IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.41665 of 2018

(Arising out of Order in Original No. 51/2018 Ch. N. GST dated 27.3.2018 passed by the Commissioner of GST & Central Excise, Chennai North Commissionerate)

M/s. Cognizant Technology Solutions India Private Limited **Appellant**

6th Floor, New No. 165
Old No. 110, Menon Eternity Building
St. Mary's Road, Alwarpet
Chennai – 600 018.

Vs.

Commissioner of GST & Central Excise **Respondent**

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri Rajaram Ramanan, Chartered Accountant for the Appellant
Shri M. Ambe, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40529/2023

Date of Hearing : 22.06.2023
Date of Decision: 28.06.2023

Per M. Ajit Kumar,

This is an appeal filed by M/s. Cognizant Technology Solutions India Private Limited (herein after referred to as CTS India) against Order in Original No. 51/2018 CHN. GST dated 27.3.2018, passed by the Principal Commissioner of GST & Central Excise, Chennai North Commissionerate.

2. The facts of the case area that during the course of audit by the officers of GST and Central Excise, Chennai North Commissionerate, it

was noticed from the Income Tax Returns in Form 3CEB filed by the CTS India for the Financial Years 2012 – 13 and 2013 – 14, that they had declared to have rendered 'On-site Development of Software relates services' to their Branch office located in the USA (CTS USA) and have received Rs.75,82,95,595/- during the financial year 2012 – 13 and Rs.56,80,90,136/- during the financial year 2013 – 14 from their US Branch office for the services rendered to them (CTS USA). The onsite development of software related services provided by CTS India to their US Branch could not be treated as a service exported in terms of Rule 6A of the Service Tax Rules, 1994, therefore it appeared that the service would fall under the category of 'exempted services' as per Rule 2(e) of CENVAT Credit Rules, 2004. Hence CTS India was liable to pay/ debit an amount equivalent to 6% of the value of exempted services provided by them as per Rule 6(3)(i) of the CENVAT Credit Rules, 2004. The learned Commissioner went on to confirm the demand of Rs.12,93,23,935/- being the amount payable by the appellant under Rule 6(3)(i) of CENVAT Credit Rules, 2004 for the period from July 2012 to March 2015 under proviso to section 73(1) of the Finance Act, 1994 r/w Rule 14(1)(ii) of the CENVAT Credit Rules, 2004. He also demanded interest and imposed an equal penalty on the appellant. Aggrieved by the order, the appellant is before the Tribunal in appeal.

3. No cross-objection has been filed by the respondent-department.

4. We have heard Shri Rajaram Ramanan, learned Chartered Accountant for the appellant and Shri M. Ambe, learned AR for the Revenue.

5. The learned consultant Shri Rajaram Ramanan appearing for the appellant submitted that the entire amount disclosed in the Income Tax Returns Form 3CEB reflects provision of onsite support service rendered by the US branch office of the appellant (CTS USA) to its associated enterprise situated outside India and hence ought not to be held as an exempt service rendered by the appellant (CTS India). He reiterated that the said amount earned by their US branch office for their services gets consolidated in the appellant's books of accounts and in all its statutory reporting and was hence reflected in their Income Tax Returns Form 3CEB also. Therefore, the amount mentioned in the form is only for reporting purposes, being a mandatory requirement. He has taken us through the following documents during his submissions: -

a. Sample copies of invoices issued by their overseas branch office to their customers i.e. its associated enterprise situated outside India
b. bank statement of the overseas branch office evidencing receipt of the consideration
c. Extracts from the US Income Tax return filed by the overseas branch office declaring the subject amounts as income under the US tax laws
d. Reconciliation statement between the amounts declared in Form 3CEB, Financial Statements and the US Income Tax returns

He further stated that though they do not admit to the charge, even if they were found to have discharged a service that was exempt the impugned order had erroneously confirmed the demand arbitrarily at

6% of the value of alleged exempt services without giving them an option as provided under Rule 6(3)(ii) of CENVAT Credit Rules, 2004 of computing reversal using the formula based proportionate method. He also submitted that they were a large taxpayer unit and were regularly subjected to audit. None of these visits resulted in a dispute related to the said transactions. Hence the allegation of suppression against them and penalty are to be set aside. He referred to the following judgments to support the appellants stand;

a. DSP Merrill Lynch Limited Vs. CCE, Mumbai - 2016 (2) TMI 221 - CESTAT MUMBAI

b. Kedarnath Jute Manufacturing Company Limited Versus Commissioner of Income-Tax (Central), Calcutta - 1971 (8) TMI 10 – SC

c. CCE vs. Mayfair Resorts, NHI, Jalandhar – 2011(3) TMI 175 P&H HC

d. Luit Developers P. Ltd. vs. CCE, Dibrugarh – 2022(3) TMI 50 – CESTAT Kol.

e. Quest Engineers & Consultant Pvt. Ltd. vs. Commissioner of CGST & C.Ex. – 2021(10) TMI 96 – CESTAT Allh.

f. Raj Mohan vs. Commissioner of CGST, Panchkula – 2022(8) TMI 832 – CESTAT Chandigarh

He prayed that the Hon’ble Tribunal may set aside the impugned order and render justice.

7. We have heard learned AR Shri M. Ambe for the Revenue. He stated that it was evidenced from the books of accounts and the returns filed by the appellant under Income Tax Act that payments were received for exempted services provided by appellant to their US branch. Since they were using common input services on which CENVAT credit was availed, and by not maintaining a separate inventory of accounts, made the appellant liable to reverse the amount

as prescribed under Rule 6 of the CENVAT Credit Rules, 2004. Further, the appellant has not provided evidences, documents etc. regarding the nature of receipt of the amount from their branch. Hence they have not proved that the amounts indeed pertain to the services rendered outside India by their US branch and not by them. He stated that had the audit team not discovered these facts during their visit to the appellant's office, the fact would not have come to light and therefor the extended period of limitation has correctly been invoked and so has been the imposition of penalty. He has referred to the judgment of the Hon'ble High Court of Gujrat in **Linde Engineering India Pvt Ltd and 1 other** [2020 TIOL 1285 HC AHM ST] in support of the impugned order and prayed that the appeal may be rejected.

8. We have heard both the parties and find that the issues involved are:-

(a) whether the service rendered in the US was rendered by the appellant or by their overseas branch.

(b) whether the impugned order has erroneously confirmed the demand arbitrarily at 6% of the value of alleged exempt services without giving them an option as provided under Rule 6(3)(ii) of CENVAT Credit Rules, 2004.

(c) whether the invocation of extended period of limitation is warranted when the unit has been audited in the past and no discrepancy noticed.

9. It is seen from the Income Tax returns in Form 3CEB for the Financial Year 2012 – 13, that 'Cognizant Technology Solutions India Private Limited US branch' is carrying out 'on-site development of

software related services'. At para 13 of the return 'particulars in respect of providing of services' is reported. The appellant has responded with a 'Yes' to having entered into international transactions in respect of services. The tabular column below the para shows that one of the international transaction was with CTS USA. The description of service provided is shown as 'On-site development of software related services.' An amount of Rs 758295595/- is shown as received both as per 'book of accounts' and as 'as computed by the assessee having regard to arm's length price'. The counsel for the appellant had explained that the said entry was only reflecting the amount received by its branch at W. Burr Boulevard in the USA. The amount received by the US Branch gets consolidated in the appellants books of account as it is a part of statutory reporting. A similar situation prevailed during the Financial Year 2013 – 14. He has referred to the table showing the debit note / invoice wise amount involved, as enclosed with their appeal paper book along with copies of the invoices. Reference was made to the debit note / invoice, which shows that the amounts pertain to services rendered by CTS USA to their customers (associated enterprises). Copies of the bank statements enclosed also show that the US customer has made payment to CTS at W. Burr Boulevard in the USA. A reconciliation of amounts as per Financials, Form 3CEB and US IT Returns was produced which was shown to tally. We find that the impugned order at para 26.7 also acknowledges that the appellants had submitted invoices raised by their branch and also a worksheet reconciling the amount reflected in their Form 3CEB and US IT Returns. However, the learned Commissioner stated that the dispute is not

about the income reported by the appellants branch and payment of tax by the branch in the concerned country. The dispute is about the amounts received from the branch shown under the 'On-site development of software related services' in the books of account of CTS. We find that this issue stated in the findings of the impugned order is a secondary one. The main issue before the lower authority stems from whether the service rendered in the USA as seen in the Income Tax Return was rendered by the appellant to its overseas branch as alleged in the SCN. It has been satisfactorily demonstrated by the appellant that it was CTS USA who has rendered service to their associated enterprise in USA and received the payment for it in USA for the amount declared in the Income Tax Form 3CEB. There is no allegation in the Show Cause Notice that CTS USA was only a front company for services rendered by CTS India in the USA. This being so no taxable service has been rendered by CTS India in USA with respect to the impugned figures disclosed in their Income Tax Form 3CEB for the Financial Year 2012 – 13 and 2013 – 14. This entry was the trigger for the allegations in the show cause notice that culminated in the impugned order. Once no service was rendered by the appellant in USA, which is exigible to tax under the Finance Act 1994, all charges under the said Act against the appellant must fail.

10. We find that the judgment of the Hon'ble High Court in **Linde Engineering** (supra) pertains to a case where Linde India was providing service to its parent company Linde Germany. The facts in this case show that CTS USA and not CTS India which was supplying services and that too to a foreign customer and hence the facts are

distinguished and do not support Revenue's stand. Since the matter is decided in favor of the appellant on merits, the judgments cited by them are not discussed.

11. Based on the discussions above, we find that the main charge against the appellant fails on merits. This being so, the other issues relating to CENVAT credit and the extended time limit also do not survive. We are hence inclined to set aside the impugned order and allow the appeal with consequential relief, if any, as per law. We order accordingly.

(Pronounced in open court on 28.6.2023)

(**M. AJIT KUMAR**)
Member (Technical)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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