



SHIVADASS & SHIVADASS®  
— LAW CHAMBERS —

## PRACTICE AREA UPDATE INDIRECT TAX

**CESTAT holds that substantial permanence to be established to hold the provision of service to be in India; holds transaction to be an Export of Service**

Investigation was initiated against a leading IT Company indulged in IT services and manpower supply to domestic and foreign customers, on the premise that service tax is payable on amounts collected from foreign customers on provision of manpower services which were provided by sitting in Indian premises of the Company by observing that the location of the services provided was in India and it could not be considered to be an 'export of service'.

Against the Order issued by the Department to this effect, the Company approached CESTAT, Bangalore, contending that all the conditions prescribed under Rule 6A of the Service Tax Rules, 1994 (dealing with export of services) have been satisfied. Further, based on the interpretation of 'fixed establishment' and 'business establishment' in the Service Tax Education Guide, a sufficient degree of permanence and availability of suitable structure in India is required to be established to conclude that the location of the provision of service is in India, which is absent in the present case. Hence, the location of the Assessee in India cannot be considered to be the location of the foreign recipient.



**SHIVADASS & SHIVADASS<sup>®</sup>**  
— LAW CHAMBERS —

Based on the submissions made, the Hon'ble CESTAT allowed the appeal, holding that the 'business establishment' or 'fixed establishment' of the client is outside India since the all the services are provided to the client located outside India even though such personnel carry out such work within the premises of the Company. That a permanent establishment would mean the existence of a substantial element of permanence of a foreign enterprise in another country which can be attributed to a fixed place of business in that country, and such services provided to customers outside India would not mean that such customers have a 'fixed establishment' in India. Therefore, the same is in the nature of export of services.

**The client was advised by the Firm led by Partner Prashanth Shivadass, Associate Partner Rishab J and Principal Associate Shradha Rajgiri. The arguments in court were led by Senior Advocate G Shivadass.**



**G Shivadass**



**Prashanth Shivadass**



**Rishab J**



**Shradha Rajgiri**