IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/88137/2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/09/18-19 dated 25.04.2018 passed by Commissioner of CGST & CX (Appeals-I), Mumbai)

Banyan Tree Finance Pvt. Ltd. **Appellant**

Vs.

Commissioner of C.G.ST. **Respondent**
Mumbai South

Appearance:

Shri Alpesh Dodhia, C.A. for appellant
Shri S.K. Hatangadi Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision: 21.02.2019

FINAL ORDER NO. **A/85384 / 2019**

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 25.04.2018 passed by the Commissioner (Appeals-I), CGST and CX., Mumbai.

2. Brief facts of the case are that the appellant is engaged inter alia, in providing taxable services under the category of "Banking and Other Financial Services" and "Business Support Services", defined under the Finance Act, 1994. The appellant avails Cenvat Credit of service tax paid on the input services used for providing the output service. During the disputed

period, the appellant had exported the services to M/s. Banyantree Capital Advisors Limited, a company incorporated in the Republic of Mauritius. Export of services were effected pursuant to the agreement dated 09.04.2008 executed between the appellant and the Mauritius company. In view of exportation of services, there was no scope or occasion on the part of the appellant to utilize the input service credit available in its Cenvat register. Thus, the appellant had filed the refund application before the jurisdictional service tax authorities, claiming refund to service tax paid on the input services. The refund application was rejected by the original authority on the ground that the relationship between the companies recipient of service and the appellant are that of holding and subsidiary and as such, it cannot be said that the appellant had earned income from its group/holding company. The other ground assigned for rejection of the refund benefit is that the services provided by the appellant cannot be termed as export of service, as the services were used by associated company for making investment in India. Appeal filed against the adjudication order dated 11.03.2016 was also dismissed by the Learned Commissioner (Appeals) vide the impugned order dated 25.04.2018, in upholding the observations made by the adjudication authority.

3. The Learned Consultant appearing for the appellant submits that the service receiver and the appellant are distinct and separate legal entities and there is no relationship whatsoever as holding/subsidiary companies. In this context, he

has submitted the balance sheet of the company for the relevant period, wherein the share holding pattern of the appellant company has been described. He further submits that pursuant to the agreement, the appellant had provided the services to the overseas entity and the service fee was received in convertible foreign exchange. Thus, it is his submission that use/utilization of service in India should not be the determining factor for deciding the issue, whether such service classifies as export under the Export of Service Rules, 2005. In this context, the Learned Consultant has relied on the order dated 10.02.2017 of this Tribunal passed in the case of the appellant itself.

4. On the other hand, the Learned DR appearing for Revenue reiterates the findings recorded in the impugned order. He further submits that since the services provided by the appellant were received and used within India, such services should not be considered as “Export of Service” for the purpose of grant of benefit provided under Rule 5 of the Cenvat Credit Rules, 2004.

5. Heard both sides and perused the records.

6. I find from the financial statement prepared for the year 31.03.2015 that the entire share holdings of the appellant company were held by Ms. Ritu Singhal and Shri Rajiv Singhal. There is no specific mention about the overseas recipient of service M/s. Banyantree Capital Advisors Limited, Mauritius. Further, no evidences were produced by the department to show

that the appellant was the subsidiary company of the overseas service receiver. Thus, I am of the firm view that denial of refund benefit on the ground that appellant is subsidiary of the service receiver will stand for judicial scrutiny.

7. With regard to provision of service, it is an undisputed fact that appellant had entered into an agreement with the overseas service receiver and pursuant to such agreement, had provided the service on payment of consideration in the form of "advisory fee". After receiving the taxable service by the overseas entity, the place of actual use of service will not be considered as the relevant factor for export inasmuch as the appellant was not a party to the service used within India and there is no specific agreements executed between the appellant and the Indian recipient of service. Further, the services were consumed within India pursuant to the agreement entered into between the overseas entity (service recipient) and Indian recipient of service. Since the appellant is no way connected to the user of service in India, it cannot be said that the services provided to overseas entity cannot be considered as export in terms of Export of Service Rule, 2005. I find that in an identical situation, this Tribunal in the case of appellant itself, vide order dated 10.02.2017 has allowed the appeal filed by the appellant, by placing reliance on the earlier orders of the Tribunal passed in the case on AMP Capital Advisors India Pvt. Ltd. – 2015-TIOL-1001-CESTAT-MUM and Bain Capital Advisor India Pvt. Ltd. – 2015-TIOL-119-CESTAT-MUM.

8. In view of the foregoing discussions, I do not find any merits in the impugned order passed by the Learned Commissioner (Appeals). Accordingly, after setting aside the impugned order, the appeal is allowed in favour of the appellant with consequential benefit, as per law.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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