

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.59778 Of 2013**

[Arising out of Order-in-Original No.ROH-EXCUS-COM-000-017-13-14 dated 31.05.2013 passed by the Commissioner of Central Excise, Rohtak, Haryana]

**M/s Bechtel India Private Limited**

**: Appellant**

Knowledge Park, 244-245, Udyog Vihar,  
Phase-IV, Gurgaon, Haryana-122015

*VERSUS*

**The Commissioner of Central Excise,  
Rohtak**

**: Respondent**

SCO No.6 to 8 & 10, Sector-1, Huda Market,  
Rohtak, Haryana-124001

**APPEARANCE:**

Shri A.R. Madhav Rao and Shri Mukunda Rao, Advocates for the Appellant  
Shri Aneesh Dewan, Authorised Representative for the Respondent

**CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60516/2024**

DATE OF HEARING: 24.05.2024  
DATE OF DECISION: 06.09.2024

***PER: P. ANJANI KUMAR***

M/s Bechtel India Pvt. Ltd., the appellants, are registered for providing taxable service i.e. "Consulting Engineers Services" as per Section 65 (105) (g); on conducting investigation by the officers of Anti-Evasion Branch of Service Tax Commissionerate, Delhi, it appeared to the Revenue the appellants have not discharged service tax on various services, provided by them during the period 01.04.2006 to 31.03.2011, in relation to various projects undertaken by them or their group companies; enquiries were conducted by writing various letters; appellants have also replied by various letters giving particulars about the

services rendered/ received by them in respect of various projects like Jamnagar Export Project, KG-D6, Dabhol Project etc. On conclusion of the investigation, the Show Cause Notice dated 21.10.2011 was issued to the appellants seeking to recover service tax of Rs.2,22,70,103/- (service tax of Rs.2,17,33,744 + Education Cess of Rs.4,34,675 + Secondary and Higher Education Cess of Rs.1,01,684/-); seeking to appropriate service tax of Rs.14,80,001/- ((service tax of Rs.14,38,526 + Education Cess of Rs.28,776 + Secondary and Higher Education Cess of Rs. 12,699/-) already paid by the appellants; seeking appropriate interest of Rs.5,39,865/- already paid by the appellants and proposing to impose penalties under Section 76, 77 & 78 of Finance Act, 1994; the Show Cause Notice was adjudicated vide impugned order dated 31.05.2013. Hence, this appeal.

2. Shri A.R. Madhav Rao, assisted by Shri Mukund Rao, learned Counsel for the appellant, traces out the changes in the Export of Service Rules during the impugned period i.e. 2006 to 2011 and submits that for a service to be considered as Export of Service, service was required to be delivered outside India and used in business or for any other purpose outside India during 07.06.2005 to 19.04.2006 and payment/ foreign exchange should have been received; service was required to be delivered outside India and used outside India between 19.04.2006 to 01.03.2007 and where the foreign recipient has an office or a commercial establishment in India; the order of provision of service should be made from office or a commercial establishment located outside India; was required to be provided from India and used outside India from

01.03.2007 to 22.05.2007; was required to be used outside India from 22.05.2007 to 27.02.2010 and the criteria to be used outside India was omitted w.e.f. 27.02.2010. He submits that the main case of the Department is that services have not been used outside India and that the appellants are unable to show that the order for provision of service has been made from outside India; therefore, the benefit of export of services is not available; the findings of the Commissioner are baseless; all the projects were being executed by foreign entities and the Branch officers had a limited role to play in this regard; there is no evidence put forth by Revenue that the order was placed by the offices of the foreign entities located in India; the three contracts entered into by the appellants with foreign entities were interpreted by the Commissioner to imply that the services exported are being used in India and not outside; the fact of the matter is Jamnagar Project, Dhabol Restart Project and KD D-6 had executed agreements with foreign companies; the services performed by the appellants were in the capacity of independent contractors of the foreign companies; in case of any deficiency, the responsibility was of the foreign companies and not the appellants; in all these contracts, there is no reference to any Branch office of any foreign entity in India.

3. Learned Counsel submits that the appellants are subsidiary of M/s Bechtel Corporation USA and provide Engineering Designs and Drawing Support Services exclusively only to Bechtel group for turnkey projects awarded anywhere globally, including by companies in India, to foreign entities. He submits that the appellant appoints a project engineer responsible for the work awarded to them, a team visits overseas entities

offices for orientation and learning sessions; Detailed Design Engineering Services on the basis of drawings provided by the overseas Bechtel entities are prepared; the overseas entities of Bechtel open the Central Repository of Data Base and the appellant submits the final version of drawings and designs and other data in the Central Repository; the transfer of documents is through a dedicated Wide Area Network (WAN); final deliverable is done by their overseas masters; all communications with the ultimate customer, even located in India, are done only by the overseas entities of the appellant.

4. Learned Counsel submits also that the provision of Export of Services has been clarified by the CBEC by circulars issued from time to time, particularly the Circulars dated 24.02.2009 and 13.05.2011; these Circulars interpreted the phrases "used outside India" to mean that the benefit of service should accrue outside India; 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 the services accrue outside India. He submits that though the Circular dated 13.05.2011 makes a slight departure to the extent of saying that where a consultancy service is obtained and used in respect of project in India, the service cannot be set to be used outside India, in the present case, the services given by the appellant to the entities abroad are further amended by the foreign entity as required and suitable for the project and then proceed to execute the project; hence, the services are utilized abroad; it is simplistic to assume that the services rendered by the appellant to foreign entities is the last word for execution of projects in India. He submits that the overall scope, understanding and implementation of the projects is in the domain of the

foreign entities who used the services of the appellants; the word “used outside India” is to be interpreted to mean that the benefit of service should accrue outside India for which the deciding factor is the location of the service receiver and not the place of performance; the clarification given by, Circular dated 13.05.2011, stating that in respect of Consultancy Service which is used in respect of project in India, cannot be treated as export, is not applicable in the appellant’s case; it would apply to cases where the drawings and designs made by any consultancy company are delivered directly to the projects in India, which is not the case in respect of the appellants; the Department has assumed that the orders were received by the appellants from the local offices of the foreign entities is without any evidence. He relies on the following cases:

- M/S Bechtel India Private Limited v. Commissioner of Service Tax, Delhi (Judgment Dated 13.09.2023 In Service Tax Appeal No. 1451 Of 2011)
- Verizon Communication India Pvt. Ltd. Vs. Asstt. Commr., S.T., Delhi-III - 2018 (8) G.S.T.L. 32 (Del.)
- Commr. Of Central Tax V. M/S Singtel Global India Pvt. Ltd. - (Judgment Dated 06 September 2023 In SERTA 10/2023
- Coca Cola India Pvt. Ltd. Vs Commissioner of C. Ex., Pune-III - 2009 (242) ELT. 168 (Bom.)
- Paul Merchants Ltd. Versus Commissioner of C. Ex., Chandigarh - 2013 (29) STR 257 (Tri. - Del.)
- M/S. Samsung India Electronics P. Ltd Versus CCE. Noida - 2015 (1) Tmi 1098
- Microsoft Corporation (1) (P) Ltd. Versus Commr. Of S.T., New Delhi - 2014 (36) STR 766 (Tri. - Del.)
- Microsoft Corporation (India) Pvt. Ltd. Versus Commr. Of C. Ex., Delhi-III - 2018 (18) G.S.T.L. 465 (Tri. - Chan.)
- M/S. Fanuc India Pvt. Ltd. Versus C.C.E. & S.T. - Bangalore-Ltu - 2020 (1) TMI 316 - Cestat Bangalore
- Vodafone Essar Cellular Ltd. V. Commissioner of C. Ex., Pune -III- 2013 (31) STR 738 (Tri. - Mumbai)
- All India Fedn. Of Tax Practitioners V Union of India - 2007 (7) STR 625 (S.C.)

- Collector Of Customs V. K. Mohan & Co. Exports - 1989  
(43) ELT. 811 (S.C.)

5. Regarding the other issues, learned Counsel for the appellants submits that the appellants paid service tax for the period 03.03.2009 to 19.05.2009, in terms of Notification No.9/2009-ST; learned Commissioner himself holds in the impugned order that the services have been provided to the overseas companies and to the SEZ; this finding categorically amounts to confirm that the services have been exported and hence, the service tax paid of Rs. 9,50,273/- (plus interest thereon of Rs.3,81,032) requires to be refunded. Learned Counsel submits in relation to the service tax of Rs.66,750/-demanded on Club and Association Service that the services were availed abroad with respect to the clubs of Texas Board of Professional Engineers, Virginia Department of Professional and Occupational Regulations; the same was availed outside India and payment understandably was made in foreign currency; therefore, service tax cannot be demanded. Learned Counsel concedes that in respect of other services availed, the appellants are liable to pay service tax of Rs.5,29,728/- (plus interest of Rs.1,58,833/-) and the same stands paid during the investigation and before the issuance of Show Cause Notice dated 21.10.2011.

6. Learned Counsel for the appellants submits that extended period is not invocable as the appellants had a bona fide belief that the services being rendered to overseas entities are not taxable; CBEC Circular dated 24.02.2009 clarified that if the recipient of the services is abroad then it will accepted that the services are used abroad; only vide Circular dated

13.05.2011, it was clarified that the recipient should be situated abroad in respect of the Consultancy Services; when the Department itself was in doubt and has to issue series of circulars, it is unfair to allege that there is suppression etc. on the part of the appellants so as to invoke extended period and no penalty is payable. He relies on the following cases:

- Padmini Products v. Collector of C. Ex. - 1989 (43) ELT. 195 (5.C.)
- Usha Udyog vs. Commissioner Of Central Excise, Kanpur - 2001 (136)ELT. 1031 (Tri. - Del.)
- Duke & Sons Pvt. Ltd v. Commissioner of Central Excise, Mumbai-11-2004 (178) ELT 190 (Tri. - Mumbai)
- Indian Hotels Co. Ltd. Vs Commissioner of Service Tax, Bangalore -2014 (36) STR 1268 (Tri. - Bang.)
- 3m India Ltd. V. Commissioner of Customs, Bangalore-1-2020 (373) ELT. 385 (Tri. - Bang.)
- International Merchandising Company LLC v. Commissioner of Service Tax, New Delhi - 2022 (67) GSTL 129 (SC)
- Commissioner of C.Ex v. Gujarat Narmada Fertilizers Co. Ltd. - 2009 (240) ELT. 661 (S.C.)
- Omega Financial Services v. Commissioner of C. Ex., Cochin - 2011 (24) STR 590 (Tri. - Bang.)

7. Shri Aneesh Dewan, learned Authorized Representative for the Department, reiterates the findings of the impugned order and submits that the appellants representing their overseas group companies, have in fact provided Consulting Engineers Services to the clients of the overseas group companies with respect to the specific projects of BHL and Reliance Group in India; therefore, they do not qualify as export of service under Rule 3(1)(iii) of Export of Service Rules, 2005, for non fulfilment of conditions; in terms of the Rules, the service shall be treated as export (prior to 01.03.2007) only if such services are provided to a recipient located outside India, services delivered outside India and the same is used outside India; with effect from 01.03.2007, services rendered shall

be deemed as export if such service is provided from India and received outside India; in both cases, payment is received in convertible foreign exchange; with effect from 27.02.2010, it was further provided that the order for service should not be delivered by any commercial establishment or any office of the foreign entity. He submits that Commissioner has given elaborate findings as above and correctly decided that the appellants did not export services during the period 01.04.2006 to 24.02.2009; the same is amplified/ clarified by the Circular dated 13.05.2011.

8. Learned Authorized Representative further submits that in respect of "Club or Association Service", the same falls under Rule 2 (1) (d) of Service Tax Rules, 1994 read with Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and the Adjudicating Authority has correctly confirmed the demand. He submits that the appellant has accepted the service tax liability on other services received. On the issue of limitation, learned Authorized Representative submits that it is incorrect to state that the appellants were under bona fide belief as they did not approach the Department and did not seek any clarification; he relies on Digilink India Ltd. – 2006 (3) STR 386 (Tri. Delhi). He further submits that as the appellants are in the self-assessment regime and cannot hide under bona fide belief to justify the non-payment of service tax.

9. Heard both sides and perused the records of the case. Brief issues involved in the impugned case are that whether the services rendered by the appellant as "Consulting Engineer" qualified to be export, during the

period 01.04.2006 to 24.02.2009, under Rule 3 of Export of Service Rules, 2005; whether the appellant is liable to pay service tax on "Club or Association Service" and "other services" received by them during the period 2006-07 to 2010-11; whether extended period is invocable in this case. The appellants are engaged in the provision of Consulting Engineers Service under contracts entered into with their foreign principals; the appellants prepare the drawings and designs as required for the specific projects, send it to their principals for modifications and approvals and on approval upload the same in the Central Repository of the overseas entity through a dedicated WAN; the foreign entities of the appellant, who in turn entered into agreements with projects executed in India, supply designs, drawings etc. relating to the projects. The appellants have thus submitted the drawings and designs in respect of projects like Jamnagar Export Project, KG-D6, Dabhol Project etc. It is the case of the Department that the services are to be considered as rendered and consumed in India and therefore, cannot be treated as export of services. The case of the appellants is that the drawings and designs though prepared by them are whetted and improved upon by their overseas principals and only after their final approval, the same is uploaded in the Central Repository; they are preparing the designs as per the direction of their overseas entities under a contract; they are receiving the consideration thereof from their overseas entities and they have no communication, whatever, between them and the Indian companies who are using such drawings.

10. We find that learned Commissioner observes that during the period under consideration, export of service is also subject to the condition that the "service is delivered outside India and is used outside India" or "service provided from India and is used outside India as the case may be"; as the services rendered by the appellant are tailor made to the Indian companies, they cannot be used outside India and therefore, to that extent, the services are not used outside India. We also find that Commissioner relies on CBEC Circular dated 13.05.2011 which clarified that "used outside India" should be interpreted to mean that the benefit of service should accrue outside India. We find that the Circular cites as an example that it is possible to obtain a consultancy report from a service provider in India, which may be used either in the location of the customer or in any other place outside India or even in India; in a situation where the consultancy, though paid by client located outside India is actually used in respect of a project or an activity in India, the service cannot be used outside India. We find that this Circular attempt to nullify the key factor of payer for the service. We find that the Larger Bench of the Tribunal in the case of M/s Arcelor Mittal Stainless India Pvt. Ltd. – 2023-VIL-516-CESTAT-MUMBAI-ST observed as follows:

44. The concept that service tax is a destination based consumption tax is also in conformity with international practice in respect of value added taxes. Thus, in a destination based consumption tax, the tax is levied only at the place where the consumption takes place. It is for this reason that exports are not taxed and imports are taxed on same basis as domestic supplies.

45. The 2005 Export Rules were introduced to achieve the destination based consumption tax concept and so exemption is provided from payment of service tax to services exported out of India. The 2005 Export Rules set out various conditions for a service to qualify as export of service. Basically, the service recipient should

be outside India; service should be provided from India and delivered outside India; and payment should be received in foreign currency.

46. Prior to 19.04.2006, under rule 3(3) of the 2005 Export Rules, the export of taxable service would mean, in relation to taxable services, such taxable services which have been provided and used in or in relation to commerce or industry and the recipient of such service is located outside India. For the period between 19.04.2006 and 01.03.2007, export of taxable service in relation to business or commerce, is the provision of such service to a recipient located outside India when such service is delivered outside India, and used outside India; and payment for such service provided outside India is received by the service provider in convertible foreign exchange. However, as the phrase „delivered outside India“ in rule 3(2)(a) did not provide clarity with respect to intangible services, this expression was replaced w.e.f. 01.03.2007 by „is provided from India and used outside India“. The Circular dated 29.04.2009 issued by CBEC clarifies that the relevant factor is the location of the service receiver and not the place of performance and the phrase „used outside India“ is to be interpreted to mean that the benefit of the service should accrue outside India. The term “used outside India”, therefore, means that the service is provided to such a service recipient who is located outside India. It is the location of the service-recipient which determines where the service is used. The use of intangible services should be seen with respect to the location of the service recipient and not the place of performance.

47. In the present case, Arcelor India is a sub agent of Arcelor France which is an agent for the steel mills situated outside India. For procuring sale orders for the products manufactured by the foreign mills from customers in India, the requests of prospective customers identified by Arcelor India is forwarded to the foreign mills who, thereafter, directly get in touch with the Indian customer to determine the terms and conditions and execute a contract after which the goods are supplied by the foreign mills directly to the Indian customers. For this provision of service, Arcelor India receives consideration from Arcelor France in convertible foreign exchange. Thus, there exists a relationship of service provider and service recipient between Arcelor India and Arcelor France.

48. A service recipient is a person who makes a request for a service, in exchange of a consideration.

In fact, he is the person who is liable to pay for the services received. Service recipient is not a person who is affected by the performance of the service. The Finance Act does not define the term „service recipient“. However the same has been clarified in the CBEC Education Guide as follows: “5.3.3 Who is the service receiver? Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.”

49. It is, therefore, clear that the recipient of service is the person at whose desire the activity is done in exchange for a consideration, i.e., the person who is obliged to make payment for the service. The recipient of service would, therefore, be a person at whose instance and expense the service is provided, whether or not he is the beneficiary of the service.

11. Further, we find that Tribunal in the case of Verizon Communication India Pvt. Ltd. (supra) relying the decision of the Larger Bench in the case of Paul Merchants Ltd. (supra) held that:

The decision of Larger Bench of 50. CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) may be referred to at this stage. The period with which the dispute in that case related to was between 1st July, 2003 and 30th June, 2007. It involved, therefore, the interpretation of the ESR, 2005 as amended and applicable during the said period. There the assesseees were intermediary agents providing money transfer services to foreign travellers who were the end user on behalf of their principals. The contention of the Department that this did not qualify as ‘export of service’ was rejected by the CESTAT. It noted that the C.B.E. & C. had to issue a clarification Letter No. 334/1/2010-TRU, dated 26th February, 2010 acknowledging the difficulties that were faced by the trade in complying with the condition that the services had to be ‘used outside India’. It was clarified that “as long as the party abroad is deriving benefit from service in India, it is an export of service.”

In the considered view of the 51. Court, the judgment of the CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) is right in holding that “The service recipient is the person on whose instructions/orders

the service is provided who is obliged to make the payment from the same and whose need is satisfied by the provision of the service." The Court further affirms the following passage in the said judgment in Paul Merchants Ltd. v. CCE, Chandigarh (supra) which correctly explains the legal position :

"It is the person who requested for the service is liable to make payment for the same and whose need is satisfied by the provision of service who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India, who is liable to make payment for these services and who used the service for his business, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the place of performance of Service."

In Vodafone Essar Cellular Ltd. 52. v. CCE (supra), the CESTAT explained the arrangement lucidly in the following words :

"Your customer's customer is not your customer. When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party. For example, when a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend."

12. We further find that the learned Commissioner has based his argument mainly on the Circular 13.05.2011. However, the impugned period is mostly before the issue of Circular. While we hold that Circular cannot go beyond the provisions of Act and Rules made thereunder, we find that Hon'ble Apex Court in the case of Suchitra Components Ltd. (supra) held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively; thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively.

13. We find further that this Bench, vide Final Order No. A/60377/2023 dated 13.09.2023, while dealing an issue of refund held that:

(v) Coming to the last ground on which the rejection of refund of Rs. 3,84,358/- is made with regard to input services which are utilised for providing output service to foreign affiliates in relation to projects in India. We note that the said services are in the nature of preparation of layouts, designs, plans, drawing etc. Thus, the services provided by the appellant were used ultimately by the overseas affiliates only as benefit arising out of the services provided by the appellant accrued to the overseas affiliates only and hence, the requirement of Rule 3(2) of the export of the services stood satisfied as the services were provided by the appellant from India and the recipient of the services are located outside India and were used by the foreign affiliates located outside India satisfying the condition of Rule 3(1)(iii) of export rules. Moreover, the Circular No. 111/05/2009- ST dated 24.02.2009 has clarified that the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Moreover, the decision of the Tribunal in the case of M/s Fanuc India Pvt. Ltd. cited (supra) wherein the Tribunal after considering the export of service rules and the Circular No. 111/05/2009-ST dated 24.02.2009 has held that where the benefit of the services accrued outside India it will be termed as export of services. Therefore, the denial of refund on this ground is also bad in law.

14. Further, we find that in respect of the exemption claimed by the appellants towards the supplies claimed to have been rendered to M/s JERP Project, Jamnagar, learned Commissioner himself finds that the exemption contained under Notification No.09/2009 or 15/2009 is not applicable as in this case, the services have been provided by the assessee to the aforesaid overseas group company by electronic media in connection with M/s JERP Project of Reliance Group in India. We find that learned Adjudicating Authority did not use the same logic in respect of

services rendered to other projects where the services undertaken by the appellants are similar in nature. In all the cases, the appellants have rendered services to their overseas entities by preparing the drawings and designs and uploading the same to the Central Repository through the WAN for use by their overseas entities, irrespective of the fact whether the same drawings and designs were ultimately supplied to projects in India by their overseas entities. There is nothing on record to show that there has been any communication between the appellants and the Indian projects leaving alone any agreement between them. In view of the above, we are of the considered opinion that the services rendered by the appellants to their overseas entities constitute export of services during the impugned period and accordingly, the demand on this issue cannot survive.

15. Coming to the issue of demand of duty on "Club or Association" Services obtained by the appellants, it is very clear that the payment made was towards the use of professional associations and clubs abroad which were utilized by the officers or employees of the company when they visited abroad for their professional work. Department could not produce any evidence to show that the said service is enjoyed in India. The service being rendered and utilized abroad, the taxability of the same in India does not arise. As regards the demand on other services, we find that the appellants have accepted their liability and paid duty with interest before the issuance of Show Cause Notice. In view of the facts and circumstances of the case, we are of the opinion that no case for levy of penalty has been made.

16. In view of the above, the appeal is partly allowed in the following terms:

(i) Demand of Service Tax to the extent of Rs.5,29,728/- and interest of Rs.1,58,833/-, which is already paid by the appellant, is confirmed; rest of the demand is set aside.

(ii) All the penalties are, however, set aside.

(Order pronounced in the open court on 06/09/2024)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**

PK