CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87397 of 2016

(Arising out of Order-in-Original No. 28/STC-V/SKD/16-17 dated 16.07.2016 passed by the Commissioner of Service Tax-V, Mumbai).

Goldman Sachs (India) Securities Pvt. Ltd. .... **Appellant**
Rational House, Plot No. 951-A,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai- 400025.

Versus

Commissioner of Service Tax-V, Mumbai .... **Respondent**
4th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Sector-E,
Bandra Kurla Complex, Bandra-E,
Mumbai- 400051.

Appearance:

Shri Sanjeev Nair, Advocate for the Appellant

Shri Adeeb Pathan, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85048/2024

Date of Hearing: 09.01.2024

Date of Decision: 09.01.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged *inter alia*, in the business of providing non-binding investment advisory services to various overseas clients (Group companies) as per the contractual norms agreed upon by them. The activities undertaken pursuant to the agreement were considered by the appellants export of service and accordingly, no service tax liability was discharged by them for provision of the services in favour of the overseas entities. However, the department objected to the fact of non-payment of service tax on the ground that the investment advisory services were meant for investment in stock market in India/Indian companies and as such, those services would not be qualify as export of service as per the conditions laid down under Rule 3(2)(a) of the Export of Service Rule, 2005. The department had also objected to the fact of availment of Cenvat Credit on the input services namely, rent-a-cab service, outdoor catering service and air travel agent service on the ground that those services were not utilized for provision of the output services by the appellants. The show cause notice dated 19.10.2012 issued in this regard was adjudicated by the learned Commissioner of Service Tax-V, Mumbai vide order-in-original No.28/STC-V/SKD/16-17 dated 16.07.2016 (for short, referred to as the 'impugned order'), wherein service tax demand of Rs.25,62,89,761/- was confirmed along with interest and also penalties were imposed under Section 77 & 78 of the Finance Act, 1994. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that the non-binding investment advisory services are classifiable under category (iii) services, as per Rule 3(1) (iii) of Export of Service Rules, 2005 and therefore the disputed transaction should be construed as export, when provided in relation to business and commerce to a recipient located outside India. He further submitted that the conditions prescribed under Rule 3 (2) *ibid* have been duly complied with by the appellant inasmuch as the service recipient is the overseas entity. In this context, learned Advocate has relied upon the order of the Larger Bench of this Tribunal in the case *Arcelor Mittal Stainless India Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai* – 2023-TIOL-469-CESTAT-MUM-LB,to support the case of the appellant that the benefit of export should be available on provision of output services to the group entities located abroad and no service tax was payable on provision of such services. With regard to denial of Cenvat Credit on the input services, he submitted that in reply to show cause notice, the appellant had categorically stated that those disputed services were used/utilized in connection with the provision of the output service and as such, qualify as 'input service' in terms of Rule 2(l) of the Cenvat Credit Rule, 2004 for the

purpose of consideration as input service for utilization towards payment of service tax on the output services.

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. It is an admitted fact on record that the appellants have entered into the agreement with the overseas entities for providing the services under the category of non-binding investment advisory services in their behalf. The payment for provision of said services were also received in convertible foreign exchange. The services provided by the appellants were for the benefit of the overseas entities and as such, falls under the Category-III of services defined under Rule 3(1) (iii) *ibid*. With regard to the classification of such service for the purpose of consideration as export, the CBEC vide Circular No.111/5/2009-S.T. dated24.02.2009 had explained the scope of "used outside India" and had clarified as under:

> *"For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the* ***benefits of these services accrue outside India****."*

Further, the CBEC vide Circular dated 13.05.2011 has also clarified the said phrase 'used outside India', mentioning that the benefit should accrue in favour of the overseas entities for the purpose of qualifying certain transaction as export of service. The relevant paragraph in the said circular is also extracted herein below:

> *"It may be noted that the words "accrual of benefit" are not restricted to mere impact on the bottom-line of the person who pays for the service. If that were the intention it would render the requirement of services*

> *being used outside India during the period prior to 28.2.2010 infructuous. These words should be given a harmonious interpretation keeping in view that during the period upto 27.2.2010 the explicit condition was provided in the rule that the service should be used outside India. In other words these words may be interpreted in the context where the effective use and enjoyment of the service has been obtained. The effective use and enjoyment of the service will of course depend on the nature of the service. For example effective use of advertising services shall be the place where the advertising material is disseminated to the audience though actually the benefit may finally accrue to the buyer who is located at another place".*

Further, we also find that the issue arising out of the present dispute is no more open for any debate, in view of the order dated 09.06.2023 passed by this Tribunal in the case of *Arcelor Mittal Stainless India Pvt. Ltd.*(supra). The Larger Bench of the Tribunal in said case has held that since the benefit of service is accruing outside India, the said service should qualify as export of service in terms of the Rules, 2005.

6. We find that in the reply to show cause notice, the appellants had categorically stated that the disputed services were used/utilized for provisions of the output service. However, while dealing with the matter, the adjudicating authority has denied the benefit of Cenvat Credit solely on the ground that no documentary evidences were produced to demonstrate that those disputed services would be considered as input service. Since, the appellants are the business entity and utilized the services for provision of the output services and also paid the service tax on the input services, it cannot be said that those disputed services were not used/utilized for provisions of the output services. Since, the disputed services were used for accomplishing the purpose of the business, the said service, in our considered view, should qualify as 'input service', defined under Rule 2(l) *ibid*.

7. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellant. Therefore by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM