CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Miscellaneous Application (EH) No. 85766 of 2022
(On behalf of Appellant)
Service Tax Appeal No. 86493 of 2017

(Arising out of Order-in-Original No. PUN-SVTAX-000-COM-062-16-17 dated 31.03.2017 passed by the Commissioner of Service Tax (Audit), Pune)

M/s. Quick Heal Technologies Ltd. **Appellant**
Marvel Edge, Office No.7010 C&D,
7th Floor, Viman Nagar, Pune 411 014.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
F Wing, 3rd Floor, ICE House,
41/A, Sassoon Road, Pune 411 001.

AND

Service Tax Miscellaneous Application (EH) No. 85765 of 2022
(On behalf of Appellant)
Service Tax Appeal No. 86233 of 2018

(Arising out of Order-in-Original No. PUN-SVTAX-001-COM-014-17-18 dated 09.01.2018 passed by the Commissioner of CGST & CE, Pune-I)

M/s. Quick Heal Technologies Ltd. **Appellant**
Marvel Edge, Office No.7010 C&D,
7th Floor, Viman Nagar, Pune 411 014.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Prasad Tendulkar with Ms. Kiran Chavan, Advocates, for the Appellant
Shri Anand Kumar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 18.10.2022
Date of Decision: 18.10.2022

FINAL ORDER NO. A/85993-85994/2022

PER: SANJIV SRIVASTAVA

These applications for early hearing of appeals have been filed by the applicant/appellant stating the following grounds:-

"1. Applicant is a unit engaged in development of Arus Software by name "Quick Heal Antivirus" and the issue involved in the appeals is "whether Service Tax is payable on Shrink Wrapped Packaged Software sold on CD/DVD" which is finally decided by Honourable Supreme Court in applicant Quick Heal Limited's favour by dismissing Civil Appeal (Diary No. 24399 of 2020) filed by Commissioner of Service tax New Delhi on Friday 5th August, 2022."

2.1 We have heard Shri Prasad Tendulkar with Ms. Kiran Chavan, Advocates, for the applicant/appellant and Shri Anand Kumar, Additional Commissioner, Authorised Representative for the Revenue.

2.2 Learned counsel for the applicant/appellant submits that the issue involved is squarely covered by the decision of Hon'ble Supreme Court referred to in para 1 above in their favour.

2.3 Learned AR does not objects.

2.4 Early hearing applications are allowed.

3.1 With the consent of both sides, we have heard the appeals.

3.2 By the impugned order, in appeal No. ST/86493/2017 before us, the Commissioner has held as follows:-

"<u>ORDER</u>

36.1. I confirm the demand of service tax amounting to Rs. 28,53,54,034/ (Rs. Twenty Eight Crore Fifty Three Lakh Fifty Four Thousand Thirty Four only) inclusive of Education Cess and Secondary and Higher Education Cess for the period 01-04-2014 to 31-03-2015, in respect of Information Technology Software Services provided by them as discussed above under Section 73(2) of the Finance Act, 1994.

36.2 I order recovery of interest, at the appropriate rate(s) as applicable during the relevant period, on the demand of service tax as confirmed at paras 36.1, under the provisions of Section 75 of the Finance Act, 1994.

36.3 I impose a penalty of Rs. 2,85,35,403/- (Rs. Two Crore Eighty Five Lakh Thirty Five Thousand Four Hundred Three only) on M/s Quick Heal Technology Pvt. Ltd. under Section 76 of the Finance Act, 1994, under the provisions of Section 76 of the Finance Act, 1994 for contravention of various provisions of the Act/Rules hereinabove.

However, I give an option to pay penalty of Rs.71,33,851/- (Rupees Seventy One Lakh Thirty Three Thousand Eight Hundred Fifty One only) being 25% of Rs. 2,85,35,403/- (Rs. Two Crore Eighty Five Lakh Thirty Five Thousand Four Hundred Three only)provided entire amount of Service Tax, Interest and reduced penalty is paid within thirty days from the date of receipt of this order as per the second proviso to section 76(1) of the Finance Act, 1994.

36.4 I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) on M,/s. Quick Heal Technology Pvt. Ltd. under Section 77 of the Finance Act, 1994.

37. This order is issued without prejudice to any other action that may be taken under the provisions of the Finance Act, 1994 and Rules framed there under or any other law for the time being in force in the Republic of India."

3.3 We find that in the appellant's own case, the issue has been decided by the judgment dated 05.08.2022 of Hon'ble Supreme Court in Civil Appeal No. 5167 of 2022. Paras 55 and 56 of the said judgment are reproduced below:-

"55. The sum and substance of the ratio of the case of BSNL (supra) as discernible is that the contract cannot be vivisected or split into two. Once a lumpsum has been charged for the sale of CD (as in the case on hand) and sale tax has been paid thereon, the revenue thereafter cannot levy service tax on the entire sale

consideration once again on the ground that the updates are being provided. We are of the view that the artificial segregation of the transaction, as in the case on hand, into two parts is not tenable in law. It is, in substance, one transaction of sale of software and once it is accepted that the software put in the CD is "goods", then there cannot be any separate service element in the transaction. We are saying so because even otherwise the user is put in possession and full control of the software. It amounts to "deemed sale" which would not attract service tax.

56. In view of the aforesaid, we have reached to the conclusion that the impugned order of the Tribunal suffers from no jurisdictional or any other legal infirmity warranting any interference at our end in the present appeal."

4.1 Respectfully following the above judgment of Hon'ble Supreme Court, these appeals in the present case which are on the same issue are allowed in favour of the appellant.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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