

:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. A. M. Infoweb Pvt. Ltd., Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-003-2021-22 dated 26/29.11.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third-party information/ data based on Income Tax Returns/ 26AS for the Financial year 2014-15, 2015-16 & 2016-17 of the Appellant. Letter dated 15.07.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15, 2015-16, 2016-17 & 2017-18 (upto June-2017). The Appellant vide their email dated 17.07.2020 informed that the Pune GST department had issued similar notice demanding documents from them with relation to Service Tax pertaining to Financial Year 2015-16 on 22.01.2020 and they had done one submission. However, due to strict lockdown, they would not be able to send the acknowledgement copy of the same till 23.07.2020. Once the lockdown is lifted, they will send the acknowledgement copy of their submission. Their premises registered for S.T.02 is at Pune office. However, no further communication was received from them till issuance of the Show Cause Notice by the department. The Appellant had even not supplied any proof of making any submissions to Pune GST Department for the year 2015-16 as mentioned in their above referred letter. Further, the Appellant had not clarified whether they had made any submissions of the documents for 'the Financial Year 2014-15, 2016-17 & 2017-18 (Upto June-2017) to Pune GST or not.

3. In absence of data/ information, a Show Cause Notice dated 03.09.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 1,88,68,274/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The adjudicating authority vide the impugned order confirmed the demand of Rs. 1,88,68,274/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 1,88,68,274/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a) and 77(2) of the Act and dropped the penalty proposed under Section 77(1)(c).



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5. Being aggrieved, the Appellant has preferred the present appeal on ground that they are engaged in the activities of export of outsourcing services to their clients/ customers situated outside India and also maintaining necessary records related to their export. The Service Tax should be charged only on those services which are provided in taxable territory which is defined under Section 65B(52) of the Act. In Para 3.5 and 3.6 of the impugned order, the Adjudicating Authority mentioned that the activity of the Appellant falls within all the four corners of the Rule 6A of the Service Tax Rules, 1994, thus falls into the category of export of services. They being exporter of the services provided outside the taxable territory hence, charging Service Tax on export services is not justified. The Adjudicating Authority referred to Section 93A of the Act which pertains to rebate of tax paid on input services which are used in export of goods or services and not to the output services, hence charging Service Tax on export services on the basis of misinterpretation of the law/ section is not justified. The Adjudicating Authority referred to the Notification No. 41/2012-Service Tax dated 29.06.2012 wherein procedure and conditions for claiming the rebate of Service Tax paid on input services used in export of goods and services have been laid down. This Notification does not mention anything on charging of Service Tax on export of services, hence charging Service Tax on export services on the basis of misinterpretation of the law/ section is not justified. They have submitted documents related to Financial Year 2014-15 through email on 29.07.2020. They are not liable to Service Tax, interest and penalties as imposed vide the impugned order. During the year 2014-15, their value of taxable service does not exceed Rupees Ten Lakhs. Since the demand of Service Tax is not sustainable, the question of levy of interest and penalty does not arise and they relied on the case of H.M.M. Limited - 1995 (76) ELT 497 (SC), Commissioner of Central Excise, Aurangabad V. Balakrishna Industries - 2006 (201) ELT 325 (SC).

6. Personal hearing in the matter was held on 22.02.2023. CA Shri Vijay Kathe appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the Appellant is exporter of services which are exempt from Service Tax. Section 93A referred by the Adjudicating Authority in Para 3.7 is applicable to export of goods and not for export of services. They have provided copy of audit report and FIRC's before Adjudicating Authority and also enclosed with the appeal. In view of this he requested to set aside the Order-In-Original and to allow the appeal.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not. The Adjudicating Authority at Para 3.5 & 3.6 of the



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impugned order by referring provisions of Rule 6A of the Service Tax Rules, 1994, held that the Appellant is located in India, where the Service Tax Rules, 1994 applicable and the service recipients are outside of India as per invoices. The services provided by the Appellant are not specified in the negative list as per Section 66D of the Act. The services have also been provided outside India. Further, the payment received by the Appellant is in convertible foreign exchange. Thus, the activity of the Appellant falls within all the four corners of the Rule 6A of the Service Tax Rules, 1994.

8. The Appellant produced copies of Form 26AS wherein no income of TDS details is shown except details of tax paid by the Appellant and details of TDS on sale of immovable property. The Appellant also produced copy of audit report for the year 2014-15 wherein at column 9 C of the Directors' report, the details of foreign exchange earnings and outgo of Rs. 15,26,55,939.62 have been mentioned. On verification of invoices submitted, it is seen that they have provided services to Major Media Consulting, Inc, Exact Match Media, LLC, Citizens Disability LLC, First Serve, Insideup Inc, Consumer Ally LLC, Julie LLC, L Asutin Majors, Michelle Pak, Bernstein Liebhard LLP, 360 Partners Holdings LP, Alliance Security Inc, PRGI Inc., G P Internet Marketing Inc, Elite Marketing Group LLC, Sail Rock Services LLC, All Your Leads Needs Inc, Lead Headquarters LLC, Exact Match Media LLC, Anvil Advertising Group LLC, ER Inrteractive LLC, all from United States of America. They have also produced copies of FIRC issued by the respective banks wherein the bill amount has been mentioned in US Dollar. Thus, based the case records, submissions and documentary evidences submitted by the Appellant, I am in agreement of the views/ findings recorded by the lower Adjudicating Authority and hold that the service provided by the Appellant is export of service satisfying the provisions of the Place of Provision of Services Rules, 2012 notified vide Notification No. 28/2012-Service Tax dated 20.06.2012 read with provisions of Rule 6A of the Service Tax Rules, 1994.

9. On going through the case records and submissions made by the Appellant, I have no doubt that the Appellant is providing export services satisfying the provisions of the Place of Provision of Services Rules, 2012 notified vide Notification No. 28/2012-Service Tax dated 20.06.2012, as amended.

10. The place of provision of service has been defined under Place of Provision of Services Rules, 2012 (Notification No. 28/2012-Service Tax dated 20.06.2012) which reads as under:

"3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:"

The provisions of Rule 6A of the Rules are re-produced below for reference:

"6A. Export of services.-

(Signature)



(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)”

On the basis of documents submitted by the Appellant, it is clear that the provider of service i.e. the Appellant is located in the taxable territory and the recipients of service are located outside India. The place of provision of the service is outside India in terms of Rule 3 of the Place of Provision of Services Rules, 2012. The payment has been received in convertible foreign exchange as the ICICI Bank has received the payment in US dollar and the same was remitted to Appellant's bank account in equivalent convertible Indian Rupees. On verification of sample copies of invoices submitted by the Appellant, it is clear that they had issued the invoices having amount either in US Dollar. As all these ingredients are satisfied, the service provided by the Appellant is nothing but export of service. Therefore, the services provided by the Appellant being not provided within taxable territory, are not liable to Service Tax under Section 66B of the Act.

11. I find that the lower Adjudicating Authority has placed reliance on the provisions of Rule 6A(2) of the Rules, 1994 read with Section 93A of the Act, which is re-produced below for reference:

6A. Export of services.-

(1)

(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.

On this, I find that the Rule 6A(2) of the Rules deals with the grant of 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 conditions and limitations as provided by the Notification. The rebate provisions under Section 93A of the Act which are as under:

“SECTION 93A. Power to grant rebate. – Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or



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processing or removal or export of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed or specified by notification in the Official Gazette."

The above provisions speak about grant of rebate of Service Tax paid on taxable services used as input services for providing any taxable services on export of services. This is a beneficial legislation for reversal of tax suffered on input services, based on the concept that taxes should not be exported. This is an additional benefit available to the exporter at his choice. The same does not override the provision under Section 66B to make them applicable outside taxable territory. The exporter cannot be forced to claim rebate of tax on input services, or worse, forced to pay tax on non taxable exported services, that too, with heavy penalty etc. Here, in the case on hand the issue is levy of service tax on export services provided by the Appellant outside taxable territory and not rebate of service tax incidence suffered on input services used for providing export services. Therefore, on conjoint reading of Section 66B, Rule 6A *ibid* with Section 93A *ibid*, I am of considered view that there is no stipulation that a person engaged in export of service has to first pay the Service Tax on the exported output service and then claim just rebate of taxes paid on input services used, in the manner and time specified under the Notification No. 41/2012-Service Tax dated 29.06.2012. These findings by the Adjudicating Authority, after holding the activity as nothing but export of service, are misconceived and untenable.

12. Accordingly, I set aside the impugned order of the Adjudicating Authority holding the Appellant liable to pay Service Tax on exported services. Since the service tax is not leviable, the levy of interest and penalties imposed vide the impugned order are not warranted at all.

13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

[Signature]

[Signature] 23-2-23

आर. एस. बोरीचा / R. S. BORICHA (शिव प्रताप सिंह) / (Shiv Pratap Singh),
अधीक्षक / Superintendent

के. व. एवं सेवा कर अपील, राजकोट आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D. CGST Appeals, Rajkot

To, M/s. A. M. Infoweb Pvt. Ltd., B-3, 3 rd Floor, Cerebrum IT Park, Kalyani Nagar, Pune- 411 014.	सेवा में, मेसर्स ए. एम. इन्फोवेब प्राइवेट लिमिटेड B-3, तीसरी मंजिल, सेरेब्रम आई. टी. पार्क, कल्याणी नगर, पुणे- 411 014.
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प्रतिलिपि :-



- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

