CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 86242 of 2023
In
Service Tax Appeal No. 85678 of 2016

[Arising out of Order-in-Appeal No. Mum-II-STAX-000-APP-75 to 78-15-16 dated 28.12.2015 passed by the Commissioner of Service Tax-II (Appeals), Mumbai]

Flipkart Internet Pvt. Ltd. **.... Appellant**
14th Floor, R tech Park,
Goregaon (E),
Mumbai 400 063.

Versus

Commissioner of Service Tax-II, Mumbai **.... Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

WITH

Service Tax Miscellaneous Application No. 86243 of 2023
In
Service Tax Appeal No. 85679 of 2016

[Arising out of Order-in-Appeal No. Mum-II-STAX-000-APP-75 to 78-15-16 dated 28.12.2015 passed by the Commissioner of Service Tax-II (Appeals), Mumbai]

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9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

WITH

Service Tax Miscellaneous Application No. 86244 of 2023
In
Service Tax Appeal No. 85680 of 2016

[Arising out of Order-in-Appeal No. Mum-II-STAX-000-APP-75 to 78-15-16 dated 28.12.2015 passed by the Commissioner of Service Tax-II (Appeals), Mumbai]

Flipkart Internet Pvt. Ltd. **.... Appellant**
14th Floor, R tech Park,
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Mumbai 400 063.

Versus

Commissioner of Service Tax-II, Mumbai **.... Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

WITH

Service Tax Miscellaneous Application No. 86245 of 2023
In
Service Tax Appeal No. 85682 of 2016

[Arising out of Order-in-Appeal No. Mum-II-STAX-000-APP-75 to 78-15-16 dated 28.12.2015 passed by the Commissioner of Service Tax-II (Appeals), Mumbai]

Flipkart Internet Pvt. Ltd. **.... Appellant**
14th Floor, R tech Park,
Goregaon (E),
Mumbai 400 063.

Versus

Commissioner of Service Tax-II, Mumbai **.... Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai 400 012.

APPEARANCE:

Shri Shamik Gupta, Advocate for the Appellant

Shri S.B.P. Sinha, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 86069-86072/2026

Date of Hearing: 24.08.2026
Date of Decision: 24.08.2026

PER: SANJIV SRIVASTAVA

These appeals are Order-in-Appeal No. Mum-II-STAX-000-APP-75 to 78-15-16 dated 28.12.2015 passed by the Commissioner of Service Tax-II (Appeals), Mumbai. By the impugned order, the Commissioner (Appeals) has dismissed the appeals filed by the appellant against orders-in-original as detailed below:-

S.No.	Order-in-Original No. & date	Refund amount rejected (in Rs.)
1.	2210 R(KHA)/10-11 dated 26.10.2010	2,57,693
2.	2213 R(KHA)/10-11 dated 26.10.2010	8,36,973
3.	2211 R(KHA)/10-11 dated 26.10.2010	42,00,478
4.	2212 R(KHA)/10-11 dated 26.10.2010	14,40,421

2.1 The appellant is registered with the Service Tax Department for providing taxable services. They have filed four refund claims claiming refund in terms of Rule 5 of the Cenvat Credit Rules, 2004 for the period and the amount detailed in table below:-

S.No.	Refund claim date	Period	Amount (in Rs.)
1.	31.03.2009	October 2008 to March 2009	8,36,973
2.	24.09.2009	October 2008 to March 2009	42,00,478
3.	31.03.2009	April 2008 to September 2008	14,40,421
4.	31.03.2009	April 2008 to September 2008	2,57,693

2.2 In the refund claims were filed by the appellant they have claimed that they had exported certain output services to its affiliate eBay International AG (eBay AG) and as these were the services exported and they were not in a position to utilize the CENVAT credit availed/accumulated on account of such exports, they were claiming refund. The refund claims were accompanied with the following documents:-

(i) Application in Form 'A'

(ii) Particulars of input service tax credit eligible for refund.

(iii) Copy of agreement between eBay Motor India and eBay AG.

(iv) Copies of invoices issued to service recipient i.e. eBay AG.

(v) Copy of FIRC evidencing realization of export proceed.

(vi) ST-3 Return for October 2008 to March 2009.

(vii) Attested copy of CENVAT Credit Register for the relevant period showing availment and utilization of credit.

(viii) Attested copy of statement of input invoice for the relevant period.

2.3 The refund claims were scrutinized and show cause notices were issued to the appellant proposing to reject the refund claims stating the following grounds:-

A. Services provided by the Noticee do not qualify as export in terms of Rule 3(2) of the Export Rules:

(i) As the same are provided to end users of service located in India for and on behalf of the foreign principal.

(ii) the service was received in India by Indian customers.

B. Input service namely "payroll processing, corporate tax fringe benefit, inland couriers, charge for office service, professional fees, etc." have not been used in the so called export of output service. Accordingly, CENVAT credit amounting to Rs.7,85,608/- available with respect to the above stated input service in sought to be denied.

2.3 The refund claims were adjudicated as per the orders-in-original referred in para 1 above. Aggrieved appellant filed four appeals before the Commissioner (Appeals), which have been rejected by the common impugned order, the subject matter of these appeals. Aggrieved appellant has filed these appeals before the Tribunal.

3.1 We have heard Shri Shamik Gupta, Advocate for the appellant and Shri S.B.P. Sinha, Authorized Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that all the four refund claims have been rejected by the impugned order for the reason that the original and the appellate authority found that the services provided by them do not qualify as export of services. They further submitted that the reason for rejection goes contrary to the clarification issued by the Board vide Circular No. 111/05/2009-ST dated 24.02.2009. As the services provided by them, as per the Board circular, are in the category of export of services, the refund claims could not have been rejected for this reason.

3.3 Arguing for the Revenue, learned Authorized Representative submits that the appellant had entered into service agreement with eBay AG for providing the following services:-

- Co-ordinate promotion with vendors for marketing and promotion.
- Co-ordinate with vendors in India with whom eBay International AG proposes to contract and also review the agreements from a commercial and tax perspective before they are sent to eBay AG for final approval and signatures.
- Complete the CAS (Contract Authorization Sheet) & FAP (Financial Authorization Policy) checklists (provided by eBay G) in respect of each agreement before these can be sent to eBay AG for final approval and signature.
- Provision of market data relating to the local committee Industry to eBay.
- Collection and remittance of revenue pertaining to eBay AG's business and

- Operating a helpdesk which attends to queries of eBay AG's customers.
- Considering the transactions with eBay AG, the appellant has filed four refund applications claiming refund of unutilized credit. On examination of the refund applications, it was found that the services do not qualify as export of services for the purpose of admitting refund claims under Rule 5 of CENVAT Credit Rules. Reliance is placed on the decision of this Tribunal in the case of *Croda India Company Pvt. Ltd. vs. Commissioner of Service Tax-VII, Mumbai [Final Order No. A/85916/2019 dated 17.05.2019]*.

4.1 We have considered the impugned order along with the submissions made in appeals and during the course of arguments.

4.2 The impugned order records the findings as follows:-

"9. I find that sub-rule (2) of rule 3 of Export of Services Rules, 2005 prescribes that the provisions of any taxable service shall qualify as 'export of service' when the following conditions are satisfied:

(a) such service is delivered outside India and used outside India; and

(b) payment of such service provided outside India is received by the service provider in convertible foreign exchange.

10. The clarification issued by the CBEC vide circular No. 111/5/2009-S.T., dated 24-2-2009 reads as below.

> *"Subject: Applicability of the provisions of the Export of Services Rules, 2005 in certain situations.*
>
> *In terms of rule 3(2)(a) of the Export of Services Rules 2005, a taxable service shall be treated as export of service if "such service is provided from India and used outside India". Instances have come to notice that certain activities, illustrations of which are given below, are denied the benefit of export of services and the refund of service tax under rule 5 of the Cenvat Credit Rules, 2004 [Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006] on the ground that these activities do not satisfy the condition 'used outside India', -*
>
> *(1) Call centres engaged by foreign companies who attend to calls from customers or prospective customers from all around the world including from India:*
>
> *(ii) Medical transcription where the case history of a patient as dictated by the doctor abroad is typed out in India and forwarded back to him;*
>
> *(iii) Indian agents who undertake marketing in India of goods of a foreign seller. In this case, the agent undertakes all activities within India and receives commission for his services from foreign seller in convertible foreign exchange;*

(iv) Foreign financial institution desiring transfer of remittances to India, engaging an Indian organisation to dispatch such remittances to the receiver in India. For this, the foreign financial institution pays commission to the Indian organisation in foreign exchange for the entire activity being undertaken in India.

The departmental officers seem to have taken a view in such cases that since the activities pertaining to provision of service are undertaken in India, it cannot be said that the use of the service has been outside India.

2. The matter has been examined. Sub-rule (1) of rule 3 of the Export of Services Rule, 2005 categorizes the services into three categories:

(i) Category I [Rule 3(1)(i)]: For services (such as Architect service, General Insurance service, Construction service, Site Preparation service) that have some nexus with immovable property, it is provided that the provision of such service would be 'export' if they are provided in relation to an immovable property situated outside India.

(ii) Category II [Rule 3(1)(ii)]: For services (such as Rent-a-Cab operator, Market Research

Agency service, Survey and Exploration of Minerals service, Convention service, Security Agency service, Storage and Warehousing service) where the place of performance of service can be established, it is provided that provision of such services would be 'export' if they are performed (or even partly performed) outside India.

(iii) Category III [Rule 3(1)(iii)]: For the remaining services (that would not fall under category I

or II), which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and Other Financial services, Business Auxiliary services and Telecom services), it has been specified that they would be 'export',-

(a) If they are provided in relation to business or commerce to a recipient located outside India; and

(b) If they are provided in relation to activities other than business or commerce to a recipient located outside India at the time when such services are provided.

3. It is an accepted legal principle that the law has to be read harmoniously so as to avoid contradictions within a legislation. Keeping this principle in view, the meaning of the term 'used outside India' has to be understood in the context of the characteristics of a particular category of service as mentioned in sub-rule (1) of rule 3. For example, under Architect service (a Category I service [Rule 3(1)(i)]), even if an Indian

> *architect prepares a design sitting in India for a property located in U.K. and hands it over to the owner of such property having his business and residence in India, it would have to be presumed that service has been used outside India. Similarly, if an Indian event manager (a Category II service (Rule 3(1)(ii)]) arranges a seminar for an Indian company in U.K. the service has to be treated to have been used outside India because the place of performance is U.K. even though the benefit of such a seminar may flow back to the employees serving the company in India. For the services that fall under Category III [Rule 3(1)(iii)), the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as thebenefits of these services accrue outside India. In all the illustrations mentioned in the opening paragraph, what is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well.*
>
> *4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned. These instructions should be given wide publicity among trade and field officers.*

11. The CBEC, in Para 2 (iii) of the Circular, has clarified that "For the remaining services (that would not fall under category I or II, which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and Other Financial Services, Business Auxiliary Services and Telecom services), it has been specified that they would be 'export':

(a) If they are provided in relation to business or commerce to a recipient located outside India; and

(b) If they are provided in relation to activities other than business or commerce to a recipient located outside India at the time when such services are provided.

12. I find that CBEC, has been candid in stating that for the services that fall under Category-III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of service should accrue outside India. Thus, for the Category-III Services [Rule

3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India. What is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well.

13. However, CBEC vide Circular No. 141/10/2011-TRU dated 13.05.2011 has further clarified the expression "used outside India" appearing in Rule 3(2)(a) of ESR as under:

> *"Subject: Applicability of the provisions of the Export of Services Rules, 2005 in <u>certain situations</u>*
>
> *Circular No. 111/05/2009-ST was Issued on 24th February 2009 on the applicability of the provisions of the Export of Services Rules, 2005 in certain situations. It had clarified on the expression "used outside India" in Rule 3(2)(a) of the Export of Service Rules 2005 as prevalent at that time. The condition specified in Rule 3(2)(a) has since been omitted vide Notification 06/2010-ST dated 27 Feb 2010. In the context of the stated Circular an issue has been raised, whether for the period prior to 28.2.2010 the requirement that the service should be "used outside India" invariably means the location of the recipient?*
>
> *2. In the stated Circular it was inter-alia, clarified that the words, "used outside India" should be interpreted to mean that "the benefit of the service should accrue outside India". It is well known that services, being largely Intangibles, are capable of being paid from one place and actually used at another place. Such arrungements commonly exist where the services are procured centrally eg audit, advertisement, consultancy, Business Auxillary Services. For example, it is possible to obtain a consultancy report from a service provider in India, which may be used either at the location of the customer or in any other place outside India or even in India. In a situation where the consultancy, though paid by a client located outside India, is actually used in respect of a project or an activity in India the service cannot be said to be used outside India.*
>
> *3. It may be noted that the words "accrual of benefit" are not restricted to mere impact on the bottom-line of the person who pays for the service. If that were the intention it would render the requirement of services being used outside India during the period prior to 28.2.2010 infructuous. These words should be given a harmonious interpretation keeping in view that during the period upto 27.2.2010 the explicit condition was provided in the rule that the service should be used outside India. In other words, these words may be interpreted in the context where the effective use and enjoyment of the service has been obtained. The effective use and*

enjoyment of the service will of course depend on the nature of the service. For example effective use of advertising services shall be the place where the advertising material is disseminated to the audience though actually the benefit may finally accrue to the buyer who is located at another place.

4. This, however should not apply to services which are merely performed from India and where the accrual of benefit and their use outside India are not in conflict with each other. The relation between the parties may also be relevant in certain circumstances, for example in case of passive holding/subsidiary companies or associated enterprises. In order to establish that the services have not been used outside Indla the facts available should inter-alia, clearly indicate that only the payment has been received from abroad and the service has been used in India. It has already been clarified thai in case of call centers and similar businesses which serve the customers located outside India for their clients who are also located outside India, the service is used outside India.

5. Besides above, to attain the status of export, a number of conditions need to be sutisfied which are specified in Rule 3(1) and Rule 3(2) of Export of Services Rules 2005. The Circular No.111/05/2009-ST explained the expression "used outside India" only and the other conjunct conditions, as applicable from time to time, also need to be independently satisfied for availing the benefit of an export."

14. In the present case, it is undisputed that the Appellants' activities are considered as taxable services under Business Auxiliary Service' which is covered under Category-III Services as described in the CBEC's Circular dated 24.02.2009. It is also seen from the service agreement between the appellants and eBay International AG that eBay International AG at its own cost and expense shall at all times during the Term of Agreement would provide Service Provider with such training in the eBay Online Environment, necessary for Service provider to perform its duties; Continue the development and enhancement of the eBay Online Environment. It is uncontroverted fact on record that the website www.ebay.in is available for buyers and sellers of goods in India alone, which is supported from the evidences on web world that respective countries have got separate websites like ebay.uk, ebay.com, etc. No sale or buying activities taking place elsewhere in the world are being catered or serviced by the website www.ebay.inand by the appellant in this case, atleast no such evidence has been produced by the appellant to thecontrary. I have gone through the sample copies of invoices submitted by the appellant, and find that the same indicates the description of services as "cost + April 2008", "cost+ May 2008" *etc. which do not throw any light on the exact nature of the services provided to eBay AG by the appellant. Hence, it is convenient to infer that the activities of buying and sellingof any products through www.ebay.inhad taken place in India, and also the services have been provided by the appellants to eBay AG in relation to the activities in India. This is also supported from the agreement copy which restricts the operation at the hands of the appellants within the territory of the service provider (appellants) i.e. India. Though the benefits of the activities rendered by the appellant could possibly enhances the business and sale/purchase of goods through the website which is maintained by eBay AG and the payment for the said services of the appellant in India is received in convertible foreign exchange from eBay AG located outside India, yet in terms of the CBEC Circular Dated 13.05.2011, which clarified the term "used outside India", the instant services cannot be categorized as "export of service" as envisaged under Rule 3(2) of the Export of Service Rules, 2005.*

15. The appellants have taken a plea that the benefit of the services rendered by them accrues to eBay AG outside India therefore the instant service qualifies as export of service. I find that the said circular dated 13.05.2011 has categorically stated in para 3 that "the words "accrual of benefit" are not restricted to mere impact on the bottom-line of the person who pays for the service. If that were the intention it would render the requirement of services being used outside India during the period prior to 28.2.2010 infructuous. These words should be given a harmonious interpretation keeping in view that during the period upto 27.2.2010 the explicit condition was provided in the rule that the service should be used outside India. In other words, these words may be interpreted in the context where the effective use and enjoyment of the service has been obtained. The effective use and enjoyment of the service will of course depend on the nature of the service." The clarification is self explanatory which has to be applied to the facts of each case for deciding the dispute. A step further, the said circular dated 13.05.201lin para 2 to 4 has clarified the term "used outside India" which prevailed in the said rule 3(2) of ESR at the material time by citing certain examples for better understanding. It has categorically explained as to how the said term clarified vide circular dated 24.02.2009 should be interpreted. It is also specifically stated in the circular of 2011 that the relation between the parties may also be relevant in certain circumstances in case of passive holding/ subsidiary companies or associated enterprises. It is also clarified further that in order to establish that the services have not been used outside India the facts available should inter-alia, clearly indicate that only the payment has been received from abroad and the service has been used in India. In addition, the circular dated 13.05.2011 has illustrated the case of *consultancy service provided by a service provider in India, and clarified that in a situation where the service, in respect of a project or an activity in India the service cannot be said to be used outside India. Similarly, in case of advertising service, circular of 2011 has clarified that effective use of advertising services shall be the place where the advertising material is disseminated to the audience though actually the benefit may finally accrue to the buyer who is located at another place.*

16. In the instant case, as discussed above, the sale and purchase of goods are taking place in India through website only available in India; the sales orders are procured in India; promotion and marketing of the services provided by eBay AG are done by the appellant in the territory of India; coordinating promotions with vendors for marketing and promotional services, etc are also being performed in India as per the agreement. Taking the clue from the circular dated 13.05.2011, 1 have no hesitation to hold that all activities extended by the appellant to the foreign subsidiary are taking place in India, may it be,either marketing research, consultancy or promotion of sales/marketing through advertisement or any other modes. It is not the case of the appellant that they conducted any market research or activity outside India while providing the impugned business auxiliary services. In such a situation, by applying the example of consultancy, advertisement, etc specifically cited in the circular of 2011, I hold that the impugned services would not qualify as "export of service" under rule 3(2) of ESR simply on the ground that the benefit of the service provided by the appellant accruing to eBay AG and the payment of charges are received in convertible foreign exchange, as the same has failed to satisfy the essential qualification of service being delivered and used outside India as envisaged in the ESR at the material time.

17. The reliance placed on the various case laws of Deloitte Tax Services Pvt. Ltd. - 2008-TIOL-629-CESTAT-Bang.; Blue Star Ltd. 2008 (11) STR 23 (Tri. Bang.); ABS India Ltd. 2008-TIOL-1500-CESTAT-Bang.; Gap International Sourcing (India) P. Ltd. 2009-TIOL-249-CESTAT-Del.; Lenovo (India) P. Ltd. - 2009-TIOL-911-CESTAT-Bang etc. do not help the case of the appellant as the facts and circumstances are not identical in this case. In none of the cases relied upon, the services involved are in the nature of services provided by the appellant and therefore are distinguishable. Even in the case of Paul Merchants Ltd. 2013 (023) STR 0257 (Tri. Del.) the issue involved was money transfer from one country to another through their world-wide network of agents and sub-agents, and not anyway identical to the issue in hand. It is a settled position in law that the ratio of any decision must be understood in the background of the facts of that case and a case is only an authority for *what it actually decides, and not what logically follows from it and a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In Bharat Petroleum Corporation Ltd. & another v. N.R.Vairamani& another - AIR 2004 SC 4778, it was held that a decision cannot be relied on without disclosing the factual situation. In the same judgment it was held as under:*

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems not as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgment of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgment. They interpret words of statutes: their words are not to be interpreted as statutes."

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

In view of the settled law, I hold that the case laws relied upon by the appellants are not application to these cases in hand.

18. In that view, I am in full agreement with the adjudicating authority that the appellant could not fulfill the mandatory conditions of rule 3(2) of Export of Service Rule, 2005. Hence, the findings of the Adjudicating Authority that the appellant had not satisfied the conditions of services delivered outside India and used outside India and hence the services do not qualify as 'export of service cannot be faulted with.

19. The appellants have also contended that the Assistant Commissioner has failed to make any observation on the issue of denial of Cenvat credit on certain input services, proposed in the show cause notices. I find that since the output services provided by the appellants were held not amounting to *export of service by the adjudicating authority, he rightly did not consider the issue of denial of Cenvat credit in the impugned orders."*

4.3 We find that the impugned order concludes that the services provided by the appellant do not qualify as export of services. In that situation, we are of the view that by concluding that the services provided by the appellant do not qualify as export of services, the Commissioner (Appeals) is seeking to deny the refund claims filed by the appellant under Rule 5. In our view, if the findings recorded in the impugned order is having any merit, then the issue could not have been limited to the denial of refund claims filed by the appellant under Rule 5, but there should have been demand for service tax paid in respect of the services so provided by the appellant in terms of Section 73 of the Finance Act, 1994. We observe that the decision of the Tribunal in the case of *Croda India Company Pvt. Ltd.* relied upon by the Revenue was a case where demand of service tax was made treating the services provided as not qualifying to be the export of services. Para 1 of the said order is reproduced below: -

> "This appeal is directed against order in original No 46/ST-VII/RS/2014 dated 23.03.2015 of Commissioner Service Tax –VII Mumbai. By the said order Commissioner has held as follows:
>
> > *"4.1 I confirm the demand of Service Tax of Rs 1,32,57,559/- (Rupees One Crore Thirty-Two Lakhs Fifty-Seven Thousand Five Hundred and Fifty-Nine only) and order its recovery from M/s Croda Chemicals (India) Private Limited under the provisions of Section 73(2) of the Finance Act, 1994 for the reasons discussed above.*
> >
> > *4.2 I order recovery of interest at appropriate rate from the due date till the date of payment, on the amount of demand confirmed at Para 4.1 above, from M/s Croda Chemicals (India) Private Limited under the provisions of Section 75 of the Finance Act, 1994.*
> >
> > *4.3 I impose a penalty of Rs 1,32,57,559/- (Rupees One Crore Thirty-Two Lakhs Fifty-Seven Thousand Five Hundred and Fifty-Nine only) on M/s Croda Chemicals (India) Private Limited under the provisions of Section 78 of the Finance Act, 1994.*
> >
> > *4.4 I impose a penalty of Rs 10,000/- (Rupees Ten Thousand only) under Section 77 of the Finance Act, 1994 on M/s Croda Chemicals (India) Private Limited."*

4.4 In the present case where the Revenue authorities concluded that the services provided were not export of services, they were provided within taxable territory in India . The impugned order also records the findings that for the same reason, the authorities below have not considered the issue of denial of CENVAT credit. In absence of any notice for recovery of the service tax due from the appellant in respect of services not considered to be export of services in appropriate proceedings, we do not find much merit in the impugned order which is rejecting the refund claims filed in terms of Rule 5. Revenue cannot have two stands in respect of the same services.

4.5 The same view has been taken by the Chandigarh Bench of the Tribunal in the case of *JFE Steel India Pvt. Ltd. [Final Order No. 60398-60399/2020]*, wherein the following has been observed:-

> *"If the case of revenue is that the activities undertaken by the appellants in present case is not amounting to Export of Service then the proceedings need to be initiated against the appellant for demanding the service tax in respect of the taxable services provided by the appellant. In the present case no such proceedings demanding the Service Tax on these taxable services provided by the appellant have been initiated in terms of Section 73 of the Finance Act, 1994. By not initiating any such proceedings revenue itself has allowed these taxable services provided as Export of Services. Having done so they cannot in a proceeding under rule 5 for refund of accumulated credit take the contrary stand and deny refund treating the services provided not to be export of services."*

4.5 We also find that in terms of the Circular dated 24.02.2009 which was present at that time, the Board in respect of these services has clarified as follows: -

> *"(iii) **Category (III) [Rule 3(1)(iii)]** :*
>
> *For the remaining services (that would not fall under category I or II), which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and Other Financial services, Business Auxiliary services and Telecom services), it has been specified that they would be 'export',-(a) If they are provided in relation to business or commerce to a recipient located outside India; and(b) If they are provided in relation to activities other than business or commerce to a recipient located outside India at the time when such services are provided.*
>
> *3. It is an accepted legal principle that the law has to be read harmoniously so as to avoid contradictions within a legislation. Keeping this*

principle in view, the meaning of the term 'used outside India has to be understood in the context of the characteristics of a particular category of service as mentioned in sub-rule (1) of rule 3. For example, under Architect service (a Category I service [Rule 3(1)(i)]), even if an Indian architect prepares a design sitting in India for a property located in U.K. and hands it over to the owner of such property having his business and residence in India, it would have to be presumed that service has been used outside India. Similarly, if an Indian event manager (a Category II service [Rule 3(1)(ii)]) arranges a seminar for an Indian company in U.K. the service has to be treated to have been used outside India because the place of performance is U.K. even though the benefit of such a seminar may flow back to the employees serving the company in India. For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India. Inall the illustrations mentioned in the opening paragraph, what is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well.

4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned. These instructions should be given wide publicity among trade and field officers."

4.6 As we hold that these services provided qualify as export of services, there is no merit in the impugned order.

5.1 In view of the above, we set aside the impugned order and allow the appeals. The miscellaneous applications filed by the appellant for change of their name are also allowed.

(Operative part pronounced in court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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