

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.209 of 2010

(Arising out of Order-in-Appeal No.69/ST/2010 dated 31.03.2010 passed by
Commissioner (Appeals) of Central Excise, Kolkata)

M/s Witzemann India Private Limited

Plot No.J-5,Block-EP & GP Sector V, Salt Lake City, Kolkata-700091

Appellant

VERSUS

Commissioner of Service Tax, Kolkata

180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

None for the Appellant

Shri A.Roy, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.....75894/2023

DATE OF HEARING : 20 .06.2023

DATE OF DECISION : 20 .06.2023

Per Ashok Jindal :

By way of impugned order, a demand of service tax has been confirmed against the appellant for the period 01.07.2003 to 19.11.2003 for the services rendered to M/s Witzemann, Gmbh, Germany, located out-side India under reverse charge mechanism and for the period 15.03.2005 to 30.09.2006 for the services rendered to their Principal located outside India.

2. The appellant contested the impugned order. The demand has been confirmed.

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3. We find that the said issue came up before this Tribunal on 02.03.2023 in the case of M/s Eldyne Electro System Private Limited Vs. Commissioner of Service Tax, Kolkata in Service Tax Appeal No.ST/95/2010. Vide Final Order No.75096/2023 dated 02.03.2023, the Tribunal has observed as under :

"7. As the facts are not in dispute that appellant is an Agent for Principal located outside India for procurement of purchase order for Principal in India to sale the product by their Principal located outside India. In that circumstances, the service provided by the appellant is a service provided to the Principal located outside India, who is located in India. We, therefore, hold that it is a case of export of service, on which no service tax is leviable on the appellant. The same view has been taken up by the various decisions, which are as under :

- (i) CCE, Jaipur Vs. National Engineering Industries Ltd. : 2018 (11) GSTL 235 (Raj.)*
- (ii) CST, Mumbai VI Vs. A.T.Enterprises Pvt. Ltd. 2018 (8) GSTL 123 (Bom.)*
- (iii) M/s IXIX Technologies Pvt. Ltd. Vs. CST 2020 TIOL 968 CESTAT KOL*
- (iv) CCE, Noida Vs. Graphics Mega Times Ltd. 2018 (14) GSTL 382 (Tri.-All)*
- (v) Hitachi Metal (I) Pvt. Ltd. Vs. CCE & ST,Gurgaon I.*

8. As the issue has already been settled in favour of the appellants, therefore, following the above cited decisions, we hold that the appellant is not liable to pay the service tax. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any."

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4. As the issue has already been settled in favour of the appellant, therefore, following the above cited decision, we hold that the appellant is not liable to pay the service tax being the service rendered by the appellant is service exported outside India. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

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