(2021) 10 CESTAT CK 0059

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 12108 Of 2018

L And T Sargent And Lundy Limited APPELLANT

Vs

C.C.E. And S.T.-Vadodara-I RESPONDENT

Date of Decision : 26-10-2021

Acts Referred:

Finance Act, 1994 — Section 65(44), 65B, 66B, 66C, 66D, 73, 78(1), 658(44), 668
Service Tax Rules, 1994 — Rule 5, 6A, 6A(1)(f)
Cenvat Credit Rules, 2004 — Rule 2, 2(e), 6, 6(3), 15(3)
Constitution of India, 1950 — Article 366

Citation : (2021) 10 CESTAT CK 0059

Hon'ble Judges : Delip Gupta, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been filed by M/s L&T Sargent & Lundy Limited against demand of Cenvat Credit, interest and imposition of penalty.

2. The appellant is an equally capitalized joint venture company of Larsen & Tuobro Limited, India and Sargent & Lundy LLC, USA. The assessee is a service provider of consulting engineering services. It was rendering services to parties located outside India and was claiming the benefit of export of service without payment of service tax. The appellant was rendering services to M/s Larsen & Toubro Electromech LLC and M/s Sargent & Lundy LLC, both located out of India and was not charging the service tax on such provisions of services during 2012-13 to 2014-15, treating the same as export of service. The Revenue alleged in the demand notices that the said two service recipients were other 'establishments' of the assessee and therefore, provision of service to them was not export of service in accordance with item (b) of Explanation 3 of Clause (44) of section 65 B of the Finance Act, 1994 and in terms of rule 6A of the Service Tax Rules, 1994, as inserted w.e.f. 01.07.2012 vide Notification No.36/2012-S.T., dated 20.6.2012.

3. Relying upon clause (44) of section 65 B of Finance Act, 1994 and item (b) of Explanation 3 revenue further alleged that though the related parties of the assessee may be registered as separate entities in their respective countries under their respective Acts, it did not absolve their status of being 'any other establishments of the assessee'. The criteria of being 'any other establishment' has nothing to do with the place of registration, more so, when the law itself envisage that such other location may be a place outside India.

4. Revenue alleged that in terms of the provisions of rule 5 of Place of Provision of Service Rules, 2012 and section 66B of the Finance Act. Service tax was leviable under section 66B on services provided or agreed to be provided in the taxable territory, but no service tax was leviable on the services provided or agreed to be provided in the non taxable territory under section 66B of the Finance Act.

5. The said rule 5 and section 66B are reproduced below:

"5 The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

"66B There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another....."

6. In view of provisions of rule 6A of the Service Tax Rules, 1994 and section 66B of the Finance Act, 1994 and rule 5 read with clauses (h) & (i) of rule 2 of the Place of Provision Rules, 2012, in case consulting services in respect of immovable properties is provided by the assessee to its own 'establishments' located outside India, the service is not export, though it is being provided in a non-taxable territory. Thus, Revenue alleged that the assessee was providing services relating to immovable property to other establishments of their own group established in a non-taxable territory and the place of provision was in a non-taxable territory. Revenue alleged that since the assessee has been providing service in a non-taxable territory, no service tax is leviable under section 66B of the Finance Act, 1994. Revenue alleged in terms of sub-clause (2) of clause (e) of rule 2 of Cenvat Credit Rules, 2004, the services on which no service tax is leviable under section 66B of the Finance Act are covered as 'exempted service'. Thus, the services provided by the assessee to 'other establishments' of their own group established in a non-taxable territory are 'exempted services' in view of sub-clause (2) of clause (e) of rule 2 of Cenvat Credit Rules, 2004.

7. Revenue relied on the definition of 'exempted services', and treating the said services as exempted services, invoked rule 6 (3) of the Cenvat Credit Rules, 2004 to demand an amount equal to 6% /7% of the value of exempted services in terms of rule 6 (3) of the Cenvat Credit Rules, 2004 which reads as follows:

"Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services:-

______

______

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any of the of the following options, as applicable to him, namely:

? pay an amount equal to six per cent of value of the exempted goods and exempted services, or (w.e.f 1.6.2015 amended vide Nott. 14/2015-CE(NT) as 'pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services)

? pay an amount as determined under sub-rule (3A); or

? maintain separate accounts...;"

8. It was further alleged that the appellant did not follow the conditions mentioned under sub-rule 3A of rules 6 of Cenvat Credit Rules, 2004 to pay an amount of Cenvat Credit availed and utilized on the exempted services under clause (ii) of clause (b) of sub-rule (3) of rule 6 of Cenvat Credit rules, 2004. It was also alleged that the appellant did not maintain separate accounts for receipt and use of input services used for the exempted and taxable services. Extended period was also invoked alleging that the appellant had not reflected the nature of services being provided by it in the periodical ST-3 return filed before the department, and it consequently availed and utilized the Cenvat Credit on exempted services. It was alleged that the appellant suppressed vital facts from the Revenue with intention to evade service tax by recourse to suppression of facts and willful misstatement in the ST-3 returns and consequently extended period of limitation was invoked to raise this demand. The demand was confirmed by the Original Adjudicating Authority. The demand of interest was made subjective to verification of the appellant maintaining minimum balance of Cenvat Credit in their account. Penalty was also imposed under sub-rule 3 of Rule 15 of Cenvat Credit Rules read with provisions of sub section (1) of section 78 of Finance Act, 1994.

9. Learned Counsel for the appellant argued that Larsen and Toubro Electromech LLC and Sargent & Lundy LLC are not "other establishments" of the Appellant for the purpose of Clause (b) of Explanation 3 to Clause 44 of Section 66B of the Act. For this purpose he relied on Rule 6A (1)(f) of Service Tax Rules, 1994 and

Explanation 3(b) to section 65 (44) of Finance Act, 1994.

10. Learned Counsel also relied on the following observations of the Commissioner in the impugned order:

"I find Rule 6A of the Service Tax Rule, 1994 adequately makes clear that the provider of the services and recipient of service are not merely establishment of a distinct person then those services are said to be export of services and providing services from a taxable territory to any of the other establishments in a non-taxable territory shall be treated as establishment of distinct persons as per the explanation 3(b) to clause 44 of Section 65B of the Finance Act, 1994. In the instant case the services by an entity in India are provided to an establishment of their own group in different countries and they are said to be establishment of distinct persons. In light of the above, services provided by the notice to its group companies situated out of India are not export services."

11. Learned Counsel argued that Sargent & Lundy LLC (USA) and Larson and Toubro Electromech LLC, are both independent legal entities and do not even qualify to be establishments of the appellant L&T Sargent and Lundy Limited. In this regard, the observations of the Commissioner in the above order are incorrect and misplaced.

12. Learned Counsel further pointed out that Commissioner has not placed any evidence on record to prove that Larson & Toubro Electromech LLC was set up by Appellant as its establishment. He pointed out that Larson & Toubro Electromech LLC (Oman) was incorporated in the year 1976 whereas the appellant was registered in the year 1995. He argued that in view of above facts, the assertion that Larson & Toubro Electromech LLC (Oman) is an establishment of the appellant is incorrect. Learned Counsel argued that in view of above facts, the services provided by the appellant to Larson & Toubro Electromech LLC (Oman) and Sargent & Lundy, USA, which are separate legal persons, qualifies to be export of services in terms of clause (f) of rule 6A of Service Tax Rules, 1994.

13. Learned Counsel further argued that the observations in the impugned order that the appellant and the service recipients are not separate entities but are related and interconnected is unfounded in as much as entities which are related or interconnected for reasons such as common share holding, common directors, etc continue to retain their independent legal status afforded to them under law.

14. Learned Counsel for the appellant pointed out that a similar case has been decided by the High Court of Gujarat in M/s Linde Engineering India Pvt. Ltd. vs Union of India 2020-TIOL-1285-HC-AHM-ST. Learned Counsel pointed out that audit in the aforesaid case had raised following objections:

"1. That the Petitioner No.1, which was a 100% subsidiary of Linde AG, Germany, and which was rendering consulting engineering services outside India and claiming the benefit of export of service, without the payment of Service tax;

ii. That during the scrutiny of records of the Petitioner No.1 for the period

2012-13 to 2014-15, it was found that the Petitioner No. 1 was rendering services to other establishments of the Linde Group, more particularly Linde Engineering Gmbh and was raising an invoice in foreign currency;

iii. That the Linde Group Companies, including Linde AG, Germany would be establishments of the Petitioner No.1, and therefore the provision of service by the Petitioner No.1 would not fall within the ambit of 'Export of Service' under Rule 6A of STR and would therefore be and 'exempted service' in terms of the provisions of Rule 2(e) of the Cenvat Rules."

15. He pointed out that in the said case the Court observed as follows:

"11. On perusal of the above provisions of the Act, 1994 and the Rule, 1994 read with Rules, 2004, it emerges that Rule 6A of the Rules, 1994 provides that services rendered would be treated as "Export of services" when clause (a) to clause (d) refers to provider of service is located in the taxable territory and recipient of service is located outside India and the service is not a service specified in Section 66D of the Act and the place of the provision of the service is outside India and as per clause (e) the payment for such service has been received by the provider of service in convertible Foreign Exchange. It emerges that the petitioner is fulfilling all the conditions, however, so far as the clause (f) of Rule 6A of Rules, 1994 is concerned, it provides that the provider of service and recipient of service are not merely establishments of a distinct person in accordance with tem (b) of explanation 3 of clause (44) of Section 65B of the Act. As per clause (44) of Section 658 of the Act. 1994 "service means any activity carried out by a person for other for consideration, and includes a declared service. Item (b) of the explanation 3 stipulates that an establishment of a person in taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons. Therefore, a question arises in the fact of the present case, whether the services provided by the petitioner No.1 located in India which is a taxable territory and the recipient of the service i.e. holding Company of the petitioner No.1 located outside India which is a non- taxable territory, whether both of them would be two establishments of the same Company or not so as to treat them as distinct persons liable for service tax. If the answer to this question is in affirmative, as interpreted in the impugned show cause notice that providing the services by the petitioner No.1 to its parent Company would be to the establishment of the petitioner and therefore it would be a distinct person. then rendering of service by the petitioner No.1 cannot be treated as "Export of Services as per Rule 6A (F) of Rules, 1994 because as per explanation 3(b) to Section 658(44) of the Act, 1994, the petitioner and holding Company are to be treated as distinct person as per the understanding of the respondent No.3, and therefore the petitioner would be liable to pay service tax.

12. However, on analysis of the aforesaid provisions, it appears that the respondents have assumed the jurisdiction on mere misinterpretation of the provisions of explanation 3 (b) to Section 65B(44) of the Act, 1994 read with

Rule 6A of the Rules, 1994 as by no stress of imagination, it can be said that the rendering of services by the petitioner No.1 to its parent Company located outside India was service rendered to its other establishment so as to deem it as a distinct person as per Item (b), explanation 3 of clause (44) of Section 658 of the Act, 1994, the petitioner No.1 which is an establishment in India, which is a taxable territory and its 100% holding Company, which is the other company in non taxable territory cannot be considered as establishments so as to treat as distinct persons for the purpose of rendering service. Therefore, the services rendered by the petitioner No.1-Company outside the territory of India to its parent Company would have to be considered "export of service" as per Rule 6A of the Rules, 1994 and Clause (f) of Rule 6A of the Rules, 1994 would not be applicable in the facts of the case as the petitioner No.1, who is the provider of service and its parent Company, who is the recipient of services cannot be said to be merely establishment so as to be distinct persons in accordance with Item (b) explanation 3 of Clause (44) of Section 65B of the Act, 1994.

13. In such circumstances, the respondents would not have any jurisdiction to invoke the provisions of the Act, 1994 read with Rules, 1994 to bring the services rendered by the petitioner No.1 to its parent Company within the purview of levy of service tax under the provisions of the Act, 1994."

16. Learned Counsel also asserted that there is no suppression or misdeclaration on their part. Thus, extended period could not have been invoked in this case.

17. Learned Authorised Representative relied on the impugned order. He pointed out that decision of High Court in M/s Linde Engineering India Pvt. Ltd. was passed after the impugned order was passed.

18. In the rejoinder, learned counsel for the appellant pointed out that whether the transaction amounts to export of service or not is the primary issue to be decided. In M/s Linde Engineering India Pvt. Ltd. (supra), the High Court has, in similar circumstances, held in favour of the appellant. He pointed out that all the other arguments taken in his appeal are alternate arguments. He argued that relief needs to be granted as the primary issue has been decided by the High Court after examining the facts.

19. We have considered the rival submissions.

20. We find that facts are not in dispute that L&T Sargent & Lundy Limited (appellant) were found to be providing services to (1) Larson and Toubro Electromech LLC (2) M/s Sargent & Lundy, both located outside India without charging service tax treating the same as export of services. The audit contended that the two service recipients are nothing but 'other establishments' of the appellant and, therefore, provision of services to them was not export of services in accordance with item (B) of Explanation 3 of clause (44) of section 65B of the Finance Act and rule 6A of Service Tax Rules. Based on the aforesaid assertions, demand of service tax was raised against the appellant. The charges made in the Show Cause Notice are in two folds.

21. The first issue is whether the service recipients were 'other establishments' of the appellant, and, therefore hit by rule 6A of Service Tax Rules. The said rule reads as under:

"6A. Export of services.- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,- (a) the provider of service is located in the taxable territory, (b) the recipient of service is located outside India, (c) the service is not a service specified in the section 66D of the Act, (d) the place of provision of the service is outside India, (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act."

22. Item (b) of Explanation 3 of clause (44) of section 65 B of the Act reads as under:

"Explanation 3- For the purposes of this Chapter,-

(a) ....

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons."

23. The second issue raised is based on the assertion that the services provided by the appellant to Larson & Toubro Electromech LLC (Oman) and Sargent & Lundy, USA were exempted services in terms of sub-section (2) of clause (e) which reads as under:

"Exempted service means a- Service, on which no service tax is leviable under section 66B of the Finance Act, 1994."

24. From the above it is apparent that the entire charge is based on the presumption that the appellant and the Larson & Toubro Electromech LLC (Oman) and Sargent & Lundy, USA are not independent entities but Larson & Toubro Electromech LLC (Oman) and Sargent & Lundy, USA are merely 'other establishments' of the appellant company.

25. This issue was examined in similar circumstances by the High Court in M/s Linde Engineering India Pvt. Ltd. The High Court observed as follows:

"9. The facts of the case are not in dispute that the petitioner No.1, who is 100% subsidiary of Linde AG, Germany, which is a leading worldwide technology partner for plant engineering and construction, and is inter alia engaged in the provision of consulting engineering and other services to various entities located in India and outside. On the basis of the scrutiny of the records of the petitioner No.1 by Central Excise Revenue Audit (CERA), it was observed by the respondents that the petitioner No.1 was rendering services to other organizations located in different countries out of India and was not charging service tax on such services treating the same as "export of services", more particularly, the petitioner No.1 rendered services to its parent Company and other establishments of Linde Group outside India without payment of service tax by wrongly treating the same as 'export of service.

10. Therefore, to consider the contentions raised by the petitioners that the impugned show cause notice is without jurisdiction, it would be germane to refer to the various provisions of the Act, 1994 and the Rules, 1994 read with Rules, 2004, which are made applicable to assume the jurisdiction by the respondent No.3 to issue impugned show cause notice.

(1) Section 65B (44) of the Act, 1994 reads thus

"65B. In this Chapter, unless the contest otherwise requires,

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service,

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(a) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.- For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds anypost in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as aChairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.- For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include -

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating a organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;. (Finance Act 2016)

(b) by a foreman of chit fund for conducting or organising a chit in any manner.;

Explanation 3. - For the purposes of this Chapter, -

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;"

(ii) Section 668 of the Act, 1994 reads thus:

"Charge of service tax on and after Finance Act, 2012.-

66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."

(iii) Section 66C of the Act, 1994 reads thus :

"Determination of place of provision of service.-

66C. (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory."

(iv) Section 73 of the Act, 1994 reads thus :

"Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.-

73. (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any service tax has not been levied or paid or has been short levied or short-paid or erroneously refunded by reason of-

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted.

Explanation.-Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of thirty months or five years, as the case may be."

(v) Rule-6A of the Rules, 1994 reads thus :

"[Export of services.-

'6A. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the section 66D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]"

(vi) Rule 2(e) as well as Rule 6 of the CENVAT Rules, 2004 reads thus:

2. In these rules, unless the context otherwise requires,-

xxx

[(e) "exempted service means a

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 65B of the Finance Act; or

(3) taxable service, whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken,

[but shall not include a service-

(a) which is exported in terms of rule 6A of the Service Tax Rules, 1994; or

(b) by way transportation of goods by a vessel from customs station of clearance in India to a place outside India);]"

xxx

"[Obligation of a manufacturer or producer of final products and a provider of [output] service.]

6 (1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be:"

11. On perusal of the above provisions of the Act, 1994 and the Rule, 1994 read with Rules, 2004, it emerges that Rule 6A of the Rules, 1994 provides that services rendered would be treated as "Export of services when clause (a) to clause (d) refers to provider of service is located in the taxable territory and recipient of service is located outside India and the service is not a service specified in Section 660 of the Act and the place of the provision of the service is outside India and as per clause (e) the payment for such service has been

received by the provider of service in convertible Foreign Exchange. It emerges that the petitioner is fulfilling all the conditions, however, so far as the clause (f) of Rule 6A of Rules, 1994 is concerned, it provides that the provider of service and recipient of service are not merely establishments of a distinct person in accordance with tem (b) of explanation 3 of clause (44) of Section 65B of the Act. As per clause (44) of Section 65B of the Act. 1994 "service means any activity carried out by a person for other for consideration, and includes a declared service. Item (b) of the explanation 3 stipulates that an establishment of a person in taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons. Therefore, a question arises in the fact of the present case, whether the services provided by the petitioner No.1 located in India which is a taxable territory and the recipient of the service i.e. holding Company of the petitioner No.1 located outside India which is a non- taxable territory, whether both of them would be two establishments of the same Company or not so as to treat them as distinct persons liable for service tax. If the answer to this question is in affirmative, as interpreted in the impugned show cause notice that providing the services by the petitioner No.1 to its parent Company would be to the establishment of the petitioner and therefore it would be a distinct person. then rendering of service by the petitioner No.1 cannot be treated as "Export of Services as per Rule 6A (F) of Rules, 1994 because as per explanation 3(b) to Section 658(44) of the Act, 1994, the petitioner and holding Company are to be treated as distinct person as per the understanding of the respondent No.3, and therefore the petitioner would be liable to pay service tax.

12. However, on analysis of the aforesaid provisions, it appears that the respondents have assumed the jurisdiction on mere misinterpretation of the provisions of explanation 3 (b) to Section 65B(44) of the Act, 1994 read with Rule 6A of the Rules, 1994 as by no stress of imagination, it can be said that the rendering of services by the petitioner No.1 to its parent Company located outside India was service rendered to its other establishment so as to deem it as a distinct person as per Item (b), explanation 3 of clause (44) of Section 658 of the Act, 1994, the petitioner No.1 which is an establishment in India, which is a taxable territory and its 100% holding Company, which is the other company in non taxable territory cannot be considered as establishments so as to treat as distinct persons for the purpose of rendering service. Therefore, the services rendered by the petitioner No.1-Company outside the territory of India to its parent Company would have to be considered "export of service" as per Rule 6A of the Rules, 1994 and Clause (f) of Rule 6A of the Rules, 1994 would not be applicable in the facts of the case as the petitioner No.1, who is the provider of service and its parent Company, who is the recipient of services cannot be said to be merely establishment so as to be distinct persons in accordance with Item (b) explanation 3 of Clause (44) of Section 65B of the Act, 1994.

13. In such circumstances, the respondents would not have any jurisdiction to invoke the provisions of the Act, 1994 read with Rules, 1994 to bring the services

rendered by the petitioner No.1 to its parent Company within the purview of levy of service tax under the provisions of the Act, 1994."

14. Moreover, the impugned show cause notice is also not tenable in law as the same is issued Invoking Section 73 of the Act, 1994 for extending the period for the issuing the Notice on the ground of alleged willful mis-statement or suppression of the facts on the part of the petitioner No.1. The petitioners cannot be said to have made any willful mis statement or suppressed any fact as the petitioners cannot be made liable for levy of service tax by wrongly treating the petitioners and its parent Company as establishment of the same Company. It is trite law that the petitioner no.1 Company, which is incorporated under the provisions of the Companies Act, 1956 and its holding Company Incorporated at Germany are both distinct persons and therefore, both cannot be treated to be establishments of the same Company distinct artificial jurisdiction person."

26. In the instant case, the appellant is a service provider and is a joint venture company of Larson & Toubro Ltd, an Indian conglomerate and Sargent and Lundy LLC (USA). Both Larson & Toubro Ltd and Sargent and Lundy LLC (USA) are independent registered companies in India and USA respectively. The service recipient Larson and Toubro Electromech LLC is a company registered in Oman. The said company is formed with L&T Hydrocarbon Engineering Limited holding 70% of its share capital and Modern Channels Services LLC holding 30% of its share capital. From the above it is apparent that L&T Electromech LLC, Sargent and Lundy LLC (USA) and the appellants M/s L&T Sargent and Lundy Limited are each independent companies registered in their respective countries. From the above it is apparent that the appellant and service recipient are similarly placed as the service provider and service recipient in the case of M/s Linde Engineering India Private Limited decided by High Court. Consequently, LLC and Sargent and Lundy LLC (USA) cannot be treated as 'other establishments' of the appellant.

27. Thus, the fundamental charge that the service recipients are 'other establishments' of service providers in terms of in terms of rule 6A (f) and item (b) of Explanation 3 of clause (44) of section 65B of the Finance Act, 1994 is not established. Consequently, the services provided by appellant qualify as Export of Services, under rule 6A of Service Tax Rules, 1994. Thus, as the services provided by the appellant are export of services under rule 6A of Service Tax Rules, 1994, the same cannot be called 'exempted services' under clause 2(e) of the Cenvat Credit Rules, 2004. Since the services provided by the appellant are not exempted services, no demand of reversal of credit can be made under rule 6 of the Cenvat Credit Rule, 2004 and no liability can be fixed on the appellant.

28. In view of above, the demand of service tax, interest and imposition of penalty cannot be sustained. The impugned order is, therefore, set aside and the appeal is allowed.

(Pronounced in the open court on 26.10.2021)

