IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 24/10/2016.
DATE OF DECISION : 24/10/2016.

Service Tax Appeal No. 172 of 2011

[Arising out of the Order-in-Appeal No. 366 (DKV)ST/JPR-I/2010 dated 01/11/2010 passed by The Commissioner (Appeals), Central Excise & Customs, Jaipur.]

M/s XL Laboratories Pvt. Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance

Ms. Rinky Arora Advocate – for the appellant.

Shri Ranjan Khanna, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Ashok K. Arya, Member (Technical)

Final Order No. 56428/2016 Dated : 24/10/2016

Per. Ashok K. Arya :-

M/s XL Laboratories Pvt Ltd. is in appeal against order-in-appeal dated 01/11/2010 passed by Commissioner (Appeals), Jaipur.

2. The appellant namely M/s XL Laboratories Pvt. Ltd. has been represented by the learned Advocate Ms. Rinky Arora and

the Revenue has been represented by learned DR Shri Ranjan Khanna.

3. The brief facts are that the appellant participated in the trade fare by way of space booking for stalls in various exhibitions organized in Vietnam. The Revenue is of the view that the appellant as service recipient of business exhibitions services is liable to pay service tax.

3.1 Revenue issued a show cause notice dated 20/08/2009 which was originally adjudicated by the Assistant Commissioner who confirmed the demand of Rs. 66,815/- alongwith interest and equivalent penalty.

3.2 The appellant went in appeal to Commissioner (Appeals) who vide the impugned order-in-appeal dropped the demand of Rs. 53,038/- and confirmed the demand of Rs. 13,777/- alongwith interest and imposition of equivalent penalty. Hence, the assessee M/s XL Laboratories Pvt. Ltd. is in appeal before the Tribunal.

4. After careful consideration of the facts of the case and the submissions of both the sides, we are of the considered view that the service provider in this case is located abroad and the service has been performed in Vietnam in connection with the appellant's participation in the trade fare and exhibitions in that country. The service, in question, is taxable under the provisions of Section 65 (105) (ZZO) of the Finance Act, 1994 and in terms of Rule 3 (ii)

of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, service classifiable under Section 65 (105) (ZZO) provided from outside India shall be treated as received in India only if such services have been performed in India. However, the subject services have not been performed in India; therefore, the same cannot be treated as received in India by the appellant assessee and no service tax, therefore, can be charged from the appellant by invoking the provisions of Section 66A of Finance Act, 1994. The matter is squarely covered by the CESTAT Mumbai decision in the case of **Positive Packaging Industries Ltd. vs. CCE, Raigad – 2015 (39) S.T.R. 219 (Tri. – Mumbai)**.

4.1 Thus, considering the fact that the business exhibition service has been entirely performed outside India and following CESTAT decision in the case of **Positive Packaging Industries Ltd.** (supra) no service tax demand is sustainable against the appellant. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

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