CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad

Appeal No. ST/75-76/2010-DB
(Arising out of OIA no. 299/2009/STC/HKJ/COMMR-A-/AHD dated 23/11/2009 and 303/2009/STC/HKJ/COMMR-A-/AHD dated 24/11/2009 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

NCM **Appellant**

Vs.

C.C.E. & S.T., Ahmedabad **Respondent**

Represented by:
For the appellant: Shri S.J. Vyas, Adv.
For the respondent: Shri Gobind Jha, Supdt.(AR)

CORAM: Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing/Decision: 01.02.2019

Order No. A/10246-10247 / 2019

Per: Ramesh Nair

The issue involved is that whether the appellant is liable to pay Service Tax on the courier services for delivering the documents to foreign country for foreign consignee with the fact that the appellant hand over the documents to other courier agency for delivering the same to foreign recipient.

2. Shri S.J. Vyas, Ld. Counsel appearing on behalf of the appellant submits that the courier service which they performed is an export of service in terms of Export of Service Rules, 2005. As per rule 3 (ii), the only requirement is that the service even partly performed outside India, it will be

treated performed outside India. Accordingly, it is export of services. He placed reliance on the following judgments:

1. Madras HC Decision- 2016 (43) STR J 81
2. Professional Courier- 2008 (10) STR 125
3. Prakesh Air Freight 2011 (23) STR 220 KAr.
4. Prakesh Air Freight 2008 (10) STR 308 TRI
5. TNT India 2011 (23) STR 115 Kar
6. TNT India Pvt Ltd. 200 (7) STR 142
7. Fairline Worldwide Express 2010 (18) STR 499

3. Shri Govind Jha, Ld. Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that the appellant have claimed the courier service as export of service in terms of Rule 3(ii) of Export Of Service Rules, 2005. It is reproduced below:

3(ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), [], (n), (o), [], (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv),(zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzp), (zzzzg), (zzzzh), (zzzzi), (zzzzk) and (zzzzl) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India:

Provided that where such taxable service is partly performed outside India, it shall be treated as performed Outside India;

Provided further that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India.

From the above Rule, the only requirement for treating the service as export of service is that if the service is even partly performed outside India, it will qualify as export of service. Under Rule 3(ii), the courier service under sub clause (f) is specified. The courier service performed by the appellant is partly performed outside India. Therefore, it qualify the report of service. The judgment relied upon by the Counsel directly supports their case. Therefore, the demand of Service Tax raised by the lower authorities is not sustainable. The impugned order is set aside. The appeals are allowed.

(Dictated and pronounced in the open Court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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