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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.112 OF 2017

The Principal Commissioner of
Mumbai Commissionerate ...Appellant
vs.
M/s.Q-India Investment Advisory
Pvt.Ltd. ...Respondent

Mr.M.Dwivedi i/b Mr.J.B.Mishra for the appellant
Mr.Bharat Raichandani i/b UBR Legal for the respondent

CORAM : A.S.OKA, &
A.K.MENON,JJ.
DATE : OCTOBER 3, 2017

P.C.:

1 Heard the learned counsel for the appellant-revenue. An exception has been taken by the appellant to the Judgment and order dated 3rd July 2015 of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `the Appellate Tribunal'). The challenge in the appeal was to the order dated 5th August 2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai. By the order impugned in the appeal before the Appellate Tribunal, the Commissioner (Appeals) allowed the Appeals.

2 In paragraph 6 of the impugned Judgment, CESTAT has observed thus:

“6 I find that original authority has

rejected the refund application filed under Rule 5 against export of services only on the ground that services by the respondent was provided in India therefore it cannot be treated as export of service in terms of Export of Services Rules,2005. I find that it is not under dispute that though the services of analysing, advising, reporting etc carried out in India but the same has been provided to company located in USA therefore service recipient is in foreign country. Whatsoever services were performed by the respondent has been received by foreign company i.e M/s.Tiger Iron LLC Co., USA. Against these services the recipient has been paid the service charges in convertible foreign exchange in terms of Export of Service Rules, 2005. The provisions of taxable services shall be treated as export of services when the following conditions are fulfilled: (i) Service provided from India and used out side India and (ii) Payment of such services is received by the service provider in convertible foreign exchange. As discussed above these two condition have been complied with, service provided by the respondent although provided in India but it was received and used by the foreign person outside India and the service charges have been received by the service provider in convertible foreign exchange. In view of this undisputed facts,

there is no doubt that the output service of the respondent have been exported in accordance with the Export of Service Rules,2005...”

3 The finding recorded in paragraph 6 is on the basis of the undisputed position that though services of analysing, reporting etc have been carried out in India by the respondent but the same have been provided to a company located in USA.

4 Thus, we will have to proceed on the aforesaid undisputed position.

5 The law laid down by the Division Bench of this Court in the case of Commissioner vs. SGS India Private Limited[1] will squarely apply to the facts of the case. The paragraphs 18 and 19 of the said decision reads thus:

“18 The Tribunal has found that the clients of the respondents are located abroad. The tests reports may have been prepared in India. The tests may have been conducted in India. However, the certificates have been forwarded to the clients of the respondent abroad. It is in such circumstances the Tribunal concluded that the facts in the case of Commissioner of Service Tax, Ahmedabad V. M/s.B.A.Research India Limited which is a Tribunal's decision and reported in 2010 (18)

1 2014 (34) S.T.R. 554 (Bom.)

S.T.R. 439 (Tribunal-Ahmedabad) which was followed by the Tribunal's single member in the case of KSH International Pvt.Ltd. vs. Commissioner of Central Excise,Belapur reported in 2010 (18) S.T.R. 404 (Tribunal-Mumbai) are identical.

19 The respondent before us had exported the services by way of testing and analysis in India and transmitting the test report/analysis report to the foreign clients. The service was complete when the report was delivered to the foreign client. Since the delivery of the report to the foreign client was considered to be an essential part of the service that the demand of Service Tax was set aside."

Ultimately, in paragraph 24,the Division Bench held thus:

"24 In the present case, the Tribunal has found that the assessee like the respondent rendered services, but they were consumed abroad. The clients of the respondents used the services of the respondent in inspection/test analysis of the goods which the clients located abroad intended to import from India. In other words, the clients abroad were desirous of confirming the fact as to whether the goods imported complied with requisite specifications and standards.

Thus, client of the respondent located abroad engaged the services of the respondent for inspection and testing the goods. The goods were tested by the respondents in India. The goods were available or their samples were drawn for such testing and analysis in India. However, the report of such tests and analysis was sent abroad. The clients of the respondent were foreign clients, paid the respondent for such services rendered, in foreign convertible currency. It is in that sense that the Tribunal holds that the benefit of the services accrued to the foreign clients outside India. This is termed as `export of service'. In these circumstances, the Tribunal takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as `export of service'. Such an act does not invite a Service Tax liability. The Tribunal relied upon the circulars issued and prior thereto the view taken by it in the case of KSH International Pvt.Ltd. Vs. Commissioner and B.A. Research India Ltd. The case of the present respondent was said to be covered by orders in these two cases. To our mind, once the Hon'ble Supreme Court has taken the view that Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer,

then, it is leviable only on services provided within the country. It is this finding and conclusion of the Hon'ble Supreme Court which has been applied by the Tribunal in the facts and circumstances of the present case."

6 The view taken by the Appellate Tribunal is consistent with the view taken by the Division Bench of this Court in the case of SGS India Private Limited.

7 Hence,no interference is called for. No substantial question of law arises. There is no merit in the appeal. Appeal is dismissed with no order as to cost.

(A.K.MENON,J.) (A.S.OKA,J.)