
(2015) 01 GUJ CK 0002
In the Gujarat High Court
Case No : Tax Appeal Nos. 1239-1244 of 2014

Commissioner of Service Tax	Vs	APPELLANT
Quintiles Technologies Pvt. Ltd.		RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 40 STR 237

Hon'ble Judges : Jayant M. Patel and S.H. Vora, JJ.

Bench : Division Bench

Advocate : Y.N. Ravani, Advocate, for the Appellant; Dhaval Shah, Advocate, for the Respondent

Judgement

Jayant M. Patel, J.—All the appeals arise from the order passed by the Tribunal [2014 (34) S.T.R. 753 (Tri. - Ahmd.)] in the respective appeals before it, whereby the appeals were allowed. We have heard Mr. Ravani, learned Counsel for the appellant Revenue and Mr. Prakash Shah, learned Counsel with Mr. Dhaval Shah, learned Counsel for the respondent assessee.

2. The learned Counsel appearing for both the sides admitted that the substantial questions of law to be considered in the present group of appeals are the same and, therefore, they are being considered simultaneously.

3. On behalf of the Revenue, following substantial questions of law have been formulated:--

"(i) Whether the Tribunal committed error in applying and extending the provisions of Rule 5(1)(D) of C.C.R. 2004 for the period prior to 17-3-2012; though Clause (D) of Rule 5(1) of C.C.R. 2004 is inserted later on ?

(ii) Whether the Tribunal is right in allowing the refund without verifying the facts whether the Technical Testing and Analysis service can be considered to have been exported when no documents in the form of FIRC were produced showing receipt of foreign exchange?

(iii) Whether Tribunal committed error in allowing the refund even in respect of Credit Notes issued by the Assessee, which shows that no service was provided by them in respect of such Credit Notes and no payments received in foreign exchange?"

4. We may record that the finding of the Tribunal in the impugned order at Paragraph 4 and 4.1 reads as under:--

"4. Heard both sides and perused the case records. The issue involved in the present proceedings is only with respect to calculation of refund as per formula given in Rule 5(1) of the Cenvat Credit Rules, 2004. The prescribed formula is reproduced below:--

Further Clauses (D) and (E) of Rule 5(1) define the Export turnover of services and total turnover as follows:--

"(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:--

Export turnover of services = payment received during the relevant period of export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period.

(E) "Total turnover" means sum total of the value of -

- (a) all excisable goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of sub-Rule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of Rule 3 against an invoice, during the period for which the claim is filed."

4.1 It was the case of the appellant that 100% of the credit with respect of Services Exported should be refundable under Rule 5 of the Cenvat Credit Rules, 2004. There is no evidence on record that appellant has taken any input service tax with respect to exempted services exported out of India. As per the definition of "Export Output of Services", given in Clause (D) of Rule 5(1) of the Cenvat Credit Rules, 2004, no distinction is made with respect to payments received from export of services. Further the logic of giving cash refund of taxes used, in relation to export of goods/services under Rule 5 of Cenvat Credit Rules, 2004, is to have "Zero rated" exports. In the case of the appellant, no exempted service is provided in the domestic tariff area. Therefore, even exempted export services will require to be added to the Export turnover of services and all the unutilised service tax credit pertaining to exported service will be admissible as refund under Rule 5 of the Cenvat Credit Rules, 2004. This view is also fortified by the view taken by CESTAT Mumbai in the case of Zenta Pvt. Limited v. CCE, Mumbai in Appeal No. ST/455/2011 which was relied upon by the appellant."

5. At this stage, we may also refer to the decision of the Tribunal, Mumbai Bench reported in , 2012 (284) E.L.T. 45 : 2012 (27) S.T.R. 519 (T) in the case of Zenta Private Limited v. Commissioner of Central Excise, Mumbai-V , wherein the Tribunal relied upon its earlier decision in the case of Dell International Services India Pvt. Limited v. Commissioner of Central Excise, Bangalore, reported in , 2010 (17) S.T.R. 540 has held in favour of the assessee.

6. Mr. Ravani, learned Counsel appearing for the appellant attempted to contend that for getting Cenvat Credit, it is required for the Unit concerned to establish that the foreign exchange was earned in respect of the payment regarding technical/testing and analysis services and if not, while calculating the total turnover, the amount pertaining to the technical, testing and analysis services cannot be added.

7. We are afraid such contention can be accepted and the simple reason is that once it is 100% Export Unit, all expenses for such technical, testing and analysis services would be a part of the turnover and the services exported cannot be separately connected on the ground as sought to be canvassed.

8. We do not find that the substantial questions of law as sought to be canvassed would arise for consideration in the present appeals. It may also be recorded that the questions formulated by the Revenue are, as such, interconnected, but based on the principal contention that unless it is established that a particular service was exported and foreign exchange was realized, the amount pertaining to technical, testing and analysis services by connecting therewith, the services exported would not be available.

9. There is no change in the provisions as it existed by Circular and subsequently incorporated in the Notification. Therefore, no such question would arise as sought to be canvassed.

10. We do not find any merit in the contention.

11. In view of the above, we find that no substantial questions of law would arise for interference with the impugned order passed by the Tribunal. Hence, all the appeals are meritless and, therefore, dismissed.