

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 2

SERVICE TAX Appeal No. 11138 of 2018-SM

[Arising out of Order-in-Appeal No RAJ-EXCUS-000-APP-233-2017-18 dated 07.02.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Orbit Bearing India Pvt Limited

.... Appellant

Plot No. 2313, GIDC Metoda, Kalawad Road,
RAJKOT, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Rajkot

.... Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat -360001

APPEARANCE :

Shri Vikas Mehta, Consultant for the Appellant
Shri P. Ganesan, Superintendent (AR), for the Respondent

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 08.10.2025

DATE OF DECISION: 19.11.2025

FINAL ORDER NO. 11072/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the impugned Order-in-Appeal dated 07.02.2018 passed by learned Additional Director General (DGIS), AZU, Ahmedabad through which he confirmed the demand of service tax on the appellant with applicable interest and penalty equal to the demand confirmed. He also upheld the penalty imposed by the learned Adjudicating Authority on the appellant vide Order-in-Original under the provisions of Section 77(1) (a) and Section 77(2) of the Finance Act, 1994. However, he dropped the demand of service tax on the services provided after 01.10.2014. Since the demand for the said period was found not

sustainable therefore, interest and penalty levied under Section 75 and 78 of the Finance Act, 1994 was also dropped.

2. The facts of the case in brief are that during the course of audit of the CERA Ahmedabad, it was observed that the appellant had paid commission to their overseas commission agent on export of goods and on overseas sales promotion to the tune of Rs. 43,07,115/- for the period from 2011-12 to 2014-15, on which the appellant being service recipient, had failed to pay service tax amounting to Rs. 5,32,359/- under Reverse Charge Mechanism. Accordingly, a Show Cause Notice dated 21.03.2016 was issued to the appellant demanding service tax amounting to Rs.5,32,359/- along with applicable interest and proposed penalties.

2.1 The said Notice was adjudicated vide Order-in-Original No. 49/ST/2016-17 dated 31.01.2017 by the Assistant Commissioner, Service Tax Division, Rajkot, wherein the Adjudicating Authority confirmed the demand of Rs. 4,89,850/- under Section 73(2) of Finance Act, 1994 read with Section 68 of the Finance Act, 1994 and ordered for appropriation of Rs. 4,89,850/-, already paid. He also ordered for recovery of interest under Section 75 of the Finance Act, 1994, and also ordered for appropriation of Rs. 42,509/- against the demand of interest. He also imposed equal amount of penalty under Section 78 of the Finance Act, 1994 and imposed penalties amounting to Rs. 10,000/- under Section 77(1)(a) and Rs. 10,000/- under Section 77(2) of the Finance Act, 1994. However, he dropped penalty under Section 76 of the Finance Act, 1994.

2.2 Feeling aggrieved from Order-in-Original the appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) rejected the appeal while upholding the Order-in-Original passed by learned Adjudicating Authority. However, he dropped the demand of service tax on the services provided after 01.10.2014. He also imposed interest and penalty thereon for the said period under the provisions of Section 75 and 78 of the Finance Act, 1994. Feeling aggrieved from the impugned order dated 07.02.2018 passed by Commissioner (Appeals), the present appeal has been filed before this Tribunal.

3. Learned Counsel for the appellant submitted that the order passed by learned Commissioner (Appeals) has travelled beyond the scope of Show Cause Notice in as much as there is no allegation in the Show Cause Notice that the appellant had mis-classified the service covered by Invoice No. 2042 dated 17.07.2011 and Invoice No. 2858 dated 30.03.2012. Therefore, the impugned order is not tenable in the eyes of law and the same is liable to be quashed and set-aside. Learned Counsel for the appellant also submitted that the lower authorities have erred in failing to appreciate that the entire situation is 'Revenue neutral' given the fact that service tax held as payable by appellant is available to them as Cenvat credit and hence, there can be no intention to evade payment of tax. Therefore, invocation of extended period and imposition of mandatory penalty upon the appellant under Section 78 of Finance Act, 1994 is not tenable in the eyes of law and hence, the same is liable to be quashed and set-aside.

3.1 Learned Counsel for the appellant also submitted that learned Adjudicating Authority has nowhere found that the appellant had suppressed the taxable value with intent to evade payment of service tax. Hence, the demand of service tax was confirmed without any findings by learned

Adjudicating Authority. Learned Commissioner (Appeals) has also failed to appreciate this lacuna and has upheld the adjudication order without giving consideration to the submissions made by appellant in this regard. Thus, the impugned order upholding the demand of service tax beyond normal period of limitation cannot be sustained in the eyes of law. The proceedings are hit by limitation and hence, the same are not sustainable in the eyes of law. It has been prayed that the impugned order may be set-aside and the appeal may be allowed.

4. Learned AR for the department has submitted that Rule 9 of the Place of Provision of Specified Service Rules, 2012 as notified vide Notification No. 28/2012-ST dated 20.06.2012, prevailing during the period involved in the present case, is as follows:-

“Place of provision of specified services. The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Online information and database access or retrieval services;

(c) Intermediary services;

(d) Service consisting of hiring of means of transport, upto a period of one month.

Learned AR for the Revenue further submitted that it is clear from the above that the appellant is liable for payment of service tax under RCM in light of provisions of Section 66A of the Act read with Notification No. 30/2012-ST dated 20.06.2012. The appellant had also failed to pay service tax on the services received from the overseas service providers under reverse charge

mechanism upto 30.09.2014 and such non-payment of service tax represents the fact of deliberately not declaring the taxable value of services received from the overseas service providers, while filing their ST-3 returns. The fact was only revealed at the time of audit of the appellant. He prayed that the impugned order passed by learned Commissioner (Appeals) be upheld and the appeal may be rejected.

5. I have heard the learned Counsel for the appellant and learned AR for the department and perused the record.

6. I find that in Order-in-Original, learned Adjudicating Authority has admitted that the service covered by aforesaid two invoices was not covered under the category of "Business Auxiliary Service". However, he confirmed the demand of service tax on these invoices on the ground that it would still be liable to service tax under Reverse Charge Mechanism. It is also pertinent to note here that demand was made pursuant to audit of recorded transactions and not on account of any suppressed material. Adjudicating Authority was required to examine the issue of invocation of extended period in terms of proviso to Section 73 (1) of Finance Act, 1994 and further, there is no proof of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provisions or rules with intent to evade payment of service tax. The Adjudicating Authority had not given any findings on how the service tax can be demanded by invoking extended period of limitation of five years as against normal period of 18 months, applicable to the period covered by the Show Cause Notice. It was only with introduction of Finance Act, 2016 which came into effect from 14.05.2016 onwards, that period of 30 months was introduced.

6.1 It is also pertinent to note here that appellant's contention that consultancy service cannot be classified under Business Auxiliary Service was duly accepted by learned Commissioner (Appeals). He held that this service is required to be classified under "Management or Business Consultants Service" which is not proposed in the Show Cause Notice and on this basis, he confirmed the demand. The Commissioner (Appeals), in the absence of findings by adjudicating authority on the point of time bar, held that Show Cause Notice had correctly invoked extended period, without paying regard to the fact that the entire transactions which gave rise to the demand of service tax, were duly recorded in the books maintained by appellant that were presented for audit.

6.2 The learned Adjudicating Authority and the learned Commissioner (Appeals) have confirmed the demand of service tax on 'consultancy service' under a category 'Management or Business Consultants Service' that is not proposed in the Show Cause Notice. Hence, the demand is made under a service category that is not proposed in the show cause notice, which is not permissible in law.

6.3 It is also pertinent to mention here that Hon'ble High Court of Karnataka has held in the case of **Mahakoshal Beverages Pvt. Limited - 2014 (33) STR 616 (Kar.)**, that service tax cannot be demanded under a category that is not proposed in the Show Cause Notice.

7. In view of the above discussion and observations, I am of the view that the impugned order passed by learned Commissioner (Appeals) and the Order-in-Original passed by learned Adjudicating Authority is not sustainable and liable to be quashed to the extent of demanding of service tax beyond 18 months as the learned Adjudicating Authority has not found any fraud or

collusion or wilful mis-statement or suppression of facts or contravention of any provision or rules with intent to evade payment of service tax and the learned Commissioner (Appeals) has not rebutted the basic fact that all transactions were duly recorded in the books of accounts presented for audit. I am also of the considered view that demand of service tax under 'Management or Business Consultants Service' which was not even proposed in the Show Cause Notice, is not sustainable. Therefore, levy of interest and imposition of penalty to this extent is also not sustainable and liable to be quashed and set-aside.

8. Consequently, the appeal is allowed in the above terms.

(Pronounced in the open court on 19.11.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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