CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Cross-Objection No. 91078 of 2016
In
Service Tax Appeal No. 85917 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-178-179-15-16 dated 14.12.2015 passed by the Commissioner of Service Tax (Appeals), Pune.)

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

Versus

Tech Mahindra Ltd. **.... Respondent**
Sharda Centre, off. Karve Road,
Plot No.1, Rajeev Gandhi Infotech Park,
Phase- III, Hinjewadi, Pune- 411 057.

WITH

Service Tax Cross Application No. 91077 of 2016
In
Service Tax Appeal No. 85919 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-178-179-15-16 dated 14.12.2015 passed by the Commissioner of Service Tax (Appeals), Pune)

Commissioner of Service Tax-I, Pune **.... Appellant**
ICE House, 41/A, Sasson Road,
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Versus

Tech Mahindra Ltd. **.... Respondent**
Sharda Centre, off. Karve Road,
Plot No.1, Rajeev Gandhi Infotech Park,
Phase- III, Hinjewadi, Pune- 411 057.

Appearance:

Shri Anand Kumar, Authorized Representative for the Appellants
Shri Vinay Jain, Advocate for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87596-87597/2023

Date of Hearing: 24.01.2023

Date of Decision: 24.01.2023

Per: S.K. MOHANTY

1.1 Brief facts of the case are that the respondents herein are engaged *inter alia*, in the provision of various taxable services, defined under the Finance Act, 1994. During the disputed period April to September, 2014, the respondents had exported the "Information Technology Software Service". Since no service tax was paid on exportation of such service, the respondents had filed the refund applications before the jurisdictional Service Tax authorities, claiming refund of accumulated CENVAT Credit of service tax paid on the input services. The refund applications were filed under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 27/2012-C.E. (N.T.) dated 18.06.2012. The Deputy Commissioner (Refund), Service Tax, Pune vide the original orders dated 29.05.2015 and 05.06.2015 had partially allowed the refund claims and rejected the claim amount in certain cases, on the ground that the onsite supply services provided by the respondents' to their overseas subsidiary and branch offices cannot be treated as export and accordingly, the same were excluded from their export turnover/total turnover. The original authority had also rejected the refund amount on certain disputed services, holding that those services were not in conformity with the "input service", defined under Rule 2(l) of the Rules of 2004.

1.2 Against rejection of the refund amount by the original authority, the respondents herein had filed the appeals before the learned Commissioner of Service Tax (Appeals), Pune. The appeals were disposed of by the learned Commissioner (Appeals) vide the impugned order dated 14.12.2015, in modifying the original orders, by way of granting further refund in favour of the respondents. In support of allowing the additional refund amount, the learned Commissioner (Appeals) has held that the entire services under the 'Model-I' were exported by the respondents to their overseas client, as per the contract and the entire payment had been received by them from the overseas client as per the contract. With regard to the 'Model-II' category, he has held that no contract was entered into between the respondents and the overseas client and no invoices were issued by the respondents in the name of the overseas client and also no payment (consideration) was received by them from their overseas client, and therefore, no service was provided by the respondents to the overseas client including for the offsite component of the services. Feeling aggrieved with the impugned order 14.12.2015, the Revenue has filed these appeals before the Tribunal. Revenue has urged the following grounds in their appeals: -

(a) In the case of onsite services provided under Model-I, the test of exportability of services from India fails and thus, the value of onsite services provided by the overseas subsidiary and branches cannot be treated as export and accordingly, cannot be considered as 'export turnover' of the respondents.

(b) The learned Commissioner (Appeals) erred in excluding the value of the onsite services provided under Model-II by the overseas subsidiary from the value of the 'total turnover', while calculating the admissible refund claim amount as per Rule 5 of the Rules of 2004.

1.3 Pursuant to the appeals filed by the Revenue, the respondents have also filed the Cross-objections before the Tribunal.

2. Heard both sides and perused the case records.

3. We find that identical facts for the period July 2012 to March 2014 were in dispute and the appeals filed by the Revenue were disposed of by the Tribunal vide Final Order No. A/85255-85262/2022 dated 04.03.2022, holding that services provided by the respondents under Model-I qualify as export of service from India inasmuch as the contract for entire services i.e. onsite as well as offsite services were with the respondents and accordingly, onsite services under Model-I qualify as export of services. With regard to the offsite services under Model-II, the Tribunal has held that such service cannot form part of the total turnover for the purpose of computation of eligible refund under Rule 5 of the Rules of 2004. The relevant paragraphs recorded in the order dated 04.03.2022 are extracted herein below: -

"4.6 Commissioner (Appeals) has in respect of Model I specifically concluded that the services provided by the appellants to their overseas clients through their subsidiaries and branch offices located outside the taxable territory were in fact the services provided by the appellants to their client for which they were billing their clients and receiving the Foreign Exchange from their clients. The subsidiaries/ branch offices did not raised any bill/ invoice on the recipient of the services or received any payments from them. All the services provided by the appellant to their overseas client have been provided under umbrella of a single contract. The subsidiaries/ branch offices of the appellants located overseas do not provide any service to the clients of the appellant independently. No such contractual agreement exists between the subsidiaries/ branch offices of the appellant with the service recipient. The subsidiaries/ branch offices provide the said services to the appellant and raise bill for the same on appellant for which the appellant are also discharging the service tax on reverse charge basis treating them as import of services. Thus these services are input services to the appellant for providing the services to their client overseas. Hence in Model I we are in complete agreement with findings recorded by Commissioner (Appeal) in para 23.

4.7 In respect of Model II, Commissioner (Appeal) has concluded that these services cannot be termed to be export of services. Same is clarification as given by the education guide at para 10.2.2. Revenue has challenged the order of the

Commissioner (Appeal) on the account of calculation error. The case of revenue is that the Commissioner (Appeal) has erred while determining the "total turnover" by deducting the value of onsite services provided by the overseas subsidiaries / branches directly to their clients, which do not qualify as export of services from the value of total turnover. In our view the stand is itself erroneous, the said services which were not provided by the appellants cannot be treated as part of "total turnover" of the Appellant and the hence the order of Commissioner (Appeal) cannot be faulted on this account."

4. The respondents have contended that they are not pressing for the Model-II onsite services, owing to the reason that they had re-availed the CENVAT Credit to the extent of onsite turnover and transitioned into GST. Since the respondents did not press for such submission in the cross-objections filed pursuant to the appeal of the Revenue, we are not expressing any opinion on such issue.

5. In view of above discussions, we do not find any merits in the appeals filed by Revenue. Therefore, the impugned order passed by the learned Commissioner (Appeals) sustains and accordingly, appeals filed by Revenue are dismissed. Cross-objections are disposed off.

(Operative portion of the order pronounced in open court)

(C J Mathew)
Member (Technical)

(S.K. Mohanty)
Member(Judicial)

SM