CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 85249 of 2017

(Arising out of Order-in-Original No. PUN-SVTAX-000-COM-019-16-17 dated 28.10.2016 passed by the Commissioner of Service Tax Commissionerate, Pune.)

M/s. AGS Customer Services (India) Pvt. Ltd. ....Appellant
Office No.-103, 1st Floor, P3 Pentagon,
Magarpatta City, Hadapsar,
Dist.-Pune, Maharashtra – 411 013

VERSUS

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

APPERANCE:

Shri Mihir Deshmukh, Advocate alongwith
Shri Suryakanth Singh, Advocate for the Appellant

Shri Ajay Kumar Shrivastava, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85624/2024

Date of Hearing: 06.05.2024
Date of Decision: 25.06.2024

PER: DR. SUVENDU KUMAR PATI

Confirmation of Service Tax demand of ₹1,78,92,239/- alongwith interest and equal penalty on secondment of employees by the Appellant to its associated/related Company at United Kingdom on reverse charge mechanism under the heading "Manpower

Recruitment and Supply Agency Services" is assailed by the Appellant in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a holder of Service Tax registration No. AAHCA1940PST001. Intelligence was gathered by Directorate General of Audit (Customs, Central Excise & Service Tax), New Delhi that Appellant had remitted £13,06,045,95/- (GBP) during the financial year 2009-10 to 2011-12. Information was called for from the Appellant by the Preventive Unit, Pune-III of the Respondent-Department and from the information furnished by Appellant, it was found that Appellant had registered for 'Business Support Service' and its a 100% exporter of such service. It is a wholly own subsidiary of Aviva Group having parent holding company Aviva PLC located in United Kingdom. It had entered into an agreement with M/s. Aviva Employment Services Ltd. (AESL) on 1st September, 2008 for recruiting some employees of AESL and accordingly employment letters were issued, salary etc. were disbursed to the employees in the home country by AESL on behalf of AGS. Holding the same to be "Manpower Recruitment and Supply Agency Services" on secondment and allegedly suppression of fact of non-payment of Service Tax, demand cum-show-cause notice dated 14.10.2014 for the financial year 2009-10 to 2011-12 was issued that was adjudicated upon and resulted in confirmation of the demand, interest and penalty, as referred above, which is assailed in this appeal.

3. We have heard submissions from both the sides and perused the case record. Argument is led by both sides with reference to provision of law and judicial decisions on the point but ultimately the consensus that emerged is that in view of Hon'ble Supreme Court judgment on the issue, as passed in the case of *Commissioner of Customs, Central Excise & Service Tax, Bangalore (Adjudication) Vs. Northern Operating Systems Pvt. Ltd.,* secondment of employees by overseas entity for the purpose of completion of Assessee's job amounts to manpower supply and Assessee was service recipient for the same and, therefore, demand was sustainable but invocation of extended period was impermissible as Assessee had bonafide believe that it was not liable to pay any Service Tax, apparently for the reason that judicial decision on the similar line till pronouncement of *Northern Operating Systems Pvt. Ltd.* judgement by the Hon'ble Supreme Court was holding the field. But in the present case it could be noticed that show-cause notice was issued on 14.10.2014 up to the end of financial year 2011-12 and in view of clear provision contained in Section 73(1) read with 73(6), the normal period for making demand through show-cause notice was 18 months from the relevant date unless any fraud, collusion, wilful misstatement, suppression of facts, contravention of any of the provisions of this Chapter or the Rules made thereunder with intent to evade payment of Service Tax is noticed, Central Excise Officer can serve notice for demand that could be extended up to 5 years. This being the statutory provision, the notice of demand being signed on 14.10.2014 and dispatched thereafter cannot be considered to have

been sent within 18 months of the end of financial years up to which demand is made i.e. up to 31^{st} March 2012, against which Service Tax Return was filed on 24.04.2012. We are, therefore, of the considered view that the show-cause notice is not issued in conformity to the law and, therefore, it was required to be quashed before initiation of adjudication proceeding.

4. In addition to our observation above, it would be worthwhile also to take on record the submission of learned Counsel for the Appellant that Appellant having filed its return for the said period on 24.04.2012, in view of clear provision contained in Section 73(6)(i)(a) wherein it has been mentioned that for the purpose of determination of "relevant date", periodical return filed on the date showing particulars of Service Tax paid during the period to which return relates would be taken for the purpose of calculation of period of limitation of 18 months, which would end on 23.10.2013, during which period no irregularity was noticed to enable the Department to go beyond the normal period up to 5 years and therefore, the entire demand is barred by limitation.

5. We find force in the submissions of learned Counsel and we are in agreement with the contention of the Appellant that the demand, apart from being barred by the period of limitation, is also unsustainable for the extended period and since no demand is due for the normal period, the following order is passed.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Service Tax Commissionerate, Pune *vide* Order-in-Original No. PUN-SVTAX-000-COM-019-16-17 dated 28.10.2016 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 25.06.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad