(2015) 06 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 55426 Of 2014, Service Tax Miscellaneous Application No. 55989 Of 2014

M/s Nortel Networks (I) Pvt. Limited — APPELLANT

Vs

CST, New Delhi — RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:
Finance Act, 1994 — Section 66A, 67
Export of Service Rules, 2005 — Rule 3

Citation : (2015) 06 CESTAT CK 0008

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : N. Venkataraman, Kishore Kunal, Amresh Jain

Final Decision : Allowed/Dismissed

Judgement

1. Heard ld. Sr. Counsel for the appellant and ld. DR Shri Amresh Jain representing the Revenue.

2. Though, the miscellaneous application is listed for hearing, after hearing the matter for some time, we are satisfied that the matter can be disposed

of finally. Heard both parties.

3. Proceedings were initiated by three show cause notices dated 25.10.2010, 14.10.2011 and 04.10.2012 covering the block period 2005-06 to 2009-10,

2010-11 and 2011-12. After due process the impugned order dated 29.08.2014 was passed by the learned Commissioner, Service Tax, New Delhi

confirming a composite demand of Rs.69,48,29,639/-. Out of the above demand, demand for Rs.66,96,09,360/- stands confirmed on the consideration

received by the appellant in respect of services provided to overseas associated entities, in respect of which the appellantâ??s claim for immunity from levy and collection of service tax by reliance on the provisions of the Export of Service Rules, 2005 was negated in the impugned order. A

demand for Rs.2,52,20,279/- stands confirmed under â??Manpower Supply and Recruitment Servicesâ?. The appellantâ??s defence that the

deputation of employees by its overseas associates is in terms of an agreement whereby during the period of service with the appellant the employees

work under the control and supervision of the appellant and therefore the activity falls outside the ambit of the taxable service alleged to have been

rendered, was rejected by the ld. Commissioner. Another defence of the appellant and alternatively that since the service even if as alleged to fall

under the classification asserted by Revenue since it was prior to 18.04.2006, there is no liability to remittance of tax on the appellant under reverse

charge mechanism under Section 66A of the Finance Act, 1994 (the Act), since this provision was introduced w.e.f. 18.04.2006 and prior thereto

there was no legislative authority for levy and collection of tax from the appellant who is merely the recipient of the service. An amount of

Rs.94,24,777/- stands confirmed in the impugned order towards interest liability on non remittance of service tax within the time stipulated, in respect

of book entries made in relation to amounts due to the appellant from its associated enterprises for services provided by the appellant to overseas

entities. Appellantâ??s claim that book entries made prior to 10.05.2008, the date with effect from which necessary amendments were made in

Section 67 whereby the liability for remittance of tax on the basis of book entries made even though no consideration is actually received, cannot have

retrospective effect, was rejected by the impugned order.

4. In our considered view, the impugned order cannot be sustained since every one of the three integers on the basis of which tax stands confirmed

apart from interest and penalty is covered in favour of the appellant by binding precedents. In so far as the demand of Rs.66,96,09,360/- in respect of

services provided by the appellant to the overseas entities is concerned, this activity falls within the ambit of Rule 3 of Export of Service Rules, 2005

as declared in Microsoft Corporation India Pvt. Ltd. vs. CST, New Delhi - 2014 (36) STR 766 (Tri. Del.), Paul Merchants Ltd. vs. CCE - 2013 (29)

STR 257 (Tri. Del.), GAP International Sourcing India Pvt. Ltd. vs. CST - 2014-TIOL-465-CESTAT-DEL, Alpine Modular Interiors Pvt. Ltd. - 2014

(36) STR 454 (Tri. Del). and in Vodafone Cellular Ltd. vs. CCE- 2014 (34) STR 890 (Tri. Mum.).

5. Service tax of Rs.2,52,20,279/- stands confirmed by the impugned order in respect of remittances by the appellant to overseas entities whose

employees were seconded for service with the appellant. The remittances were prior to 18.04.2006. Revenue alleged and confirmed this allegation in

the impugned order that Manpower Supply and Recruitment was provided by overseas entities to the appellant and since the overseas entities did not

have permanent establishment in India, the inherence of tax liability fell on the appellant. This reversal of the normal inherence of tax mandated by the

provisions of the Act was introduced by the legislative dynamics of Section 66A introduced by the Finance Act, 2006 w.e.f. 18.04.2006. Prior to

18.04.2006, a recipient of Manpower Supply and Recruitment service was not liable to remit tax in the absence of any legislative authorisation for levy

and collection of service tax on a recipient of the service. This position in law stands concluded by the decision of the Supreme Court in Indian

National Shipowners Association vs. UOI - 2009 (13) STR 235 (Bom.)= 2010 (17) STR J5 (7SC). Secondment of employees from abroad for serving

in India does not constitute rendering of Manpower Supply or Recruitment service is declared in Computer Science India Pvt. Ltd. vs. CST, Noida -

2014 (35) STR 94 (Tri. Del), Bain and Co. India Pvt. Ltd. vs. CST, New Delhi - 2014 (35) STR 553 (Tri. Del.) and in Volkswagen India Pvt. Ltd. vs.

CCE, Pune - 2014 (34) STR 135 (Tri. Mum). The decision of this Tribunal in Computer Science India Pvt. Ltd. stands confirmed by the Allahabad

High Court in CST, Noida vs. Computer Science India Pvt. Ltd. - 2015 (37) STR 62 (All.).

6. On demonstrable and apparent facts, entries were made in the books of account by the appellant in respect of amounts due from overseas entities,

prior to 10.05.2008. On this count there is no contest. For entries made prior to 10.05.2008 there is no liability to remittance of tax merely on account

of amendment to the provisions of Section 67 of the Act is a principle concluded by decisions of this Tribunal in Sify Technologies vs. CCE - 2011 (21)

STR 252 (Tri. Chennai) and Cecas Services India Pvt. Ltd. vs. CST, New Delhi - 2014 (36) STR 556 (Tri. Del.).

7. On the aforesaid analysis confirmation of the demand of Rs.69,48,29,639/- alongwith interest and penalties as specified in the impugned order,

cannot be sustained. The impugned order is accordingly quashed. The Appeal is allowed. No order as to the costs.

8. Since the appeal is disposed of, Miscellaneous Application No. 55989 of 2014 is dismissed as infructuous.

