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. III

DATE OF HEARING : 16/03/2017.
DATE OF DECISION : 29/03/2017.

Service Tax Appeals No. 1775 of 2012 and 58857 of 2013

[Arising out of the Order-in-Appeal No. 76/S. Tax/D-II/2012 dated 02/04/2012 and No. 108/S. Tax/D-II/2012 dated 17/04/2013 both passed by The Commissioner (Appeals), Central Excise, New Delhi.]

M/s Medallion Consulting Private Limited — Appellant

Versus

CST, Delhi — Respondent

Appearance

Shri N.K. Gupta, Advocate – for the appellant.

Shri J.P. Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52612-52613/2017 Dated : 29/03/2017

Per. B. Ravichandran :-

These two appeals are against orders dated 02/04/2012 and 17/04/2013 of Commissioner (Appeals), New Delhi. These are two appeals dealing with the same issue of eligibility of appellant for refund of Cenvat credit lying unutilized, in terms of Notification 5/2006-CE (NT) dated 14/03/2006 issued under Rule

5 of Cenvat Credit Rules, 2004. The appellants were registered with the Department under the category of "Business Auxiliary Service (BAS)". They filed two refund claims under the provisions mentioned above. The claims were examined and the Original Authority rejected the claims. He held that the appellants provided "market research agency service" in terms of Section 65 (105) (y) and not BAS, as claimed by them. Further, he held that the services are rendered in India and they cannot be considered as exported in terms of Export of Services Rules, 2005. On appeal, the Commissioner (Appeals) confirmed the original orders.

2. The learned Counsel for the appellant submitted that the nature of service rendered by them can be categorized under BAS. They were registered with the Department under the said category. They are engaged in project set up, training, data collection, quality control and monitoring. They are collecting various data for the client and providing the same to the foreign client. Using the data the foreign client is doing market research. They are mainly involved in collection of data from various target groups, as per the requirement of the client and forward the data to them for further use in market research. The services are exported out of India as the recipient is located outside India. Delivery of collected data to the client abroad only completes the performance of service. Whatever of the work is done by the appellant in India is of no use if the collected data are not forwarded, as per the requirement, to the client situated outside

India. As such, it is a clear case of export of service as the provision of service gets completed only upon delivery of the results (data) to the clients, outside India.

3. The learned AR reiterated the findings of the lower Authorities. He further stated that the appellants are basically engaged in market research. The collection of data from target groups is in terms of the agreement with the foreign client. The data collection and quality check and collation of the said data, for the use by the foreign client will be clearly covered by market research service. The services are rendered in India and, as such, no benefit under Rule 5 of Cenvat Credit Rules, 2004 can be extended to the appellant.

4. We have heard both the sides and perused the appeal records. We have examined the scope of work as submitted by the appellant. The objective of the agreement dated 08/10/2009, titled as "SMB Path to Market and Path to Influences Study" is to conduct research among SBMs and channels to understand their purchase and sales trends. The target respondents for the study is people who have significant responsibility for technology related decisions in SMBs and people knowledgeable about sales in channels. The agreement also gives the methodology of study, sample process, questionnaire etc. The responsibility of the appellant is to set up project, mutually agreed communication schedule for the start of the project, training, data collection and quality control and monitoring. The details regarding data

delivery and the type of questionnaire were also discussed in the agreement. It is relevant to note the scope of tax entry for "market research agency". Section 65 (105) (y) defines market research agency as "any person engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customized and syndicated research services". Having perused the statutory scope of the taxable service we are of the considered view that the work carried out by the appellant will fall under the category of market research agency. The claim of the appellant that they are engaged in procuring services for the foreign client and, as such, should be considered as rendering BAS is not factually or legally sustainable. The appellants are only collecting data by questionnaire and study. Collection of such data from various target persons cannot be considered as procurement of services which are inputs for the clients. Hence, we agree with the Revenue regarding classification of the service under "market research agency".

5. On the second issue regarding the claim of export of service by the appellant, we note that the data collected by the appellants are delivered to the clients outside India in the required format. Without such delivery of the collected data the service will not get completed. The Tribunal in **CST, Ahmedabad vs. B.A. Research India Ltd.** reported in **2010 (18) S.T.R. 439 (Tri. – Ahmd.)** while examining the scope of export of technical testing and analysis services, held that the performance

of service does not get completed until the analysis report is delivered to the client. Such delivery of report, which is essential part of service, occurring outside India and used outside India will make the service as exported service. In the present case, we are dealing with market research agency service. The same ratio is applicable. The data collected from target groups are to be arranged and delivered in a manner as required by the foreign client. Without such delivery of the collected data there is no completion of service. Hence, we hold that part of the service is performed outside India. In such situation, the proviso clause of Rule 3 (1) of the Export of Services Rules, 2005 will apply. The said proviso stipulates that where such taxable service is partly performed outside India, it will be treated as performed outside India. The taxable service falling under Section 65 (105) (y) is listed under sub-clause (ii) of Rule 3 (1) of Export of Services Rules, 2005. Part performance of service outside India shall be treated as performed outside India. In view of the above discussion and analysis, we hold that the appellant have rendered taxable services which are exported out of India and, as such, they are eligible for the claim of refund of input service credits in terms of Rule 5 of Cenvat Credit Rules, 2004. The claim shall be considered, upon verification of supporting documents and fulfillment of other conditions, as mentioned in the notification issued under the said rule. The Original Authority shall examine the claims in the light of the observations made above for sanction. The impugned orders are set aside. The appeals are allowed by way of remand.

(Order pronounced in open court on 29/03/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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