CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 28.11.2017

Appeal No. ST/801/2011- [DB]

[Arising out of the Order-in-Original No. 31/JM/09 dated 17/12/2009, passed by the Commissioner of Service Tax (Adjudication) New Delhi]

SBI Cards and Payment Services Pvt. Ltd. … Appellant

Vs.

C.S.T. Delhi …Respondent

Appearance:
Present Shri B.L. Narsimhan, Narender Singhvi, Advocate for the appellant
Present Shri Amresh Jain, AR for the respondent

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

FINAL ORDER No. 58115/2017

Per B.Ravichandran

1. The appeal is against order dated 17/12/2009 of Commissioner (Adjudication) Service Tax, New Delhi. The appellants are engaged in banking and financial business. They are also issuing credit cards to their customers. In pursuance of an agreements with M/s VISA International Services Association, USA and M/s Master Card International, USA, the appellants were authorized to use the brand name of VISA/Mater Card in their credit cards. The agreements stipulated various obligations on the part of the appellant which included the promotion of the brand and business of VISA and Master Card. For such promotion activities the appellants received consideration from the other parties to the agreement. The Revenue

entertained a view that such promotional activities are liable to Service Tax and accordingly, proceedings were initiated against the appellant to demand and recover Service Tax under business auxiliary service in terms of Section 65 (19) of Finance Act, 1994. The Original Authority decided the case and issued the impugned order. He held that the appellants are liable to pay service tax of Rs. 46,72,604/- and also imposed penalties on them.

2. Ld. Counsel appearing for the appellant submitted that in terms of the agreements entered into with these two foreign entities the appellant did promote the brand and business of these parties to the agreement. However, he submitted that these services were to the benefit and consumption of these parties to the agreement who are located outside India. Accordingly, in terms of Export of Service Rules, 2005, BAS is covered under category III of Rule 3 of Services and in the present case the activities are with reference to export of service. The considerations were also received in convertible foreign exchange. He contested the finding of the Original Authority to the effect that the services were rendered, consumed, used and utilized in India. It is the submission of the appellant that these services were consumed and benefited the owners of Master Card/VISA brand whose business have been promoted by the appellant in India. He further relied on decision of Hon'ble High Court in the case of ***Verizon Communication India Pvt. Ltd., 2017- TIOL- 1863- DEL- ST.***

3. The Ld. AR supported the findings of the Original Authority. He submitted that in one of the agreements the reference of local address of VISA office in India has been mentioned for

communication and the dispute, if any, has to be resolved by a Court in India only. He submitted that the appellants are engaged in an activity of promotion in India and the services are rendered in India. As such he contested the ground taken by the appellant with reference to export of service.

4. We have heard both sides and perused the appeal records. We note that in pursuance of agreements with Master Card/Visa the appellant did provide services which can be categorized under BAS, in India. However, for these services which are category III (Under Rule 3 of the Export of Service Rules) the place of provision of service will be determined by the location of recipient of such service. In the present case, the fact that the service recipients, with whom the appellants entered into agreements are located outside India is not in dispute as can be seen from the proposals of the show case notice itself. Even the Commissioner in his order while admitting this aspect of agreement, however, held that these services were actually consumed and utilized in India. We are not in agreement with such conclusion. Admittedly, the other parties to the agreement with the appellants have received the services. The Service Tax being destination based consumption tax, the present case will cover the requirements for export of services.

5. In this connection, we refer to the decision of Hon'ble Delhi High Court in ***Verizon Communication India Pvt. Ltd.*** (supra). The High Court observed as below:-

> ***51***. *In the considered view of the Court, the judgment of the CESTAT in Paul Merchants Ltd v. CCE, Chandigarh (supra) is right in holding that "The service recipient is the person on whose instructions/orders the service is provided who is obliged to make the payment from the same and whose need is satisfied by the provision of the service." The Court further affirms the following passage in the said judgment in Paul*

Merchants Ltd v. CCE, Chandigarh (supra) which correctly explains the legal position:

"It is the person who requested for the service is liable to make payment for the same and whose need is satisfied by the provision of service who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India, who Is liable to make payment for these services and who used the service for his business, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the place of performance of Service."

***54**. To summarise the conclusions:*

(i) It made no difference that Verizon India may have provided 'telecommunication service' and not 'business support services' since to qualify as export of service both had to satisfy the same criteria.

(ii) The provision of telecommunication services by Verizon India during the period January 2011 till 1st July 2012 complied with the two conditions stipulated under Rule 3 (1) (iii) of the ESR to be considered as 'export of service'. In other words, the payment for the service was received by Verizon India in convertible foreign exchange and the recipient of the service was Verizon US which was located outside India.

(iii) That Verizon India may have utilised the services of Indian telecom service providers in order to fulfil its obligations under the Master Supply Agreement with Verizon US made no difference to the fact that the recipient of service was Verizon US and the place of provision of service was outside India.

(iv) The subscribers to the services of Verizon US may be 'users' of the services provided by Verizon India but under the Master Supply Agreement it was Verizon US that was the 'recipient' of such service and it was Verizon US that paid for such service. That Verizon India and Verizon US were 'related parties' was not a valid ground, in terms of the ESR or the Rule 6A of the ST Rules, to hold that there was no export of service or to deny the refund.

(v) The Circular dated 3rd January 2007 of the CBEC had no application to the case on hand. It did not pertain to provision of electronic data transfer service. It was wrongly applied by the Department. With its total repeal by the subsequent Circular dated 23rd August 2007, there was no question of it applying to deny the refund for the period January 2011 till September 2014.

(vi) Even for the period after 1st July 2012 the provision of telecommunication service by Verizon India to Verizon US satisfied the conditions under Rule 6A (1) (a), (b), (d) and (e) of the ST Rules and was therefore an 'export of service'. The amount received for the export of service was not amenable to service tax.

6. In view of the above discussion and analyses and following the ratio of the decision of High Court cited above we find that impugned order is not sustainable. Accordingly, the same is set aside and the appeal is allowed.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

(B.Ravichandran)
Member (Technical)

Rekha