## CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70654 of 2019**

(Arising out of Order-In-Original No.03/COMMR./ST/NOIDA/2019-20 dated 03.06.2019 passed by Commissioner, Central Goods & Service Tax, Noida)

**M/s Pragati Development Consulting Services Limited** **.....Appellant**

(Plot No.A-4 & 5, 1st Floor
Sector -16, Noida)

*VERSUS*

**Commissioner of Service Tax, Noida** **....Respondent**

(CGST, Noida, C-56/42
Renu Tower, Sector 62, Noida)

**APPEARANCE:**

Shri Sanjay Kumar, Advocate for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70216/2023**

DATE OF HEARING : 27.09.2023
DATE OF DECISION : 27.09.2023

**P.K. CHOUDHARY:**

The present appeal is arising out of Order-In-Original No.03/COMMR./ST/NOIDA/2019-20 dated 03.06.2019 passed by Commissioner, Central Goods & Service Tax, Noida.

2. The Appellant is engaged in legal, accounting, book-keeping & auditing activities, tax consultancy, market research &

public opinion polling, business & management consultancy. The Appellant is registered with the Service Tax Department vide STC No. AAFCP9244FSD001 dated 02.09.2011 under the taxable category of "Management or Business Consultant Service", "Rent a Cab Scheme Operator Service", "Security/Detective Agency Service", "Business Support Service" and Other Taxable Service. During the disputed period i.e. 01.10.2015 o 30.06.2017, the Appellant entered into Long Term Agreements with UNICEF for providing technical assistance towards financial human resource management and logistics management for various programs of UNICEF in different states of India.

3. An audit of records of the Appellant was conducted on 27.12.2013 by the department for the period 01.04.2011 to 31.03.2013 wherein it was observed that the Appellant had claimed the exemption in respect of services provided to United Nation International Children's Emergency Fund (UNICEF). However, the department alleged that the Appellant is not eligible for exemption under entry no. 1 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 in respect of services provided to UNICEF.

4. Based on the above allegations and in continuation of previous SCN dated 19.09.2016 for the period 01.04.2011 to 30.09.2015, the Appellant was served with a Subsequent Show Cause Notice dated 09.10.2018 for the disputed period 01.10.2015 to 30.06.2017 proposing a service tax demand of Rs. 4,35,74,725/- along with Interest u/s 75 and penalties u/s 76 & 77 of the Finance Act, 1994.

5. The Appellant filed its defence reply and the same was adjudicated by the Learned Commissioner vide Order-in-Original no. 03/COMMR./ST/NOIDA/2019-20 dated 03.06.2019 confirming the demand of Rs. 4,35,74,725/- along with interest u/s 75 and penalties u/s 76& 77 of the Finance Act, 1994.

Being aggrieved with the impugned order, the Appellant has filed the present appeal before the Tribunal.

6. Learned counsel for the Appellant is relying upon the Tribunal's Final Order No. 71122/2019 dated 17.06.2019 having identical issues wherein the appeal was allowed by setting aside the orders of Adjudicating Authority for the period 01.04.2011 to 30.09.2015. He further submits that the Central Government vide Entry No. 1 of Notification No. 25/2012-ST dated 20.06.2012 w.e.f. 01.07.2012 has exempted services provided to United Nations or a specified International organization from the whole of Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Relevant extract of the said notification is reproduced as under:-

**"Services provided to the United Nations or a specified international organization";**

7. Learned counsel for the Appellant also submits that the UNICEF to whom the Appellant is providing services can be called as "United Nations" or "Specified International Organisation". For this, it is necessary to look into Article 7 of the Charter III of the United Nations which talks about the organs of the United Nations. It is amply clear that the UNICEF is a subsidiary organ of the United Nations which was created by

the United Nations General Assembly by virtue of Article 22 of the UN Charter. Further, it is submitted that the website of UNO recognizes UNICEF as its arm and also, they share their logo. Learned counsel has placed reliance on an agreement dated 05.04.1978 entered into between the UNICEF and the Government of India, wherein it has been mentioned that "UNICEF is an organ of the United Nations". Learned counsel has also referred to a letter dated 20.11.2014 where it has been confirmed by UNICEF that in terms of United Nations Privileges and Immunities Act, 1947, all exemptions, privileges applicable on UN organization under any law, enactment, rules and guidelines in force in India are also applicable to UNICEF. Thus, UNICEF is also entitled for service tax exemptions vide entry no. 1 of the Notification No. 25/2012-ST as this entry exempts all the services provided to United Nations.

8. Learned counsel for the Appellant has placed reliance upon the judgment of Commissioner, CGST (Audit), Noida in the case of M/s. ICRA Management Consulting Services Ltd. wherein the Learned Commissioner has set aside the service tax demand on services provided to UNICEF vide Order-in-Original No. 01/Commissioner (Audit) Noida/2017-18 dated 10.11.2017 and held that services provided to UNICEF are exempted from service tax vide Entry No. 1 of Notification No. 25/2012-ST.

9. Learned counsel for the appellant has also placed reliance upon the following judgments:-

(i) AC NIELSON ORG. MARG PVT. LTD. vs. COMMISSIONER OF S.T., MUMBAI-II 2018 (12) G.S.T.L. 322 (Tri.- Mumbai)

(ii) BALLSET ENTERTAINMENT P. LTD. vs. COMMISSIONER OF SERVICE TAX, DELHI 2018 (10) G.S.T.L. 372 (Tri.-Del.)

10. Learned Departmental Representative appearing on behalf of the respondent has reiterated the findings given in the impugned order.

11. Heard both sides and perused the appeal records.

12. We note that the appellant was providing certain services to UNICEF and was not paying service tax in respect of said services in view of the understanding that services provided to UNICEF are covered by exemption Notification No.16/2002-ST dated 02/08/2002 and Notification No.25/2012-ST dated 20/06/2012 for the period with effect from 01/07/2012. Therefore, proceedings were initiated against the Appellant through show cause notice dated 19/09/2016 for recovery of service tax for the period from 01/04/2011 to 30/09/2015. We note that learned Original Authority has observed that under Notification No.108/95-CE dated 28/08/1995 as well as under Notification No.84/97-Cus dated 11/11/1997 UNICEF is specifically mentioned whereas in service tax Notification UNICEF is not specifically mentioned therefore, he has denied the said exemption to the Appellant.

13. In the case of AC Nielson Org. Marg Pvt. Ltd. vs. Commissioner Service Tax, Mumbai reported at 2018 (12) G.S.T.L. 322 (Tri.-Mum.) interpreting the Notification No 16/2002-ST following has been held:

*"5.1 The contention of the Revenue is that these two organizations are not listed in the Schedule to Section 3 of the*

*United Nations (Privileges and Immunities) Act, 1947. In this regard, for the ease of reference, Notification No. 16/2002-ST dated 2-8-2002 is reproduced below : -*

*"Service Tax - Services provided to United Nations or International Organisation exempted*

*In exercise of the powers conferred by Section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, vide GSR 205(E), 24th April, 1998, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all the taxable services specified in Section 65 of the said Act provided by any person, to the United Nations or an International Organisation, from whole of the service tax leviable under Section 66 of the said Act.*

*Explanation. - For the purposes of this notification, "International Organization" means an international organisation declared by the Central Government in pursuance of Section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply."*

*From the reading of the above notification and explanation thereof, it is seen that the definition of international organization as provided therein all the entities of United Nations are covered in the exemption. Therefore, if any entity falls under the umbrella of United Nations, all those entities are covered under the explanation in the exemption notification and apart from those entities, if there are other entities which may or may not part of United Nations, but listed in Schedule to Section 3 of the*

*United Nations (Privileges and Immunities) Act, 1947, those entities will be covered under "International organization". Therefore, the Schedule to Section 3 of the Act applies only in respect of any international organization. However, as regards the entities, which are undisputedly fall under the overall organization of the United Nations, it is covered under the exemption. Therefore, in the present case, World Bank and International Finance Corporation are part of United Nations. Therefore, there is no need to resort to the definition of International Organization for extending the benefit of notification. In this scenario, we hold that the services provided to World Bank and International Finance Corporation being entities of United Nations, exempted under Notification No. 16/2002-S.T."*

14. In the case of Ballset Entertainment Pvt. Ltd. vs. Commissioner of Service Tax, Delhi reported at 2018 (10) G.S.T.L. 372 (Tri.-Del.) following has been observed:

*"5. On the second issue regarding services provided for use by the international organization UNICEF, we note the lower authorities denied the exemption under Notification No. 16/2002-S.T. on the ground that the services were provided by the appellant to M/s. Lintas India (P) Ltd. and not to UNICEF. Notification No. 16/2002-S.T. exempts all taxable services provided by any person to the United Nations or an international organization as declared by the Government. UNICEF is covered by the exemption notification. We have perused various bills raised by the appellant to receive the consideration for such*

*services. Though the bills were raised in the name of M/s. Lintas India (P) Ltd., the nature of service is clearly mentioned as charges towards branding cost of three UNICEF Van, UNICEF Girl Star activities, cost of UNICEF Float Operational for 30 days, branding of Van for UNICEF. A perusal of these bills make it clear that the services are for UNICEF though the bill is raised through M/s. Lintas India (P) Ltd. We find in such situation, denial of exemption under Notification No. 16/2002-S.T. will not be sustainable. Accordingly, the claim of the appellant is accepted for such exemption."*

15. We note that the Original Authority has taken Central Excise & Customs Notification into consideration to decide the matter related to service tax and held that since UNICEF is not mentioned in Notification No.16/2002-ST dated 02/08/2002. Thus exemption for the services provided to UNICEF is not covered by said service tax Notification. On the contrary Tribunal has held in the above stated cases that UNICEF is covered by exemption Notification No.16/2002-ST.

16. In view of the above discussions, it is our considered view that the Appellant is entitled for exemption under Notification No.16/2002-ST dated 02/08/2002 for services provided to UNICEF. Exemption under Notification No.25/2012-ST dated 20/06/2012 for period subsequent to 01/07/2012 which is pari-materia with the Notification No 16/2002-ST will be admissible.

17. In case of the Appellant, Allahabad Bench has for the period from 01/04/2011 to 30/09/2015, vide Final Order No 71122/2019 dated 17.06.2019 decided the issue in favour of the

appellant. Present appeal is only in respect of the statement of demand issued for the subsequent period. Following the judicial precedence in appellants own case the impugned order needs to be set aside.

18. We set aside the impugned order and allow the appeal with consequential relief as per law.

(Pronounced in open court)

**(P.K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

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