

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 87292 Of 2019

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0016/2019-20 dated 09.04.2019 passed by Commissioner (Appeals-I) Central Tax, Pune)

**Thyssenkrupp System Engineering
India Pvt. Ltd.**

.....Appellant

Gat No. 168, Chakan industrial Area,
Village Sawardari, Taluka Khed,
Pune, Maharashtra- 410501.

VERSUS

**Commissioner of CGST & Central
Excise-Pune-I**

.....Respondent

41-A, ICE House, Sasoon Road,
Opp. Wadia College, Pune,
Maharashtra-411001.

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant

Shri Sunil Kumar Katiyar, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86179/2023

Date of Hearing : 22.11.2022

Date of Decision : 11.05.2023

PER : S.K. MOHANTY

The appellant is a wholly owned subsidiary of M/s ThyssenKrupp System Engineering GmbH, Germany and provides business and marketing related support services to such parent company. For providing such services, the appellant got itself registered with the Service Tax Department. In this case, the Anti Evasion Division of Service Tax Department initiated enquiry proceedings against the appellant on the basis of the audit report that the appellant had recovered some amount from its parent company under the cover of credit notes for providing business support

services. On detailed investigation into the matter, the Department came to the conclusion that during the disputed period, the appellant was working as an intermediary between the parent company and its customers located in India and thus, is liable to pay service tax in terms of Place of Provision of Service Rules, 2012. The Department initiated show cause proceedings against the appellant, which was culminated into the adjudication order dated 30.11.2018, wherein the learned Assistant Commissioner of Central Excise, Pune-I had confirmed service tax demand of Rs. 46,94,063/- along with interest and also imposed penalties under Sections 77 and 78 of the Finance Act, 1994. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 09.04.2019 has upheld the confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. We have perused the agreement dated 01.10.2011 entered into between the appellant and its parent company located abroad. The said agreement has provided that the appellant should cater to the requirements such as making customer relations, customer visits, developing relationship with customers, obtaining market intelligence about products, identify potential opportunities for new business etc. for and on behalf of the parent company. On reading of the clauses in the agreement, it transpires that the appellant's scope of work is confined to promoting the parent company in India by way of providing marketing, administrative, technical support services. It is an admitted fact on record that the appellant has not facilitated or assisted the parent company in connection with supply of goods or services. Further, there was no contractual obligation on part of the

appellant to ensure the participation of the appellant to provide services or goods between the overseas parent company and any other defined party /customer. Therefore, in the absence of necessary pre-requisites of facilitating actual supply of goods or services between two or more identifiable persons, the transaction made by the appellant should not qualify as an intermediary service, rather, the services rendered by the appellant qualify as business and marketing support service. We find that the CBEC vide circular no. 159/15/2021-GST dated 20.09.2021 has clarified the scope of an intermediary service. According to the said circular, in order to constitute the intermediary service, the conditions to be fulfilled are that there should be minimum of three parties to the contract, two distinct supplies i.e., main supply and ancillary supply, and intermediary service provider to have the character of an agent, broker or any other similar persons. In the present case, none of the ingredients, itemized in the definition of intermediary service are fulfilled by appellant, inasmuch as it is not a facilitator between the parent company and its customers located in India with regard to either supply of goods or provision of service.

4. We find that the conditions prescribed under sub-rule (1) of Rule 6A of the Service Tax Rules, 1994 have been duly fulfilled by the appellant inasmuch as the service recipient was located outside India, the payment towards provision of service has been received in convertible foreign exchange. Thus, the place of provision of service in this case would be governed by Rule 3 of Place of Provision of Services Rules, 2012. In absence of any documentary evidence that the appellant had acted as an intermediary between the overseas entity and its Indian customer and that the location of the service receiver is in Germany, the transaction in our considered view, should appropriately be considered as the export of service.

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Order pronounced in the open court on 11/05/23)

(C J MATHEW)
Member (Technical)

(S.K. MOHANTY)
Member (Judicial)

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