

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066  
CUSTOMS APPEAL BRANCH**

Dated: 01/07/2015

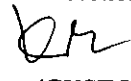
To

Appellant as per address in table below

Respondent as per address in table below

**Final Order No. ST/A/52027/2015-CU[DB] dated 17/06/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

  
Asstt. Registrar(CUSTOMS Appeal Branch)

| Application | Appeal                           | Name and Address of Appellant                                                                                                                                        |
|-------------|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1           | ST/MISC/55989/2014 ST/55426/2014 | <b>Nortel Networks India Pvt Ltd</b><br>Vatika Business Centre,<br>Suite#25 First India Place, 2nd<br>Floor, Block -b Sushant Lok-i,<br>M.g Road<br>GURGAON, HARYANA |

**Name and Address of Respondent**

|   |                                                                                                            |
|---|------------------------------------------------------------------------------------------------------------|
| 2 | C.S.T.-Service Tax - Delhi<br>MG MARG... IP ESTATE,17-<br>B... IAEA HOUSE...I P<br>ESTATE,<br>DELHI-110002 |
|---|------------------------------------------------------------------------------------------------------------|

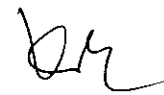
**Copy To**

**3 Advocate(s) / Consultant(s):**

**TARUN GULATI/SPARSH  
BHARGAVA/RAGHURAM  
SRINIVASAN  
PDS LEGAL, OFFICE NO.7,  
FIRST FLOOR, ATMA RAM  
MANSION, SCINDIA HOUSE,  
K.G.MARG, NEW DELHI-  
110001**

**4 Additional Party's Name & Address :**

- 5 Bar Association, CESTAT, Delhi  
6 Director Publications, Customs, Excise. I.P. Estate, Delhi  
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3  
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17  
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005  
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15  
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)  
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070  
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38  
14 C.D.R.      15 Office Copy      16 Guard File

  
Asstt. Registrar(CUSTOMS Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 17.06.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President  
Hon'ble Mr. R. K. Singh, Member (Technical)

|   |                                                                                                                                   |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------|--|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?      |  |
| 2 | Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? |  |
| 3 | Whether their Lordships wish to see the fair copy of the Order?                                                                   |  |
| 4 | Whether Order is to be circulated to the Departmental authorities?                                                                |  |

Service Tax Appeal No. 55426 of 2014 with  
Service Tax Misc Application No. 55989 of 2014  
(Arising out of order-in-original No.39-41AKJ/CST/2014 dated  
29.08.2014 passed by the Commissioner, Service Tax, Delhi).

M/s Nortel Networks (I) Pvt. Limited

Appellant

Vs.

CST, New Delhi

Respondent

Appearance:

Shri N. Venkataraman, Sr. Advocate with Sh. Kishore Kunal, Advocate  
for the appellant

Shri Amresh Jain, DR for the Respondent

Coram: Hon'ble Mr. Justice G. Raghuram, President  
Hon'ble Mr. R. K. Singh, Member (Technical)

Final Order No. 52027/2015

Per: **Justice G. Raghuram:**

Heard Id. Sr. Counsel for the appellant and Id. DR Shri Amresh  
Jain representing the Revenue.



2. Though, the miscellaneous application is listed for hearing, after hearing the matter for some time, we are satisfied that the matter can be disposed of finally. Heard both parties.

3. Proceedings were initiated by three show cause notices dated 25.10.2010, 14.10.2011 and 04.10.2012 covering the block period 2005-06 to 2009-10, 2010-11 and 2011-12. After due process the impugned order dated 29.08.2014 was passed by the learned Commissioner, Service Tax, New Delhi confirming a composite demand of Rs. 69,48,29,639/-. Out of the above demand, demand for Rs. 66,96,09,360/- stands confirmed on the consideration received by the appellant in respect of services provided to overseas associated entities, in respect of which the appellant's claim for immunity from levy and collection of service tax by reliance on the provisions of the Export of Service Rules, 2005 was negated in the impugned order. A demand for Rs. 2,52,20,279/- stands confirmed under "Manpower Supply and Recruitment Services". The appellant's defence that the deputation of employees by its overseas associates is in terms of an agreement whereby during the period of service with the appellant the employees work under the control and supervision of the appellant and therefore the activity falls outside the ambit of the taxable service alleged to have been rendered, was rejected by the Id. Commissioner. Another defence of the appellant and alternatively that since the service even if as alleged to fall under the classification asserted by Revenue since it was prior to 18.04.2006, there is no liability to remittance of tax on the appellant under reverse charge mechanism under Section 66A of the



Finance Act, 1994 (the Act), since this provision was introduced w.e.f. 18.04.2006 and prior thereto there was no legislative authority for levy and collection of tax from the appellant who is merely the recipient of the service. An amount of Rs. 94,24,777/- stands confirmed in the impugned order towards interest liability on non remittance of service tax within the time stipulated, in respect of book entries made in relation to amounts due to the appellant from its associated enterprises for services provided by the appellant to overseas entities. Appellant's claim that book entries made prior to 10.05.2008, the date with effect from which necessary amendments were made in Section 67 whereby the liability for remittance of tax on the basis of book entries made even though no consideration is actually received, cannot have retrospective effect, was rejected by the impugned order.

4. In our considered view, the impugned order cannot be sustained since every one of the three integers on the basis of which tax stands confirmed apart from interest and penalty is covered in favour of the appellant by binding precedents. In so far as the demand of Rs. 66,96,09,360/- in respect of services provided by the appellant to the overseas entities is concerned, this activity falls within the ambit of Rule 3 of Export of Service Rules, 2005 as declared in ***Microsoft Corporation India Pvt. Ltd. vs. CST, New Delhi – 2014 (36) STR 766 (Tri. Del.), Paul Merchants Ltd. vs. CCE – 2013 (29) STR 257 (Tri. Del.), GAP International Sourcing India Pvt. Ltd. vs. CST – 2014-TIOL-465-CESTAT-DEL, Alpine Modular Interiors Pvt. Ltd. – 2014***



(36) STR 454 (Tri. Del). and in *Vodafone Cellular Ltd. vs. CCE- 2014*  
(34) STR 890 (Tri. Mum.).

5. Service tax of Rs. 2,52,20,279/- stands confirmed by the impugned order in respect of remittances by the appellant to overseas entities whose employees were seconded for service with the appellant. The remittances were prior to 18.04.2006. Revenue alleged and confirmed this allegation in the impugned order that Manpower Supply and Recruitment was provided by overseas entities to the appellant and since the overseas entities did not have permanent establishment in India, the inherence of tax liability fell on the appellant. This reversal of the normal inherence of tax mandated by the provisions of the Act was introduced by the legislative dynamics of Section 66A introduced by the Finance Act, 2006 w.e.f. 18.04.2006. Prior to 18.04.2006, a recipient of Manpower Supply and Recruitment service was not liable to remit tax in the absence of any legislative authorisation for levy and collection of service tax on a recipient of the service. This position in law stands concluded by the decision of the Supreme Court in *Indian National Shipowners Association vs. UOI – 2009 (13) STR 235 (Bom.)= 2010 (17) STR J57 (SC)*. Secondment of employees from abroad for serving in India does not constitute rendering of Manpower Supply or Recruitment service is declared in *Computer Science India Pvt. Ltd. vs. CST, Noida – 2014 (35) STR 94 (Tri. Del)*, *Bain and Co. India Pvt. Ltd. vs. CST, New Delhi – 2014 (35) STR 553 (Tri. Del.)* and in *Volkswagen India Pvt. Ltd. vs. CCE, Pune – 2014 (34) STR 135 (Tri. Mum)*. The decision of this Tribunal in



**Computer Science India Pvt. Ltd.** stands confirmed by the Allahabad High Court in **CST, Noida vs. Computer Science India Pvt. Ltd. – 2015 (37) STR 62 (All.)**.

6. On <sup>The</sup> demonstrable and apparent facts, entries were made in the books of account by the appellant in respect of amounts due from overseas entities, prior to 10.05.2008. On this count there is no contest. For entries made prior to 10.05.2008 there is no liability to remittance of tax merely on account of amendment to the provisions of Section 67 of the Act is a principle concluded by decisions of this Tribunal in **Sify Technologies vs. CCE – 2011 (21) STR 252 (Tri. Chennai)** and **Cecas Services India Pvt. Ltd. vs. CST, New Delhi – 2014 (36) STR 556 (Tri. Del.)**.

7. On the aforesaid analysis confirmation of the demand of Rs.69,48,29,639/- alongwith interest and penalties as specified in the impugned order, cannot be sustained. The impugned order is accordingly quashed. The Appeal is allowed. No order as to the costs.

8. Since the appeal is disposed of, Miscellaneous Application No. 55989 of 2014 is dismissed as infructuous.

  
(Justice G. Raghuram)  
President

  
(R.K. Singh)  
Member (Technical)