# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH
## COURT No.

## Service Tax Appeal No. 85867 of 2016

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/879/15-16 dated 20.01.2016 passed by Commissioner of Central Excise (Appeals), Nagpur)

**M/s. Krishna Consultancy** **Appellant**
Plot No. 10/2, IT Park,
Behind Infotech Tower,
Parsodi, Nagpur 440 022.

Vs.

**Commissioner of CGST, Nagpur** **Respondent**
Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

Appearance:

Shri Vinay Jain, Advocate, for the Appellant
Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

Date of Hearing: 26.09.2023
Date of Decision: 11.10.2023

## FINAL ORDER NO. 86769/2023

PER: ANIL G. SHAKKARWAR

Appellant is engaged in giving guidance to prospective students to seek admissions in universities located outside India. The appellant does not collect any consideration from prospective students. Appellant has entered into contracts with the universities abroad and arrangements are that when a student guided by the appellant secures admission in university in the foreign country and pays fee, a part of the fee is paid to the appellant as commission. Appellant paid Rs.48,06,310/- in cash and through cenvat account Rs.2,66,831/- towards service tax on the said activity during the period from 04.05.2013 to 07.02.2014. After making the above payments towards service tax, appellant realized that the service tax was leviable on services provided within India and there was no service tax

leviable on services which are provided outside India. On realization that their services were export of service, they filed on 07.04.2014 a claim for refund of already paid service tax amounting to Rs.50,73,141/-. Appellant was issued with a show cause notice dated 27.06.2014. The show cause notice contended that the appellant had not uploaded the revised ST-3 return for the period from October 2012 to March 2013 and that for the period from October 2012 to March 2013, the appellant had disclosed their transaction as domestic service. It was further contended in the said show cause notice that the appellant was providing service to Indian students who were beneficiaries of the activities of the appellant. It was further contended that the appellant was functioning like intermediary defined under Rule 2(f) of Place of Provision of Services Rules, 2012. The said show cause notice also stated that the appellant has not provided proof of having received entire consideration in convertible foreign exchange. The refund application was adjudicated through order-in-original dated 12.05.2015. Appellant's contentions were not accepted by the original authority and the refund was rejected. Appellant preferred appeal against the said order before learned Commissioner (Appeals) who did not interfere in the original order and, therefore, the appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that under similar circumstances, the organization providing free consultations to Indian students cannot be treated as intermediary has been held by this Tribunal in the case of Sunrise Immigrations Consultants Pvt. Ltd. vs. CCE&ST reported at 2018 (5) TMI 1417 – CESTAT Chandigarh. He has submitted that it has been held in para 8, 9, 10, 11 and 12 that the organization undertaking similar activity cannot be treated as intermediary within the meaning of the said Rule 2(f). He has further submitted that the contention of Revenue that services are provided in India are contrary to the provisions of the Act because for an activity to be qualified as service, receipt of consideration is a must. Appellant is not receiving any consideration from prospective students. Therefore, it can be concluded that the appellant is not providing

any service to the prospective students. Since the appellant is receiving consideration in convertible foreign exchange, the service is treated as export. He has further submitted that for the period other than October 2012 to March 2013, they have filed ST-3 return declaring the activity as export of service. He has, however, admitted that all foreign remittance certificates have not been submitted.

3. Heard the learned AR for Revenue. Learned AR has submitted that the appellant has not revised their ST-3 return for the period from October 2012 to March 2013 and in the pre-revised return, the appellant has declared their activity to be service provided in India and without revising their return, the appellant is not eligible for refund. Since such an issue has been referred to Larger Bench in the case of Viavi Solutions India Pvt. Ltd. through Interim Order No.111/2021 dated 08.10.2021 by Tribunal's Chandigarh Bench and the decision of Larger Bench is yet to be received.

4. On the said submission of Revenue, appellant has submitted a letter dated 02.08.2023 stating that they do not wish to contest refund claim pertaining to the period from October 2012 to September 2013 and agreed to forego the same. Further, they have submitted that the amount pertaining to the said period is Rs.26,43,969/-. They further contended that out of the total refund claim of Rs.50,73,141/-, they are not pressing for refund of Rs.26,43,969/-. The said letter was submitted by the learned counsel for the appellant and the said letter was signed by Mrs. Nalini Agarwal on behalf of the appellant.

5. We have carefully gone through the record of the case and submissions made. We note that the appellant is providing guidance to Indian students without charging any consideration from them. In view of the definition of service, we hold that the appellant is not providing any service to prospective students in India. We hold that the appellant is providing service to universities located in foreign countries who are paying consideration to the appellant. We, therefore, hold that the

services covered by these proceedings are export of services. We have also gone through the decision of this Tribunal in the case of Sunrise Immigrations Consultants Pvt. Ltd. decided by Chandigarh Bench of this Tribunal. We note that this Tribunal has held that such organisations cannot be treated as intermediaries under the definition of Rule 2(f) of Place of Provision of Service Rules, 2012. We, therefore, hold that the contention of Revenue that the appellant is an intermediary is not in accordance with law. We further note that the appellant has foregone the refund of Rs.26,43,969/-. Therefore, now the refund claim works out to the tune of Rs.24,30,172/-. We note that the appellant has not provided all the foreign inward remittance certificates covering the transactions involving service tax of Rs.24,30,172/-. We, therefore, remand the matter to the original authority with a direction not to rake up any other issue but to collect foreign inward remittance certificates from the appellant in respect of those transactions which involve refund of Rs.24,30,172/- out of the refund claim of Rs.50,73,141/- and allow the refund out of Rs.24,30,172/- in respect of such transactions where FIRCs get produced by the appellant before the original authority. We direct the appellant to produce all FIRCs concerned with the refund amount of Rs.24,30,172/- before the original authority. For the said purpose, we set aside the impugned order.

6. In above terms, we allow the appeal by way of remand.

(Order pronounced in the open court on 11.10.2023)

**(Anil G. Shakkarwar)**
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

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