IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 40385 of 2019

(Arising out of Order-in-Original No. 115/2018 CH.N.GST (Commr.) dated 04.12.2018 passed by Principal Commissioner Chennai North GST Commissionerate GST Bhawan, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai- 600 034)

M/s. Cognizant Technology Solutions India Private Limited **: Appellant**
6th Floor, New No. 165
Old No. 110, Menon Eternity Building
St Mary's Road Alwarpet,
Chennai-600 018

VERSUS

The Principal Commissioner of GST & Central Excise, Chennai North GST Commissionerate **: Respondent**
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034

APPEARANCE:

Shri Rajaram Ramanan, Chartered Accountant
For the Appellant

Shri Anoop Singh, Joint Commissioner (A.R.)
For the Respondent

CORAM:

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

FINAL ORDER NO. 40050/ 2024

DATE OF HEARING : 05.01.2024
DATE OF DECISION: 12.01.2024

Order : [Per Mrs. Sulekha Beevi C.S.]

Brief facts are that the appellants are providers of Information Technology Software Services and Business Support Services. Appellant is having a Branch Office in the United States.

2. Appellants availed Cenvat Credit of Service Tax paid on their input services like Banking & Other Financial Service, Chartered Accountant Service, Courier Service, and Insurance Service, Security Agency Service, Renting of Immovable Property Service, Manpower Service, Management/ Business Consultancy Service, etc., and has utilized the same for payment of Service Tax on their output services.

3. During the course of audit conducted by the officers of *erstwhile* Large Taxpayer Unit Commissionerate, Chennai, it was noticed from the Income Tax Returns in Form 3CEB filed by appellants under Sec 92E of the Income Tax Act, 1961, for the Financial Years 2012-13 and 2013-14, that they had declared the rendering of 'On-site Development of Software related Services' to their Branch Office located in the USA and have received Rs. 75,82,95,595/-, Rs. 56,80,90,136/- and Rs. 82,90,13,188/- during the financial years 2012-13, 2013-14 and 2014-15 respectively from their U.S Branch Office, for these services. In as much as-

a. The said services provided by the GTS to their U S. Branch are in the nature of 'exempted services' in terms of Rules 2(e) and 6(8) of the Cenvat Credit Rules, 2004,
b. Appellants had availed Cenvat credit of Service Tax paid on common input services used for providing taxable as well as exempted services, and
c. Appellants had failed to maintain separate accounts for receipt and use of

> input services used for providing exempted services and taxable output services;
>
> it appeared that, appellant was liable to pay an amount equal to six per cent of the value of exempted services provided by them, as per Rule 6(3)(i) of the Cenvat Credit Rules, 2004.

4. Accordingly, appellant was issued show cause notice no. LTUAC/CHN/11/2016-(C) in C.NO III/10/79/2016-LTU Audit dated 12.07.2016, demanding an amount of Rs. 12,93,23,935/-being the amount payable by them under Rule 6(3)(i) of the Cenvat Credit Rules, 2004, for the period from July 2012 to March 2015, under proviso to Sec. 73(1) of the Finance Act, 1994, read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. After due process of law, the said demand was confirmed vide Order in Original No. 51/2018-CH-N-GST dated 27.03.2018 along with appropriate interest under section 75 of the Finance Act, 1994. Equal penalty under Section 78(1) of the Finance Act, 1994, read with Rule 15(3) of the Cenvat Credit Rules, 2004, was also imposed for the aforesaid contravention.

5. The appellant continued the same contravention for the subsequent periods and SOD for the period April 2015 to March 2017 was issurd for Rs. 4,34,52,037/- on the basis of Income tax return in Form 3 CEB for the financial years 2015-2016 and 2016-2017.

6. After due process of law, the original authority confirmed the demand along with interest and imposed penalties. Aggrieved by such order of

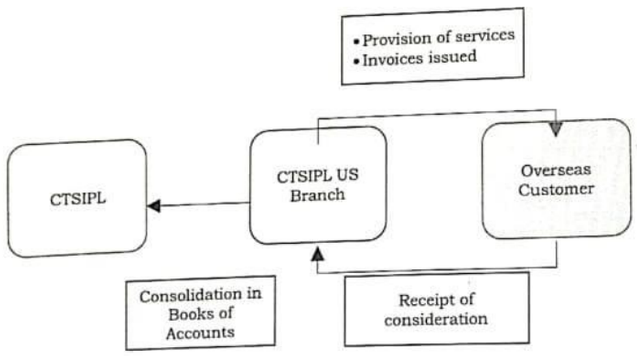
confirmation of demand, for the period April 2015 to March 2017 the appellant is now before the Tribunal.

7. The learned consultant Shri Rajaram explained that the demand raised cannot sustain as there is no services provided by the appellant, to the overseas branch.

8.1 The Impugned Order at Para 9 (at Pg. 25 of the appeal paperbook) has relied upon a declaration made in the Form 3CEB (Report from an accountant on related party transactions under the Income-Tax law) to conclude that there were transactions between the Appellant and its overseas branch office in the United States of America Further, the Impugned Order alleges the said transactions to be in the nature of "Exempt Services", thereby warranting a reversal of CENVAT Credit

8.2 The SOD and Impugned Order proceed on the presumption that the Appellant had rendered the subject services to the overseas branch office, which is alleged as "exempt services.

8.3 It is submitted that subject services were rendered by the Overseas Branch to its customers. The flow of transactions under the arrangement is elucidated below.



To establish the above factual matrix, following documents were submitted:

a. Extracts from the US Income-Tax return filed by the overseas branch office declaring the subject amounts as income under the US tax laws and

b. Workings of figures as per Income tax returns, FORM 3CEB and Financial Statements.

8.4 It is argued that it is amply clear from these documents that the subject transactions are not services rendered by the Appellant, and hence ought not be held as "exempt services rendered by the Appellant. The very basis of SCN being erroneous, the SOD ought to be quashed and the Impugned Order be set aside.

7.5 The entire amount disclosed in Form 3CEB reflects provision of on-site support services rendered by US branch office of the Appellant to its Associated Enterprise(s) situated outside India. The aforementioned amount earned by the US branch office for their services gets consolidated in the Appellant's books of accounts and in all its statutory reporting. Therefore, the amount disclosed in the

return is only for reporting purposes, being a mandatory requirement.

7.6 It is submitted that, when no service income is earned by the Appellant from the overseas branch office, the question of any exempt services and the consequent requirement for reversal of CENVAT does not arise.

7.7 The Ld. Counsel submitted that the very same issue came up for consideration before the Tribunal in the appellant's own case in Appeal No. ST/41665/2018. The Tribunal vide Final Order 40529 /2023 dated 28.6.2023 analyzed the entire issue and held that the demand cannot sustain. The learned consultant prayed that the appeal may be allowed.

7.8 The learned AR Shri Anoop Singh appeared and argued for the department. The finding in the impugned order was reiterated.

7.9 Heard both sides.

8. It is seen that the issue that arises for consideration in this appeal as to whether the appellant is liable to reverse the CENVAT credit alleging that they have provided exempted service of 'onsite development of software services' to their branch office situated abroad, has been considered by the Tribunal in the appellant's own case and has set aside the demand vide Final Order No. 40529/2023 dated 28.6.2023. The discussions are as under:-

> *9. It is seen from the Income Tax returns in Form 3CEB for the Financial Year 2012-13, that 'Cognizant Technology Solutions India Private Limited US branch is carrying out on-site*

development of software related services'. At para 13 of the return 'particulars in respect of providing of services' is reported. The appellant has responded with a 'Yes' to having entered into international transactions in respect of services. The tabular column below the para shows that one of the international transaction was with CTS USA. The description of service provided is shown as 'On-site development of software related services'. An amount of Rs. 75,82,95,595/- is shown as received both as per 'book of accounts' and as 'as computed by the assessee having regard to arm's length price. The counsel for the appellant had explained that the said entry was only reflecting the amount received by its branch at W. Burr Boulevard in the USA. The amount received by the US Branch gets consolidated in the appellants books of account as it is a part of statutory reporting. A similar situation prevailed during the Financial Year 2013-14. He has referred to the table showing the debit note/ invoice wise amount involved, as enclosed with their appeal paper book along with copies of the invoices. Reference was made to the debit note / Invoice, which shows that the amounts pertain to services rendered by CTS USA to their customers (associated enterprises). Copies of the bank statements enclosed also show that the US customer has made payment to CTS at W. Burr Boulevard in the USA. A reconciliation of amounts as per Financials, Form 3CEB and US IT Returns was produced which was shown to tally. We find

that the impugned order at para 26.7 also acknowledges that the appellants had submitted invoices raised by their branch and also a worksheet reconciling the amount reflected in their Form 3CEB and US IT Returns. However, the learned Commissioner stated that the dispute is not about the income reported by the appellants branch and payment of tax by the branch in the concerned country. The dispute is about the amounts received from the branch shown under the 'On-site development of software related services' in the books of account of CTS. We find that this issue stated in the findings of the impugned order is a secondary one. The main issue before the lower authority stems from whether the service rendered in the USA as seen in the Income Tax Return was rendered by the appellant to its overseas branch as alleged in the SCN. It has been satisfactorily demonstrated by the appellant that it was CTS USA who has rendered service to their associated enterprise in USA and received the payment for it in USA for the amount declared in the Income Tax Form 3CEB, There is no allegation in the Show Cause Notice that CTS USA was only a front company for services rendered by CTS India in the USA. This being so no taxable service has been rendered by CTS India in USA with respect to the impugned figures disclosed in their Income Tax Form 3CEB for the Financial Year 2012-13 and 2013-14. This entry was the trigger for the allegations in the show cause notice that

culminated in the impugned order. Once no service was rendered by the appellant in USA, which is exigible to tax under the Finance Act 1994, all charges under the said Act against the appellant must fail.

10. We find that the judgment of the Hon'ble High Court in ***Linde Engineering*** *(supra) pertains to a case where Linde India was providing service to its parent company Linde Germany. The facts in this case show that CTS USA and not CTS India which was supplying services and that too to a foreign customer and hence the facts are distinguished and do not support Revenue's stand. Since the matter is decided in favor of the appellant on merits, the judgments cited by them are not discussed.*

11. Based on the discussions above, we find that the main charge against the appellant fails on merits. This being so, the other issues relating to CENVAT credit and the extended time limit also do not survive. We are hence inclined to set aside the impugned order and allow the appeal with consequential relief, if any, as per law. We order accordingly.

9. After appreciating the facts, evidence and also following the decision in the appellant's own case, we are of the considered opinion that the demand, interest or penalties cannot sustain and requires to be set aside.

10. In the result, the impugned order is set aside.

11. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in the open court on 12.01.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

RKP