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

Appeal(s) Involved:

ST/159/2009-DB

[Arising out of Order-in-Appeal No. 4/09 dated 29/01/2009 passed by Commissioner of Central Excise & Service Tax, Bangalore]

C.C.E. & S.T.-BANGALORE-LTU
100 FT RING ROAD JSS TOWERS,
BANASHANKARI-III STAGE,
BANGALORE,
KARNATAKA
560085

Appellant(s)

Versus

ABB LTD
GIDC, MAKARPURA, MANEJA,
VADODARA-390013

Respondent(s)

Appearance:

Dr. J. Harish, AR

For the Appellant

Mrs. Nethu James
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD, BANGALORE - 560 055
KARNATAKA

For the Respondent

Date of Hearing: 26/07/2018
Date of Decision:30/07/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21038/2018

Per : P.ANJANI KUMAR

M/s. ABB Ltd. (the respondents) were receiving services as consulting engineer service, technical testing and analysis service and business auxiliary service from foreign companies which did not have any office in India. It was alleged that they did not pay Service Tax on the payments made to such foreign companies for the taxable services. A SCN was issued demanding Service Tax of Rs.44,61,853; the Additional Commissioner, LTU has confirmed the demand vide Order-in Original No. 44/08 dated 29.05.2008. On an appeal filed by M/s. ABB Ltd., the Commissioner (A) has set aside the demand confirmed in respect of technical testing and analysis service provided from abroad while holding that Service Tax in respect of 'business auxiliary service' and 'consulting engineer service' rendered from outside India for the period prior to 18.04.2006 is not payable and the same is payable for the period from 18.04.2006. Aggrieved by this order, the Department has filed an appeal.

2. The learned Departmental Representative contended that the Commissioner (A) has not appreciated that technical testing and analysis service is also taxable from 18.04.2006 while

upholding the 'consulting engineer service' and 'business auxiliary service' from 18.04.2006; the Order-in-Original categorically mentions that the technical testing service in some cases was rendered in India and in some cases, it was rendered in abroad. Rule 3 of Taxation of Services have provided from outside India and received in India so far Rules 2006 provides that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under Section 67 of the Act and Rules made thereunder. He further submitted that for a better appreciation of the legal procedure point for competition of the Service Tax liability of the respondents, the matter should go back to the Appellate Authority.

3. The counsel for the respondents had submitted that the Department's appeal does not make any submission in respect of demand of 'technical testing and analysis' services which was dropped in the order; technical testing and analysis service is performed outside India as evidenced by the invoice and is therefore not a service received in India liable to Service Tax under Section 66A of the Finance Act.

4. Heard both sides and perused the records of the case.

5. We find that though the departmental appeal is against the impugned order in toto as per the legal position as on date. As submitted by the Authorized Representative, the dispute now is only on the point of applicability of Service Tax on the 'technical testing and analysis' service received by the respondents on or after 18.04.2006. The Department is not contesting the setting aside of the other issues prior to the period of 18.04.2006; the only issue that remains to be seen in the instant case is as to whether any service received by the respondents under the heading 'technical testing and analysis' was received in India wholly or partly after 18.04.2006. We find that the learned counsel for the appellants has produced invoice in their defence. However, that invoice is dated 16.02.2006 which is prior to 18.04.2006; the other records like invoices are not available to verify at this end. Therefore, it is logical that the case should go back to the original Adjudicating Authority for the limited purpose of verifying the services received by them, for the period from 18.04.2006 to December 2006, under the category of 'technical

testing and analysis', 'consulting engineer service' and 'business auxiliary service'. The respondents shall submit all available records to the original Adjudicating Authority within two months of receipt of this order and thereafter, the original Adjudicating Authority within one month will examine the duty liability, if any, on the appellants on this count. If any liability arises, the respondents shall pay the amounts forthwith.

6. In view of the above, the appeal is allowed by way of remand for the limited purpose of calculating duty liability, if any, for the period from 18.04.2006 to December 2006.

(Order was pronounced
in Open Court on **30/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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