CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 51355 of 2017

(Arising out of Order-in-Original No. 20/2017-ST dated 28.04.2017 passed by the Additional Director General, DGCEI (Adjudication Cell), New Delhi-110066)

TC Global India Pvt. Ltd. **Appellant**
1006, Chiranjiv Tower, 43 Nehru Place
New Delhi-110019.

Versus

Additional Director General, DGCEI, **Respondent**
New Delhi
West Block-VIII, Wing No. 6, 2nd Floor,
R.K. Puram, New Delhi-110066.

Appearance :

Present for the Appellant: Shri B.L. Narasimhan & Shri Kunal Agarwal, Advocates

Present for the Respondent: Ms. Jayakumari, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing : 28/08/2024
Date of Decision : 13/12/2024

Final Order No. 59883/2024

Per: Rachna Gupta:

The present appeal has been filed to assail the order in original No. 20/2017 dated 28.4.2017. The facts, in brief, culminating into the said adjudication order are that the intelligence was received in Zonal unit of Directorate General of Excise intelligence (DGCEI) indicating that the appellant who were earlier known as NN Chopra Consultants Pvt. Ltd. were not paying service tax on the commission received by them from the foreign universities/institutes, for arranging and facilitating provision of Student Recruitment Services to be provided in India to various foreign universities/institutes. During further investigation, it was observed that the universities/institutes in Australia were registered as education service providers on Commonwealth Register of Institutions and Course for Overseas Students (CRICOC) to comply with the requirement of Education Services for Overseas Students (ESOS) Act, the National Code and the universities Australia Code of Practice.

2. After going through the said Codes, department found an opinion that the Australion university/institutes are required to render student recruitment services consistent with the specified norms. For providing such services they entered into agreement with the education agents formerly representing them under the national codes. The appellant had also entered into such agreement with various foreign education service providers for arranging or facilitating recruitment of students as their education agent in lieu of a commission termed as agents fee/consultancy income from the activities agreed to be performed by the appellant. Based on the one of such agreement department with Australian university department formed an opinion that the appellants were providing intermediary services of arrangement and facilitation of student recruitment services to foreign education service providers in India. It is alleged that the appellants were liable to pay service tax on the commission received by them for the said activity. It is alleged that the said activity is taxable, however, the appellant have not paid the service tax. Resultantly a show cause Notice No.

269/2015 dated 17.12.2015 was served upon the appellant proposing a demand of service amounting to Rs. 15,58,58,003/- along with proportionate interest and the appropriate penalties. The said proposal have been confirmed vide the aforementioned order in original. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Advocate Shri B.L. Narasimhan and Advocate Shri Kunal Agarwal, learned Counsels for the appellant and Mrs Jaya Kumari the authorized representative for the respondent department.

4. Learned Counsels for the appellant has mentioned that the impugned Show Cause notice (SCN) was issued without proper enquiry and examination of available records as all relevant documents have not been taken into consideration by the departmental investigating officers. The enquiry has been conducted based merely on one agreement with Australian University which does not represent the activities of the appellant in totality. The appellant has entered into agreements with several foreign university, almost 244 in number, for promotion of those universities by disseminating information about their courses among students in India. For the purpose the appellants have agreed to engage themselves in the activities like advertisement, website promotion, road shows etc. however, without acting as the agent of those foreign universities. Few clauses of only one agreement with University of Technology, Sydney Australia dated 10.10.2012, have been considered by the department to presume that the appellant is acting as intermediatory for the foreign

universities. The context of the agreement and the entire content therein has been absolutely ignored by the department. It is alleged that such a procedure adopted by the investigating team amounts to violation of principle of natural justice as procedural fairness is an inherent part of all departmental actions. Ld. Counsel has relied upon the decisions of Hon'ble High Court Madras in the case of **R. Sunder Vs. Deputy Collector of Customs reported as 1996 (082) ELT 451 Madras.** The decisions of Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank reported as 2009 (2) SCC 570** wherein it is held that the enquiry officer has a duty to arrive at a finding after taking into consideration the entire material brought on record by the parties. The department without conducting the proper investigation has alleged that the appellants are providing 'Intermediary services'. Said allegation is without any basis. The adjudicating authority has wrongly confirmed the demand on the basis of presumptions.

5. Learned Counsels further submitted that Rule 9 of place of Provision of Rules, 2012 has wrongly been applied by wrongly presuming that the appellant while facilitating the students recruitment services to foreign education service providers, since is located in taxable territory and is recruiting students of taxable territory only, the location of service recipient is irrelevant. Learned Counsels impressed upon that it shall be Rule 3 of Place of Provision Rules, 2012 where by the location of service receiver is relevant for deciding taxability shall be applicable. The appellant is

the service provider hence shall not be liable to pay tax nor the appellant is an Intermediary.

6. It is further submitted that the appellants are acting as both Counsellor to students and marketing consultant for university and two activities cannot be mixed to create an artificial connect for raising demands. Learned Counsel impressed upon that the admission of Indian students to any foreign university could only happen when the students clear the examination as required to be cleared for admission in such university. Hence it is wrongly alleged that the appellant has arranged for admission of students in the universities. The services rendered by the appellant are otherwise exempted from service tax in terms of notification no. 25/2012-ST dated 20th June 2012, entry no. 9 thereof, which exempts the services provided an educational institution in respect of education by way of auxiliary educational services. The adjudicatory authority below has failed to take into consideration the said notification.

7. It is further submitted that the foreign consultancy income otherwise amounts to "Export of Services" in terms of Rule 6A of Service Tax Rules, 1994. All the conditions of the said rule, in sub para (a) to (f) thereof, stands duly complied with including that the payment of the services has been received by the appellant, the provider of the service, inconvertible foreign exchange.

8. Finally it is submitted that the extended period of limitation has wrongly been invoked while issuing the impugned Shaw Cause Notice. There is no evidence of alleged suppression of facts. The matter was within knowledge of department for almost two years

decisions of Hon'ble Supreme Court in the case of **Continental Foundation joint venture Vs. CCE 2007 Tax Mann. Com 532 SC** is relied upon. It is also the submission that the appellant has been reversing cenvat credit under Rule 6 (3) of cenvat credit Rule 2014, considering services to foreign university as non taxable services. With these submissions and praying for setting aside the imposition of penalty on the appellant, the order under challenge / order in original is prayed to be set aside and the appeal is prayed to be allowed.

9. While rebutting, the submissions made by the Ld. Counsels for the appellant, learned Department representative for the department has, at the outset, reiterated the findings in the impugned order. It is further submitted that apparently the students' counselling is part and parcel of the main service i.e. 'Students Recruitment Service'. Since the appellant is providing these services like an agent / broker / middle man the appellant is rightly held to be engaged in providing services as 'Intermediary' in terms of rule to 2(f) of Place of Provision of Service Rules, 2012. Hence there is no infirmity in the order under challenge.

10. Learned Departmental Representative further mentioned that exemption benefit of Notification no. 25 of 2012, Entry No. 9 is also not available to the appellants because the said entry exempts the 'Auxiliary Education Services' whereas the appellants is providing 'Intermediary Services'. For the same reason, the activity of the appellant cannot be called as "Export of Service'. Hence it is rule 9 of Place of Provision of Service Rules, 2012 which is applicable with respect to Intermediary Service Provider. According to said rule the

location of service provider is relevant for the purpose of taxability. The appellant, service provider, lies in taxable territory hence the demand of service tax on foreign consultancy income, irrespective received in convertible foreign exchange, has rightly been confirmed against the appellant. Finally submitting about invocation of extended period of limitation while issuing SCN, learned Departmental Representative has mentioned that the appellants, in their ST – 3 returns have declared their services as 'Business Auxiliary Services' and 'Commercial Training or Coaching Services' by concealing that they are also providing the exempted services. No reversal of amount under Rule 6 (3) of Cenvat Credit Rules 2004 has been shown reversed during the period in dispute in their ST – 3 returns. The said act is an act of suppression of facts and misrepresentation thereof. Thus the extended period has rightly been invoked and the penalties have rightly been imposed. With these submissions, learned Departmental Representative has prayed the appeal to be dismissed.

11. As submitted by learned counsel for the appellant, the revenue structure comprises mainly of two income:

a) Consultancy income

  (i) Domestic Consultancy income

  (ii) Foreign Consultancy income

(b) Coaching Income

12. For consultancy, M/s NNCCPL has entered into separate agreements with various Foreign Universities/Institutions for

promotion of those foreign universities amongst Indian students and making them aware about the courses (many as 244 universities). But show cause notice has discussed only one agreement with Australian university. It is further submitted that, the appellant has been discharging its service tax liability on the above incomes except on Foreign Consultancy Income on the grounds that it amounts to Export of Services as per Rule 6A of Service Tax Rules.

13. Learned counsel impressed upon the nature of service submitting that M/s MNCCPL suggest to the students the most suitable option for education in Foreign University/Institutes, based on the information provided by the students like marks, preferred destination/course/university etc. One the student is convinced, he is advised to approach their Branch Office along with all the documents required for admission

14. Various agreements with different foreign university are annexed on record. The scope of service appears to be mainly as follows:

15. The services to be provided by the Consultants-Advisor will include:-

(i) Promotion of courses of study as well as associated services which are notified by the American University of Barbados time-to-time;

(ii) To give wide publicity of courses and faculties for the medical courses notified by American University of Barbados subject to clause 10 of this agreement;

(iii) Publicity through various modes including electronic media viz. website etc. and other appropriate promotional channels so as to build the brand value of the American University of Barbados, with a view to attract students for admission;

(iv) On the website of the consultant advisor, American University of Barbados will be displayed for student's attention and likewise American University of Barbados will carry the link of consultant advisor;

(v) To make all efforts leading to maximum admission of students by providing publicity, guidance and counseling as well as other related activities;

(vi) To provide assistance in fulfilling of the admission procedure as per prospectus and guideline issued by the American University of Barbados including cooperating and providing assistance in completing requisite formalities to the prospective students for getting the Visa and journey etc. in connection with admission;

(vii) To guide the students for depositing the tuition and other fee directly to American University of Barbados in conformity with the rules and procedure relating to foreign transactions;

(viii) To ensure that fees payable to the American University of Barbados as per rules and regulations laid down by the American University of Barbados are sent by the student directly to the American University of Barbados;

(ix) The consultant advisor must submit all applications of the prospective candidates reflecting all requisite details like family, home address and contact details (including E-mail address) to the American University of Barbados as desired time-to-time.

This is otherwise apparent from statement of Ms. Kalpana, the counselor of appellant where she stated that :

16. M/s MNCCPL performs Road shows thrice a year at various places for foreign University wherein representatives of various University also participates. Further students also come directly to the branch offices (all over India) going through M/s MNCCPL advertisements, Exhibition, website thechopras.com, previous references etc. She has also stated that once students receive the registration enquiry having students details, they feed the essential information like student name, address, education, Marks preferred destination/course/university in the same in CCPL software. This software automatically generates a unique ID of the student. Thereafter on the basis of information fed, it analysis the best suitable option to match the student preference. On the basis of choices of Universities selected by the student, out of the matching reports, appellant further provide them the checklist Form and application forms of selected Universities along with other details like campus area, fees durations etc. **Students are further advised to pay application fees directly to these universities**. Further after certification of all relevant documents and checking of

University admission form the concerned branch office of M/s NNCCPL places its stamp on the Agency detail column of University form and send the same (as per checklist) directly to the University via email or appellant's portal. After the University checked the applicability of the student and if they are eligible as per their requirement they send an unconditional/conditional offer to admission to the student through us having offers, fees structure etc. which it accepted. M/s NNCCPL advise student to apply for visa which is done by them paper base at VFS Centres. Once the Visa is cleared student goes to the respective foreign university for studies as per schedule. Same is the testimony of Harvinder Singh Anand (DGM of M/s Chopra Group) of appellant. 18. From the above testimony it is clear that appellant is just a facilitator for students in Indian and is supporting the foreign universities. But the department concluded that the activities undertaken by the assessee including arrangement and facilitation of student recruitment services provided to Foreign Education Services Providers are classifiable under to Intermediary services' as defined in Rule 2(f) of the Place of Provision of Services Rules, 2012. However, the appellant throughout treated this activity as 'Export of Service' which invites no service tax liability.

17. In the light of above observation vis-à-vis facts, the question to be adjudicated, therefore is:

Whether the services rendered by the appellant to overseas universities/colleges amounts to 'Export of Service' as contended by appellants or it is 'intermediary service' as alleged by the department.

18. Foremost we check the definition ‘intermediary’ and that of ‘Export of Service’ ‘Intermediary’ has been defined in Rule 2(f) of Place of Provision Rules, 2012 as under:

> "intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account”.

Thus, to be an intermediary, the following criterias are to be fulfilled:

(a) intermediary should be a broker or an agent or similar person by whatever name called.

AND

(b) such person is undertaking either of the two functions:

(i) Arranges a provision of a service (hereinafter called the 'main' service) between two or more persons:

(ii) Facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons:

19. At the outset it is important to mention that the phrase 'any other person’ in the definition has not to be read in absolute isolation else the existence of the first two words- agents or brokers would have no relevance. By applying the principle of "Noscitur a Sociis" and "Ejusdem generis, the nature of any person has to take its Colour from the genre of persons specified in the definition clause. If the word is preceeded by a set of words, the general word must be read in context of the preceeding or surrounding words to provide a gainful meaning to the definition. Thus phrase ‘any other person’ has to be read as person like agent or broker.

20. Wharton's Law Lexicon, 16 Edition defines agent as follows:

> "Agent, a person acting for another, whether by his express or implied authority, the general rule being, that whatever a person may do himself, that he may, as 'principal,' authorize another to do for him, and in accordance with the maxim, qui facit per alium facit per se, to fix him with the same liability in contract or tort as f he had done it himself."

21. Broker has been defined by the same referencer as under:

> "Broker [fr. broceur, Fr., a person who breaks into small pieces), (1) an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation, by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally: (2) and, more commonly, an agent employed by one party only to make a binding contract with another.

As evident above, the common aspect in both the above engagements is the relationship of agent-principle. This relationship has been coded in Indian Contracts Act, 1872 and has binding implications for both the parts viz. agent as well as principle. We shall now explain the relationship between the agent and principle for better understanding of this engagement and its application to NNCCPL contracts.

22. The law of agency as defined in Contracts Act, 1872 is as follows:

> "An "agent" is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

23. The distinction between the position of an agent a servant and an independent contractor is well known and, has been noted by the Supreme Court in **Lakshminarayan Ram Gopal and Son Ltd. v. Govt. of Hyderabad, 1955-1 SCR 393 at page 401** : (AIR 1954 SC 364 at page 367) by reference to the statement of the law contained in Halsbury's Laws of England Hailsham Edition--Volume 1 at page 193. That statement of law, which is now

contained in paragraph 350 of Halsbury's Laws of England, Simonds Edition, Volume 1, is as follows:

> "An agent is to be distinguished on the one hand and on the other from an independent contractor. A servant acts under the direct control and Supervision of his master, and is bound to conform to all reasonable orders given him in the course of his work: an independent contractor on the other hand, is entirely independent of any control or interference, and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though, bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal."

24. An agent is ordinarily a person authorised by a candidate to act on his behalf on general authority conferred on him by the candidate. Ordinarily, the agent has to act under the instructions given to him, being under his control as was held in **Chandrakanta Gopal v. Sohan Singh Jodh Singh Kohli** reported in **(1996) 1 SCC 378 (383).**

25. Reverting back to the facts of the present case we observe that in all contracts with the foreign universities, it is explicitly written that NNCCPL is not an agent of such universities. There is a clear denial of agent-principal relationship in the Agreement itself. The different agreements have specified it differently as:

<u>Brunel University London Agreement</u>

(1) Name of agreement to the Consultant shall have no power to enter into any contract on behalf of the University or issue any others whether in writing or orally to potential Applicants and/or any students of the university.

(2) The Consultant warrants that it will make no representations to potential students as to the likelihood of success of their applications to the University or, if accepted, as to the

likelihood of success in their courses of study undertaken at the university. The Consultant shall indemnify and keep indemnified the University from and against any loss damage or liability suffered and legal fees and costs incurred by the University as a result of the Consultant's breach of this clause.

Insearch Partner Program Agreement

(3) The Partner is not an agent of insearch and has no authority to any contract or other legal obligation, incur any liability on Insearch's behalf, or receive any money (including without limitation fees) on Insearch's behalf. For the avoidance of doubt, there is no legal relationship of any kind between the partner and any related entity or joint venture partner of Insearch, including but not limited to the University of Technology, Sydney.

American University of Barbados

(4) Not to describe himself as an Advisor or representative of the American University of Barbados or its Education Group except as expressly authorized by this Agreement and in particular not to represent himself as capable of admitting students for the courses or as being able to guarantee enrolment.

(5) Each party enters into this Agreement as an independent contractor and neither the Agent nor its officer, employees, servants or agents are employees of UTS.

Similar all the covenants in all other agreements, it is clear from above discussion that the appellant is not the agent of the foreign universities nor is their broker.

26. Further we observe that M/s NNCCPL performs following activities of creating awareness/promotion of courses offered by foreign universities/institutions:

Road shows

Radio shows

Education fair and exhibitions

Advertisements on display at:

Metro stations

Road pillars

Cinema Advertisements also by way of leaflet distribution, magazine distribution, conduct seminars and workshops in school and colleges, online marketing and television shows. Thus, the marketing activities for foreign universities range from outdoor publicity to in person publicity to door to door surveys etc. They undertake the same to promote the knowledge about the courses offered by such universities. In this arrangement the beneficiary of these activities are the foreign universities. Hence the appellant, while rendering these activities is the provider thereof and the foreign universities are the recipients. Resultantly, we hold that appellant was not rendering services as 'Intermediary'.

27. We now peruse (Rule 6A of Service Tax Rules, 1994) and which Export of service which reads as:

"**RULE 6A (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 establishment of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.

(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."

28. Therefore, if following conditions of Rule 6A will get satisfied, then the service will amount to 'Export of service' and hence, it will be outside the ambit of service tax.

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 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.

29. All the conditional as laid down in Rule 6A of Service Tax Rules, 1994 are held satisfied in the present ca se. Though department's stand is that place of provision of service is taxable territory as the services are provided to Indian students. But we

hold that services as mentioned above have been rendered by the appellants for promotion and publicity of foreign universities among Indian students. The agreement for the same is between appellant and foreign universities. There is no agreement of appellant with Indian students. The amount in question is received from foreign universities in convertible foreign exchange and not from Indian students. The students are paying fees in case of getting admission, to the foreign university only. These observations are sufficient for us to hold that Indian students are not the service recipients of the impugned services rendered by the appellants. The place of provision is wrongly held to be in taxable territory (India). Hence foreign consultancy services provided by an assessee amounts to 'Export of services' and they are outside the ambit of service tax and they are wrongly alleged as being rendered by intermediary.

30. The view taken by us gain support from the earlier decisions, which we would like to take note of. The fundamental principle enunciated by the Apex Court in All India Federation of Tax Practitioners Vs. Union of India - 2007 (7) STR 625 (SC) is that service tax is a destination based consumption tax, leviable only on services provided within the country. The provision of Section 66B of the Act, explicitly provides that for service tax to be levied in terms of Chapter V of the Act, the service had to be provided within the taxable territory. But in case where services are provided outside the 'taxable territory', where the service provider is in India and the recipient of service is located outside India, in normal parlance it would be export of service.

31. Coming to "export of service" post 1st July, 2012, the basic principle to be seen is who is the recipient of the service, whether the place of provision of service is outside India and the party abroad is deriving benefit from the service in India. The High Court of Delhi in Verizon Communication India Private Limited Vs Assistant Commissioner, ST, Delhi - 2018 (8) GSTL 32 (Del.) observed that the recipient of the service is determined by the contract between the parties and who has the contractual right to receive the ST/53328/2018 service and who is responsible for the payment for the service and the department has lost sight of this essential difference. The High Court of Delhi then considered the decision of the Larger Bench of the Tribunal in Paul Merchants Ltd. Vs. CCE, Chandigarh - 2012 (12) TMI 424-CESTAT-DEL.-LB which was rendered with reference to ESR, 2005 where the assessees were intermediary agents, providing money transfer services to foreign travellers, who were the end user on behalf of their principals and the contention of the department that this did not qualify as export of service was rejected referring to the CBEC clarification letter no. 334/1/2019- TRU dated 26.02.2010 that as long as the party abroad is deriving benefit from service in India, it is an export of service. The relevant paras of the decision in Verizon Communication India Private Limited (supra) is quoted as under:-

> "51. In the considered view of the Court, the judgment of the CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) is right in holding that "The service recipient is the person on whose instructions/orders the service is provided who is obliged to make the payment from the same and whose need is satisfied by the provision of the service." The Court further affirms the following passage in the said judgment in Paul Merchants Ltd. v. CCE, Chandigarh (supra) which correctly explains the legal position :

"It is the person who requested for the service is liable to make payment for the same and whose need is satisfied by the provision of service who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India, who is liable to make payment for these services and who used the service for his business, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the place of performance of Service."

52. In Vodafone Essar Cellular Ltd. v. CCE (supra), the CESTAT explained the arrangement lucidly in the following words :

"Your customer's customer is not your customer. When a service is rendered to a third party at the behest of your customer, ST/53328/2018 the service recipient is your customer and not the third party. For example, when a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend."

32. On similar issue where commission was received from foreign universities for promotion and marketing of universities, the Tribunal in **Study Overseas Global (P) Ltd Vs. Commissioner of Service Tax, Delhi, 2017 (3) GSTL 443 (Tri.-Del.),** observed:

"8. Thus, the Export of Services being destination based is subject to Tax. Further, mere fact that the appellant has been promoting and marketing foreign universities within India and then getting prospective students enrolled for various courses in those universities does not mean that services to foreign universities were consumed within India. There is no dispute that service recipients are foreign universities and they are located outside India and payment for such services has been received in foreign currency. From the totality of facts and circumstances, there is no doubt that these services were provided from India and used outside India.

33. Though the department has invoked Rule 9 of Export of Service Rules according to which provider of service is to be considered. But we hold that services of M/s NNCCPL falls within the ambit of Rule 3 of Place of Provision Rules, 2012, according to which location of service recipient is relevant. Foreign universities the service recipient, are located outside the taxable territory. Therefore place of provision of impugned Foreign Consultancy

Service is outside the taxable territory. Accordingly, we hold that show cause notice has wrongly invoked Rule 9 of Place of Provision Rules. Demand confirmed invoking said rule is therefore, liable to be set aside. The issue is otherwise no more res integra as being already dealt with by this Tribunal Principal bench in the case of **CHF Industries (P) Ltd. Vs. Commissioner CGST, Noida – 2021 (10) TMI 641-CESTAT Allahabad, Macquarie Global Services Ltd. Vs. CCE & ST, Gurgaon-1 – 2021 (12) TMI 481 - CESTAT Chandigarh** and **RS Granite Machine Tools Pvt. Ltd. Vs. CGST and CE (Chennai-North) – 2019 (1) TMI 1179 – CESTAT Chennai.**

34. Finally coming to plea of invocation of extended period, we observe that a perusal of Section 73 of Finance Act, 1994 indicates that to sustain a show cause notice beyond a period of one year and up to a period of 5 years, it has to be established that the service tax has not been paid or short-paid, by reasons of either fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Act or Rules made there under, with intent to evade payment of duty. All the above elements must be undertaken by the assessee with intent to evade tax. The understanding has been upheld in the case of **Cosmic Dye Chemical v CGE, Bombay reported as 1995 (75) ELT 721 (SC)** wherein the Hon'ble Supreme court while discussing Section 11A of the Central Excise and Salt Act, 1944 (which is parimateria with section 73 of the Act) has held as under:

> "The main limb of Section 11A provides limitation of six months. In cases, where the duty is not levied or paid or short levied or short-paid or erroneously refunded, it can be appropriately recovered by the appropriate officer within six

> months from the relevant date. (The expression 'relevant date' has been defined in the Section itself). But the said period of six months gets extended to five years where such non-levy, short-levy etc. is "by reason of fraud, collusion, or any wilfulmis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty……..”
>
> No so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e, to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words 'mis-statement or suppression of facts" which means intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A, Mis statement or suppression of facts must be wilful,"

The above decision clearly pronounces that the intent to evade tax is must in any of the actions of the assessee. In present case, NNCCPL has been registered with the Service Tax department and has been filing its service tax returns regularly. Payment of Service Tax as applicable on them has clearly been discharged by them vis-à-vis domestic consultancy Income and Coaching Services. The appellant is held not liable to pay service tax with reference to foreign Consultancy Income i.e. the income received from foreign universities for promoting and publicizing their business in India, as discussed above. We hold that there is no evasion of tax, question of having any intent to evade is redundant when the tax is already paid. Thus we hold that the show cause notice is barred by time.

35. In the light of entire above discussion, we held that appellants are wrongly held as intermedia in terms of Rule 2(f) of Place of Provision Rules, 2012. The services rendered amounts to 'Export of Service' in terms of Rule 6A of Service Tax Rules. Hence Rule 9 of Place of Provision Rules has wrongly been invoked. Appellant is, therefore, not liable to pay

service tax on foreign Consultancy fee. The show cause notice is otherwise held to be barred by time. Resultantly, the order under challenge is set aside and the appeal is hereby allowed.

(Pronounced in open Court on 13.12.2024)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

RM