

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

SERVICE TAX APPEAL No.40569 OF 2013

(Arising out of Order-in-Appeal No.77/2012 dated 29.11.2012 passed by Commissioner (Appeals) of Central Excise and Service Tax, Large Tax Payer Unit, 1775, J N Road, Anna Nagar (W) Extn. Chennai 600 101)

The Commissioner of GST & Central Excise **...Respondent**
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

Versus

M/s. Sundaram Asset Management Co. Ltd. **.....Appellant**
Sundaram Towers
No.46, Whites Road, Royapettah
Chennai 600 014

SERVICE TAX APPEAL No.41764 OF 2014

(Arising out of Order-in-Appeal No.92/2014 dated 12.6.2014 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Tax Payer Unit, 1775, J N Road, Anna Nagar (W) Extn. Chennai 600 101)

M/s. Sundaram Asset Management Co. Ltd. **.....Appellant**
Sundaram Towers
No.46, Whites Road, Royapettah
Chennai 600 014

Versus

The Commissioner of GST & Central Excise **.....Respondent**

Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

APPEARANCE :

Shri R. Rajaram, Consultant
For the Assessee

Shri Rudra Pratap Singh, Additional Commissioner (A.R)
For the Department

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing :07.11.2023
Date of Decision : 07.11.2023

FINAL ORDER No.41024-41025/2023**ORDER : Per Ms. SULEKHA BEEVI C.S.**

1. The issue involved in both these appeals being same and connected, they are heard together and disposed of by this common order. The parties are hereafter referred to as assessee and department for the sake of convenience.
2. Brief facts are that the assessee is engaged in the activity of management of assets of various schemes of Sundaram Mutual Fund and gives advice of investment to clients both in India and overseas. While providing advisory services to clients abroad they received the consideration in inconvertible foreign exchange. They paid service tax on the services so provided. The assessee then filed rebate claim of Rs.48,82,448/- on 13.01.2011 under Rule 5 of Export of Services Rules 2005 for the period of October 2009 to

March 2010. The original authority allowed part of the claim to the tune of Rs.9,21,881/- and rejected the amount of Rs.39,60,567/-. The balance rebate was rejected on two grounds. Firstly, on the ground of limitation and secondly, alleging that there is no export of services. Against such order the assessee filed the appeal before the Commissioner (Appeals). It was contented by the assessee before the Commissioner (Appeals) that the rebate claim is filed within the time limit. With regard to the second ground of rejection the assessee contented that as per Board Circular No.111/5/2009/ST dated 24/2/2009 as well as Circular No.141 dated 1/10/2011 TRU, the services are to be considered as exported. The Commissioner (Appeals) vide order dated 29/11/2012 allowed the appeal filed by the assessee. Thus ordered the sanction of the balance rebate of Rs.39,60,567/-.

3. Aggrieved by the sanction of refund, the department has now filed Appeal No.ST/40569/2013. It is pertinent to mention that the department in this appeal has not contested the issue of limitation and has confined the grounds of appeal to the issue as to whether there is export of service or not.

4. Pursuant to the order passed by the Commissioner (Appeals) sanctioning the rebate, the assessee filed request for refund before the refund sanctioning authority. The said authority vide Order in Original No.152/2013 dated 3/5/2013 sanctioned the amount of Rs.39,60,567/-. Against this order the department filed an appeal before the Commissioner (Appeals), who vide order

dated 2/6/2014 set aside the order of sanctioning the refund dated 29.11.2012. Aggrieved by such order the assessee has now filed Appeal no.ST/41764/2014.

5. The learned AR Shri Rudra Pratap Singh appeared and argued for the department. It is submitted that the assessee has provided advisory services for investment of funds to the client abroad. Though the advices are given to the client abroad the investment having been made in India, the activity has to be construed as services used in India. Only if the services are used outside India it can be said that there is export of services. The Circular issued by the Board dated 13/5/2011 was relied by the learned AR to argue that *"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"*. The circular issued by the Board is binding on the department and therefore the order dated 29.11.2012 passed by the Commissioner (Appeals) sanctioning the refund is erroneous. Further, the Commissioner (Appeals) though discussed about the Circular dated 24/2/2009 has not rendered any finding in regard to the circular dated 13/5/2011. It is urged by the learned AR that the decisions in the case of *Manish Agarwal 2012 (27) STR 155 and EM Jay Engineers 2010 (20) STR 821* relied by the Commissioner (Appeals) has referred to the circulars of 2009 and therefore not applicable. The learned AR prayed that the

department appeal may be allowed and assessee appeal may be dismissed.

6. The learned consultant Shri Rajaram appeared and argued for the assessee. It is submitted that the Commissioner (Appeals) has referred to both the circulars of 2009 as well as 2011 and thereafter with detailed discussion has sanctioned the refund. When the assessee has provided advisory services to a client abroad and also received convertible foreign exchange as consideration the activity has to be considered as export of services. The view taken by the department that because the investment is made in India by the foreign client, the service is provided within in India and does not amount export of services is totally misplaced. It is submitted by the learned consultant, that the department ought not to have filed an appeal against the order passed by the refund sanctioning authority who has sanctioned the refund pursuant to the order passed by Commissioner (Appeals). The assessee was not even issued Show Cause Notice or Deficiency Memo prior to passing of the order by the refund sanctioning authority. The said order was for sanction of refund consequent to a valid order passed by Commissioner (Appeals). In such circumstances the department cannot file an appeal against the sanction of refund. It is prayed that the assessee appeal may be allowed and the department appeal may be dismissed.

7. Heard both sides.

8. On perusal of the order passed by the Commissioner (Appeals) dated 29/11/2012, it is seen that the Commissioner (Appeals) has considered the issue as to whether the activity of giving investment advices to the client abroad amounts to export of services. We have to say that the decision to accept the advice rests with the foreign client. The client who is abroad can opt to accept the advice given by appellant or reject the same. In such circumstances, a decision taken by a foreign client to invest in India cannot be said to be the deciding factor whether the advisory services amount to export of service or not. In other words, taxability of an event cannot depend upon a decision taken by a foreign client. In our view, the Commissioner (Appeals) has rightly discussed the issue in detail and held that the refund is eligible to the assessee. Though the decision referred by the Commissioner (Appeals) has analysed the issues on the basis of a circular of 2009, we find that the reasoning given by the Commissioner (Appeals) is proper and does not require any interference. Moreover, Commissioner (Appeals) has referred and taken notice of the subsequent circular 2011 also. In such scenario, we are of the opinion that the sanction of refund to the assessee is legal and proper. The appeal filed by the department is without merits.

9. The impugned order in appeal ST/40569/2013 is sustained. Consequently, the appeal of the department is dismissed. The impugned order in ST 41764/2014 is set aside. Consequently, the

appeal filed by the assessee is allowed with consequential reliefs if any.

(Dictated and pronounced in open court)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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