IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Service Tax Appeal No. 175 of 2011

(Arising out of Order-in-Original No. 42/Commr/ST/Kol/2010-11 dated 11.03.2011 passed by Commissioner of Service Tax, Kolkata.)

Commissioner of Service Tax, Kolkata.
GST, Bhavan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

...Appellant (s)

VERSUS

M/s Net 4 Communications,
20B, Abdul Hamid Street, 3rd Floor, Flat No. 3E, Kolkata-700069.

. ..**Respondent(s)**

APPERANCE :
Shri J. Chattopadhyay, Authorized Representative for the Appellant
Shri Sanjay Dixit, Chartered Accountant for the Respondent

CORAM:
HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75834/2023

DATE OF HEARING : 08.05.2023

DATE OF PRONOUNCEMENT: 26th June, 2023

PER K. Anpazhakan :

M/s Net 4 Communications (The Respondent) are engaged in providing service under the categories of "business Auxiliary Service" and "Internet Café Service" as defined under Sections 65(19) and 65(57) of the Finance Act, 1994. During the course of departmental audit of the financial records of the Respondent for the Financial Years 2005-06 and 2006-07, it was revealed that they had rendered taxable services in relation to 'Online Information and Data Base Access and / or Retrieval Services' to their clients during the Financial Year 2005-06, for which they did not pay Service Tax.

2. Accordingly, a show cause notice dated 16.10.2009 was issued to the Respondent demanding service tax and Education Cess amounting to Rs 66,25,807/-. The Notice was adjudicated by the Commissioner vide Order-in-Original dated 11.03.2011, wherein he dropped the demands

raised on the Respondent in the Notice. Aggrieved against the impugned order, the department has filed the present appeal.

3. The Adjudicating Authority dropped the demand upon observations that the service provided by the Respondent would not be classifiable under 'Online Information and Data Base Access and / or Retrieval Services' as they were neither involved in generation of data or information nor involved in providing the same to their clients. They were involved in setting up the network for transfer of data not provided by them.

4. The adjudicating authority observed that in terms of Section 65(75) of the Finance Act 1994, "online information and database access or retrieval' means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network. Section 65(105)(zh) of the Act defines the "Taxable Service' as any service provided or to be provided to a customer, by a commercial concern in relation to online information and database access or retrieval or both in electronic form through computer network, in any manner."

5. The Ld A.R. reiterated the grounds of appeal and contended that the term 'in any manner' figuring in the above said definition, is wide enough to cover the activities of the Respondent under the category of 'online information and database access or retrieval' service which is liable to service tax.

6. Heard both sides and perused the appeal records.

7. We observe that in the instant case, the Respondent has been providing 'System Networking Services'. The said service involves linking of two or more computing devices together for the purpose of sharing data. Networks are built with a mixture of computer hardware and software. The work of the Respondent is to undertake inter-linking of computers through installations of required software and hardware. It is the contention of the Respondent that they were nowhere concerned with supply / retrieval of any information or data through any network to any person whomsoever. There was no allegation in the notice also that they have supplied/ retrieved any information or data through any network to any person.

8. It is observed that the Respondent has provided solutions to their customers based on various network models, architectures etc, and thus they have provided service for making available telecommunication network through which data and information can reach from one place to another for the purpose of sharing data. We observe that this service will not be classifiable as 'Online Information and Data Base Access and / or Retrieval Services' liable to service tax.

9. The expression 'online information and database access or retrieval' has been defined in Section 65(75) of the said Act.

"On-line information and database access or retrieval 'means providing data or information, retrievable or otherwise, to a customer, in electronic from through a computer network. Similarly, section 65(105)(zh) of the Act defines ' on-line information and database access or retrieval service" which reads as under:

"Taxable service means any service provided or to be provided to a customer, by a commercial concern, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner."

10. From the above definition it is evident that the following are the essential ingredients required to classify a service under the category of 'Online Information and Data Base Access and / or Retrieval Services'

- The service must relate to providing data or information;
- The said data or information can be retrievable or otherwise;
- The services must be provided in electronic form;
- The services must be provided through a computer network;

10. From the activity of the Respondent, it is observed that they are neither involved in generation of data or information nor involved in providing the same to their clients. They are involved in setting up the network for transfer of data not provided by them. Thus, we hold that the Respondent has not provided the service of 'Online Information and Data Base Access and / or Retrieval Services' to their clients. Thus, we hold that the impugned order dropping the demands holding that the Respondents have not rendered 'Online Information and Data Base Access and / or Retrieval Services' is sustainable. Accordingly, the department's appeal is liable to be rejected.

11. In view of the above discussion, we reject the appeal filed by the department.

(Pronounced in the open court on……26th June, 2023……)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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