CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/21700/2017-SM, ST/21701/2017-SM

[Arising out of Order-in-Appeal No. 993-994/2017 dated 07/09/2017 passed by Commissioner of Central Tax , BANGALORE-I(Appeal)]

Analog Devices India Pvt Ltd
Rmz Infinity No 03 Level 6 Tower D Old Madras Road
BENGALURU - 560016
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax, Bengaluru East

Respondent(s)

Appearance:

Shri Deepak Kumar Jain, CA
DJHS & ASSOCIATES
CHARTERED ACCOUNTANT
'GREEN APPLE', NO.16, 1ST FLOOR, MURPHY ROAD, ULSOOR
BANGALORE - 560008
KARNATAKA

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 27/02/2018
Date of Decision: 27/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20297-20298 / 2018

Per : S.S GARG

These two appeals have been directed against the common impugned order dt. 07/09/2017 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has remanded the matter back to the original authority with certain directions. Since the issue involved in the present appeals is common, therefore both the appeals are disposed of by this common order. The details of the appeals are as under:-

Appeal No.	Impugned Order No.	Period	Amount sanctioned	Amount in dispute
ST/21700/2017	No.993-994/2017	October 2015 to December 2015	Rs.82,23,550/-	Rs.6,41,167/-
ST/21701/2017	-do-	January 2016 to March 2016	Rs.1,08,54,233/-	Rs.7,28,549/-

For the sake of convenience, the facts of the appeal No.ST/21700/2017 are taken.

2. Appellant is a private limited company and is a subsidiary of Analog Devices Holdings BV, Netherlands which in turn is a subsidiary of Analog Devices International and they are primarily engaged in the business of providing taxable services viz. Consulting Engineering Services and Business Auxiliary Services etc. The appellant is exporting taxable services to its holding company without payment of duty and thereafter the appellant filed a refund claim under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE-NT dt. 18/06/2012 for the period cited in the above table. After following the due process, the Assistant Commissioner partly allowed the refund vide order dt. 28/02/2017. Aggrieved by the said order, the appellant filed appeal before the Commissioner(Appeals) who has partly issued a favourable order by

allowing the credit on various services but has not addressed all the issues for which the appeal was filed by the appellant.

3. Heard both sides and perused records.

4. Learned consultant for the appellant submitted that the impugned order is not sustainable in law as the learned Commissioner(Appeals) has not given any finding with regard to the fact that the appellant is not an intermediary under Rule 2(f) of Place of Provision of Service Rules, 2012. He further submitted that the services rendered by the appellant are not in any manner connected with the facilitating or arranging sale of analog products in India and accordingly by no stretch of imagination can they be treated as intermediary. He further submitted that the nature of services rendered by the respondent company are nothing other than consulting engineering services and marketing support services which are not classifiable as intermediary. He also submitted that the definition of intermediary amended only from 10/2014 to include facilitating the sale of goods. He also submitted that the burden of proof is on the Department to prove that the company has facilitated sale of goods. He further submitted that the services provided are principal to principal basis and not on behalf of the group company. In support of his submission, he relied upon the following decisions:-

i. Paul Merchants Limited Vs. CCE, Chandigarh [2013(29) STR 257 (Tri. Del.)]
ii. Blue Star Ltd. Vs. CCE, Bangalore [2008(11) STR 23 (Tri. Bang.)]
iii. ABS India Ltd. Vs. CCE, Bangalore [2009(13) STR 65 (Tri. Bang.)]

iv. Lenovo India Pvt. Ltd. Vs. CCE, Bangalore [2010(20) STR 66 (Tri. Bang.)]
v. National Engineering Industries ltd. Vs. CCE, Jaipur [2008(11) STR 156 (Tri. Del.)]
vi. KSH International Pvt. Ltd. Vs. CCE, Belapur [2010(18) STR 404 (Tri. Mumbai)]
vii. CCE&ST, Bangalore-V Vs. Analog Devices India Pvt. Ltd. [Final Order No.22791/2017 dt. 13/11/2017]

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner(Appeals) has only remanded the matter and has left it to the original authority to decide the issue afresh after considering the observation of the learned Commissioner(Appeals). He further submitted that the appellant has been providing the intermediary service and not the export of service. He also submitted that the place of provision of service is not outside India but within India and hence the conditions contained in Rule 6A(1)(d) of the Service Tax Rules, 1994 read with Notification No.272-12-ST dt. 20/06/2012 stands fulfilled rendering the assessee ineligible for the refund to the extent of turn over relating to marketing and sales support service.

6. After considering the submissions of both the parties and perusal of records and the judgments relied upon by the assessee, especially the assessee’s own case for the previous period, I find that the appellants are not rendering the intermediary service and they are rendering consulting engineering service and BAS and fall in the definition of export of service. After holding that the appellants are not rendering intermediary service, I am of the view that this case needs to be remanded

back to the original authority as held by the Commissioner(Appeals) to pass a fresh order after considering all the submissions of the appellant. Consequently, both the appeals are allowed by way of remand to the original authority who will decide the same after complying with the principles of natural justice and affording an opportunity to the appellant to produce the documentary evidence.

(Operative part of this order was pronounced in open court
On conclusion of the hearing)

S.S GARG
JUDICIAL MEMBER

Raja...