

In fact the service is consumed in aboard in the hands of the foreign companies who engaged the respondent for providing the services of sales promotion and marketing, therefore, the contention of the Revenue in their appeal is apparently incorrect as per the facts of the present case. We do agree with the finding of the Adjudicating Authority and with the decision of Blue Star Ltd given by the Hon'ble Bombay High Court and subsequently judgment in the case of ATE Enterprises Pvt Ltd (Supra), Wartsila India Ltd (Supra) and Life care Medical Systems (Supra) of Bombay Hogh Court is directly applicable in the present case. Therefore, we do not find any error in the order of the Adjudicating Authority.

5. Accordingly we uphold the impugned order and dismiss the appeal filed by the revenue.

(Pronounced in the open court on 27.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)