GIB/KA/NCR CORPORATION/19.04.2021/OTHERS-17

Others Category : LEVY OF SERVICE TAX

State : Karnataka

Order No.: GIB/KA/NCR CORPORATION/19.04.2021/OTHERS-17

Name of Entry :
M/S NCR CORPORATION INDIA PRIVATE LIMITED

Date : 19-04-2021

Breif Issue :

FACTS OF THE CASE:

The appellant, M/s NCR Corporation India Private Limited was issued a Show cause Notice alleging non-payment of service tax on various grounds and sought to recover the same from the appellant along with interest and penalty. The SCN proposed to demand the tax on the ground that on review of the Balance Sheet of the Company it was observed that the Company had incurred certain expenses in foreign exchange, categorized as “Travel and Others” in the balance sheet, which was related to the “Professional Services? received under the ISA.

As per provisions of Section 67 of the Finance Act, 1994 read with Rule 5 of the Service Tax (Determination of Value) Rules, 2006, all expenses incurred in relation to the provision of main services were includible in the gross value charged for the provision of such service, and thereafter, leviable to Service Tax. Accordingly, such expenses incurred are to be included in the value of service referred to supra, and chargeable to service tax under the Reverse Charge Mechanism, under the taxable category of Business Support Services. Similar observations were made for the period FY 2007-08 to 2010-11 as well. The Authorities proposed to demand service tax to the tune of INR 15,20,96,837/- on this account, along with the applicable interest.

Decision of Advance Ruling Authority :

DECISION:

Whether the Appellant is liable to pay service tax on travel reimbursement paid to its own employees for their overseas business travel?

The appellant from the very beginning i.e. at the time of filing submissions against various audit inquiries from time to time, in its reply to the SCN issued by the respondent has highlighted that the said foreign exchange expenses have been incurred on account of

employees of NCR India who frequently travel abroad for official purposes for the growth and promotion of the business of the appellant - the travel expenses incurred by the employees of the appellant were not incurred in relation to Integrated Services Agreement. These services are never received in India and hence cannot be taxed in the hands of the appellant under Section 66A of the Finance Act, 1994.

Whether the Appellant is liable to pay service charge on third party vendor cross charge received from the overseas group companies? -

These other expenses represent cost shared in relation to certain specific services from such third party vendor such as pay roll or online monitoring of ATM operations of the appellant. We also find from the documentary evidences furnished by the appellant that these other expenses are independent of the Integrated Services Agreement charges and hence not includable in the value for the purpose of demand of service tax liability - other expenses incurred which are in the nature of reimbursement made by the appellant to overseas Group Company towards third party vendor cost engaged at the group level are not liable to be taxed as Business Support Service for the same reasons as held in the findings on issue number one above. Hence, this issue is also decided against the Revenue.

Whether the Appellant is liable to pay service tax on employee-cost charged received from its overseas group companies?

The appellant has provided various services to its group entities located outside India and has cross charged its overseas Group Company towards its employee cost which cannot be construed as provision of service and hence cannot be taxed under Business Support Service as sought to be done by the learned Commissioner. Further, it is found that even if these services i.e. Business Support Service are considered taxable, the same would qualify as export of service under Rule 3(i)(iii) of Export of Service Rules 2005 because as per the Export of Service Rules, taxable services shall be deemed to be provided outside India, if the service recipient is located outside India and consideration is received in convertible foreign exchange - In the Present case, both the conditions are fulfilled hence the services rendered by the appellant cannot be taxed under Business Support Service and the ratio of the decisions relied upon by the appellant cited supra are squarely applicable to the facts of the case hence considering from both angles, the appellant cannot be taxed under Business Support Service and this issue is also decided in favour of the appellant.

So travel expenses incurred by the employees of the appellant were not incurred in relation to Integrated Services Agreement. These services are never received in India and hence cannot be taxed in the hands of the appellant under Section 66A of the Finance Act, 1994.