IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/88955/2013

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APP-225-13-14 dated 23.7.2013 passed by Commissioner of Central Excise & Customs (Appeals), Nashik)

GlaxoSmithkline Asia Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Nashik **Respondent**

Appearance:

Shri R.G. Sheth, Advocate, for appellant
Shri M. Suresh, Deputy Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 19.1.2018
Date of Decision: 17.5.2018

ORDER No. **A/86436/2018**

Per: Ramesh Nair

The fact of the case is that the appellant provided support service of business/commerce to the group company M/s. Glaxo Smithkline Trading Service (GSKTS) located in Ireland and paid service tax on the same. Later they realised that since services were exported they were not required to pay service tax and hence filed refund claim of service tax. The show cause notice dated 3-2-2013 was issued to the appellant asking why the refund claim should not be rejected as services were not exported. The Order-in-Original was passed by the Asstt. Commissioner of Service Tax, Nashik. Appellant filed appeal before the Commissioner (Appeals) which came to be rejected, therefore appellant are before us.

2. Shri. R.G. Sheth, Ld Counsel for the appellant submits that lower authorities held that refund is not admissible on the ground that service were not exported as the same were provided in India only. He submits that services involved is of the business support service which consist of preparation of information/documents/reports in respect of assistance, financial, medical and clinical data, market research report and legal support provided by the appellant and same was used for the activity undertaken by the foreign entity M/s. GSKTS that is out side India. He submits that M/s. GSKTS Ireland does not have operation in India therefore question of using the services in India does not arise. All the information and data prepared by the appellant have been sent to M/s. GSKTS and same was used for their operation in Ireland, therefore service of business support service clearly export of service. He submits that during relevant period only requirement to qualify the service as export of service is only that against the service, payment should be made in convertible foreign currency which is not in dispute in the

present case. Ld. Commissioner contended that on various grounds which are not supported by law such as he contended that there was no agreement between appellant and the various entity without which it cannot be considered the service has been exported. He submits that there is statutory requirement that agreement should exist though the agreement was prepared belatedly which covers the period of export of service. He submits that Ld. Commissioner also contended that debit note is not valid document for the purpose of export of service which is absolutely absurd as within the group companies debit note is proper document for debiting any amount towards services. Therefore merely because invoice was not issued but the debit note issued refund cannot be rejected. He placed reliance on various judgements wherein it was held that even though the service was provided in India but the recipient of the service is located outside India, the service should be considered as export of service. These judgments are as under:-

(i) *Mount Kellett Management (I) Pvt. Ltd. vs. CST, Mumbai-I – 2015 (40) STR 165 (Tri.-Mumbai)*;

(ii) *AMP Capital Advisors India Pvt. Ltd. vs. CST, Mumbai-I – 2015 (40) STR 577 (Tri.-Mumbai)*;

(iii) *GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi – 2015 (37) STR 757 (Tri.-Del.)*;

(iv) *Centrica India Offshore Pvt. Ltd. vs. CST, Delhi – 2015 (40) STR 326 (Tri.-Del.)*;

(v) *Atlas Copco (I) Ltd. vs. CCE, Pune – 2015-TIOL-864-CESTAT-MUM*;

(vi) *Airbus Group India Pvt. Ltd. vs. CST, Delhi – 2016 (45) STR 120 (Tri.-Del.)*;

(vii) *Barco Electronics Systems Pvt. Ltd. vs. CCE&ST, Noida – 2016 (45) STR 532 (Tri.-All.)*.

3. On the other hand, Ld. Commissioner A.R. appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that appellant in their ST 3 returns did not show services which has been exported, appellant themselves have treated the service as provided in India Accordingly, correctly paid the service tax. There is no question of refund as there is no export of service.

4. We have carefully considered the submissions made by both sides and perused the records.

5. We find that Ld. Commissioner upheld the rejection of refund made by the Asstt. Commissioner on the ground that there was no agreement at the time of provision of service, which was claimed by the appellant as export. Consequently, there was no invoice issued towards export of service, only document that is debit note raised by the appellant, cannot

be considered as document for export of service, as service was provided in India. We find that all the reason given by the Ld. Commissioner(Appeals) has no force, as regard the debit note is concerned, merely because debit note are issued, it cannot be held that service has not been exported. The debit note is acceptable legal document for making claim of payment towards services and same is acceptable as per the accounting principle also, only it is to be ascertained that against debit note whether payment have been realised. Once the payment have been realised, it is immaterial whether document issued is a debit note or invoice. Debit note is also considered as invoice only, for the payment towards services. As regard the agreement, even though there is no agreement but if it is established that services have been exported, merely in absence of agreement export of service cannot be disputed. As per the provision for export of service under Rule 3(2)(a) of export of service Rule 2005, the only requirement to qualify services as export of service was the payment of such service is received by the service provider in convertible foreign exchange. As per this statutory provision Ld. Commissioner was not suppose to import various extraneous requirement, which are otherwise not relevant. As per the facts, it is clear that though the report/information on various aspect was prepared in India but the same was provided to GSKTS, Ireland and same was used by GSKTS in Ireland, therefore merely because the information/report were prepared in India it cannot be said that service has not been exported. It has been held in various judgments cited by the appellant that, even though the service was performed in India but service recipient is located outside India and convertible foreign exchange was received towards such service, service shall be considered as export of service. Since lower authority have not verified documents properly i.e. debit note and entry of the debit note in the books of accounts, payment received against such debit note. If these informations are recorded in the books of accounts, which have been audited then only on basis of that debit note issued refund cannot be disputed. We therefore of the view that if on verification, it is found that the services provided by the appellant were received by GSKTS and payment their against was received by the appellant in convertible foreign exchange the services are held to be export of service. We, therefore allow the appeal by way of remand to the adjudicating authority to verify all these facts and thereafter to pass a fresh order. Appeal is allowed by way of remand to the original adjudicating authority.

(Pronounced in court on 17.5.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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