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. I

DATE OF HEARING : 01/08/2018.
DATE OF DECISION : 01/08/2018.

Service Tax Appeals No. 300-301 of 2012 and 52174 of 2015

[Arising out of the Order-in-Appeal No. 429-430/ST/D-II/2011 dated 30/11/2011 and No. 17/ST/DLH/2015 dated 25/03/2015 both passed by The Commissioner of Central Excise (Appeals), New Delhi.]

M/s Anglo American Services (India) Pvt. Ltd. Appellant

Versus

CST, Delhi Respondent

Appearance

S/Shri B.L. Narsimhan and Rachit Jain, Advocates – for the appellant.

Shri G.R. Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 53549-53551/2018 Dated : 01/08/2018

Per. Anil Choudhary :-

The appellant has filed three appeals details of which are given hereunder and same are being disposed of by the present common order as issue involved in all the appeals is same.

S. No.	Appeal No.	Amount (Rs.)	Period of Dispute	OIA No. & Date	OIO No. & Date
1.	ST/300/2012	52,23,070/-	Oct. 2007 – March 2009 2010	429-430/ S.Tax/D-II/11 & 30.11.2011	52-57/2010-R 22.01.2010
2. .	ST/301/2012	2,43,528/-	April 2009 – Sept. 2009		294-295/2010-R 16.05.2010
3.	ST/52174/2015	55,49,497/-	Jan. 2010 – March 2011	17/ST/DLH/20&25.03.2015	346-354/2013-R 17.12.2013

2. The appellant is an Indian subsidiary of Anglo American Services, UK which is a part of the Anglo-American Plc. Group, a global leader in mining and natural resources. The appellant is providing services to its parent company in UK by exploring the possibilities of setting up joint ventures, subsidiaries and/or collaboration arrangements in its areas of operation in India and understand the industry dynamics in India. The appellant is primarily engaged in collating information from different sources, analyzing the same and preparation of the database and preparation of reports/notes to be sent to its parent company. The appellant classified the said services under management consultant service.

3. The appellant was also availing Cenvat credit of service tax paid on input services. Considering that management consultant services provided by appellant, qualifies as export of service, appellant filed refund claims of Cenvat credit under Rule 5 of Cenvat Credit Rules,

2004. The said refund claims have been rejected by the Commissioner (Appeals) on the ground that services provided by the appellant are not management consultant service and services provided by appellant does not qualify as export. Aggrieved by the order appellant has preferred the present appeal.

4. Shri B.L. Narsimhan, learned Advocate appearing for the appellant submits that services provided by appellant are covered under management consultant service as the appellants advice its parent company on potential opportunities of business development in India. He relied on following decisions :-

- **CBEC Circular** issued vide **Letter F. No. 177/2/2001-CX4 dated 27/07/2001**
- **CDP Real Estate Advisory India Pvt. Ltd. vs. CCE, Delhi – 2018 (3) TMI 1330 – CESTAT (New Delhi)**
- **Enpro Oil (P) Ltd. vs. CCE, Noida – 2015 (38) S.T.R. 1038 (Tri. – Del.)** and
- **Jubiliant Enpro (P) Ltd. vs. CCE, Noida – 2015 (38) S.T.R. 625 (Tri. – Del.)**

He further submits that services provided by the appellant are used by its parent company outside India thus same will qualify as export of service. In support of its argument he has relied on following decisions.

- **Verizon Communication India Pvt. Ltd. vs. Assistant Commissioner, Service Tax, Delhi – III – 2017 – TIOL – 1863 – HC – DEL – ST**
- **Microsoft Corporation (India) Private Limited vs. CCE, Delhi – III – 2017 – VIL – 1048 – CESTAT – CHD – ST**
- **Paul Merchants Limited vs. CCE – 2013 (29) S.T.R. 257 (Tri. – Del.)**

- **Ind Synergy Limited vs. CCE, CUS and ST, Nagpur – 2018 – TIOL – 1145 – CESTAT – MUM.**
- **SBI Cards and payment Services Pvt. Ltd. vs. CST, Delhi – 2017 – VIL – 999 – CESTAT – DEL – ST**
- **M/s N.R. Management Consultants India (P) Ltd. vs. CST, New Delhi – 2017 – VIL – 1026 – CESTAT – DEL.**

5. Shri G.R. Singh, learned Departmental Representative submits that service provided by appellant are not classifiable under management consultant service and he reiterated the findings of the Commissioner (Appeals).

6. Heard both the sides and perused the records.

7. In the present appeal issue to be decided is as to whether services provided by appellant are classifiable under management consultant service or not? For deciding the issue in hand it is relevant to see the provisions relating to management consultant service.

8. Section 65 (105) (r) of the Finance Act, 1994 defined taxable service as :

> *"Taxable Service" means any service provided or to be provided to any person, by a management or business consultant in connection with the management of any organization or business in any manner*;

9. Section 65 (65) of the Finance Act, 1994 provided definition of management or business consultant for the relevant period :

> "management or business consultant means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization or business

in any manner and <u>includes any person who renders any advice</u>, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management ; (emphasis supplied)

10. From the above definition it is clear that any service provided by management or business consultant in connection with management of any organization in any manner will be covered under management consultant service.

11. Clause 1 of agreement dated 01/07/2007 executed by appellant with its parent company provides for scope of service as under :

I. Scope of work

1.1 AASPIL shall render the following services to AA services (U.K.)

1.1.1 Obtain and provide information to AA Services/AA Group on upcoming projects/potential collaborations of interest to AA Group in India and towards this disseminate any information regarding AA Group as may be required by Indian Corporates, entrepreneurs, Government officials, regulatory bodies, NGOs, etc.

1.1.2 Provide updates on Government policies, economic scenario, political climate and industry analysis in India

1.1.3 Obtain and provide information to AA services/AA group for identification of vendors and provide other procurement related support services to AA Group. However, AA Group shall be the sole authority to scrutinize and recommendations and/or information provided by AASIPL and to accept or reject the same.

1.1.4 Provide HR support services in relation to recruitment of employees for AA Group Companies.

12. From the scope of services, it is clear that appellant provides information on upcoming projects or potential collaborations of interest to its parent company. Appellant provides the updates and information about the government policies, economic scenario, political climate and industry analysis in India to its parent company. Appellant also provides information about vendors and other procurement related services. Appellant also provides services in relation to recruitment of employees. The said services are used by the parent company to explore the business opportunities in India.

13. From the above services, it is evident that said services provided by appellant are related to management of business of parent company in India and for HR management. The said services are used by parent company to take decisions about the business opportunities in India. Further the perusal of the reports forwarded by appellant to its parent company shows that in such reports appellant explicitly presents its views and provides advice to the parent company (service receiver) in form of comments market upon the various information shared via the respective reports. Since services in question are related to business management the said services are clearly covered under the definition of 'management and business consultant service'.

14. The other issue is whether services provided by appellant qualifies as export or not? Perusal of the impugned order shows that Commissioner (Appeals) has not given in any finding on this aspect. As per provisions of Export of Service Rules, 2005 to qualify as export following three conditions to be satisfied : i) service recipient should be located outside India, ii)service should be provided from India and used outside India, iii) payment of service should be received in convertible foreign exchange. From 27/02/2010 condition of provision of service

from India and used outside India was removed. From the facts of the present case it is evident that services recipient i.e. parent company is located outside India. Further service provided by appellant are used by its parent company outside India to take decisions and payment are received by appellant in foreign currency. Since all conditions of export of service are satisfied, services provided by appellant qualifies as export. We find that issue of export of service is decided by Larger Bench of Tribunal in the case of **Paul Merchants Limited vs. CCE – 2013 (29) S.T.R. 257 (Tri. – Del.)** and by Hon'ble Delhi High Court in the case of **Verizon Communication India Pvt. Ltd. vs. Assistant Commissioner, Service Tax, Delhi – III – 2017 – TIOL – 1863 – HC – DEL – ST.**

15. In view of the above discussions we set aside the impugned orders and allow the appeals with consequential relief.

16. The Adjudicating Authority is directed to disburse refund within a period of 60 days from receipt of a copy of this order with interest as per rules.

(Operative part of the order pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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