

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86988 of 2019

(Arising out of Order-in-Appeal No. PVNS/94/Appeals-II/ME/2019 dated 08.04.2019 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

**M/s Anglo Eastern Maritime
Services Pvt. Ltd.
102, Mezzanine Floor,
Leela Business Park, Marol,
Andheri (East), Mumbai – 400 059**

.....Appellant

VERSUS

**Commissioner of CGST, Mumbai East
9th Floor, Lotus Parel, Lotus Infocentre,
Near Parel Station, Parel East,
Mumbai – 400 012**

.....Respondent

APPEARANCE:

Shri Vasant Bhat, C.A. for the Appellant
Shri Onil Shivadikar, Assistant Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85606 / 2022

Date of Hearing: 19.05.2022

Date of Decision: 30.06.2022

Rejection of refund claim made as per provisions of Notification No. 27/2012-CE(NT) dated 18.06.2012 of CENVAT credit by the exporter of service on the ground that exporter is an intermediary and place of provision of service is India, is assailed in this appeal.

2. Facts of the case, in brief, is that Appellant is engaged in providing Ship Management service involving Crew Management to its foreign associated company based in Hong Kong. The service recipient has been appointed by foreign vessel owner for their ship management activities. Appellant sought for refund of its accumulated CENVAT credit from October, 2016 to June, 2017 as per provision contained in Notification No. 27/2012-CE(NT) dated 18.06.2012 issued under Rule 5 of the CENVAT Credit Rules, 2004 and it was rejected by an adjudication order dated 23.01.2018 on the ground that services rendered by Appellant were intermediary services and there export would attract Rule 9(c) of POPS Rules, 2002 as the place of provision of service would be treated as India for such intermediary. Such an adjudication order received approval of the Commissioner of CGST & Central Excise (Appeals-II), Mumbai on dated 29.03.2019, before whom Appellant had filed an appeal against the Order-in-Original. Such confirmation of rejection order by the Commissioner (Appeals) is assailed here.

3. During the course of hearing of the appeal learned Counsel for the Appellant Mr. Vasant Bhat, with reference to the judicial decisions on the issue reported in *Eastern Pacific shipping India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai East. 2020 (37) GSTL 182 (Tri. Mumbai)*. *Torm Shipping India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai East. 2021 (44) GSTL 195 (Tri. Mumbai)*, *International Overseas Services Vs. Commissioner of Service Tax,*

Mumbai East 2016 (41) STR 230 (Tri. Mumbai), Seaspn Crew Management India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai 2019 (5) TMI 1813-CESTAT MUMBAI, submitted that Appellant is an independent Pvt. Ltd. Company registered in India and it had provided independent service of recruitment of ship crew members to its foreign associate, who was undertaking whole management of ships of different ship owners and the above referred decisions would clearly support the contention of the Appellant that seafarers recruitment services are not intermediary services to deny the benefits of Notification No. 27/2012-CE(NT). Further, he argued that not only Respondent-Department had accepted the export of service declared in ST-3 returns, it had never even imposed tax on the Appellant holding it as intermediary and sought recovery of the same that would justify the stand taken in the Order-in-Original and Order-in-Appeal. Referring to annexed contract copy and more particularly to its page 65 containing terms of the contract, he further argued that the contract is executed between two principals and not even a principal and its agent/broker or intermediary, as enumerated in sub-Rule f of Rule 2 of the POPS Rules, 2012 that would attract Rule, 9 for which he submitted that the order passed by the Commissioner (Appeals) is unsustainable in law and is required to be set aside.

4. In response to such submissions, learned Authorised Representative for the Respondent-Department Mr. Onil Shivadikar submitted that through an exhaustive order containing detail of the provisions *vis-a-vis* Appellant's status leaned Commissioner

(Appeals) had given his reasoned findings, for which he sought no interference of this Tribunal in the order passed by the Commissioner (Appeals).

5. I have gone through the case record, written submissions and the relied upon judgments submitted in this case and referred in the orders passed by the authorities below. At the outset, it is required to be scrutinised the status of the exporter. It is an independent agency or agent or intermediary? Can it be ascertained from the terms of the contract between the service provider and its overseas service recipient? If the nature of service provided by the service provider is that of an intermediary as contained in Rule 2(f) of the POPS Rules, 2012? Going by its Bare texts, which is reproduced below would bring more clarity to the issue. Rule 2(f) of the POPS Rule, 2012 reads:

"Rule 2(f) "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 and does not include a person who provides the main service on his account."

The simple meaning that can be inferred from the above provision is that anyone who arranges or facilitates provision of service between two or more persons, other than providing the main service, is an intermediary and it is immaterial if he is called a broker or an agent or in any other name. Agreement copy at Annexure-2 clearly reveals

that Appellant selects and trains crew members as an independent agency and provides the trained personnel to its overseas client namely M/s. Anglo-Eastern Tanker Management (Hong Kong) Ltd. The said service recipient provides entire ship management service to ship owners and in the process it recruits the crew members selected and trained by the Appellant. In the process, Appellant gets 15% as its remuneration over and above the amount spent in completing the recruitment process, training and making provision for Visas and travels for the crew members. This being facts on record, it can be said that only trained manpower supply work is done by the Appellant and the service recipient recruits those manpower after taking them into its fold and control and even pays salary to them directly. Additionally Annexure-2 i.e. agreement copy clearly contains provision that it is an agreement on principal to principal basis and during subsistence of the agreement, it is the Appellant who shall indemnify overseas client against any claim or demand, cost, action that may be incurred or suffered by the Manager mainly the overseas clients. Section 2 definition on intermediary classifies them as agent, broker, etc. etc. whose action as per Indian Contract Act are supposed to be ratified/indemnified by the Principal and therefore, as per terms of the agreement, I have got no hesitation to say that Appellant is not an intermediary since it provided trained manpower to its overseas customer who recruited them and engaged them in the ship owned by others through a separate Ship Management agreement. Further, Ship Management

in its entirety is not confined to requirement of crews by the ship owners as individual.

6. As could be inferred from the order passed by the learned Commissioner (Appeals) at para 7.1 of his order, Appellant's role is restricted to provision of crew management services and not any other services of ship management activities that was being managed by AETM (Hang Kong) Ltd. who outsourced crew management service to the Appellant. This is not factually correct in its entirety in view of the fact of para 9(a) of the Agreement and its sub-para:

"9(a) This Agreement is on a "Principal to Principal" basis. It is hereby clearly agreed and understood that the Manager is an independent employer and all personnel, employees engaged by them shall be employees of the Manager and not of the Service Provider.

At no point of time the Service Provider shall be considered as Principal Employer relating to the personnel engaged/employed by the Manager and the Manager shall alone be responsible for payment of salaries, wages and other legal dues of the employees, for rendering services as contemplated herein."

(emphasise supplied)

Para 9(b) is also more categorical on the nature of relationship between the Appellant and its overseas services, which can never been equated with any kind of intermediary relationship. Sub-para (b) of para 9 of Exhibit-B namely the agreement dated 01.04.2013 is also reproduced below for a better clarity:

"9(b) The Manager and Service Provider acknowledge and agree that their relationship arising from this Agreement does not constitute or create a general agency, joint venture, partnership, employee relationship or franchise between them."

It is, therefore, erroneous to hold that AETM (Hang Kong) Ltd. had outsourced crew management service to the Appellant whereas in its actuality it picked up trained crew members from the Appellant selected at its instance and recruited them in its own company for providing crew management service to ship owners.

7. In para 8 of his order learned Commissioner (Appeals) also had made some observations concerning the Appellant after going through the Director General of Shipping Control Website. But I prefer not to go into its detail as the same relates to grant of licence to the Appellant from 05.11.2017, which is beyond the period of dispute required to be settled in this appeal. On the contrary, I fully concur with the stand taken by the Appellant that in view of the judgments referred in the preceding paragraph namely *Eastern Pacific shipping India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai East. 2020 (37) GSTL 182 (Tri. Mumbai)* that had set the ratio on the issue that seafarer's recruitment service provider, who processes the entire selection, medical test, insurance, transportation, training etc. to the overseas client and received convertible foreign exchange, is not an intermediary. In carrying forward the judicial precedent set by the Tribunal the following order is passed in *Eastern Pacific shipping India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai East.*

2020 (37) GSTL 182 (Tri. Mumbai), Seaspn Crew Management India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai 2019 (5) TMI 1813-CESTAT MUMBAI. Hence the order.

ORDER

8. The appeal is allowed and the order passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai vide Order-in-Appeal No. PVNS/94/Appeals-II/ME/2019 dated 08.04.2019 is hereby set aside. Appellant is entitled to get the refund of CENVAT credit claimed by it from the period from October, 2016 to June, 2017 amounting to Rs.12,01,918/- alongwith applicable interest and the Respondent-Department is directed to pay the same within two months of communication of this order.

(Order pronounced in the open court on 30.06.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad