

2013 (3) ECS (227) (Tri-Del)

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI - 110 066.**

**Date of Hearing 30.07.2013**

**United News of India**

**Vs.**

**C.S.T., Delhi – II**

**STAY No.ST/STAY/57454/2013  
In Appeal No.ST/56894/2013-ST[DB]**

United News of India      Appellant

Vs.

C.S.T., Delhi - II      Respondent

**Appearance**

Shri BL Narasimhan, Advocate    for the appellant

Shri Govind Dixit, DR      for the respondent

**CORAM:**

**Hon'ble Justice G. Raghuram, President**

**Hon'ble Mr. Sahab Singh, Member (Technical**

Stay Order No.58678      dated 30-07-2013

**"It is axiomatic that "Chapter" referred to in clause (b) of Section 66A (1) is  
Chapter V of the Finance Act, 1994, a Chapter in which Section      93**

**also occurs. Prima facie, therefore, the legislative fiction that the service recipient when liable to pay service tax under Section 66A shall be considered as the service provider should apply in terms to the ad-hoc exemption order as well. The service tax liability as assessed under this head is Rs.52,46,317/-." [Para 4]**

**"Whether the Noscitur a Socii principle, often considered a problematic interpretative rule should be applied to the definition of Business Support Services in Section 65 (104a) is the matter that should await the final disposal of the matter. This issue as to the petitioner's liability for remitting tax on BSS, is thus evenly balanced, at this stage. " (Para 5)**

**Per: G. Raghuram, J. :**

1. Waiver of pre-deposit and grant of stay proceedings in pursuant to the adjudication order dated 11-01-2013 is the relief sought in this application. The assessee/appellant (the petitioner herein) is a news agency. Proceedings were initiated for recovery of service tax along with interest and applicable penalties for failing to remit the tax. Revenue considered three taxable services provided or received as the case may be by the petitioner and in respect whereof the liability to remit tax arises; identified as "Online Information or Database Access or Retrieval Service" (OIDARS); "Business Support Service (BSS)" and "Sale of Space or Time for Advertisement on Internet".
2. In respect of OIDARS, the petitioner under agreements entered into with overseas news service providers such as Reuters and European Pressphoto Agency (EPA) to facilitate the access the data provided by the foreign agencies for discrimination of the date within the country was remitting payments to the overseas service providers. The petitioner contended before the adjudicating authority that the transactions involved under agreements with the overseas agencies do not fall within OIDARS as defined in Section 65 (105)(zh) of the Finance Act, 1994 as what was transferred is not data but news. The adjudicating authority rejected the said contention and concluded that as per the definition of the taxable service and definition of the expression of "data" as defined in Section 2 of the Information Technology Act, 2000, the service provided by the overseas agencies falls within the taxable service. The petitioner does not contest the classification of the service as concluded by the adjudicating authority before us. Before the adjudicating authority, the petitioner claimed immunity from liability to tax also on the basis of the Ad-hoc Exemption order No.1/1/2010-ST, dated 06-09-2010 issued by Govt. of India in purported exercise

of powers under Section 93 (2) of the Act. Under this order, the Govt. exempted services provided to any person by the PTI or UNI (the petitioner herein) in relation to OIDARS (the taxable service) during the period 01-04-2004 to 26-02-2010 (the period in issue), from the whole of service tax leviable under Section 66 of the Act. The preamble to the ad-hoc exemption order states that the petitioner is a news agency set up in India solely for collection and distribution of news and was granted exemption from Income Tax under the provisions of Section 10 (22b) of the Income Tax Act, 1961. In rejecting the petitioner's claim for exemption qua the ad-hoc exemption order dated 06-09-2010, the adjudicating authority however concluded that since in respect of the transactions in issue, the petitioner is not the service provider but a service recipient, it liable to pay the tax, under Section 66A of the Act and that the benefits of the Notification are not available.

3. The Ld. Counsel for the petitioner reiterates the same contention, which was disfavoured by the adjudicating authority, that in view of the provisions of Section 66A of the Act, the legislative fiction enjoined is that a service recipient liable to remit the tax under reverse charge mechanism shall be considered to be the service provider and this fiction should be applied for considering grant of benefits under the adhoc Notification dated 06-09-2000 as well.
4. Prima facie, in our considered view that contention urged on behalf of the petitioner is well founded. Under Section 66A of the Act, where any service specified Section 65 (105) is provided by a person, of the description specified in clauses (a) and (b) of sub-section (1) thereof, such service shall, for the purposes of the section, be the taxable service and such taxable service shall be treated as if the recipient had himself provided the service in India and accordingly all the provisions of Chapter shall apply. It is axiomatic that "Chapter" referred to in clause (b) of Section 66A (1) is Chapter V of the Finance Act, 1994, a Chapter in which Section 93 also occurs. Prima facie, therefore, the legislative fiction that the service recipient when liable to pay service tax under Section 66A shall be considered as the service provider should apply in terms to the ad-hoc exemption order as well. The service tax liability as assessed under this head is Rs.52,46,317/-.
5. Rs.11,09,275/- has been assessed on account of payments made for receipt of "support services of business or commerce", a taxable service spelt out in Section 65 (zzzq) and defined in Section 65 (104c) of the Act. That the transactions constitute the taxable services alleged, the petitioner is liable to remit the tax due as assessed under reverse charge mechanism, is not in

dispute. The transactions in issue are payments made by the petitioner not to its regularly employed reporters but to overseas freelance stringers, who were paid on an agreed basis (located outside the territory of India), in foreign currency. The contention of the petitioner (which found disfavour by the adjudicating authority) is that services provided by such overseas located stringers fall outside the definition of Business Support Service. BSS is defined in Section 104c as "service provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing". According to the petitioner, the provision of support of business and commerce service must be understood in terms of the enumerated services in inclusive part of the definition by applying the principles of *Noscitur a Socii*. Reliance is placed for this contention on the judgement of the Supreme Court in *Godfrey Philips India Ltd. & Another vs. State of U.P. & Others* 2005 (139) STC 1103 in a judgement of this Tribunal in *Air Liquide North India (P) Ltd. Vs. C.C.E., Jaipur* 2012 (27) S.T.R. 295 (Tri. - Del.). Whether the *Noscitur a Socii* principle, often considered a problematic interpretative rule should be applied to the definition of Business Support Services in Section 65 (104a) is the matter that should await the final disposal of the matter. This issue as to the petitioner's liability for remitting tax on BSS, is thus evenly balanced, at this stage.

6. The levy of Rs.13,14,663/- is assessed for "Sale of Space and Time for Advertisement Service", the Ld. Counsel for the petitioner fairly states that this aspect of the levy is not being contested at the present stage and challenge on this aspect will be presented at the final hearing. It is also contended by the Ld. Counsel that Rs.2,61,611/- has already been remitted by the petitioner and therefore in respect of any conditional order for waiver that may be passed in this application that remittance should be given credit for.
7. In the aforesaid circumstances and analysis, we prima facie see a good case for no liability to tax on the OIDARS component, i.e., for Rs.52,35,317/-; and an evenly balanced case in respect of Business Support Service, i.e. for Rs.11,09,275/-; and none (at this stage) for "sale of space and time for advertisement service", i.e. for Rs.13,14,663/-.

8. Accordingly, we grant waiver of pre-deposit and stay all further proceedings pursuant to the adjudication order, on condition that the petitioner remits Rs.16,00,000/- within 8 weeks from today and reports compliance by 07-10-2013. In default, the appeal shall stand dismissed for failure of pre-deposit.
9. The stay application is accordingly disposed of.