CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Regional Bench
Court – I

Service Tax Appeal No. 2605 of 2012
(Arising out of Order-in-original No. 30/2012-Adjn(Comm)ST dated 31.05.2012 passed by Commissioner of Central Excise, Customs & Service Tax Hyderabad IV)

M/s Deloitte & Touche Assurance & Enterprises Risk Services India Pvt Ltd **......Appellant**
Block A, Part 2 of 2nd Floor,
Deloitte Drive Plot No 13, Road No. 2
Hitech City Layout,
Madhapur,
Hyderabad
A.P.

VERSUS

Commissioner of Central Tax,
Hyderabad-IV Commissionerate
Posnett Bhavan, Tilak Road, **......Respondent**
Ram Kote,
Hyderabad

Service Tax Appeal No. 2825 of 2012
(Arising out of Order-in-original No. 33/2012-Adjn(Comm)ST dated 29.06.2012 passed by Commissioner of Central Excise, Customs & Service Tax Hyderabad IV)

M/s Deloitte & Touche Assurance & Enterprises Risk Services India Pvt Ltd **......Appellant**
Block A, Part 2 of 2nd Floor,
Deloitte Drive Plot No 13, Road No. 2
Hitech City Layout,
Madhapur,
Hyderabad
A.P.

VERSUS

Commissioner of Central Tax,
Hyderabad-IV Commissionerate
Posnett Bhavan, Tilak Road, **......Respondent**
Ram Kote,
Hyderabad

Service Tax Appeal No. 20171 of 2014
(Arising out of Order-in-original No. 64/2013-Adjn(Comm)ST dated 08.10.2013 passed by Commissioner of Central Excise, Customs & Service Tax Hyderabad IV)

M/s Deloitte & Touche Assurance & Enterprises Risk Services India Pvt Ltd **......Appellant**
Block A, Part 2 of 2nd Floor,
Deloitte Drive Plot No 13, Road No. 2
Hitech City Layout,
Madhapur,
Hyderabad
A.P.

VERSUS

Commissioner of Central Tax,
Hyderabad-IV Commissionerate
Posnett Bhavan, Tilak Road,
Ram Kote,
Hyderabad

......Respondent

Appearance
Mr. S. Thirumalai, Adv for the appellant.
Mr. B. Guna Ranjan, Authorized Representative for the respondent.

Coram:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.30894-30896/2020

Date of Hearing: 17.02.2020
Date of Decision: 17.02.2020

[Order per: P. VENKATA SUBBA RAO]

All these three appeals are filed by the appellant on the same issue and hence are being disposed of together. The issue which falls for consideration in these appeals is, in a case where the associated company of the appellant located abroad sends staff on secondment/deputation to the appellants and the appellant pays the salaries of the deputed employee whether it amounts to overseas associated company providing manpower supply services to the appellants within the meaning of chapter V of the Finance Act, 1994. Consequently, whether any service tax can be demanded from the appellants under reverse charge mechanism for such amounts paid by the appellants to their overseas associated companies.

2. After hearing both sides and perusing the records, we find that an identical issue came up before this Bench in Appeal No ST/27871 of 2013 in the case of Deloitte Tax Services India Pvt Ltd. It was held in that case decided by Final Order No. A/30643/2019 dated 20.09.2019 that where the Indian subsidiaries pay salaries of personnel on secondment through their parent companies, the same cannot be held as supply of manpower by the parent companies. Reliance in that case was placed upon the order of the Tribunal Mumbai in the case of Volkswagen India (Pvt) Ltd Vs CCE Pune

[2014(34)STR 135 (Tri-Mum)] and other judgements. Paras 4 to 9 of the aforesaid final order are reproduced below.

> "4. He would submit that there have been several cases across the country where personnel have been deputed by Multi National Companies to their Indian subsidiaries. Indian subsidiaries would pay the salaries of such personnel through their parent companies. The question as to whether such deployment should be considered as "manpower supply service" or otherwise was decided by the Tribunal Mumbai in the case of Volkswagen Indian (Pvt) Ltd., Vs CCE, Pune-I [2014 (34) STR 135 (Tri-Mum)]. Revenue's civil appeal against this order of the Tribunal was dismissed by the Hon'ble Apex Court on the ground of inordinate delay [2016 (42) STR J 145 – SC]. He further submits that similar decision was also taken in the case of Bain and Company India Pvt Ltd., [2014 (35) STR 533 TRI-DEL]. He further submits that similar issue came up before the Principal Bench in the case of Nissin Break India Pvt Ltd., [2019 (24) GSTL 563 (Tri-Del)] and it was held that when personnel are deputed on secondment from parent company to their Indian subsidiaries it cannot be termed as manpower recruitment service. This decision of the Tribunal was upheld by the Hon'ble Apex Court in civil appeal [2019 (24) GSTL J171 (SC)]. He would submit since it was a civil appeal and not a SLP the order of the Tribunal Delhi merges with the Hon'ble Apex Court's judgment and the issue has reached the finality at the hands of the highest court of the land.
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> 5. He would further submit that in their own case for a subsequent period, the Learned Commissioner vide Order-in-Original No. HYD-EXCUS004-COM-043-16-17 dated 25.10.2016 has dropped the demand relying on the judgment of Volkswagen India Pvt Ltd., (supra). (3) Appeal No. ST/27871/2013 6. He therefore prays that the impugned order must be set aside and appeal may be allowed.
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> 7. Learned DR agrees with the facts of the case but says that for the subsequent period, the Commissioner while dropping the demand has examined the following documents to hold that there existed an employee and employer relation between the appellant and the persons deployed: i) Form – 16 filed with the Income Tax Department ii) Form – 24Q filed with the Income Tax Department iii) Provident Fund Contributions iv) FRRO registration in which the assigned employees have declared themselves as employees of the assessee. He prays that for the impugned period also this verification needs to be done before deciding the matter. He therefore prays that the matter may be remanded to the Commissioner for the purpose of verification. Learned Counsel for the appellant submits that they have no objection to the matter being remanded to the Commissioner for the sole purpose of verification.
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> 8. In view of the above, we allow the appeal by way of remand to the adjudicating authority for the sole purpose of verification of the documents and determining if the personnel deployed and the appellant had an employee-employer relationship. Needless to say, principles of natural justice must be followed and adequate opportunity must be afforded to the appellant to present their documents,
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> 9. The appeal is allowed by way of remand for the purpose of verification of documents."

3. As the issues involved in the present three appeals are identical to the issues involved in the aforesaid appeal, we find no reason to take a different view in this case. In view of the above, all three appeals are allowed by way of remand to the original authority for the purpose of verification of

documents and a decision based on the ratio of the decisions of the Tribunal and Hon'ble Apex Court on similar issues.

4. All appeals are allowed by way of remand to the original authority.

(Operative portion of the order pronounced
in open court on conclusion of the hearing)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy