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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 85380 of 2019

(Arising out of Order-in-Appeal No. NA/GST/ A III/MUM/245-246/2018-19 dated 19.09.2018 passed by Commissioner of GST and CX. (Appeals-III), Mumbai)

M/s Nadiadwala Grandson Finvest Pvt. Ltd. **.....Appellant**
11-A, New Ocean View CHS Ltd,
J.P. Road, Versova, Andheri (West),
Mumbai - 400061

VERSUS

Commissioner of GST & Central Excise – Mumbai West **.....Respondent**
Mahavir Jain Vidyalaya,
Juhu Lane, Andheri (West),
Mumbai - 400058

WITH

Service Tax Appeal No. 85408 of 2019

(Arising out of Order-in-Appeal No. NA/GST/ A III/MUM/245-246/2018-19 dated 19.09.2018 passed by Commissioner of GST and CX. (Appeals-III), Mumbai)

M/s Nadiadwala Grandson Finvest Pvt. Ltd. **.....Appellant**
11-A, New Ocean View CHS Ltd,
J.P. Road, Versova, Andheri (West),
Mumbai - 400061

VERSUS

Commissioner of GST & Central Excise – Mumbai West **.....Respondent**
Mahavir Jain Vidyalaya,
Juhu Lane, Andheri (West),
Mumbai - 400058

Appearance:

Shri Abhishek Chaturvedi, Consultant along with Shri Vinay Gupta, Company Representative for the Appellant
Shri Sudhir B. Mane, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85898-85899/2020

Date of Hearing : 06.03.2020
Date of Decision: 11.09.2020

Per: S.K. MOHANTY

Brief facts of the case, leading to this appeal, are as under:

1.1 The appellant herein, is registered with the service tax department for providing the taxable services falling under the category of 'Advertising Agency Service', 'Other Taxable Service-other than the 119 listed' etc., as defined under Section 65 of the Finance Act, 1994. In this case, the appellant had entered into an agreement dated 02.01.2017 with M/s Apple & Orange Pictures Limited, United Kingdom (for short, referred to as "M/s Apple & Orange") for engaging the services of the appellant to perform all line production services in accordance with the Indian Production schedule for the movie '*JUDWAA 2*'. The appellant availed Cenvat credit of service tax paid on various input services used/utilized for providing the taxable output service. The appellant did not discharge the service tax liability on the output service under the category of "Other Taxable Service-other than the 119 listed" on the ground that such services were exported by the appellant and as per the provisions of Rule 6A of the Service Tax Rules, 1994, no service tax liability was required to be discharged on such output service. Since the output service did not suffer payment of service tax, the appellant was not in a position to utilize the Cenvat credit availed on the input services. Therefore, the appellant had filed the refund applications under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No.27/2012-C.E. (N.T.) dated 18.06.2012, claiming refund of service tax amounting to Rs.19,54,914/- and Rs.23,50,726/- paid on the input services during the period from January - June' 2017.

1.2 The refund applications were adjudicated by the learned Deputy Commissioner of Service Tax, Mumbai vide order dated 23.04.2018 in rejecting the same. Being dis-satisfied with the said adjudication order, the appellant had preferred appeals before the learned Commissioner of GST & CX. (Appeals-III), Mumbai, which were disposed of vide Order-in-Appeal No. NA/GST/A III/MUM/245-246/2018-19 dated 19.09.2018 (for short, referred to as the "impugned order"), by rejecting the appeals filed by the appellant. In support of rejection of appeals, the learned Commissioner (Appeals) has recorded the following observations in the impugned order:

(a) that as per the agreement, production of the film '*JUDWAA 2*' was completed/released in India and thus, under the provisions of Rule 8 of the Place of Provision of Service Rules, 2012, such place of provision of service should be considered as India inasmuch as upon release of the film, the same was consumed in India;

(b) that as per information available in the Internet Movie Database (IMD), the producer of the film has been shown as Mr. Sajid Nadiadwala, the line producers as Mr. Ronak Motla and Mr. Sudipto Sarkar and that since the name of M/s Apple & Orange does not appear in the entire scenario, it has to be construed that the said film has been produced by an Indian entity.

1.3 The impugned order has also referred to and relied upon the report submitted by the Comptroller and Auditor General of India (CAG) to the President of India under Article 251 of the Constitution of India, to conclude that the activities concerning production and release of the subject film cannot be considered as 'Export of Service' and accordingly, the benefit of refund provided under Rule 5 *ibid* should not be available to the appellant.

1.4 Feeling aggrieved with the impugned order dated 19.09.2018, the appellant has preferred these appeals before the Tribunal.

2. Heard both sides and examined the case records.

3. The issue involved in the present appeals for consideration by the Tribunal is whether, the requirement of Rule 5 *ibid* read with the notification issued there under had been complied with by the appellant for grant of refund of service tax paid on the input services.

4. Rule 5 *ibid* entitles a service provider for the benefit of refund of Cenvat credit of service tax paid on the input services, in the eventuality, where the output service(s) are exported by it without payment of service tax. Grant of refund benefit is subject to compliance of the formula and observance of the procedures laid down under the service statute. In the present case, the refund claims filed by the appellant for period January to June' 2017 were mainly denied on the ground that there was no export of service and thus, the case of the appellant falls outside the scope and ambit of the statutory provisions, disentitling it to claim the refund benefit. According to the department, the provisions of Rule 8 of the Place of Provision of Services Rules, 2012 should be applicable for determination of the location of actual provision of service, which is India; as against the claim of the appellant that its case should be governed under Rule 3 *ibid* and as such, provision of service to

the overseas entity should be considered as 'export'. The competing entries in the service tax statute are extracted herein below:

"Rule 3. Place of provision generally

The place of provision of a service shall be the location of the recipient of service :

PROVIDED that in case [of service the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service".

"Rule 8. Place of provision of services where provider and recipient are located in taxable territory

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service."

5. I have carefully examined the contents of the agreement dated 02.01.2017 entered into between the overseas entity M/s Apple & Orange and the appellant. The said agreement has referred to M/s Apple & Orange as the 'Producer' and the appellant as 'Service Provider'; that the appellant was engaged to perform the activities of 'Line Production Services' such as, undertaking necessary preparations for the pre-production, principal photography and post production of the film, including activities like scouting and selecting locations, organizing transportation and other physical logistics, meals, sourcing materials, props and equipment for sets etc., at the fixed budgeted agreed upon price of Rs.15,61,35,000/-. The agreement does not provide for any additional benefit to the appellant over and above the said agreed sum for the production/release of the movie. On the contrary, paragraph 2.4 in the agreement has provided that the intellectual property rights in respect of various contracts executed by different

entities/persons, though entered into in appellants name, but the same shall be fully assignable to M/s Apple & Orange, meaning thereby that the said overseas entity has been vested with the clear title in and to the filming of *'JUDWAA 2'.* Thus, under the facts and circumstances of the case, it cannot be said that the beneficiary from the movie is an Indian entity i.e. the appellant herein inasmuch as the sole rights of the movie belong to M/s Apple & Orange (an overseas entity) and the appellant is only charged with the task of carrying the production activities of the film for a specific consideration.

6. I have also perused the IMDB website clipping made available in annexure-9 to the appeal memorandum, providing the information that the shooting of the movie had also been undertaken in foreign locations, including England and Mauritius etc. Hence, it is evident that as well as India, the subject movie was also shot at different foreign locations. Further, apart from India, the movie had also been released in various other countries internationally, especially in U.K. and U.S.A., wherefrom it had made a substantial gross collection. Therefore, the impugned order holding that the movie was produced/released and the benefit was accrued only in India is factually incorrect.

7. The impugned order at paragraph 8.3 and 8.4 has referred to Rule 8 of the Place of Provision of Services Rules, 2012 and the guidelines provided in CBEC Education Guide to conclude that in the case of a service receiver, the place relevant for determining location is the place where the service is 'used' or 'consumed'. Insofar as Rule 8 *ibid* is concerned, the statute recognizes the location of the recipient of service, in case, where both the provider as well as the receiver of service are located within the taxable territory i.e. India. In the case in hand, the

contents of the agreement clearly provide that the main producer and the beneficiary of the subject movie is M/s Apple & Orange. Since, such recipient of service is located in United Kingdom, which is a place outside the geographical limits of India, in my considered view, the provisions of Rule 8 ibid shall not be applicable to the present case. On the other hand, by close scrutiny of the rules framed under the Place of Provision of Services Rules, 2012, I find that the case of the appellant will not be governed under Rule 4 to Rule 12 itemized therein. Rather, the place of provision of service will more appropriately be categorized under Rule 3 *ibid* inasmuch as the service recipient has its business establishment in United Kingdom and thus, the place of provision of service is outside India, which would be considered as export of service for grant of refund of service tax paid on the input services. The department has also accepted the impugned transactions as export of service, which is evident from the fact that no proceedings were initiated against the appellant for demand of service tax on the activities undertaken by it.

8. The impugned order in paragraph 10 has referred to the report of CAG for arriving at the conclusion that the activities undertaken by the appellant will not be considered as an export of service. On perusal of the impugned order, I find that no reference number or date of such report has been furnished therein. Thus, the contents in the impugned order about the report of CAG cannot be legally recognized as having any evidentiary value for deciding the appeal against the appellant. Even if the said report is considered at this juncture, then the facts emanating there from are entirely different from the facts of the present case. The report of CAG had referred to the incidents relating to production of the movie *'Ae Dil Hai Mushkil',* produced by Dharma Productions Pvt. Ltd., a company

registered in India. The said report does not discuss the production related issues of the movie under dispute. Thus, blind reliance cannot be placed on such report and accordingly, the impugned order is also not sustainable on this ground.

9. In view of the foregoing discussions and analysis, I do not find any merits in the impugned order, in so far as it has upheld the adjudication order on the ground that the appellant should not be entitled for refund benefit provided under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-C.E. (N.T.) dated 18.06.2012. Accordingly, by setting aside the impugned order, the appeals are allowed in favour of the appellant.

(Order pronounced in the open court on 11.09.2020)

(S.K.Mohanty)
Member (Judicial)

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