

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

REGIONAL BENCH - COURT No. II

Service Tax Appeal No.70512 of 2024

(Arising out of Order-in-Appeal No.115-ST/APPL/LKO/2024 dated 26/02/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Modius Consulting LLP,

....Appellant

(QR No.A-1074, Ramsagar,
Lucknow-226016)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow

....Respondent

(7-A, Ashok Marg, Hazratganj, Lucknow)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant &
Shri Suhail, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70536/2025

DATE OF HEARING : 10 July, 2025
DATE OF DECISION : 10 July, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.115-ST/APPL/LKO/2024 dated 26/02/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"5.2 I have carefully examined the case records and the submissions of the appellant. I find from the impugned order that adjudicating authority confirmed the demand of Rs. 10,36,996/-by treating the service provided by the appellant as Online Information Database Access and Retrieval services (i.e. OIDAR) and considering the location

of service provider as India in view of Rule 9(b) of the Place of Provision of Service Rules, 2012, therefore, the services provided by the appellant were not considered as 'Export of Services'.

5.3 In the instant case the appellant had contended that human intervention was required to encode the incoming data into the data base and outgoing from the data base and the appellant had also submitted that they had to travel out of the country several times in order to provide service, hence, the location of service provider was also out of taxable territory.

5.4 I find from the copy of contract for reprogram the electronic gate of the livestock sector in the Ministry of Agriculture executed between M/s. Amad Technical Consultancies & Laboratories, Represented by Eng. Saud Aljabreen, C.R. 1010287638 Riyadh Somatra Street and the appellant. I find that the contract was for technical support of the electronic portal of the animal resources sector for three months and the appellant was required to implement an application of the smart systems working on basis of the IOS and android system for electronic portal of the animal resources sector and the appellant was required to encode the incoming data into the data base and outgoing from the data base.

I find from para 6.1 of the impugned order and as per clause (ced) of sub-rule 1 of Rule 2 of the Service Tax Rules, 1994 that "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as (iv) providing data or information,

retrievable or otherwise, to any person in electronic form through a computer network.

5.5 In the instant case, I find that the appellant was required to encode the incoming data into the data base and outgoing from the data base and without an electronic/computer network it was not possible for the appellant to provide the services to their clients. Thus, I find that the adjudicating authority had rightly classified the services provided by the appellant, falls under category of OIDAR services.

5.6 I find from the Notification No. 46/2016-S.T. dated 09.11.2016 which was effective from 01.12.2016 that clause (b) of Rule 9 of Place of Provisions Rules, 2012 has been omitted and proviso to Rule 3 has also been amended, thus, in view of the same, I find that place of provision of service of the appellant would be location of service receiver i.e. outside India. Thus, I find that all conditions are being satisfied by the appellant as per Rule 6(A) of Service Tax Rules for treating services as Export of Services' with effect from 01.12.2016. Therefore, the amount received on and after 01.12.2016 is to be considered as receipt against Export of Services'."

2.1 Appellant is engaged in providing services under the category of 'Service Sector [IT enabled services, BPO service providers]' and at the relevant time he was not registered with the Service Tax Department.

2.2 On the basis of information received from the Income Tax Department for the Financial Year 2016-17 following was observed:-

Sl. No.	Description	Amount (in Rs.)
1.	Amount credited in Form 26 AS u/Sec.194C/194H/194I/194J	---
2.	Sale of Services as per ITR	69,13,306/-

2.3 On the basis of available information, inquiry was initiated and appellant was asked to provide documents in respect of this

amount, reflected in the ITR. Appellant vide their reply dated 'nil' received vide e-mail submitted that they are engaged in provision of export of services to Software implementation/consultancy as per Service Tax Rules and the same is exempted from service tax.

2.3 The explanation given by the appellant was not accepted and it was observed that appellant short paid service tax as detailed in table below:-

(Amt. in Rs.)

Financial Year	Sale of Services Shown in ITR	Service tax rate inclusive of all cess	Service Tax Payable	Short paid Service Tax inclusive of all cess
2016-17	69,13,306	*15%	10,36,996	10,36,996

2.4 Invoking the charge of suppression, show cause notice dated 18.10.2021 was issued to the appellant, asking them to show cause as to why-

- "(i) The Service Tax amounting to Rs. 10,36,996/- (Rupees Ten Lac Thirty Six Thousand Nine Hundred & Ninety Six only) including Education Cess, Secondary & Higher Education Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.
- (ii) The due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.
- (iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay Service Tax & suppressing the facts and contravening provisions or rules with intent to evade payment of Service Tax.
- (iv) Penalty should not be imposed upon them under Section 77(1)(c)(i) & 77(1)(c)(ii) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not furnishing the information / not producing the documents.

(v) Penalty should not be imposed upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay the Service tax electronically.

(vi) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not filing of statutory ST-3 returns for the F.Y. 2016-17."

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 30.11.2022 with the following observations:-

"ORDER

- (i) I confirm the demand of Service Tax amounting to Rs. 10,36,996/- (Rupees Ten Lac Thirty Six Thousand Nine Hundred & Ninety Six only) including Education Cess, Secondary & Higher Education Cess under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 and 174 of the CGST Act, 2017.*
- (ii) I also confirm the interest on the amount of Service Tax mentioned confirmed at (1) above under Section 75 of the Act ibid read with Section 142 & 174 of CGST Act, 2017.*
- (iii) I impose a penalty of Rs. 10,36,996/- (Rupees Ten Lac Thirty Six Thousand Nine Hundred & Ninety Six only) under Section 78 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay Service Tax & suppressing the facts and value of taxable service with intent to evade payment of Service Tax.*
- (iv) I also impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) collectively under Section 77(1)(i) & 77(1)(cn) of the Finance Act, 1994 read with*

Section 142 & 174 of CGST Act, 2017 for not furnishing the information / not producing the documents/not appearing when issued with a Summons before a Central Excise officer.

- (v) *I also impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77(1)(d) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not depositing the due Service Tax electronically.*
- (vi) *I also impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(2) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for non filing of ST-3 returns for the F.Y. 2016-17."*

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals), who by the impugned order modified the Order-in-Original to the extent of reducing the demand to Rs.5,87,299/- and penalties under Section 78 accordingly.

2.7 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Dharmendra Srivastava learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Appellant had filed appeal before Commissioner (Appeals) on the following grounds as referred in para-3.1 of the impugned order:-

"i. That the appellant provides service related to information technology to clients located out of country, hence service tax registration was not taken as the service was exported.

ii. That all the contracts, balance sheet and profit and loss account, form 26AS alongwith sample invoices and e-FIRC for the relevant years was also provided which the learned Deputy Commissioner could have considered at the time of assessment.

iii. That learned Deputy Commissioner ignored the fact that the appellant provided services to other clients also and made all the allegations based on contract of only one client M/s. Amad Technical Consultants & Laboratories and treated entire receipts for the relevant F.Y. 2016-17 under the category of online data transfer & retrieval services' which is totally unjustified.

iv. That Notification No. 46/2016-ST dated November 09, 2016 has amended Place of Provision of Service Rules to provide that in case of online information and database access or retrieval services the place of provision of service would be location of the service receiver. Accordingly, proviso to Rule 3 has been amended and Point 'b' of Rule 9 has been deleted to this effect.

V. That based on assessment of above said category of service, place of provision of service was deemed to be location of service provider even though all the services were provided outside India through medium of internet. Also, the appellant had to travel out of the country several times in order to provide the service. Hence, the location of service provider was also out of taxable territory.

vi. Because extract **"The second party i.e. the party will encode the data incoming to the data base and outgoing from the data base** from the contract of M/s. Amad Technical Consultants & Laboratories which was taken as base for selection of category of service under online data transfer & retrieval services' under 'providing data or information. retrievable or otherwise, to any

person, in electronic form through a computer network. However, it may kindly be noted as evident from contract that the appellant never provided any data of his own but only provided services related to encoding of data provided by the client himself.

vii. Because Online information and database access or retrieval services' requires rendering of supply 'essential automated and involving minimal human intervention' though in present case human intervention was required to encode the incoming data into the data base and outgoing from the data base.

viii. Because as all the conditions under Rule 6(A) of Service Tax Rules, 1994 are already satisfied, hence the services were treated to be export of services by the appellant and proof thereof is already submitted alongwith e-FIRC for receipts in convertible foreign exchange."

4.3 At para-vi reproduced above, reference was made to the contract with M/s Amad Technical Consultants & Laboratories whereby following has been stated-

"The second party i.e. the party will encode the data incoming to the data base and outgoing from the data base"

By making reference of the above Commissioner (Appeals) has concluded that these are the services covered under the category of OIDAR. However, from the above statement, it is clear that appellant was received data from their client, processing it and returning the same to their client. They never owned such data, he was only providing the en-coding facilities in respect of data owned by the client.

4.4 The basic question that needs to be decided in the present case is whether the services provided by the appellant under the

category of OIDAR Service. Rule 2 (1) (ccd) of Service Tax Rules, 1994 ("the ST Rules") defines OIDAR services as follows:

(ccd) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,-

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music, etc.);

(vi) digital data storage; and

(vii) online gaming;

4.5 The education guide issued by the CBEC on 20.06.2012 clearly explains OIDAR Services as follows:

5.9.5 What are "Online information and database access or retrieval services"?

"Online information and database access or retrieval services" are services in relation to on-line information and database access or retrieval or both,

in electronic form through computernetwork, in any manner. Thus, these services are essentially delivered over the internet or anelectronic network which relies on the internet or similar network for their provision. The otherimportant feature of these services is that they are completely automated, and require minimalhuman intervention.

Examples of such services are:-

i) online information generated automatically by software from specific data input bythe customer, such as web-based services providing trade statistics, legal andfinancial data, matrimonial services, social networking sites;

ii) digitized content of books and other electronic publications, subscription of onlinenewspapers and journals, online news, flight information and weather reports;

iii) Web-based services providing access or download of digital content.

The following services will not be treated as "online information and database access orretrieval services":-

i) Sale or purchase of goods, articles etc over the internet;

ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;

iii) A service which is rendered over the internet, such as an architectural drawing, ormanagement consultancy through e-mail;

- iv) *Repair of software, or of hardware, through the internet, from a remote location;*
- v) *Internet backbone services and internet access services.*

4.6 By Circular No. 202/12/2016 dated 09.11.2016 following was clarified:

12.	<i>Do OIDAR services include all services mediated by information technology over internet or electronic network?</i>	<i>Using the internet, or some electronic means of communication, just to communicate or facilitate outcome of service does not always mean that a business is providing OIDAR services</i>
13.	<i>What services would NOT be considered as OIDAR services?</i>	<u><i>Indicative list of non-OIDAR services</i></u> <i>i. Supplies of goods, where the order and processing are done electronically</i> <i>ii. Supplies of physical books, newsletters, newspapers or journals</i> <i>iii. Services of lawyers and financial consultants who advise clients through email</i> <i>iv. Booking services or tickets to entertainment events, hotel accommodation or car hire</i> <i>v. Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link)</i> <i>vi. Offline physical repair services of computer equipment</i> <i>vii. Advertising services in newspapers, on posters and on television</i>
14.	<i>What type of services will be covered under OIDAR services?</i>	<i>OIDAR services covers services which are automatically delivered over the internet, or an electronic network, where there is minimal or no human intervention. In practice, this can be either:</i> <i>i. where the provision of the digital</i>

		<i>content is entirely automatic eg, a consumer clicks the 'Buy Now' button on a website and either: the content downloads onto the consumer's device, or the consumer receives an automated e-mail containing the content</i> <i>ii. where the provision of the digital content is essentially automatic, and the small amount of manual process involved doesn't change the nature of the supply from an OIDAR service</i> <i>All 'electronic services' that are provided in the ways outlined above are OIDAR services.</i>
--	--	---

4.7 Thus it is evident that the conditions required to be fulfilled for holding the services classifiable under the category of OIDAR can be enumerated as follows:

- Services whose delivery is mediated by information technology over the internet or an electronic network and;
- the nature of which renders their supply essentially automated and;
- involving minimal human intervention and;
- impossible to ensure in the absence of information technology.
- The services are completely automated and require minimal human intervention
- The ownership of data/content is necessarily always with the service provider who provides access or retrieval of data owned by it to the customer against a consideration.

4.8 It is observed that respondent is engaged only in assimilating the verification documents and information available in public domain into a final verification report to its client-entities Dataflow Dubai. Respondent do not have any ownership or contract out the data and is not disseminating the same through the network appearing for public for uses against the cost, these the verification report created or transmitted through by the appellant to its clients/entities namely Dataflow Dubai by using network of computers.

4.9 In case of Philips Electronics India Ltd. [2019 (21) GSTL 450 (Tri.-Mad)] following has been held:

"5.2*The department has sought to bring these IT infrastructure services within the fold of OIDAR. We find that the term "Online Information and Database Access or Retrieval" has been defined under Section 65(75) of the Act to mean providing Data or Information Retrieval or otherwise to any person in electronic form through a computer network. Further under Section 65(105)(zh) of the Act, taxable service means any service provided or to be provided to a client by any person in relation to Online Information and Database Access or Retrieval or both, in electronic form through computer network in any manner.*

5.3*The main take away from the definitions is that services provided should facilitate not only online information but also Database Access or Retrieval. From the facts on record, it appears to reason that the infrastructure services are nothing but a spider web group which connects Philips Netherlands to all its locations worldwide through the Wide Area Network (WAN) of internet protocol. For such Philips Global Network Services, payment is made on the basis of invoices raised by Philips Netherlands towards maintenance of server/portal, license fees, server software maintenance cost, infrastructure for global platform, hiring of web space for storing data, management and maintenance of web portal, licence cost for access for*

wireless WAN environment, Directory services for listing etc. Some of these services which can be availed by Philips locations and employees are of the nature of "Calendaring and Scheduling Directory, Philips e-mail, file back up etc. In any case, all these infrastructure services are only in the nature of providing intra connectivity between Philips locations worldwide and the payments made are obviously then for sharing of the maintenance cost between the Philips' units and not as fees for supply of online information or retrieval of data from the portal."

4.10 Section 2 (17) of the IGST Act, 2017 defines Online Information And Database Access Or Retrieval Services as follows:

*"(17) **"online information and database access or retrieval services"** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-*

- (i) advertising on the internet;*
- (ii) providing cloud services;*
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer networks;*
- (v) online supplies of digital content (movies, television shows, music and the like);*
- (vi) digital data storage; and*
- (vii) online gaming;"*

4.11 The definition of as reproduced above is pari material with the definition of OIDAR as per 2 (1) (ccd) of the Service Tax Rules, 1994 which I am concerned. Interpreting Section 2 (17) of IGST Act, 2017. Hon'ble Bombay High Court has in case of Globolive 3D Pvt. Ltd. [2023 (76) G.S.T.L. 433 (Bom.)] observed as follows:

"23. The next question would be as to whether the impugned order is correct when it categorises the service offered by the petitioner to be online information and database access or retrieval services (OIDAR) within the meaning of Section 2(17) of the IGST Act. On a perusal of said definition, such services have been defined to mean services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as advertising on the internet; providing cloud services; provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; providing data or information, retrievable or otherwise, to any person in electronic form through computer network; online supplies of digital content (movies, television shows, music and the like); digital data storage and online gaming. We would wonder as to how such specialized service as being provided by the petitioner under the Agreement as entered between the petitioner and Emirates Defence Industries Co., could at all be said to be of the nature falling under the OIDAR provided under Section 2(6) of the IGST Act. No doubt that in providing such services, the petitioner was required to transfer the files through electronic medium, but that would not mean that such services being rendered by the petitioner qua its nature, would fall under the definition of OIDAR as defined under Section 2(17) of the IGST Act. This more particularly

for the reason that such service is not merely a delivery of the nature mediated by information technology over the internet or is a delivery available on an electronic network and the nature of which would render its supply essentially automated without and/or with minimal human intervention. It is far different from what is included in any of the electronic services as set out in clauses (i) to (vii) in the definition of OIDAR.

24.*Thus, in our opinion, if the interpretation to the Agreement in question as rendered by the respondents is to be accepted, it would lead to an absurdity inasmuch as any communication of information or providing of service through the medium of emails or any electronic transfer of data would be required to be held as OIDAR service, which is certainly not the purport and meaning an OIDAR service as defined under Section 2(17) of the Act.*

25.*In the present case, there is clearly an agreement of the petitioner with a party, which is a foreign party, whose location is outside the Indian territory. The agreement is clearly for a specialised work of providing 3D city models of Abu Dhabi, AL Ain, AL Dhafra. These are not works which would be freely available on the internet and/or are materials of the nature Section 2(17) would contemplate. Also undoubtedly the consideration as received by the petitioner for providing of such service is received in convertible foreign exchange, although through the foreign recipients/representative M/s. Bayanat LLP, as it is not the case of the department that such amounts as received by the petitioner are not under the Agreement in question. In fact the invoices clearly refer to the payment in US dollars to be when the contract of the petitioner with Emirates. There is no material to disbelieve the case of the petitioner for any reason whatsoever that the recipient of the service is not a foreign recipient.*

26. *For such reasons, in our opinion, considering the material on record, the petitioner is correct in its contention that merely because the petitioner has secured data from different source so as to create the services to be supplied to Emirates, it would not amount to the petitioner falling within the definition of Section 2(17)."*

4.12 As I find that the above decision is to be squarely applicable on the present case, I do not find much merits in the demand made.

4.13 I also note that the show cause notice has been issued on 18.10.2021 making a demand for the period 2016-17 invoking extended period of limitation. Appellant had been filing the Income tax return showing these services as sale of services, the charge of suppression to invoking extended period of limitation for making this demand should fail for this reason itself. In my view, the demand is also barred by limitation.

4.14 Accordingly, I do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp