CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No. ST/1755/2012-ST [DB]

[Arising out of Order-in-Original No. 08/GB/2012 dated 16.01.2012 passed by the Commissioner of Service Tax, Service Tax Commissionerate, New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

C.S.T.- Service Tax-Delhi ...Appellant

Vs.

M/s. Radware India Pvt. Ltd. …Respondent

Appearance:

Mr. Ranjan Khanha, DR for the Appellant
Mr. M.S. Bhatia, (Advocate for the Respondent

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

Date of Hearing.24.01.2017
Date of Decision.31.03.2017

Final Order No. 52671 /2017

Per S.K. Mohanty:

This appeal of Revenue is directed against the impugned order dated 16.01.2012 passed by the Commissioner of Service Tax, Delhi.

2. Brief fact of the case are that the respondent is engaged in the business of providing marketing and Help Desk services to its holding company M/s. Radware Ltd., Israel. The appellant is registered with the service tax Department for providing the taxable service namely, Business Auxiliary Service. During the disputed period, the appellant did not pay service tax on the ground that the service provided are categorized under Rule 3(1)(iii) of Export of Service Rule, 2005. However, the department objected to such view of the appellant and initiated show cause proceedings, seeking recovery of the service tax amount. The show cause notices were adjudicated vide the impugned order dated 16.01.2012 wherein, proposals made therein were dropped**,** holding that the services rendered by the appellant are categorized as "Business Auxiliary Service" and are covered by the Export of Service Rules, 2005. Feeling aggrieved with impugned order, Revenue has filed this appeal before the Tribunal, on the ground that the services rendered by the Respondent are basically provided and performed in India and thus, it cannot be said that the services were used outside India.

3. The ld. AR appearing for the Revenue reiterated the submissions made in the grounds of appeal.

4. On the other hand, the ld. Advocate appearing for the respondent submitted that the services rendered by the respondent, to its holding company located in the foreign country, are classified under Business Auxiliary Service and categorized as export under Rule 3(1)(iii) of the Export of Service Rules, 2005. He further submitted that since the beneficiary, of the services provided by the respondent, is its holding company, who is located outside India, even if certain activities under taken in India, do not by itself make the services rendered in India. To support the stand that the services provided by the respondent are to be categorized export of services, ld. Advocate has relied on the decision of this Tribunal in the case of Paul Merchants Lt. Vs. Commissioner of Central Excise, Chandigarh reported in 2013 (29) S.T.R. 257 (Tri.-Del.), Microsoft Corporation (I) (P) Ltd Bs. Commissioner of S.T., New Delhi reported in 2014 (36) S.T.R., 766 (Tri. Del.) and GAP International Sourcing (India) Pvt. Ltd. Vs. CST, Delhi reported in 2015 (37) S.T.R. 757 (Tri. Del.).

5. We have heard both sides and perused he appeal records.

6. It is an admitted fact on record that the respondent had under taken various activities pursuant to the contract

entered into with the holding company, who is located abroad and that the benefit of the services provided by the respondent have been availed and consumed by such company located outside India. Thus, in our view such services should fall under Rule 3(1)(iii) of the Export Service Rule, 2005. The position of law with regard to consideration of the services as export of service is no more *res-Integra* in view of the decisions cited by the ld. Advocate for the appellant.

8. In view of above, we do not find any infirmity in the impugned order passed by the adjudicated authority. Accordingly, the appeal filed by the Revenue is dismissed.

(Pronounced in the open court on 31/03/2017)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi