

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

**Service Txt Appeal No. 10912 of 2021**

(Arising out of OIA-VAD-EXCUS-001-APP-028-2021-22 Dated-25/06/2021 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

**CELTIC SYSTEMS PRIVATE LIMITED**

403-410 Ocean Building 4th Floor Sarabhai  
Compound Besides Central Square Dr Vikram  
Sarabhai Marg Genda Circle  
Vadodara, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-VADODARA-I**

1ST FLOOR...CENTRAL EXCISE BUILDING,  
RACE COURSE CIRCLE, VADODARA,  
GUJARAT, 390007

**.....Respondent**

**APPEARANCE:**

Shri. Manan K Bhatt, Chartered Accountant for the Appellant  
Shri. J. A. Patel, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**Final Order No. A/ 10560 /2022**

DATE OF HEARING:13.05.2022

DATE OF DECISION:06.06.2022

**RAMESH NAIR**

The issue involved in the present case is that whether the IT Service provided by the appellant to their associate company M/s Celtic Cross Holding Inc. USA is amount to export of service in terms of Rule, 6A(1) of Service Tax Rules, 1994 or otherwise. The Adjudicating Authority demanded the Service Tax holding that the supply of service by the appellant to company M/s Celtic Cross Holding Inc. USA does not amount to export on the ground that:- (i) the appellant could not prove that they have received the export proceeds in

convertible foreign exchange (ii) the appellant and the service recipient are not establishment of a distinct person in accordance with item (b) of Explanation 3 of Clause (44) of Section 65B of the Finance Act. For the reason that as per department, both the appellant and service recipient are falling under same entity, hence, they are not a distinct person in accordance with Clause (f) of Rule 6A (1) of Service Tax Rules, 1994, the Service does not fall under the category of export. Being aggrieved by the Order-In-Original appellant filed the appeal before the Commissioner (Appeals). From the order of the Commissioner (Appeals) the only issue left is that the appellant have not fulfilled the condition of Clause (f) Rules 6A(1) of Service Tax Rules, 1994. Accordingly, the demand was upheld, therefore, the appellant filed the present appeal.

2. Shri, Manan K Bhatt, Learned Chartered Accountant appearing on behalf of the appellant submits that both the companies' i.e. appellant company and the service recipient company are two different entities as both are separately registered as an independent company in respective countries. The shareholders of both companies are also different even though some of the directors are common, therefore, both are different and distinct person. He further submits that merely because a note was given in the balance sheet of the appellant company that the service recipient's company is an Associates Company of the appellant does not alter the legal status of independent entity of both the companies. He further submits that the appellant and the service recipient does not fall under the category of a person as given in the item (b) of Explanation 3 of Clause (44) of Section 65B of the Finance Act, 1994. He placed reliance on the judgment of Hon'ble High Court in the case of Linde Engineering India Pvt. Ltd. & Ors Vs. Union of India. He submits that in the aforesaid judgment the entity located in India was a 100% subsidiary of Linde AG Germany but both were different companies whereas the present case is on better footing that the appellant is not 100% subsidiary of M/s Celtic Cross Holding Inc. USA. Therefore, as per the Hon'ble High Court judgment it is

settled that the appellant and service recipient are two distinct person, therefore, the condition of Clause (f) stands fulfilled and the supply of service clearly falls under the export of service.

3. On the other hand, Shri. J. A. Patel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. From the facts on the records, it is not disputed that the appellant company is working under the banner of M/s Celtic System Pvt. Ltd. registered with the registrar of companies in India. Whereas, the Service recipient is working under the banner of M/s Celtic Cross Holding Inc. USA. Both the companies are separately registered in their respective countries. Even the directors of the company though two directors are common but others are different. Even if there is a note in the balance sheet of the appellant company that they are associate of M/s Celtic Cross Holding Inc. USA but in the eyes of law as per the companies act both companies are independent entity. Therefore, Clause (f) of Rules 6A (1) of Service Tax Rules, 1994 stand complied with. This issue has been considered of Hon'ble Gujarat High in the case of Linde Engineering India Pvt. Ltd & Ors, wherein the Hon'ble Gujarat High court even in case where the Indian Company was 100% subsidiary of the foreign company namely Linde AG Germany has held that both are different entity. In the present case the appellant are on better footing as they have constitutionally two different entity one is the appellant and other is M/s Celtic Cross Holding Inc. USA. Therefore, following the judgment of Gujarat High Court, it is clear that in the present case the appellant and the service recipient are two distinct person, hence, the service provided by the appellant to M/s. Celtic Cross Holding Inc. USA clearly falls under export of service.

5. Therefore, we are of the view that the demand confirmed by the adjudicating authority and upheld by the Commissioner (Appeals) is not correct and legal. The impugned order is set aside, appeal is allowed.

(Pronounced in the open court 06.06.2022)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

PRACHI