REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 05/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70827-70828/2017-CU[DB] dated 30/08/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70032/2016	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
2	ST/70157/2015	**Steria India Ltd** Sea View Special Economic Zone,building No. 4,plot No. 20 & 21,sector-135,noida GAUTAM BUDH NAGAR UP
		Name and Address of Respondent
3		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
4		Steria India Ltd Seaview, Special Economic Zone, Building No 4, Plot No 20 & 21, Sector-135,, NOIDA ,UP

Other Appellants and Respondents as per Annexure

Copy To

5<u>Advocate(s) / Consultant(s)</u>:

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NEW DELHI,
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6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

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16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. ST/70032/2016 & ST/70157/2015-CU[DB]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/152/2015-16 dated 31/07/2015 passed by Commissioner of Central Excise (Appeals-I), Meerut)

C.C. & C.E. & S.T., Noida (in Appeal No. ST/70032/2016) &

M/s Steria India Ltd. (formerly known as M/s Xansa India Ltd. in Appeal No. ST/70157/2015) **Appellants**

Vs.

M/s Steria India Ltd. (formerly known as M/s Xansa India Ltd. in Appeal No. ST/70032/2016) &

C.C. & C.E. & S.T., Noida (in Appeal No. ST/70157/2015) **Respondents**

Appearance:

Shri Pawan Kumar Singh (Supdt.) AR for Revenue
Shri Vishal Kumar (Advocate) for Assessee

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 30/08/2017
Date of Decision : 30/08/2017

FINAL ORDER NOs- 70827-70828/2017

Per: Anil Choudhary

The issue in these cross appeals is whether the assessee M/s Steria India Ltd, are liable to service tax on receipt of Business Auxiliary Service in the nature of procuring orders for them for providing the exempt service of information Technology Software Service during the period January, 2006 to December, 2006.

Ar

2. The brief facts are that M/s Steria India Ltd (formerly known as M/s Xansa India Ltd) are working under the STP scheme and have got approval from the STP I Noida and have also got customs warehousing licence. They are engaged in the business of developing and export of customised computer software and services connected therewith. They also render BPO services to their clients located outside India. As per show cause notice served on 02 June, 2009. It appeared that M/s Steria India Ltd (SIL for short) are not complying with the provisions of the Finance Act, 1994 and the Service Tax Rules as they have neither obtained registration nor are paying service tax on reverse charge basis. As per the agreement between M/s Steria India Ltd and M/s Xansa PLC, a company having its registered office and in England, the main terms and conditions were that M/s Xansa PLC will provide guidance on key management decisions and assisting in the strategic planning and implementation of projects, financial reporting/systems and human resource policy. The charges for services provided were to be calculated at the cost of providing such service by M/s Xansa PLC to SIL +10% thereof, subject to maximum of Rs. 40 lakh per annum which was paid after deduction of tax as per the law of land.

3. As per the agreement dated 18 December, 2006, which was effective with effect from 01 April, 2005 with M/s Xansa US having its registered office at Wilmington, USA. It was agreed that Steria has a number of clients in US whereas M/s

Xansa US agrees to provide strategic sales and marketing services to Steria for procuring business from direct clients in US and further Steria is also willing to avail of strategic sales and marketing services from M/s Xansa US for procuring business from direct clients in US. Against ~~also~~ such services Steria will pay the M/s Xansa US a fee of 5% as a service charge on the total amount billed and then M/s Xansa US will deploy full-time resources for the activities.

4. During audit by the officers of the Department for the period January, 2006 to December, 2006, it was noticed that Steria has received services as detailed in the agreements aforementioned from both the overseas companies for an aggregate amount of Rs. 3,22,15,503/-. It further appeared that the services so received are completely covered under the purview of BAS as defined in Section 65(19) of the Finance Act, 1994. The definition has been reproduced in the SCN. Whereas it has been noticed that BAS does not include any information technology service and any ~~duty~~ activity that amounts to 'manufacture' within the meaning of Clause (f) of Section 2 of the Central Excise Act, 1944. It further appeared that as the service providers located in US and UK do not have any office in India, M/s Steria India Ltd is required to pay service tax on reverse charge basis in terms of Rule 2(1)(d)(iv) of STR, 1994 read with Section 68(2) and further read with section 66A (inserted with effect from 18 April, 2006) of the Finance Act, 1994. In response to query by the Superintendent asking

Steria to deposit service tax and to furnish the details, Steria by their letter dated 03 October, 2007 submitted that they being a software development and exporter company, the service received by them through their overseas service providers does not qualify as the BAS. Therefore, all the transactions are directly or indirectly, in relation to production and export of such customized software. Thus, the assessee Steria prima facie disagreed with the view of the Department and refused to accept that they are liable to pay service tax under the classification BAS. Subsequently Steria obtained centralized service tax registration on 27 November, 2007 and deposited the tax with respect to the transaction with Xansa PLC by GR challan's of Rs. 4,51,326/- on 2 February, 2008 and Rs. 4,75,463/- on 07 March, 2008, thus ~~the~~ aggregating Rs. 9,26,789/- on the service value of Rs. 36,87,300/- and Rs. 38,84,500/- thus ~~the~~ aggregating Rs. 82,22,500/-.

5. It further appeared to the Department that Steria have contravened the provisions of the Act and the Rules as they never informed the Department regarding the payments made by them to the service providers located abroad against the services received under BAS which facts came to light only during audit and as such demand of Rs. 48,68,820/- was proposed. Being the tax on services received from the M/s Xansa, USA and M/s Xansa PLC during the period in dispute Jan. ~~April~~, 2006 to December 2006, with further proposal to

appropriate Rs. 9,26,789/- already deposited alongwith interest and further penalty was proposed under Sections 76, 77 and 78.

6. The SCN was adjudicated vide Order-in-Original dated 28 January, 2015 by the Additional Commissioner, was pleased to confirm the proposed demand with interest and also imposed penalty under Sections 76, 78 and 77 of the Act.

7. Being aggrieved the appellant assessee preferred appeal before the learned Commissioner (Appeals) who vide the impugned order was pleased to set aside the demand for the period prior to 18 April, 2006 (~~with~~ when Section 66A was brought on the statute) and was also pleased to delete the penalty under Section 76. Thus, confirming the balance demand and penalty under Sections 77 and 78 of the Act.

8. Being aggrieved the appellant is before this Tribunal. The learned counsel states that so far the transaction with Xansa PLC (UK) is concerned, the said transaction is not disputed being liable to service tax and it has been noticed in the show cause notice that they have paid the tax on the same and hence required, no adjudication. So far the issue with regard to receipt of service from Xansa USA is concerned the learned counsel also states that under the admitted facts they were not providing any taxable service during the period in question, the services received by them in the nature of BAS from the Xansa USA being procurement of orders for export of their (information technology software service), no liability to

service tax arose. He further states that the issue on this score is squarely covered by the ruling of this Tribunal in the case of Jetlite India Ltd versus CCE 2011 (21) STR 119 (Tri.-Delhi). In the said ruling under the fact that Jetlite India Ltd (formerly Sahara Airlines) were providing business, promotion and publicity service to Sahara India Commercial Corporation Ltd in terms of agreement, but had not paid service tax in respect of the consideration received for such services. Pursuant to issue of show cause notice demanding service tax under BAS for the services provided by Jetlite to Sahara India Commercial Corporation for the period July, 2003 to January, 2007, tax was demanded and adjudicated. While confirming the demand it was held that the material on record established that Sahara Corporation had launched various housing and real estate projects and in that respect the travelling passengers were sought to be targeted as the potential customers and for that purpose agreement was entered between the two and Jetlite in order to promote business of Sahara Corporation of real estate projects, published and printed logo of Sahara Corporation on its air tickets, boarding pass, baggage tags etc in consideration of payment assured and paid by Sahara Corporation to Jetlite at the rate fixed per passenger under the contract. This Tribunal held that perusal of the provisions of the Finance Act, 1994, ~~with~~ section 65(19) which defines BAS would disclose that a for person can be said to have rendered BAS in terms of the provisions of law in force, on being established that he has rendered service in relation to either promotion or marketing of some service provided by the client. The fact that the service provider has rendered the service of promotion or marketing of the service provided to others by the service recipient, has to be established before such person can be said to have rendered the taxable service which can be classified under the said clause. Unless the service recipient is shown to have been engaged in rendering some service to others and the service provider is shown to have rendered his service for promotion or marketing of such service provided by the service recipient to others, the question of creating liability under the said Act in terms of Section 65(19)(ii) read with 65(105)(zzb) of the said Act does not arise. It was also held that taxable event under the Act is the rendition of service. It is on the activity conducted or service rendered by the service provider to its customer that attracts the provisions of the Finance Act. Further, in view of the premises that the activity of Sahara Corporation of Development, ~~and~~ sale of real estate was found to be not ~~excigible~~ exigible to service tax. The activity of Jetlite comprising ~~a~~ display of logo of Sahara Corporation as agreed, resulting in promotion and marketing of the business, it could not be said to have been part of Business Auxiliary Service during the relevant period and in any case that the activity of Sahara Corporation being in the nature of sale of immovable properties. Accordingly, the learned counsel prays for allowing the appeal with consequential benefits.

9. The learned AR for Revenue supports the appeal of Revenue wherein the grounds ~~under~~ are that the learned Commissioner (Appeals) have erred in deleting the penalty under Section 76 and further grounds is that the learned Commissioner (Appeals) have ~~been~~ erred in deleting the demand for the period prior 18 April, 2006.

10. Having considered the rival contentions we hold that so far the show cause notice relating to transactions with M/s Xansa PLC (UK) is concerned the show cause notice is bad as there can be no adjudication for the demand which have already been paid, that is service tax paid. Admittedly on the transactions with Xansa PLC, being an admitted fact in the show cause notice. So far the demand with respect to transactions with Xansa USA is concerned, We find that during the relevant period the appellant was not providing any taxable service, as Information Technology Software Service became taxable with effect from 16 May, 2008, upon enactment of Section 65 (53)(a) in the Finance Act. Thus, the transactions with Xansa USA is squarely covered by the law as explained in the case of Jetlite (supra). Thus, we hold that the appellant is not liable to pay any service tax on the transactions with Xansa USA during the relevant period. In view of our findings, the impugned order is not tenable and accordingly we set aside the impugned order, So far it

confirmed the demands along with penalty. Thus the Appeal (appeal no. ST/70157/2015) stands allowed. The appellant Steria India Ltd shall be entitled to consequential benefits in accordance with law. The Appeal (appeal no. ST/70032/2016) filed by Revenue is dismissed.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

bbm

प्रमाणित प्रति/Cerified True Copy
07/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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