

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

ST/40349/2013

[arising out of Order-in-Original No.12/ST/COMMR./2012-13, dated 26.10.2012 passed by the Commissioner of Central Excise, Tirunelveli]

M/s. VEDANTA LIMITED,
(Formerly 'M/s. STERLITE INDUSTRIES (I) LTD.)

APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI

RESPONDENT

Appearance:

For the Appellant Shri Vishal Agarwal, Adv.

For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Member (Judicial)

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing: **29-03-2019**

Date of pronouncement: **30-04-2019**

FINAL ORDER NO. **40703 / 2019**

Per Bench:

Brief facts are that appellants are engaged in manufacture of Copper Anode, Sulphuric Acid and Phosphoric Acid. They are availing credit on inputs, input services and capital goods. The appellants are also providing taxable services under Consulting Engineering Service, GTA Service, Management Consultancy Service, Man-power Recruitment and Supply Services etc. A show-cause notice was issued to the appellants alleging that on scrutiny of the financial statement, it was observed that a sum of US\$ 50 lakhs has been paid to M/s. Vedanta Resources Plc. Inc., London [hereinafter referred to as "Vedanta"] as Professional Fees including Management Consultation

Fee of US\$ 30 lakhs and Representation Fees of US\$ 20 lakhs per annum. The amount paid by appellants towards Representation Fee was also shown in the financial statement as Management Consultancy Fees. Though, appellants had discharged service tax on the Management Consultancy Fees of US\$ 30 lakhs, they had not discharged service tax on US\$ 20 lakhs, which is paid to M/s. Vedanta as Representation Fees. It appeared that the agreement dated 29.03.2005 entered into between the appellants and M/s. Vedanta, whereby was appointed to represent appellant in its dealings with lawyers, bankers, consultants of revenue and other authorities to extend its overseas operations and hereby augment its financial resources. It is also stated that M/s. Vedanta is to provide technical and commercial materials to appellant to enable the appellants to promote/raise funds overseas. Thus department was of the view that though the amount of US\$ 20 lakhs is shown as Representation Fees, it is actually Management Consultancy Fees and, therefore, the appellants are liable to pay service tax on this portion also under Management Consultancy Services.

2. After due process of law, the original authority held that the appellants are liable to pay service tax on US\$ 20 lakhs under the category of Management Consultancy Services by reverse charge mechanism. The demand was confirmed with interest and also penalties under section 76, 77 and equal penalty under section 78 of the Finance Act, 1994 was imposed. An amount of Rs.4,34,45,270/- already paid by the appellants were ordered to be appropriated. Hence this appeal.

3. On behalf of the appellant, the learned counsel Shri Vishal Agarwal appeared and argued the matter. He submitted that the appellant entered into a Representation Fee Agreement with M/s. Vedanta, a Body Corporate incorporated in England & Wales on 29.03.2005. The said agreement records that the appellant is a leading non-ferrous metal player in India and has approximately a 40% market share in India. It exports about 40% of its produce to countries such as China, Japan, Philippines, Singapore, South Korea, Taiwan and Thailand. It is also recorded that in early 2003, the London Metal Exchange (LME) has listed the metal produced by it under the category of Grade 'A' Copper. The agreement also records that the appellant has interest in companies such as Balco, Hindustan Zinc and India Foils, which manufacture downstream products.

3.1 The agreement records that the appellant earlier had its Chairman's office at UK, which has since been discontinued. It is also recorded that the appellant requires presence in UK to represent it in dealings with lawyers, bankers, consultants and revenue and other authorities, for which purpose it was appointing M/s.Vedanta Resources Plc. to act as its representative.

3.2 Appellant had also entered into a separate consultancy agreement with M/s.Vedanta Resources Plc. for providing strategic advice, advice on financial treasury operations, and other consultancy services. It is not in dispute that the appellant has discharged applicable service tax on the services being rendered under the consultancy agreement.

3.3 Pursuant to an audit, show- cause notice No.13/Commr./ST/2010, dated 21.10.2010 was issued to appellant

demanding service tax on the payments made by the appellant to M/s.Vedanta Resources Plc. under the Representative Office agreement under the head Management Consultancy Services.

3.4 Appellant filed detailed reply refuting the averments made in the show-cause notice. The adjudicating authority, however, passed the impugned order confirming demand of service tax of Rs.4,41,40,399/- for the period 2006-07 to 2009-10 under section 73 (2); levying interest at the approximate rate under section 75 of the Finance Act, 1994; and imposing penalty.

3.4 The preamble to the Representative Office agreement would show that M/s.Vedanta Resources Plc. was appointed to represent the appellant in its dealings with lawyers, bankers, consultants, revenue and other authorities.

3.5 The expression 'Management Consultant' is defined in the Finance Act 1994 as under –

“Management or Business Consultant” means any person, who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person, who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management.”

3.6 It is clear from the aforesaid definition that only services in connection with the management of an organization or business by way of advice, consultancy or technical assistance, in relation to financial management, marketing management, production management etc., alone are taxable. In the case in hand, M/s.Vedanta Resources Plc. was the appellant's agent in the U.K.,

representing on its behalf before bankers, lawyers, consultants and revenue and other authorities.

3.7 Time and again, CESTAT has held that such services of an executionary nature do not fall within the ambit of Management Consultancy Services, which covers rendition of advice, consultancy or technical assistance. The appellant placed reliance on the following amongst other decisions, where the Hon'ble Tribunal ordained the scope of the expression "Management Consultant":-

- *M/s. Bastisugar Mills Company Ltd. Vs. CCE - 2007 (10) STT 111. affirmed by the Supreme Court in 2012 (25) STR J154 (SC.)*
- *M/s. BSR & Co. Vs. CST - 2013 (30) STR 242.*
- *M/s. Pricewaterhousecoopers Pvt Ltd Vs. CST - 2018-TIOL-1002-CESTAT-MAD.*
- *M/s. Nirulas Corner House Pvt. Ltd. Vs. CST 2009 (119) STT 173.*
- *M/s. Telephone Cables Ltd. Vs. CCE - 2007 (9) STT 311.*
- *M/s. Rolls Royce Industries Pvt. Ltd. Vs. CCE - 2007 (6) STT 506.*

3.8 The department has erred in reading one of the clauses of the Representative Office Agreement on a stand-alone basis without reading the agreement in its entirety. It is a settled position of law that any agreement has to be read in its entirety and that it is not open to pick one clause in the agreement and conclude based on the reading of the same that the entire agreement is of a particular nature. In other words, contextual interpretation is best form of interpretation and that it is not correct or prudent to read one provision in a statute and interpret the same dehors the act as a

whole. Reliance in this regards is placed by the appellant on *Union of India Vs. M/s. Mahindra and Mahindra Ltd. - 1995 (76) ELT 481 (SC)*.

3.9 That department failed to appreciate that there was a separate "Consultancy Agreement", which had been entered into between the appellant and M/s.Vedanta Resources Plc. in terms of which the latter was to *inter alia* provide it with strategic advice in respect of its business, advice in relation to finance, treasury and legal matters, advice in respect of marketing etc., for which a separate consideration was being paid on which the appellant had discharged applicable service tax under the head Management Consultancy Services.

3.10 Without prejudice, appellant submitted that the dispute in the present case is completely revenue neutral. It is also settled law that the extended period of limitation cannot be invoked in cases of revenue neutrality. Reliance in this regards is placed on the following amongst other decisions –

- *CCE Vs. M/s. Coca-cola India Pvt Ltd. - 2007 (213) ELT 490 (SC)*.
- *M/s. Jay Yushin Ltd. Vs. CCE - 2000 (119) ELT 718 (Tri-LB)*.
- *M/s. Reliance Industries Ltd. Vs. CCE - 2016 (44) STR 82 (Tri-Mum)*.

3.11 Without prejudice to the above, it is agreed that there is no reason or basis which had been assigned in the show-cause notice for seeking to invoke proviso to Section 73(1) i.e., larger period of limitation. The records of appellant-Company had been consistently audited by the department. However, no objection whatsoever in this regard was raised in the course of such audits. Accordingly, no

suppression can be alleged on part of the appellant so as to invoke the extended period.

3.12 That the impugned order is liable to be quashed and set aside in its entirety.

4. Against this, the learned Authorised Representative Shri B. Balamurugan supported the findings in the impugned order. He adverted to the Representative Office Agreement entered between the appellant and M/s. Vedanta. In clause 1 of the agreement, the duties of Representative Office are stated. In clause 1.1, it is stated that M/s. Vedanta will provide technical and commercial materials to appellants to enable the latter to promote its business and/or raise fund overseas. From this clause, it is clear that M/s. Vedanta is to provide technical and commercial know-how as well as materials to appellants. This is nothing but management advice. Therefore, the Representative Office Agreement entered into between the appellant and M/s. Vedanta is also in the nature of Management Consultancy Agreement. With regard to revenue neutrality, it is argued by the learned Authorised Representative that the non-payment of service tax would not have come to light but for the audit conducted by the department.

5. Heard both sides.

6. Undisputedly, there are two agreements entered between the appellant and M/s. Vedanta – (i) Representative Office Agreement and the other (ii) Consultancy Agreement. US\$ 30 lakhs is paid to M/s. Vedanta by appellants on the Consultancy Agreement. For this consideration, appellants have discharged service tax under reverse charge mechanism. The dispute is with regard to the amount paid by

the appellants to M/s. Vedanta under Representative Office Agreement. The case of the department is that in clause (1) there is a stipulation that M/s. Vedanta has to provide technical and commercial materials to appellant and this would mean that management advice is provided by M/s. Vedanta to appellant. We fail to appreciate this view taken by the department. The agreement itself is named as Representative Office Agreement. Preamble of the agreement also states that the intention of the agreement is that appellant is to have their persons in U.K. to represent them in its dealing with lawyers, bankers, consultants and revenue and other authorities. Thus, the intention of the Representative Office Agreement is to have a Representative Office for the appellants overseas. The relevant portion of the agreement is reproduced herein below:-

"Considering the size of its business, M/s. Sterlite Industries Ltd., requires a presence in the United Kingdom to represent it in its dealings with lawyers, bankers, consultants and revenue and other authorities. In the past, M/s. Sterlite Industries Ltd., had a Chairman's office in the United Kingdom, which fulfilled these needs. However, the Chairman's office in the United Kingdom has been discontinued and M/s. Sterlite Industries Ltd., is seeking a presence overseas to expand its business operations, augment its financial resources and represent it before consultants and legal authorities.

M/s. Vdeanta has indicated that it would be willing to act as a representative for M/s. Sterlite Industries Ltd.

The parties have agree that M/s. Vedanta shall render such services to M/s. Sterlite Industries Ltd., on the terms and conditions hereinafter mentioned."

7. Clause 2 of the agreement mentions about the fees that has to be paid by appellant to M/s. Vdeanta. The fees is the consideration for performing its duties as a Representative Office. The fees is fixed as US\$20 lakhs. Thus, from the agreement, it is very much clear that the intention of the parties is that appellants is to have Representative Office overseas. The department cannot pick and choose sentences

from the agreement to interpret the meaning of the agreement to be a Consultancy Agreement. Even in clause 1.1, it is not stated that M/s. Vedanta is to provide technical or commercial advice to the appellants. Instead it is stated that M/s. Vedanta has to provide technical and commercial materials. This is because the Representative Office is under duty to provide all materials to the appellants being their overseas representative.

8. The issue would be more clear from the Consultancy Agreement entered into between the appellants and M/s. Vedanta. In clause (c) of the preamble of the Consultancy Agreement, it is stated that M/s. Vedanta is willing to provide Strategic Planning and Consultancy Services to appellant and each of its subsidiaries and for such Consultancy Agreement, the fees are fixed US\$ 30 lakhs. The appellants have discharged service tax on the amount paid under this agreement. Thus, on analysis of both agreements, we have no hesitation to conclude that the agreement under question is nothing but a Representative Office Agreement and not a Consultancy Management Agreement. The demand of service tax on the amount of US\$ 20 lakhs, which was paid by the appellant to M/s. Vedanta as Representative Office cannot be subject to levy of service tax under the category of Management Consultancy Services. The demand therefore cannot sustain on merits.

9. The learned counsel has also argued on the ground of revenue neutrality and limitation. The service tax, in the present case, is discharged under reverse charge mechanism. In case, the appellants pay the service tax, they would be eligible for credit of the same. Thus, the entire exercise is revenue neutral situation. The

show-cause notice has been issued invoking the extended period alleging suppression of facts with intention to evade payment of service tax. When the situation is revenue neutral one, wherein, the appellants would be eligible for credit, it cannot be said that the appellants are guilty of suppression of facts with intention to evade payment of service tax. Furthermore, there has been several audits conducted in the appellant's factory. In all these audits, there was no objection raised in respect of the present issue. In fact, in the audit report no.192/2008 corresponding dated 01.11.2008 in para 3(iii), the short-payment of service tax on Management Consultancy Service was taken-up by the audit. But no objection has been raised by the audit team in respect of this representative agreement, which is under dispute in the present appeal. All this go to show that department is aware of the entire facts. The invocation of extended period is then without basis. The appeal succeeds on limitation also.

10. From the foregoing, we hold that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Pronounced in open court on **30-04-2019**)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL)

