CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/873/2009-DB, ST/874/2009-DB, ST/875/2009-DB

[Arising out of Order-in-Original No. 34-36-2009 dated 31/07/2009 passed by Commissioner of Service Tax , BANGALORE-I]

Commissioner of Central Excise ,
Customs and Service Tax
Bangalore-i
POST BOX NO 5400...CR BUILDINGS,
BANGALORE, - 560001

Appellant(s)

VERSUS

World Space India Pvt Ltd
(wsil)2nd Floor,mithra Towers,10/4,kasturba Road,bangalore
BANGALORE - 0
KARNATAKA

Respondent(s)

Appearance:

Shri Madhup Sharan, Asst. Commissioner(AR) — For the Appellant

None — For the Respondent

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

Final Order No. 20557-20559 / 2019

Date of Hearing: 18/07/2019
Date of Decision: 18/07/2019

Per : BENCH

The Revenue has filed these appeals against the impugned order dt. 31/07/2009 passed by the Commissioner of Service Tax, Bangalore whereby the Commissioner has dropped the demand of service tax amounting to Rs.23,07,36,138/- in respect of Business

Auxiliary Service for the period from 01/02/2006 to 31/03/2008. Since the issue involved in all the three appeals is identical and there is a common impugned order, all the three appeals are being disposed of by this common order.

2. Briefly, the facts of the present case are that the respondent M/s. World Space India Pvt. Ltd. are registered with the service tax under the category of Broadcasting Agency Service and Business Auxiliary Service. Respondent is a subsidiary of M/s. World Space Inc. (WIN, for short). WIN has established a satellite system to provide digital audio broadcasting and data transmission service to subscribers in India. The appellant undertakes the promotion and marketing services of WIN but they did not discharge appropriate service tax during the period from 01.02.2006 to 31.03.2008 even when they were registered with the Department since 2004. Three show-cause notices covering the above mentioned period were issued and adjudicated by a common Order-in-Original dt. 31/07/2009. Adjudicating authority dropped the demand of Rs.23,07,36,138/- being part of the amount pertaining to BAS for the period from 01/02/2006 to 31/03/2008 basically on two grounds namely;

i. The consideration received by them against BAS in convertible foreign currency fulfills the condition of export of the service as given under Rule 3(2) of the Export of Service Tax Rules, 2005 and therefore the said amount cannot be subjected to tax.
ii. The original authority has also relied on the Circular No.111/05/09-ST dt. 24/02/2009 which says that even when the services got ultimately consumed within India and the benefit accrue outside India, the said service can be considered as export of service.

Aggrieved by the dropping of demand, Department has filed these three appeals.

3. Heard the learned AR. None appeared on behalf of the respondent. Since the case pertained to the year 2009 and the respondent has not appeared in the appeals filed by them challenging the demand confirmed by the Commissioner vide the impugned order and their appeals were dismissed for non-prosecution, we proceed to decide these appeals on the basis of material available on record and after hearing the learned AR.

4. Learned AR for the Revenue submitted that dropping the demand of service tax is not sustainable in law. He further submitted that the service rendered by the respondent does not amount to export of service in view of the interim stay granted in the case of Microsoft Corporation (I) Pvt. Ltd. Vs. CST, New Delhi [2009-TIOL-1325-CESTAT-DEL].

5. We have considered the impugned order and we find that the Commissioner has given detailed reasoning for dropping the demand. Further we find that the Commissioner has also relied upon the Board's Circular No.111/05/2009 dt. 24/02/2009 and has given a categorical finding that the services rendered by the respondent fall in the definition of export of service as provided in the Export of Service Rules, 2005. It is relevant to reproduce the relevant finding of the Commissioner which is reproduced herein below:-

> *48. In respect of the stated Business Auxiliary Service rendered by the assessee, as discussed above, towards which they received the mutually agreed upon consideration in convertible foreign exchange, I find that the requisite service was provided by the assessee from India, and had been delivered outside India to WIN and used outside India by WIN, as the assessee which is a wholly owned subsidiary of WIN renders services for WIN i.e. World Space inc., USA. Hence, I*

find that the service provided by the assessee has been delivered only to WIN which is based outside India. As a result, the benefit of the service is derived by and accrued to, only the recipient of the service i.e. World Space Inc., USA, which obviously is based outside India. Therefore, I find that on such transactions of the stated Business Auxiliary Service rendered by the assessee, towards which the consideration has been received by them in convertible foreign exchange, they fulfill the conditions of Rule 3(2) of the Export of Service Rules, 2005, and therefore such service is liable to be treated as export of service. This opinion of mine is in consonance with the clarification issued Central Board of Excise and Customs, in circular No.111/05/2009-ST. F.No.137/307/2007 CX4(Pt) dt. 24/02/2009, wherein it is clarified that:-

> *3. … …. … … For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the* ***benefits of these services accrue outside India****. In all the illustrations mentioned in the opening paragraph, what is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well.*
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> *4. All pending cases may be disposed of accordingly. … … …*

The Relevant Business Auxiliary Service rendered by the assessee, as discussed above, as defined in Section 65(105)(zzb) of the Act, falls under the taxable services classified under Rule 3(1)(iii) of the Export of Service Rules, 2005, as amended, and is therefore covered by the above clarification. In view of the foregoing I conclude that the proposal in the stated SCNs relating to the demand of service tax *amounting to Rs.23,07,36,138/-, ….. ………… …, on the business Auxiliary Service rendered by the assessee, where they received the agreed upon consideration in convertible foreign exchange, is unsustainable and is therefore liable to be dropped, as it amounts to export of service.*

6. In view of the clear finding of the Commissioner holding that the services rendered by the respondent is export of service and hence the said service is not liable to service tax. We do not find any infirmity in the impugned order which is upheld by dismissing the appeals of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **18/07/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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