

IN THE ,CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, FKCCI COMPLEX, K.G. ROAD,
BANGALORE 56009.

COURT No. II

DATE OF HEARING: 13/7/2012

DATE OF DECISION: 13/7/2012

Service Tax Appeal No. 2370 of 2010

(Arising out of the Order-in-Appeal No. 270/2010 dated 04.8.2010, passed by the Commissioner of Central Excise (Appeals-II), Bangalore)

For approval and signature:

Honble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental authorities?

Commissioner of Service Tax, .. Appellant

Bangalore.

Versus

M/s Akamai Technologies India Pvt. Ltd. . Respondent

Appearance

Mr. N. Jagdish, Superintendent (AR) for appellant

Mr. Sachin Agarwal, Consultant for respondent.

CORAM: Hon'ble Shri M. Veeraiyan, Member (Technical)

ORDER No.....Dated 13/7/2012

This an appeal filed by the department against the Order-in-Appeal No. 270/2010 dated 4.8.2010, passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents are 100% E.O.U. engaged in providing Information Technology Software Service and Business Auxiliary Service and are paying service tax on the said services. In addition, they also paid service tax on services received by them under the category of Online Information and Data and other services in terms of Section 66A of the Finance Act, 1994.

4.1 They preferred a refund claim of Rs. 2,35,614/- relating to July 2007 under Notification No. 5/2006-NT dated 14.3.2006 in respect of the unutilised credit accumulated due to export of services.

4.2 The claim related to the following services :

(i) Cleaning activity service

(ii) Security Agency Services

(iii) Courier charges

(iv) Repair & Maintenance Service

(v) Cargo Handling Service

(vi) Commercial Training or coaching

(vii) Courier service

- (viii) Internet Telephone service
- (ix) Manpower Recruitment service
- (x) Pager service
- (xi) Rent a cab operator service
- (xii) Telephone service
- (xiii) Air Travel Agent service
- (xiv) Chartered Accountants
- (xv) Clearing & Forwarding Agents
- (xvi) Outdoor catering service

4.3 The original authority rejected the claim on the ground that the services claimed as input services do not have nexus with the services exported by the respondent. On appeal by the party, the Commissioner (Appeals) has allowed the refund of all those services except Air Travel Agent service. Accordingly, he directed the original authority to grant consequential relief to the assessee on submission of Chartered Accountants certificate.

5. The department has challenged the order of the Commissioner (Appeals) mainly on the ground that the Commissioner (Appeals) has no power of remand consequent to amendment to Section 35A (3) of the Central Excise Act, 1944 with effect from 11.5.2001 as held by the Honble Supreme Court in the case of MIL India Ltd. [2007 (210) E.L.T. 188 (S.C.)].

6. The learned Consultant for the respondent submits that the original authority has acted in pursuance of order dated 4.8.2010 of the Commissioner (Appeals) and granted refund amounting to Rs. 2,23,826/- vide Order-in-Original No. 249/2012 dated 08.3.2012.

7. I have carefully considered the submissions and perused the records. The order of the Commissioner (Appeals) is not a remand order and he has clearly held that the refund was available in respect of all services except Air Travel Agent service. Therefore, I do not find any merit in the submission that the Commissioners (Appeals) order is a remand order. In view of the above, the grounds raised by the department challenging the order of the Commissioner (Appeals) are not valid and the decision of the Honble Supreme Court in the case of MIL India Ltd. (supra) does not apply

to the facts of the present case. Further, I find that the original authority has already implemented the order of the Commissioner (Appeals).

8. In view of the above, the appeal is rejected.

(Pronounced and dictated in the open court)

(M. Veeraiyan)

Member (Technical)

/vc/