

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 11606 of 2014- DB

(Arising out of OIO-SUR-EXCUS-001-COM-063-13-14 dated 31.12.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

M/s Essar Power Ltd

27th Km, Surat Hazira Road,
Post Hazira, Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

.....Respondent

APPEARANCE:

Shri Kartik Dedhiya with Ms. Dimple Gohil, Advocate for the Appellant
Shri Rajesh K. Agarwal, Superintendent (Authorised Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO. 10768 /2024

DATE OF HEARING: 15.12.2023
DATE OF DECISION: 05.04.2024

RAMESH NAIR

The appellant M/s Essar Power is a limited company and is primarily engaged in the generation of electricity. It is registered as a service tax assessee providing various taxable services like consulting engineering services, storage and warehousing services, maintenance and repair services. The appellant executed two corporate guarantees dated 10.01.2008 and 07.01.2010 on behalf of Loop Telecom Pvt. Ltd and Loop Mobile Holdings India Ltd. for securing loans, in favour of State Bank of India to the tune of ₹1537 crores and ₹400 crores respectively. The appellant was issued show cause notice based on an investigation undertaken by DGCEI, Ahmedabad zonal unit demanding service tax on the Guarantee Commission received by the Appellant by classifying it under the head of Business Support Services. The demand has been confirmed by the Adjudicating Authority vide

Order in Original No. SUR/EXCUS/001/COM – 063 – 13 – 14. Hence the present appeal.

1.1 The following two issues are involved in the present appeal: -

- i. Whether service tax is liable to be discharged on the Guarantee Commission received for furnishing Corporate Guarantee under the heading 'business support services.'?
- ii. Whether the Department has correctly invoked an extended period of limitation against the Appellant?

2. Shri Kartik Dedhiya, Learned Counsel and Miss Dimple Gohil Learned Advocate appearing on behalf of the Appellant submits that the services rendered by the appellant are beyond the scope of business support services as the same is confined to include only such services which are in the nature of outsourced services which a business entity requires in the ordinary course of business and does not each and every service used by the business. He further relies on the clarification issued by the TRU on the scope of BSS issued vide Circular No. 344/4/2006 dated 28.02.2006. He has also relied on the following judgements in support of their claim.

- Air Liquide North India Pvt. Ltd v Commissioner 2012 (27) STR 295
- Welspun Syntex Ltd vs CCE & Cust 2013 (31) STR 270

2.1 As regards the second issue he submits that Department could not have invoked the extended period of limitation against the appellant because the appellant was under bonafide belief that they are not liable to pay service tax on guarantee Commission during period from February 2008 to June 2012 based on the legal advice that they sought in respect of the same therefore it cannot be alleged that non- payment of tax was on account of any malafideintention. He further submits that the records of the appellant were audited by jurisdictional service tax officials in January 2009 and the appellant was not subjected to any adverse treatment by the

department with respect to levy of service tax on corporate guarantee therefore the department has failed to fulfil ingredients of Section 73 in order to invoke extended period of limitation.

3. Shri Rajesh K. Agarwal learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order

4. Heard both the sides and perused the records. The main issue in the present case is whether the Corporate Guarantee provided by the Appellant falls under the category of 'Business Support Services'.

4.1 For this we need to analyse the entry 'business support services'.

Section 65 (104c) is reproduced below:

"Support Services of Business or Commerce" means services 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.

Explanation -For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]

We have observed that the definition of the said category has brought under its ambit a significant range of service to be construed as "Support Services of Business or Commerce" wherein prima facie the services provided by the Appellant do not fit. Further, it is important to note the intent of the legislature towards interpretation the said heading. For the said purposes we have produced the following interpretations:-

Circular No. 334/4/2006 – TRU dated 28/02/2006

Para 3.13 BUSINESS SUPPORT SERVICES: Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with

secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services.

Circular DOF No. 159/10/2012 – ST dated 19.06.2012

"The services of CAG are also not covered by the heading Business Support Services specified in clause (zzzq) of section 65. When the business support services were taxed for the first time in the year 2006, the TRU circular stated as follows:

"Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services."

It is evident that this circular has clarified that the new service was meant to capture such services as are ordinarily outsourced by business entities. The audit activity is not an outsourced function but is carried out in statutory fulfilment of duties. Thus, the services by CAG would also not be covered by the service head "Business Support Service".

Sequentially in order to ascertain its eligibility for levy of tax it is important to understand the meaning of Corporate Guarantee as well. Corporate guarantee is the act of undertaking the responsibility of the debtor's obligation, in this case, a company. It neither seems to qualify under any of the services included in the understanding of the definition of Business Support Services. Notwithstanding the aforesaid, the services that are required to be construed within the scope of the said definition will necessarily have to include such services that are intrinsically or inextricably associated with the said heading. Nor include within its understanding/execution any such activity that has been outsourced by the Appellant taking into consideration the extended application of the said definition under Section 65 (104c) of the Finance Act, 1994. The tribunal takes support of M/s Sterlite Industries India Ltd vs. Commissioner of GST

and Central Excise 2019 TIOL 879 – (CESTAT MAD) the relevant para has been extracted below:-

“The corporate guarantee that was entered into by appellant is only for the limited purpose of securing loans to its subsidiaries. Corporate guarantees are issued in order to safeguard the financial health of their associate enterprises and to provide it support. For banks, providing bank guarantee is part of their regular course of business and they charge rate on the higher side. Further, these are fool proof instruments of security of the customer and failure to honour the guarantee is treated as a deficiency of services of the bank under banking laws. Corporate guarantee is actually an in-house guarantee and is not issued to customers generally.”

Therefore from the above discussion it can be said that the execution of Corporate Guarantee by the Appellant is merely an act of providing an instrument for securing loans and not even fundamentally connected to the services as described under Business Support services which includes those services to the tune of transaction processing, routine administration or accountancy, customer relationship management and tele-marketing which in its nature of extension includes those that are outsourced only to be interpreted within its scope for the purpose of levy of tax. Therefore, no merit can be found that the commission so received on such corporate guarantee by the Appellant will become eligible for taxation under the scope of Section 65 (104c) of the Finance Act, 1994.

4.2 As regards the second issue, the Learned Counsel of the Appellant has made submissions on the grounds of both revenue neutrality and limitation. The show cause notice dated 09.10.2012 has been issued for the period 08.02.2008 to 30.06.2012. The Appellant states that post audit of January 2009 they were not subjected to any adverse treatment by the Department as regards levy of tax on Corporate Guarantee based on the responses submitted to the Department for the queries raised in the said audit. All this goes on to show that the Appellant has not suppressed any facts with intention to evade tax payment. Therefore, the show cause notice issued

invoking extended period cannot sustain. Appellant succeeds on limitation as well.

5. In light of the aforesaid discussions and findings, we hold that the impugned order requires to be set aside, and we do so. Therefore, the appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 05.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha