

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.309 of 2010

(Arising out of Order-in-Appeal No.111/ST/2010 dated 29.04.2010 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Eldyne Electro System Private Limited
Profulla Kanan, Kolkata-700059

Appellant

VERSUS

Commissioner of Service Tax, Kolkata
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

Shri S.P.Majumder, Advocate for the Appellant
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.....75120/2023

DATE OF HEARING : 15 .03.2023
DATE OF DECISION : 15 .03.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of service tax has been confirmed against the appellant under the category of "Business Auxiliary Service" on account of export of service.

2. Facts of the case are that the appellant is engaged in Marketing and Promoting of Signaling Products of Alcatel SEL AG, German to Indian Railways, for which they received remuneration from foreign Principal in convertible foreign exchange.

3. Revenue is of the view that the said service do not qualify for export of service. Therefore, the appellant is liable to pay service tax on the said service.

4. In these circumstances, proceedings were initiated against the appellant and the demand of service tax was confirmed and penalties are also imposed on them.

5. Being aggrieved with the said order, the appellant is in appeal before us.

6. The Ld.Counsel for the appellant appeared and submitted that in their own case for the earlier period, the matter came up for hearing before this Tribunal in Service Tax Appeal No.ST/95/2010, wherein vide Tribunal's Final Order No.75096/2023 dated 2nd March 2023, this Tribunal has held that it is a case of export of service, accordingly, no service tax is payable on the appellant.

7. Heard the Id.Counsel for the appellant and perused the records.

8. We find that it is for subsequent period to demand of service tax on their activities for providing services to foreign Principal, for which they received remuneration in convertible foreign exchange in India. As the said issue has already been decided in favour of the appellant in their own case vide Order dated 02.03.2023, therefore, following the same, we hold that the appellant is not liable to pay the service tax, as it is a case of export of service. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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