CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70011 of 2024

(Arising out of Order-in-Appeal No.453-ST/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Vantage Net Services Pvt. Ltd., ...Appellant
(3/287, Vinamra Khand,
Gomti Nagar, Lucknow-206010)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow ....Respondent

(Commissionerate, Lucknow)

APPEARANCE:

Shri Ajit Kumar, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70705/2025

DATE OF HEARING : 12 August, 2025
DATE OF DECISION : 12 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.453-ST/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order, Commissioner (Appeals) has modified the Order-in-Original No.281-282/DC/CGST/LKO-I/VANTAGE/22-23 dated 21.09.2022 wherein following has been held to the extent of setting aside the penalties imposed under Section 77(1)(b), 77 (1)(c), & 77 (1) (d) and the alte fees imposed Rule 7C read with Section 70 of Finance Act, 1994:-

"ORDER

(i) I confirm the demand of Service Tax amounting to Rs. 4,57,416/- (Rs. Four Lakhs Fifty Seven Thousands Four Hundred Sixteen Only) including various cess as applicable under Section 73(2) of the Act, 1994 read with Section 142, Section 173 && Section 174 of the CGST Act, 2017.

(ii) I confirm the demand of interest on the amount of Service Tax mentioned at (i) above under Section 75 of the Finance Act, 1994 read with Section 142, Section 173 & Section 174 of the CGST Act, 2017.

(iii) I impose Penalty amounting to Rs.4,57/416/- (Rs. Four Lakhs Fifty Seven Thousands Four Hundred Sixteen Only) under Section 78 of the Finance Act 1994 read with Section 142, Section 173 & Section 174 of the CGST Act, 2017.

(iv) I impose Penalty amounting to Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 & Section 174 of the CGST Act, 2017.

(v) I impose Penalty amounting to Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(1)(c) of the Finance Act, 1994 read with Section 142, Section 173 & Section 174 of the CGST Act, 2017.

(vi) I impose Penalty amounting to Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(1)(d) of the Finance Act, 1994 read with Section 142, Section 173 & Section 174 of the CGST Act, 2017.

(vii) I impose Late fee amounting to Rs. 5,00/- (Rupees Five Hundred only) under Rule 7C of the Rules read with Section 70 of the Act read with Section 142 & Section 174 of the CGST Act, 2017.

Provided that if tax & interest is paid within a period of thirty days of receipt of this order, I restrict the penalty under Section 78 to 25% of Rs. 4,57,416/- (Rs. Four Lakhs Fifty Seven Thousands Four Hundred Sixteen Only) and the *benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid alongwith service tax and interest within thirty days of receipt of this order. The proceedings initiated vide the subject SCN are finally disposed off in above terms."*

2.1 The appellant is engaged in providing services under the category of "Service Sector (Software Development Agencies), IT Enabled Services/Information Technology Software Services and are registered with Service Tax Department having Registration No.AAECV8046QSD001.

2.2 Acting on the information received from the Income Tax Authorities, appellant was asked vide letter dated 02.03.2020, 19.05.2020, 27.07.2020 and summons dated 14.08.2020 to submit documents in relation to services provided by him in the F.Y 2015-16. Further, for the F.Y 2016-17, letter dated 08.02.2021, 25.02.2021 and 10.03 2021 were forwarded to the appellant to ascertain the nature of services provided by him in the F.Y 2016-17 but the appellant failed to appropriately respond to the queries raised. Accordingly in view of the extant law, liability of service tax against the appellant has been worked out on the whole amount of income earned during the financial year 2015-16 and 2016-17. Accordingly, appellant have short paid service tax as detailed in table below:-

						Amount in Rs
F.Y	Sale of Services (ITR)	Taxable Value	Service Tax (incl of all cess)			
			Rate %	Payable	Paid	Short Paid
2015-16	1904448	1904448	14.5	276145	12644	263501
2016-17	1378569	1378569	15	206785	12870	193915
	3283017	3283017		482930	25514	457416

2.3 Show cause notice dated 25.12.2020 & 04.10.2021 was issued to the appellant, asking them to show cause as to why-

"(i) The Service Tax amounting to Rs. 4.57.416/- (Rs. Four Lakhs Fifty Seven Thousands Four Hundred Sixteen Only) including various cess as applicable should not be demanded and recovered from them under proviso to

Section 73(1) of the Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(ii) The due interest on the amount of Service Tax mentioned at (1) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 142, Section 173 and Section 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, Section 173 and Section 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) Penalty should not be imposed upon them under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for failing to keep maintain or retain books of account and other documents as required in accordance with the provisions of this chapter or the rules made thereunder.

(v) Penalty should not be imposed upon them under Section 77(1)(c) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for not furnishing documents in response to the summons.

(vi) Penalty should not be imposed upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017for not depositing the short paid/due Service Tax.

(vii) Late fee should not be demanded and recovered from them under the provisions of Rule 7 C of the Rules read with Section 70 of the Act read with Section 142, Section 173 and Section 174 of CGST Act, 2017for delayed filing of April-September 2015-16 ST-3 by 03 days."

2.4 The said show cause notice was adjudicated as per the Order-in-Original referred in para 1 above.

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been modified the Order-in-Original.

2.6 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Ajit Kumar learned Counsel appearing for the appellant and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- The nature of services had not furnished.
- They are providing IT Enabled Services which fall under the category of Search Engine Optimisation to foreign clients located outside India.
- They have provided the invoices raised by the foreign clients alongwith bank statement wherein money has been received in foreign currency and reconcile statement in support of its submission.
- The services provided by them though IT enabled but the same are not fall under the category of OIDAR Service.
- Original Authority have held that these services provided by them are under OIDAR category and hence service tax demandable from the service provider.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 For Modifying the Order-in-Original, impugned order records the findings as follows:-

> *"The appellant in their defence has taken a plea that they were not required to discharge Service tax on the considerations received by them in foreign convertible currency of Rs. 18,17,247.83 and Rs. 12,92,769.55 during*

the F.Y. 2015-16 and 2016-17 respectively in as much as they were engaged in the export of service to outside India especially USA & Australia by the platform of UPWORK DOT COM and provided desired on-line software as well as online consultancy service.

I however notice that the appellant has not produced copy of any of the agreements/contracts which they entered into with their customers to show the exact nature of services provided by them. Moreover, they also failed to submit copies of the invoices/bills raised by them, ledgers or any other relevant. documents evidencing providing services to the overseas clients during the relevant period. Mere claim of the appellant is not to suffice to establish that the export of services had taken place during the said period.

The appellant has although produced copy of the Balance sheet for the F.Y 2015-16 showing receipt of Rs.18,17,247.83 and Rs. 12,92,769.55 as foreign exchange during the F.Y. 2015-16 and 2016-17. As no invoices/bills evidencing providing services to the foreign based clients are available on record, I find no relevancy of the figures shown in the said Balance sheet as it is not possible to derive the exact nature of services provided by the appellant to the overseas clients during the relevant period.

In the absence of the relevant documents, I am of the view that the appellant has failed to fulfil the necessary conditions as stipulated under Rule 6A of the Service Tax Rules, 1994 to merit as 'export of services'. Therefore, I do not find merit in the appellant's said plea, hence the service tax demand on this amount is sustainable."

4.3 In this regard, Order-in-Original records as follows:-

"5.3 On going through the Show Cause Notice, it is observed that the party is engaged in providing the services under the category of "Service Sector (Software

Development Agencies, It Enabled Services"/Information Technology Software Services)". Further in the negative list regime (w.e.f. 01.07.2012), the said services are not covered in the negative list as provided under Section 66D of the Finance Act, 1994. Hence the services provided by the party are taxable services as per Section 668 of the Finance Act 2012. Further without the invoices and other documents it is not possible whether the services provided by them fall under the provisions of Reverse Charge Mechanism."

4.4 In the above para, the nature of services provided by the appellant is recorded. Appellant have claimed that in respect of services provided in the taxable services they have paid the service tax due. However, in the case of services provided to the foreign clients for which they received payment in foreign currency, no service tax is due from them as this amount has been received for providing export of services. Impugned order rejects the argument without ascertaining whether these services fall under the category of export services or not. In respect of the nature of services provided, appellant have submitted as follows:-

"2. ***Nature of Services****; It is pertinent to mention here at this juncture that the services provided by the appellant falls under the category of Search Engine Optimisation [SEO] which includes:*

a. Website Audit and Analysis

b. Keyword Research and Optimization

c. On-Page SEO: Optimizing meta tags, headers, images, URLs, and content structure.

d. Off-Page SEO: Backlink building, business listings, and content syndication.

e. Technical SEO: Improving site speed, mobile responsiveness, and fixing crawl errors.

f. Performance Tracking: Generating and sharing analytics reports through tools like Google Analytics, Google Search Console, Ahrefs, SEMrush, etc.

Further, it is to be appreciated that the work is performed remotely in India, while the service is consumed outside India, i.e., applied to foreign-hosted websites (U.S., UK, Australia, etc.). All activities are executed online the client shares access to their website (e.g., WordPress, Wix, Shopify, etc.) and SEO tools, and the appellant perform the tasks without any physical delivery."

4.5 From the above it is quite evident that services provided by the appellant are covered under the category of IT Enabled Services not under the OIDAR. For qualifying the services under OIDAR it is necessary that the service provider owns the data which is being shared or provided through internet against the received consideration. As I find that the services do not qualify under OIDAR and these services have been provided to foreign clients for which appellant have produced invoices alongwith Bank Statement showing realization. On examination of this realization, I find that these amounts are received towards exports of service. This Tribunal in the case of M/s Wildnet Technologies Pvt. Ltd. Final Order No.70434/2024 dated 18.07.2024 have held as follows:-

"10. In the present case, we find that „Search Engine Optimization" service was provided by the Appellant, which is a process whereby client"s website visibility in search engines like, Google, Microsoft Bing etc. is increased. The process optimize search engine results of the client"s website. After processing of the website, it is uploaded to client"s server. Website visibility is commonly measured by the placement or ranking of the site on search engine results pages. The above process of search engine optimization is not providing any information and database for retrieval but it is a technological change in website of

the client to rank it higher for prospective customers of the client who desires to know about the product or service of the client. Job of the Appellant is limited only to process of website of the client. It is not covered under OIDAR service as in the said process no information is provided for database access or retrieval. It is an improvement process of the website of the client to keep it on higher ranking. It is basically a support service to the clients of the Appellant. Support services as understood in common parlance are provided in relation to business or commerce and for evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services. Search engine optimizing services provided by the Appellant are thus more akin to support services. We find support from the decision of the CESTAT in the case of Dewsoft Overseas Pvt. Ltd. [2008(12) S.T.R. 730(T)] where online computer training was provided and the Department classified them under OIDAR but the Tribunal held it to be Commercial Training Service, not OIDAR service. In the case of Philips Electronics India Ltd. [2019 (21) G.S.T.L. 450 (Tri. Chennai)], the Tribunal has held that infrastructural services provided by the Assessee are not classifiable under OIDAR. We further find that in the case of United Telecom Ltd. [2009 (14) S.T.R. 212 (Tri.-Bang.)], the CESTAT has observed as:-

> *"7.3 We do not agree with the Commissioner that the ownership of data is not relevant. It is a very relevant factor. Whenever, there is information and data retrieval, the ownership definitely becomes very relevant. Just because, the appellant provided a part of the network equipment, we cannot say that the appellant was responsible for the entire services. Again the entire wide area network has been established for better communication between the districts and the state headquarters. The information will be flowing form different centres to the*

headquarters and vice versa. This cannot be equated with online information and data retrieval. In any case, the appellant is not responsible for the entire network because we find that the communication lines have been leased out from the BSNL by the Andhra Pradesh Government. When they are not functioning, the appellants are not responsible and they do not lose their service charges. They are responsible and they do not lose their service charges. They are responsible only for the proper functioning of the equipment supplied by them. Moreover, the data is generated only by the Andhra Pradesh Government and the same is being used by the different wings of the Government, therefore, the appellant has also not provided any data. The responsibility of the appellant is to see that the network (WAN) functions. This cannot be equated with Online database access/retrieval services."

Hence, we cannot understand how the Commissioner has come to the conclusion that the appellant provides this service. The Commissioner's reference to Board's Circular with regard to internet service provided is not at all correct. In our view, the said Circular is not relevant and the services provided by the appellant are not similar to those provided by the internet service provider. In this connection, we would like to refer to another taxable introduced with effect from 1.7.2007, it is called Telecommunication Service."

11. In view of the above judicial decisions, we are of the view that „Search Engine Optimization" service would not be classified as OIDAR service.

12. We find that in Google ads service /Pay per click service, the Appellant"s client purchases space from Google and provides advertisement contents to the

Appellant who in turn set up the campaign of the client on such space and charges from its client per click wise made by the end customers. The Appellant job is to set up campaign of the client by developing page on Google site.

13. We find that the Appellant only provides digital contents on site of the Google who makes data base and viewers get access or retrieval only from data base of Google. The Appellant does not have any relationship with any viewer, i.e., the person who retrieves or accesses data. The Appellant simple setting up campaign on the Google site hired by its client who uses them for further purposes. OIDAR services are those services which can be accessed by anyone all over the globe. In the instant case, the Appellant provides service only to specific person who in turn uses the same for viewers of world. The nature of service is more akin to Business Support Service. Hence, services in question are not under OIDAR category.

14. The Appellant is also engaged in development of Mobile apps and web design & development activities for its clients. Mobile application development is the process of making software for smart phones, tablets and digital assistants. The software can be preinstalled on the device, downloaded from a mobile app store or accessed through a mobile web browser. It is not an information and database for retrieval but it is software development activities for further operation. Hence the same cannot be classified under OIDAR. Web development services encompass creating, building, and maintaining websites or web applications. It combines technical skills, programming languages, and design elements to develop functional and visually appealing online platforms. The above service is limited to clients only who order to develop such software to the Appellant. The world wide viewers click the said software on the website of the clients. The said services cannot be considered to be OIDAR services.

15. Once the classification of said services is not covered under OIDAR services, the place of provision in respect of service being rendered by the Appellant is outside India in respect of which export has been claimed. The place of provision Rule 9(b) of the POPS Rules, 2002 would not be applicable in the present case."

4.6 In view of the above, I do not find any merits in the impugned order and set aside the same.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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