IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, HYDERABAD

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.2810 of 2011

(Arising out of Order-in-Appeal No.56/2011 (H-II)S.TAX dated 15.07.2011 passed by Commissioner(Appeals-II), Customs, Central Excise & Service Tax, Hyderabad.)

M/s. TNS India Private Limited
(Plot No.17, Road No.3, Banjara Hills, Hyderabad-500034, Andhra Pradesh.)
...Appellant

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II
.....Respondent
(3rd Floor, Shakar Bhawan, Opposite L.B. Stadium, Basheerbagh, Hyderabad-500004, Andhra Pradesh)

WITH

Service Tax Appeal No.2811 of 2011

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APPEARANCE

Shri Prasad Paranjape, Advocate for the Appellant (s)
Shri V.R. Pavan Kumar, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 30064-30065/2022

DATE OF HEARING : 3 March 2022
DATE OF DECISION : 19 May 2022 .

P.K.CHOUDHARY :

The present appeal has been filed by the Appellant being aggrieved by the Order-in-Appeal No.57/2011(H-II)S.Tax dated 19.07.2011 by which the rebate application of the Appellant for the period from January 2010 to November 2010 for Rs.1,76,55,624/- has been rejected on the ground that the same does not qualify as export of service as well as on the ground of unjust enrichment.

2. Briefly stated the facts of the case are that the Appellant is engaged in rendering Market Research Agency services (MRAS) and Business Auxiliary Services (BAS) to its clients located in India and abroad. The Appellant had filed rebate claim in relation to MRAS services exported to its overseas clients wherein the Appellant offered market research services on the following two aspects-Quantitative data which is data based on research and Qualitative data which is based on performing interviews.

3. Accordingly the Appellant charged service tax on output invoices for the above services and paid the same to the Government. Subsequently, it filed rebate application in the prescribed form as per Rule 5 of the Export of Service Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005. The same was sought to be rejected by issuance of SCN dated 14.03.2011. The Appellant was served with the Adjudication order dated 27.05.2011 wherein the said rebate claim stood rejected. The First Appellate authority has rejected the appeal before him vide order dated 19.07.2011. Hence the present appeal before us.

4. We have heard the Counsel appearing for the Appellant and the Ld. Authorized Representative for the Revenue and perused the appeal records.

5. The short issue to be decided in this case is as to whether the services of MRAS provided by the Appellant would be an export of service or not. We find that this Tribunal in a similar matter pertaining to MRAS services vide Final Order Nos. ST/A/52612-52613/2017-CU(DB), dated 29-3-2017 had held as under :-

> "*On the second issue regarding the claim of export of service by the appellant, we note that the data collected by the appellants are delivered to the clients outside India in the required format. Without such delivery of the collected data the service will not get completed. The Tribunal in CST, Ahmedabad v. B.A. Research India Ltd. reported in 2010 (18) S.T.R. 439 (Tri.-Ahmd.) while examining the scope of export of technical testing and analysis services, held that the performance of service does not get completed until the analysis report is delivered to the client. Such delivery of report, which is essential part of service, occurring outside India and used outside India will make the service as exported service. In the present case, we are dealing with market research agency service. The same ratio is applicable. The data collected from target groups are to be arranged and delivered in a manner as required by the foreign client. Without such delivery of the collected data there is no completion of service. Hence, we hold that part of the service is performed outside India. In such situation, the proviso clause of Rule 3(1) of the Export of Services Rules, 2005 will apply. The said proviso stipulates that where such taxable service is partly performed outside India, it will be treated as performed outside India. The taxable service falling under Section 65(105)(y) is listed under sub-clause (ii) of Rule 3(1) of Export of Services Rules, 2005. Part performance of service outside India shall be treated as performed outside India. In view of the above discussion and analysis, we hold that the appellant have rendered taxable services which are exported out of India and, as such, they are eligible for the claim of refund of input service credits in terms of Rule 5 of Cenvat Credit Rules, 2004.*"

Also, vide the decision in the case of BAYER BIO SCIENCE P. LTD. Versus COMMR. OF CUS., C. EX. & S.T., HYDERABAD-II [2019

(25) G.S.T.L. 230 (Tri. - Hyd.)], while dealing with a similar situation, this Tribunal had held that :-

> "*With respect to the service tax post introduction of the Export of Services Rules, in terms of Rule 3(1), where the taxable services are performed partly outside India and partly in India it shall be treated as an export of taxable service. In this case, the entire research including cross pollination and testing of the germplasm and testing the variety so developed is done within the country but the reports were delivered to Germany. The service is complete only when the reports are also sent to their client as per the agreement in Germany. Until the report is delivered the service is not complete and the appellant is not entitled to the consideration for the service. Therefore, we find in this particular case that the service by the appellant is rendered partly outside India and partly in India although the part rendered outside India is very small. In terms of Rule 3(1) of the Export of Services Rules such services should be treated as export of services. The Learned Adjudicating Authority had held that these cannot be considered as export of service because the overseas client ultimately uses for promotion of his sales of the new varieties developed in India and the services provided by the assessee will be utilized in India. He reasoned that the services rendered by the assessee do not qualify as export of services. We do not agree with this view. The scientific and technical consultancy services provided to their overseas client is one leg of transaction which ends when the reports are delivered to their client in Germany. The service tax proposed to be charged is on this leg of transaction. After having received the reports the clients in Germany files applications for and obtains IPR and thereafter the second phase of the activity viz., multiplication of the seeds developed and their sale in India begins. The service in question is not relatable to the second phase of the activity which begins only after they have obtained IPR. Therefore, we find that the services in question are delivered partly outside India and partly within India and the payment for the services is received in foreign exchange and hence these services should be treated as export of services and therefore they are not liable to service tax on these services.*"

6. In the instant case, on perusal of the invoices issued by the Appellant to various overseas customers, it is clear that the benefit of these services are accruing to the customer located outside India. Thus, following the ratio as laid above, there is no doubt that the services will qualify to be export of services under the provisions of the Export of Service Rules, 2005.

7. Once we have held the services to be export of services, then the issue of unjust enrichment does not require our consideration as it is a settled issue that unjust enrichment principles are not applicable to export transactions as held by this Tribunal in the case of VODAFONE CELLULAR LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-III [2014 (34) S.T.R. 890 (Tri. - Mumbai)].

Thus the Appeals are allowed with consequential relief as per law.

(Order pronounced in the open court on 19/05/2022)

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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