Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No.ST/61605/2018

[Arising out of OIA-73-ST-CGST-APPEAL-GURUGRAM-SG-2018-2019 dated 04.12.2018 passed by the Commissioner (Appeals) of Central Excise and Service Tax-Gurugaon-I]

M/s Beaumanoir India Private Limited : Appellant (s)

Vs

CCE-Gurugaon-I : Respondent (s)

Represented by:
For Appellant (s) : Smt. Reena Khair, Advocate
For Respondent (s): Shri Atul Handa, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Bijay Kumar,, Hon'ble Member (Technical)

Date of Hearing/Decision: 21.02.2019

ORDER No.A/60311/2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order rejecting their refund claim.

2. The brief facts of the case are as under:-

i) The appellants entered into a sourcing agreement with Beaumanoir Asia Holding Singapore PTE Ltd., as on 01.11.2013, to source, procure and buyall classes of goods, materials and merchandise from India for GROUPE-BEAUMONAIR. The appellants were registered with the erstwhile service tax department, under the taxable service categories of 'Business Auxiliary Services' and 'Business Support Services' etc.

ii) GROUPE-BEAUMANOIR is based in France and is engaged in the business of sourcing of various products viz. ready-to-wear garments and accessories from across the globe to supply to its brands in different countries and is focused on expanding its business of sourcing from Asian sub-continent. The remuneration paid to the appellants
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was on a cost plus 10% basis, where the cost was defined to include the overall expenses incurred by the appellant in running and managing its business and rendering services to the group.

iii) Since, the services were provided by the appellants to a customer located abroad, in terms of Rule 6A of the Service Tax Rules read with Rule 5 of the Cenvat Credit Rules, the appellants filed a claim seeking refund of unutilized Cenvat Credits for the following periods:

iv) The Assistant Commissioner vide Order-in-Original dated 01.12.2017 sanctioned the refund of an amount of Rs. 13,66,624/- of unutilized cenvat credit, on being satisfied that the appellants have complied with the Notification No. 27/2012(NT) dated 18.06.2012. It was also held that all the conditions specified in rule 6A of the Service Tax Rules, have been fulfilled and that the services provided by the appellants qualify as Export of Services.

v) On review of the order, the Department was directed to file an appeal before the Commissioner (Appeals), on the ground that the appellants have provided ‘Intermediary Services’ to its holding company situated abroad, and the refund has been wrongly sanctioned. The appellants had also filed cross-objection before the Commissioner (Appeals).

vi) The Commissioner (Appeals), Gurugram allowed the appeal filed by the Department vide the impugned order dated 29.06.2018. The Commissioner (Appeals) held that the appellant is a facilitator of services to the foreign company and is hence, an ‘Intermediary’.

Against the said order, the appellants are before us.

3. The Ld. Counsel appearing on behalf of the appellant submits that the services do not qualify as ‘Intermediary Service’, as no speaking order is passed by the authorities below. It is her submission that the appellant are assisting or facilitating only the purchase of goods for the foreign entity and they are providing assistance in identifying venders and sourcing of materials. There is no supply or service being rendered by the foreign entity to any third party in India.

In the impugned order, it is held that the appellant are providing intermediary services. As GROUPE BEAUMANOIR is mere purchaser of the goods in India and are not providing any service to any other person, there is no main service itself which has been provided. Therefore, the appellant cannot be called intermediary of any main service. In fact, the appellant themselves, are providing the main service, under the agreement, and hence, are even otherwise the activity undertaken by the appellant is excluded from the scope. In terms of the agreement, the appellant is to facilitate procurement of goods from India for GROUPE BEAUMANOIR. Therefore, at the best appellant is to be said as buyer's agent and as per CBEC Education Guide, the buyer's agent is specifically excluded from the scope of intermediary services. She further submits that it has been held that for intermediary services, the transaction should involve two activities, between the Principal and Agent and between Principal and the Service Recipient. Since, there is no third party in the present case, to whom any service is being provided, the appellant cannot be held to be the intermediary service. To support of this relied on the decision of ***RE Universal Services India Pvt. Ltd. – 2016 [42] STR 585 (AAR), RE GO Daddy India Web Services (P) Ltd., 2016 (46) STR 806 (AAR).*** She further relied on the decision of the Tribunal in the case of ***Vodafone Essar Cellular Ltd. vs. Commissioner of Central Excise, Pune-III 2013 (31) STR 738 (Tri.-Mumbai)*** wherein it has been held that if a service provided to another party on the behest of a customer, then the customer is the service recipient and not the third party. She also relied on the decision of Hon'ble Supreme Court in the case of ***Suchitra Components Ltd. vs. CCE, Guntur reported in 2007 (208) ELT 321 (S.C.).*** Therefore, she prayed that the impugned order is to be set-aside.

4. On the other hand, the Ld. AR reiterated the findings of the impugned order.

5. Heard the parties.

6. We find that on the basis of the record placed before us, the appellant is assisting or facilitating their principal to purchase goods from India. These services are purely between the appellant their principal and no third party is involved. Moreover, the appellant is providing only the said service which is in nature of Business Support Service and Business Auxiliary Service and the said service has been specifically excluded by the CBEC Education Guide of Taxation of Services which is reproduced as under:-

> **5.9.6 What are "Intermediary Services"?**
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> Generally, an "Intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:
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> i) The supply between the principal and the third party; and
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> ii) The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.
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> For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. buying or selling agent, or a stockbroker) is excluded by definition.

Admittedly, the activity undertaken by the appellant has specifically excluded from the intermediary service, in that circumstance, the refund claim filed by the appellant cannot be denied by holding that the appellant is providing intermediary service. Therefore, we do not find any merit in the impugned order, the same is set-aside. The appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in the Court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.