

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No. 3367 & 4139/2012-ST [DB]

[Arising out of Order-in-Original No. 133-ST/PKJ/CCE/ADJ/2012 dated 31.07.2012 passed by the Commissioner of Service Tax, New Delhi]

Bentley Systems (i) Pvt. Ltd. ...Appellant

Vs.

C.S.T., New Delhi ... Respondent

And

C.S.T., New Delhi ...Appellant

Vs.

Bentley Systems (i) Pvt. Ltd. ... Respondent

Present for the Appellant : Mr. Rajesh Kumar, Advocate

Present for the Respondent: Mr. Amresh Jain, D.R.

**Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)**

Date of Hearing: 30.05.2017

Date of Pronouncement: _22.09.2017

FINAL ORDER NO. __6692-56693/2017

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 31.07.2012 passed by the Commissioner of Service Tax (Adjn.), New Delhi.

2. Brief facts of the case are that the appellant is registered with the Service Tax Department for providing various taxable services. During the course of audit of records for the period 2004-05 to 2008-09, it was observed by Audit Wing of the Department that the

appellant did not pay service tax for the taxable services namely, Management, Maintenance or Repair Service, Business Auxiliary Service and Commercial Training or Coaching Centre Service provided by it. Accordingly, show cause proceedings were initiated against the appellant, which culminated in the impugned order dated 31.07.2012, wherein the Id. Adjudicating Authority has dropped the proposed service tax demand on management, maintenance or repair service. However, proposed service tax demand under Business Auxiliary Service and Commercial Training or Coaching Centre Service was confirmed along with penalties, on the following grounds:-

- (a) Business Auxiliary service was received by Bentley, Australia for its business in India and also used/ utilised in India. Thus, service tax demand of Rs.27,21,346/- is recoverable from the appellant under such category of service;
- (b) As regards Commercial Training or Coaching Centre Service, the same was provided by the appellant for imparting skill and knowledge and also the services do not fall under the exclusion part of such definition. Accordingly, the appellant is liable to pay service tax of Rs.53,25,568/- under such category of service.

3. Ld. Advocate appearing for the appellant submitted that as per the Circular dated 24.2.2009 issued by CBEC, the Business Auxiliary Service provided by the appellant falls under the category

–III [Rule 3 (1)(iii) of the Export of Services Rules, 2005] and thus, provisions of such service for the benefit of the overseas clients should be considered as export and no service tax is payable on such service. To support such stand, ld. Advocate has relied on the decision of this Tribunal in the case of **Sumitomo Corporation India Pvt. Ltd. – 2017 (50) STR 299 (Tribunal – Delhi)**. With regard to Commercial Training or Coaching Centre Service, the ld. Advocate submitted that the appellant has provided training for smooth operation of its software, which was sold to the clients/customers. He submitted that since such training was incidental to the sale of the software, without which, the software would not be used by the client, the services provided by the appellant will not be subjected to levy of service tax under such category of service. He further submitted that the issue arising out of the present dispute is no more *res integra* in view of the decision of the Tribunal in the case of **Commissioner of Central Excise, Chandigarh Vs. Punjab Communication Ltd. – 2012 (25) STR 89 (Tribunal-Delhi)**.

4. On the other hand, ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

5. Heard both the sides and perused the case records.

6. The fact is not under dispute that during the relevant period, the appellant had provided the Business Auxiliary Service (promotion and marketing of goods) to the overseas entities and for providing such service, it got payment in foreign exchange. However, the service tax demand on such taxable service was confirmed on the ground that those services were used in India for business promotion on behalf of the recipient of service. We find that with regard to categorization of service for the purpose of consideration as export, under Export of Service Rules 2005, the CBEC vide Circular dated 24.02.2009 has clarified that for category III services, falling under Rule 3(1)(iii) *ibid*, even if the relevant activities taken place in India, the said service should be considered as export, so long as the benefit of those services accrued outside India. In the present case, since the appellant had provided the services to M/s.Bentley, Australia, such service should be construed as export, in view of the clarification furnished by the CBEC. In this context, the Tribunal in the case of **Sumitomo Corpn. India Pvt. Ltd. (supra)** has extended the export benefit to the appellant, holding as under:-

8. We have heard both the sides and perused the appeal records. On the first two issues relating to liability of appellant/assessee for service tax under the category of BAS we note that the service tax liability and the activities

similar to the ones undertaken by the appellant/assessee were subject matter of decision by the Tribunal in earlier cases. In Paul Merchants Ltd. (supra) it is recorded that Export of Service Rules, 2005 are in accordance with Apex Court's ruling to the effect that service tax is a value added tax which in turn is a destination based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but a charge on the consumer. We note in the present case, the recipient of service are foreign entities and they are the consumers of these services provided by the appellant/assessee from India. The various persons in India to whom the goods were sold by the foreign entities or from whom various details and information were collected were not to be considered as recipient of service provided by the appellant/assessee. In Airbus Group India Pvt. Ltd. v. CST, Delhi reported in 2016-TIOL-2312-CESTAT-DEL. = 2016 (45) [S.T.R.](#) 120 (Tri.-Del.), the Tribunal after referring to the decisions in Paul Merchants Ltd. (supra), Microsoft Corporation (I) (P) Ltd. v. CST, New Delhi reported in 2014 (36) [S.T.R.](#) 766 (Tri.-Del.) and Gap International Sourcing India Pvt. Ltd. reported in 2014-TIOL-465-CESTAT-DEL. = 2015 (37) [S.T.R.](#) 757 (Tribunal) held that what constitutes export of service is to be determined strictly in accordance with the Export of Service Rules, 2005. It is the person who requested for

the said service and is liable to make payment for the same, who has to be treated as recipient of service and not the person affected by the performance of the service. The destination has to be decided based on place of consumption not the place of performance of service in the case of Category III, Business Auxiliary Service. The appellant/assessee were engaged in promoting market for foreign entities in India. This will amount to export of service.

7. As regards confirmation of service tax demand on Commercial Training or Coaching Service, we find that the principal aim and objective of the appellant is not to provide such service. It is an admitted fact on record that the appellant is an Information Technology Company, engaged in providing IT Services. The software provided by the appellant cannot be used by the customers /clients, unless their employees are properly trained to use such software. Thus, in such an eventuality, providing of assistance/training to the customer/client of the software would be construed as incidental and ancillary to the sale of software. Thus, providing such training will not fall under the purview of Commercial Training or Coaching Centre Service. This Tribunal in the case of **Punjab Communication Ltd. (supra)**, in an identical set of facts, has held that the training or coaching provided to the

buyer of goods will not be taxed under Commercial Coaching service.

8. In view of the above discussions, we do not find any merit in the impugned order in support of confirmation of service tax demand under the taxable entry of Business Auxiliary Service and Commercial Training or Coaching Centre Service. Accordingly, after setting aside the same, we allow the appeals in favour of the appellant.

(Pronounced in the open court on 22.09.2017)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Ckp.