

Services provided to Foreign Principals for marketing their products in India qualify as an export of service

An important judgment of the Hon'ble CESTAT, Delhi, in the case of **Commissioner of Service Tax, Delhi Vs. Menon Associates [2014-TIOL-885-CESTAT-DEL]** on following issue:

Issue:

Whether the Business Auxiliary Services (“BAS”) provided to Foreign Principals for marketing their products in India qualify as an export of services under the erstwhile Export of Service Rules, 2005 (“the Export Rules”)?

Facts & Background:

Menon Associates (“**the assessee**” or “**the Respondent**”) was engaged in providing marketing services to its Foreign Principals based in UK, Italy and Australia during the period April, 2008 to January, 2009 (“**the period**”), which involved marketing of Principal's products in India. In consideration for the said activity, the assessee was getting commission from its Foreign Principals on which they paid Service tax amounting to Rs.15,49,103/- under BAS taxable under Section 65(105)(zzb) of the Finance Act, 1994. Subsequently, realizing that the services provided by them amounted to export of services in terms of Rule 3(1)(iii) of the Export Rules, they have applied for refund of the Service tax so paid by them.

The refund claim was rejected by the Adjudicating Authority but was allowed by the Learned Commissioner (Appeals), holding that the service of marketing of goods provided to Principals located abroad is export of service in terms of Rule 3(1)(iii) of Export Rules in as much as this service has been used by the persons located abroad for their business and the Respondent have also received the payment in foreign exchange, as is evident from the remittance certificates which showed all the transactions during the period along with the credit advices.

Being aggrieved by the said order, the Revenue preferred an appeal before the Hon'ble CESTAT, Delhi, contending that the Agreements between the Respondent and its Foreign Principals stipulate that the Respondent are to act as their representatives in India and supply information about their products and sell the same within the territory of India. Thus, whatever services had been rendered by the Respondent were meant to be used in India and had, in fact, been used in India and hence, the condition regarding use of the service and the delivery of the service being outside India was not satisfied. The Revenue also pleaded that the remittance advices produced do not mention the invoice no and hence, it cannot be said that the value of the services provided had been received by the Respondent in convertible foreign exchange.

Held:

It was held by the Hon'ble CESTAT, Delhi that ***BAS rendered by the assessee to its Foreign Principals for marketing their product in India qualify as an export of service under the provisions of the Export Rules.***

The Hon'ble CESTAT, Delhi further held that since the clients to whom BAS has been provided are located outside India and the same has been used by them for their business, the following conditions of Rule 3(1) of the Export Rules read with Rule 3(2) thereof are satisfied:

- a. Service has been provided to a recipient located outside India for use in relation to commerce or industry,
- b. Service has been used outside India.

Regarding the other condition prescribed in Rule 3(2) of the Export Rules, requiring the payment to be made in convertible foreign exchange, the Hon'ble CESTAT, Delhi upheld the finding of Learned Commissioner (Appeals) in this regard.

Therefore, the Hon'ble CESTAT, Delhi rejected the contention of the Department and decided the case in favour of the assessee/ Respondent.

Point to note:

Effective from July 1, 2012, the Export Rules are rescinded and replaced by Rule 6A of the Service Tax Rules, 1994 (“**the Service Tax Rules**”) read with the Place of Provision of Services Rules, 2012 (“**the POP Rules**”). Post July 1, 2012, for a service to be treated as an export of service, all the conditions as specified under Rule 6A of Service Tax Rules read with Rule 6(8) of the Cenvat Credit Rules, 2004 needs to be fulfilled. Otherwise, the service will not be treated as an export of service.

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards.

Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Flat No. 34B, Ground Floor, Pocket - 1,
Mayur Vihar, Phase - I,
Delhi – 110091, India
DeskTel: +91-11-22757595/ 42427056
Mobile: +91 9810604563

Email: bimaljain@hotmail.com

Web: www.a2ztaxcorp.com

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