

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

REGIONAL BENCH - COURT No.-2

Service Tax Appeal No.449 of 2009

(Arising out of Order-In-Original No.019/2009-Commr.LTU dated 13/02/2009 passed by Commissioner, Central Excise & Service Tax, Large Taxpayer Unit, Bangalore)

M/s Sun Microsystems (I) PVT LTD.,Appellant
6th Floor, Prestige Obelisk, No.3,
Kasturba Road, Bangalore-560001

VERSUS

**Commissioner of Central Excise & Service Tax, LTU,
Bangalore**Respondent
JSS Towers, 100 Ft. Ring Road,
Banashankari III Stage, Bangalore 560085

AND

Service Tax Appeal No.993 of 2009

(Arising out of Order-In-Original No.96/2009-LTU dated 16/09/2009 passed by Commissioner, Central Excise & Service Tax, Large Taxpayer Unit, Bangalore)

M/s Sun Microsystems (I) PVT LTD.,Appellant
6th Floor, Prestige Obelisk, No.3,
Kasturba Road, Bangalore-560001

VERSUS

**Commissioner of Central Excise & Service Tax, LTU,
Bangalore**Respondent
JSS Towers, 100 Ft. Ring Road,
Banashankari III Stage, Bangalore 560085

APPEARANCE:

Shri Bharat Raichandani, Advocate for the Appellant
Shri Rajesh Shastry, Authorised Representative for the Respondent

CORAM:

HON'BLE D.R. D.M. MISRA, MEMBER (JUDICIAL)

**HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER
(TECHNICAL)**

FINAL ORDER NO.20872-20873/2023

DATE OF HEARING : 28.06.2023

DATE OF DECISION : 28.06.2023

PER: D.M. MISRA

These two appeals are filed against the respective Orders-In-Original passed by the Commissioner, LTU, Bangalore. Since common issue is involved in both these appeals, hence taken up together for hearing and disposal.

2. Brief facts of the case are that the appellant had entered into Marketing Service Agreement with M/s Sun Micro Systems Pvt. Ltd., Singapore on 01.7.1998 for the purpose of marketing/sales promotion, technical pre sales support services in India. Alleging that the services rendered by the appellant classifiable under 'Business Auxiliary Services' covered under Section 65(19) of the Finance Act, 1994 which is taxable w.e.f. 01.07.2003, and do not qualify to be an export service a show cause notice was issued to the appellant for the recovery of the service tax payable on the services rendered during the period from March, 2005 to December, 2007 (In Service Tax Appeal No.449 of 2009) and 01.01.2008 to 31.12.2008 (In Service Tax Appeal No.993 of 2009) with interest and proposal for penalty. On adjudication, demand have been confirmed with interest and penalty. Hence the present appeal.

2. At the outset learned advocate Shri Bharat Raichandani appearing on behalf of the appellant has submitted that the issue of leviability of service tax on services rendered by the appellant to M/s Sun Micro Systems Pvt. Ltd., Singapore is similar to the services rendered in the case **M/s Arcelor Mittal Stainless India Pvt. Ltd. V/s Commissioner Service Tax, Mumbai-II reported as 2023-TIOL-469-CESTAT-MUM-LB.** He has submitted that under the Marketing and Warranty support service agreement the service is provided to M/s Sun Micro Systems, Singapore. It is his contention that the present appeals have been kept pending since 26th February, 2020 solely on the ground that similar issue has been referred to the Larger Bench. It is his

submission that since the Larger Bench has decided the issue in favor of the assessee, therefore, the appeals may be allowed.

3. Learned A.R. for the Revenue reiterated the findings of the learned Commissioner.

4. Heard both sides and perused the record. We have carefully considered the submissions advanced by both the sides. It is the contention of the learned advocate for the appellant that the facts involved in the present case is similar to the facts in the case of M/s Arcelor Mittal Stainless India Pvt. Ltd. (Supra). In M/s Arcelor Mittal Stainless India Pvt. Ltd. (Supra) the facts are that M/s Arcelor Mittal Stainless India Pvt. Ltd. is a wholly owned subsidiary of M/s Arcelor Mittal Stainless International, Paris. The Indian company was appointed as sub-agent by Arcelor France, a commission agent for steel mills situated outside India, for procuring sale orders for the products manufactured by these mills for customers across the world. Arcelor France does not have any office in India. The prospective customers in India is either approached by Arcelor India or a prospective customer contacts Arcelor India regarding stainless steel requirement, but in either scenario the request is forwarded by Arcelor India to the foreign steel mills with the technical requirements of the Indian customers. Once the foreign mills and the Indian customer come to an understanding on the terms and conditions of supply, a written contract is executed between the Indian customer and the foreign mills or a purchase order is placed on the foreign mills. The documents are prepared by the foreign mills in the name of the Indian customer and the Indian customer, in turn, pays the foreign mills. Thus, the goods directly pass from the foreign mills to the Indian customer. Of the commission received by Arcelor France as the main agent, from the foreign mills, a part is paid to Arcelor India based on the volume of sales in each quarter in convertible foreign currency. The dispute relates to levability of service tax on commission received by Arcelor India for the period from April 2005 to January 2009; the core question was whether

the services were consumed in India or outside India. The Division Bench referred four questions of law to the Larger Bench for consideration.

5. After examining the issue and law on the subject, the Larger Bench observes as below:-

"54. The four issues raised in the reference order have been dealt with extensively and as they are intermingled, the reference is answered in the following manner: (i) Arcelor India, a service provider, is providing BAS service to Arcelor France, which is a service recipient. Arcelor India is, therefore, providing service to Arcelor France which is situated outside India and Arcelor India receives consideration in convertible foreign exchange. The service provided by Arcelor India is, therefore, delivered outside India and used outside India as is the requirement under the 2005 Export Rules prior to 01.03.2007 and Arcelor India provides services from India which are used outside India as is the requirement after 01.03.2007. It cannot, therefore, be doubted that Arcelor India provides „export of service“ as contemplated under rule 3 of the 2005 Export Rules; and

(ii) Arcelor France is an agent of the foreign steel mills and Arcelor India is its sub-agent. Arcelor India provides the necessary details of the customers in India to the foreign steel mills and, thereafter, the foreign steel mills and the Indian customers execute a contract for supply of the goods. The goods are directly supplied by the foreign steel mills to the Indian customers. Arcelor India also satisfies condition (b) of rule 3(2) as payments for such service have been received in convertible foreign exchange."

6. The aforesaid principles laid down by the Larger Bench are applicable to the facts of the present case, which are similar in nature, in as much as, the activity undertaken by the appellant is canvassing for the products and services of Sun Singapore which is ultimately used by Sun Singapore for further business. There is no agreement between the prospective customers of Sun Singapore in India and the appellant. The appellant has entered into an agreement only with Sun Singapore. It is on the request and direction of Sun Singapore that the appellant carried out the marketing activities in India and it is for these services that they

get the consideration from Sun Singapore in convertible foreign exchange. Thus, in our opinion, the service provided by the Appellant to Sun Microsystems PTE Ltd., Singapore, be considered as an 'export of service', consequently, the impugned order passed by the Commissioner cannot be sustained. In the result, the Orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open court)

(D.M. MISHRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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