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 : 31/07/2017.
DATE OF DECISION : 31/07/2017.

Service Tax Appeal No. 58055 of 2013

[Arising out of the Order-in-Original No. 12 to 15/AKM/2013 dated 28/02/2013 passed by The Commissioner (Adjudication), Service Tax, New Delhi.]

M/s Agilent Technologies India P. Ltd. Appellant

Versus

CST, New Delhi Respondent

Appearance

Shri Rachit Jain, Advocate – for the appellant.

Shri Sanjay Jain, 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. 55656/2017 Dated : 31/07/2017

Per. B. Ravichandran :-

The appeal is against order dated 28/02/2013 of Commissioner (Adjudication), Service Tax, New Delhi. The appellants are engaged in business of executing work for their parent company M/s Agilent Technologies Singapore Sales, PTE Ltd., Singapore. They are engaged in distribution of electronic products supplied by Singapore company. In terms of the agreement with the Singapore company, the appellant is required to provide support services in India for the parent company. The dispute in the present appeal relates to the liability of the appellant to pay service tax for the period 2007-2008 to 2010-2011 under the category of Business Auxiliary Service and Management, Maintenance and Repair Service. Proceeding initiated against the appellant resulted in the impugned order confirming service tax liability of Rs. 31,72,48,456/- alongwith various penalties under Section 76, 77 and 78 of the Finance Act, 1994.

2. The learned Counsel for the appellant submitted that on the very same issue for the period 01/07/2003 to 19/11/2003 and 19/04/2006 to 31/03/2007 their service tax liability under BAS and Management, Maintenance or Repair Service was subjected to demand proceedings which resulted in the confirmation of service tax by the original order dated 30/03/2009. On appeal filed by them, the Tribunal vide final order No. 53208 of 2015 dated 13/10/2015 set aside the demand and allowed the appeal. The present proceedings are for the period subsequent to the above case. Accordingly, he requested to allow the appeal.

3. We have heard both the sides. The learned AR stated that the final order mentioned above is with reference to appellant, for the earlier period. The issues now under consideration have already been examined and decided by the Tribunal in appellant’s

own case vide final order dated 13/10/2015 which observed as below :-

> "3. Learned Counsel submits and learned DR does not contest the position in law that the tax demand attributed to consideration received on Business Auxiliary Service (BAS) by the appellant amounts to export of service and tax confirmed thereon is not leviable, in view of the decision of Larger Bench of the Tribunal in **Paul Merchants Limited vs. CCE, Chandigarh** reported in **2013 (29) S.T.R. 257 (Tri. – Del.);** in **Microsoft Corporation (I) (P) Limited vs. CST, New Delhi** reported in **2014 (36) S.T.R. 766 (Tri. – Del.);** and several other decisions concurring with the view expressed in the Larger Bench decision in **Paul Merchants Limited vs. CCE, Chandigarh** (supra). Demand of tax attributed to rendition of Management, Maintenance or Repair Service is also not sustainable in view of the Hon'ble Bombay High Court's decision in **CST, Mumbai – II vs. SGS India Pvt. Ltd.** reported in **2014 (34) S.T.R. 554 (Bom.)**".

4. In view of the above decision of the Tribunal on the very same dispute, we set aside the impugned order and allow the appeal.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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