
(2024) 06 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 11260 Of 2015

J M Huber India P Limited

APPELLANT

Vs

Commissioner Of Central Excise & ST,Vadodara-II

RESPONDENT

Date of Decision : 05-06-2024

Acts Referred:

Service Tax Rules, 1994 — Rule 3, 3(1)(iii)(zzb), 3(2), 6A

Citation : (2024) 06 CESTAT CK 0002

Hon'ble Judges : Ramesh Nair, Member (J);C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Vinay Kansara, Anoop Kumar Mudvel

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The issue to be decided is that whether the services related to sales promotion of goods in India provided by the appellant to the recipients located outside India are export of service or not in terms of the export of service Rules, 2005 and Rule 6A of the Service Tax Rules, 1994.

2. During the period 2010-11 to 2012-13, the appellant had, under the agreement with the company situated outside India, provided different services to assist them in sales of their products such as to provide information regarding prospective buyers, to provide market information, competitors movement, to visit the customers for promoting the product, to follow competitor's activities, to collect import/export statistics of the product in appellant's territory and shares this information with the principals and such other services. Against providing such services, the appellant receive commission in convertible foreign exchange.

3. The case of the department is that since the appellant's activity is of Sales Promotion in India even though the recipient is located outside India, the service was provided within India, therefore it is taxable.

4. Shri VinayKansara, learned Counsel appearing on behalf of the appellant submits that even though the service was performed in India but the recipient of service is located in abroad therefore, it is Export of Service hence not taxable. He submits that in various judgments including the judgment in appellant's own case, on the identical issue, the issue is no longer res-integra. He placed reliance on the following judgments:-

(a) Evonik Specialty India Pvt. Limited - Final Order No. A/11778/2022 dated 28.11.2022.

(b) Solvay Specialities India Pvt Limited-Final Order No. A/10934/2023 dated 20-04-2023

(c) Medgenome Labs Limitedvs.Commr. of Central Tax-2022-TIOL-283-CESTAT-Bang.[This decision has been upheld by the Hon'ble High Court of Karnataka reported in 2023-TIOL-403- HC-KAR-ST]

(d) Verizon Communication India Pvt. Limitedvs.Asst. Commr., ST- 2018 (8) GSTL 32 (Del.)

(e) Linde Engineering India Pvt. Limited. vs. UOI-2022 (57) GSTL 358 (Guj.)

(f) Bellatrix Consultancy Services vs.Commr. of CT-2022 (67) GSTL 59 (KAR.)

(g) Celtic Systems Pvt. Limitedvs. CCE - 2023 (70) GSTL 74 (Tri.-Ahmd.)

(h) CST vs.Gupshup Technology India Pvt. Limited - 2018 (9) GSTL 305 (Mum.).

(i) Yamazaki Mazak India Pvt. Limited -2018 (12) GSTL 66 (Tri.-Mumbai)

(j) Pulcra Chemicals (India) Pvt. Ltd.-2015 (39) STR 700 (Tri.-Mumbai)

(k) Wartsila India Limited - 2019 (24) G.S.T.L. 547 (Bom.)

(l) Citi Bank N.A.- 2018 (18) G.S.T.L. 580 (Bom.)

(m) Life Care Medical Systems- 2018 (18) G.S.T.L. 587 (Bom.)

(n) A.T.E. Enterprises Pvt. Ltd. 2018 (8) G.S.T.L. 123 (Bom.)

(o) Nizam Sugar Factory V/s CCE - 2006 (197) ELT 465 (SC)

5. Hefurther submits that the show cause notice dated 27.03.2014 was issued for the period 2010-11 to 2012-13 invoking extended period. This show cause notice is issued for the subsequent period as for the earlier period also show cause notice for the same issue was issued. It is settled legal position that on the same issue, in the second show cause notice extended period cannot be invoked.

6. Shri Anoop Kumar Mudvel, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

7. On careful consideration of the submissions made by both the sides and perusal of record, we find that as per the facts, the appellant have provided

Sales Promotion service in India for and on behalf of the foreign service recipient for promotion of goods belonging to the foreign service recipient. In these facts, the payment against such service received in India in convertible foreign exchange, it is settled legal position that appellant's service is export of service hence, cannot be liable to service tax. The very identical case on the same issue, in the appellant's own case, this Tribunal vide order No. A/11778/2022 dated 28.11.2022 passed the following order:-

"04. We have carefully considered the submissions made by both the sides and perused the records. We find that the fact is not under dispute that the appellant have provided sales promotion and marketing service in India for sale of the goods supplied by the foreign based companies and the service recipient is those foreign based companies and the payment is received in convertible foreign currency. The contention of the Revenue is that since the service was provided in India therefore, the same will not be treated as 'Export of Service' hence, the service is taxable. We find that despite the fact that the service was provided in India but the service recipient is admittedly located outside India. The service of the appellant falls under sub-clause (zzb). As per Rule 3 of 'Export of Service' Rules, 2005 in respect of service falling under sub-clause (zzb), the same falls under clause (iii) of Rule 3(1) according to which the only condition to qualify the service as export of service, it provides that the service is required only in relation to business or commerce be provision of such service to recipient located outside India and when provided otherwise be provision of such service to a recipient located outside India at the time of provision of such service. In addition to this, to qualify the service as export of service as per Sub-rule (2) of Rule 3 the provision of any taxable service as specified in Sub-rule (1) shall be treated as export of service when the following conditions are satisfied:-

- (a) Such service is provided from India and used outside India; and
- (b) Payment of such service is received by the service provider in convertible foreign exchange.

We find that the appellant's activity is squarely covered under Rule 3(1)(iii) read with Sub-Rule (2) of Rule 3 of Export of Service Rules, 2005 therefore, the service of the appellant is clearly covered under export of service. This issue has already been considered by this tribunal in various judgments including the case of YAMAZAKI MAZAK INDIA PVT. LTD. (supra) wherein on the identical service, this tribunal has considered the issue in detail and held that Commission Agent Service provided to foreign based entity for promoting/marketing their goods in India on consideration the activity of the Indian agent providing promotion/marketing, technical support, installation, commission, etc. for sale of goods of foreign based entities in India on commission basis amounts to export of service and no service tax is demandable on such activities particularly when such commission received in convertible foreign exchange.

4.1 Considering the said judgment and also the various other judgments cited on

the identical issue, we are of the view that the appellant's service is clearly qualified as export of service hence, the same is not taxable.

5. Accordingly, the impugned order is set aside. Appeal is allowed."

8. From the above decision in the appellant's own case, it is observed that very identical issue only for the different period has been decided in favour of the appellant and hence the activity is not liable to service tax. The case of the appellant is also supported by catena of judgments cited by learned Counsel. Accordingly, the issue is no longer res-integra. Hence the impugned order is set-aside, appeal is allowed.