IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

COURT-I

Date of Hearing/Decision : **16.02.2017**

Appeal No. ST/3497/2012 -CU(DB)

[Arising out of the Order in Original No. 143/ST/PKJ/CCE/Adj/2012 dated 23.08.2012 passed by Commissioner of Central Excise (Adj.), New Delhi]

Rio Tinto India Pvt. Limited … Appellants

Vs.

Commissioner of Central Excise & S.T., New Delhi … Respondent

Appearance:

Rep. by - Shri Shashi Mathews, Advocate for the appellant
Rep. by - Ms. (Dr.) Neha Garg, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51946/2017-DB

Per Justice Dr. Satish Chandra

The present appeal is filed against Order-in-Appeal No. 143/ST/PKJ/CCE/Adj/2012 dated 23.08.2012.

2. The brief facts of the case are that, the appellant was providing various types of services since April, 2005 to group entities located outside India. The services such as developing, identifying and evaluating new business/ marketing opportunities, facilitating and developing relations and liaisoning with the Indian government departments, studying and evaluating the mining segment in India, procurement of goods for such entities, providing consultancy and support services for proposed investment opportunities in

India etc. The services provided by the appellant were for the purposes of providing management consultancy services and support services in India and facilitation and provision of marketing and sales support services of RTCA in India such as seeking sale opportunities, developing and maintaining customer relationships. The department is of the view that appellant has been paying service tax in the past on the similar services being provided to their Associate enterprises located outside India. The department has brought the said services under the clauses of service tax. Being aggrieved, the appellant has filed this appeal.

3. With the above background, we have heard Shri Shashi Mathews, ld. Counsel and Ms. (Dr). Neha Garg, ld. DR.

4. Shri Shashi Mathews, ld. Counsel submits that the issue pertains to "Export of Services" is not subjected to service tax as per the ratio laid down by CESTAT Delhi in the case of *Microsoft Corporation (I) (P) Limited vs. CST, New Delhi – 2014 (36) STR 766 (Tri. Del.)* where the Tribunal has observed as under:-

> **"51.** Even otherwise also, I find that the disputed service is the service being provided by the appellant to his principal located in Singapore. The marketing operations done by the appellant in India cannot be said to be at the behest of any Indian customer. The service being provided may or may not result in any sales of the product in Indian soil. The transactions and activities between the appellant and Singapore principal company are the disputed activities. As such, the services are being provided by the appellant to Singapore Recipient company and to be used by them at Singapore, may be for the purpose of the sale of their products in India, have to be held as export of services.**"**

By following the ratio laid down by the Tribunal, we set-aside the impugned order in this regard.

5. As regards the issue of wrong availment of Cenvat credit on the invoices, ld. Counsel submits that he is not pressing this issue. Hence, the same is dismissed as not pressed.

6. As regards the penalty, proportionate order may be passed.

7. In the result, the appeal is partly allowed as stated herein above.

[Order dictated & pronounced in open court]

(**V. Padmanabhan**)
Member (Technical)

(**Justice Dr. Satish Chandra**)
President

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