

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.138 of 2011

(Arising out of Order-in-Original No.31/Commr/ST/Kol/2010-11 dated 31.01.2011 passed by Commissioner of Service Tax, Kolkata.)

Commissioner of Service Tax, Kolkata

(Kendriya Utpad Shulk Bhawan (3rd Floor), 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

...Appellant

VERSUS

M/s. Tata International Limited

.....Respondent

(Tata Centre [6th Floor]. 43, Chowringhee Road, Kolkata-700071.)

APPEARANCE

Shri K.Chowdhury, Authorized Representative for the Revenue
NONE for the Respondent (s)

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75070/2023

DATE OF HEARING : 13 March 2023

DATE OF DECISION : 13 March 2023

ASHOK JINDAL :

Revenue is in Appeal against the impugned order wherein the Adjudicating authority dropped the demands sought to be confirmed by issuance of the Show Cause Notice.

2. The facts of the case are that the Respondent is an agent of the foreign entity and providing them services in the nature of 'Business Auxiliary Service' i.e. to procure orders for them against the foreign service recipient who supplied goods in India and Respondents were getting some commission on that. Another issue involved in the matter is that of import of service prior to 18.04.2006. The Adjudicating

authority dropped the demand against the Respondent. Against the said Order, Revenue is in Appeal.

3. Heard the Ld.Authorized Representative for the Revenue.

4. Considering the fact that it is a fact on record that the service is provided by the Appellant to their foreign service recipient and that service has been utilized outside India. The said issue has been settled by this Tribunal in the case of Blue Star Ltd. v. Commissioner of Service Tax, Mumbai [2016 (46) S.T.R. 59 (Tri.-Mumbai)], wherein it has been held that any service provided to a foreign principal in nature of 'Business Auxiliary Service', which has been utilized outside India no Service Tax is payable by the assessee. In that circumstances, we hold that the Adjudicating authority has rightly dropped the demand against the Respondent. With regard to import of service, the issue has been settled by the Hon'ble Bombay High Court in the case of Indian National Shipowners Association v. Union of India [2009 (13) S.T.R. 235 (Bom.)], wherein it has been held that for the period prior to 18.04.2006 , there was no mechanism to collect Service Tax on import of service. In that circumstances, we hold that the Adjudicating authority has rightly dropped the demand against the Respondent.

5. In the result, we do not find any merit in the Appeal filed by the Revenue. Accordingly, the same is dismissed.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)