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

REGIONAL BENCH- COURT NO. 1

Service Tax Appeal No. 10954 of 2017

(Arising out of Order in Original No. BHR-EXCUS-000-COM-107-2016-17, dated 31.01.2017 passed by the Commissioner, Bharuch)

M/s Solvay Specialities India Pvt Ltd **...Appellant**
3526-27, GIDC, Estate,Panoli-394116
Dist Bharuch

VERSUS

CCE-Bharuch **...Respondent**
GST Bhavan, Subhanpura,
Vadodara-390023, Gujarat

WITH

Service Tax Appeal No. 11181 of 2019

(Arising out of Order in Original No. VAD-EXCUS-002-COM-024-18-19, dated 16.04.2019 passed by the Commissioner, CGST Vadodara-II)

M/s Solvay Specialities India Pvt Ltd **...Appellant**
Plot No.3526-27, GIDC, Estate,Panoli-394116
Dist Bharuch

VERSUS

CCE & ST – Vadodara-II **...Respondent**
1st Floor, Room No. 101,New Central Excise Building
Vadodara-390023, Gujarat

APPEARANCE:
Shri Vinay Kansara, Advocate appeared for the Appellant
Shri R. Nathan, Assistant Commr. (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 11408-11409 /2025

DATE OF HEARING: 20.08.2025
DATE OF DECISION: 09.12.2025

SATENDRA VIKRAM SINGH:

M/s Solvay Specialities India Private Limited, Bharuch (Appellant) were providing services of sales promotion and marketing of goods of various foreign companies in India which did not have any office or business establishment in India. They were getting commission from them for these services. Likewise, they were also paying commission to foreign agents for sale of their goods outside India. They were issued the following show cause notices.

Sr. No.	SCN No. & Date	Period	Amount of service tax
1	V(ST)15-07/OA/2011 dt. 18.10.11	2006-07 to 2010-11	1,20,86,990/-
2	V(ST) 3-11/Dem/2012 dt. 10.10.2012	2011-12	52,04,389/-
3	V(ST) 3-13/Dem/2015-16 dt. 10.07.2015	2012-13 to	2,22,93,695/-

		2013-14	
4	V(ST) 3-01/Dem/2016-17 dt. 13.04.2016	2014-15 to Sept 15	2,22,46,528/- + 98,424/-
5	Vch39(04)solvay/Div-XI/Panoli/Adj/Commr/13/18-19 dated 14.09.2018	Oct 15 to June 17	3,25,52,368/- + 68,385/-

The present appeals pertain to SCNs mentioned at Sr. No. 4 and 5 of above table. The SCNs at 1 to 3 were decided by the lower authorities by confirming demands against which the appellant had filed two appeals bearing No. ST/10321/2013 and ST/12027/2016 which were decided by this Tribunal vide Final Order No. A/10934/2023 dated 20.04.2023 and 10704/2024 dated 28.03.2024 respectively by way of remand to the Adjudicating Authority.

1.1 In show cause notices at serial No. 4 and 5, service tax (including education cess and secondary and higher education cess) has been demanded under Section 73(1)/ 73(1A) of the Finance Act, 1994 along with interest under section 75 with proposal to impose penalty under Section 76 of the said Act. The Show Cause Notice at serial No. 4 was adjudicated by the Commissioner, Central Excise, Customs & Service Tax, Bharuch vide impugned order dated 31.01.2017 wherein, he confirmed the entire service tax demand (i.e. demand of Rs.98,424/- on Commission paid by Appellant to foreign companies and demand of Rs.2,22,46,528/- on commission received by the appellant from foreign companies) alongwith interest and imposed a penalty @10% of the service tax amount under section 76 of the Finance Act, 1994.

1.2 The SCN at Serial No. 5 was adjudicated by the Commissioner vide order dated 16.04.2019 wherein he confirmed the entire demand of service tax (i.e. Service tax of Rs. 68,385/- on Commission paid to foreign agents and demand of Rs. 3,25,52,368/- on the commission amount received from various foreign companies). As the appellant had already paid the service tax of Rs.3,25,52,368/- alongwith interest of Rs.19,419/-, so he appropriated the said amounts. He imposed penalty of Rs. 6839/- which is equal to 10% of the demand of service tax confirmed by him, under Section 76 of the Finance Act, 1994.

1.3 Aggrieved with above orders, the appellant filed two appeals bearing No. ST/10954/2017 and ST/11181/2019 wherein they have taken the following grounds:

Appeal No. ST/10954/2017

- Service tax of Rs. 98,424/- has been demanded for the period April 2014 to September 2015 in respect of Commission paid to foreign commission agents for sales promotion of their goods in foreign country.
- During the period from April 2014 to September 2014, service tax was exempt on commission paid to foreign agents in view of

Notification No. 18/2009-ST dated 7.7.2009. For the period from October 2014 onwards, service tax on commission paid by them to their foreign commission agents is exempt in view of Rule 9 of the Place of Provision of Services (POPS) Rules, 2012 (hereinafter referred as POPS Rules, 2012) as per which place of provision of such service is the location of the service provider. The service provider being located in a foreign country i.e. non-taxable territory, no service tax is payable as per Section 66 B of the Finance Act, 1994.

- Regarding service tax demand of Rs. 2,22,46,528/- on commission received by them from the foreign companies, the said service is required to be treated as export of service in terms of Rule 3 of the POPS Rules, 2012 read with Rule 6A of the Service Tax Rules, 1994. As Commission Agent, they received commission from foreign companies for sale of their goods, in India. Such service was treated as export of service up to 30.09.2014. This legal position is supported by the following decisions:
  a) 2009(13)STR65 (Tri. Bang.) ABS India Ltd.
  b) 2009 (15) STR 68 (Tri. Del.) National Engg. Industries Ltd.
  c) 2008 (11) STR 10 (Tri. Del.) CCE vs Cani Mechnadising Pvt. Ltd.
  d) 2008 (11) STR 23 (Tri. Bang.)Blue Star Ltd.
  e) 2009 (15) STR 225 (Tri. Bang.) Aero Products
  f) 2010 (17) STR 185 (Tri. Bang.) Worldspace India Pvt. Ltd.
  g) 2010 (17) STR 303 (Tri. Bang.) Muthoot Fincorp Ltd.

- Circular No.11/05/2009-ST dated 24.2.2009 clarifies that commission received by them from foreign comapnies during the period from April 14 to September 2014 as Indian Commission Agent for sale promotion of goods in India is not leviable to service tax.
- For the period w.e.f. 01.10.2014, they have already paid the service tax of Rs. 1,51,90,918/- on the commission so received as the said activity became taxable in terms of amended definition of intermediary service as per Rule 2(f) read with Rule 9 of the POPS Rules, 2012. Such services w.e.f. 01.10.2014 are treated as intermediary services. For taxability of such services, location of the service provider should be in Taxable Territory. They being located in India, are liable to service tax on such commission amount.
- They received commission of Rs. 5,71,37,998/- during the period April 2014 to September 2014 and Rs. 11,73,07,770/- for the period from October 2014 to September 2015. They have already paid service tax of Rs. 1,51,90,918/- on commission received during October 2014 to September 2015 and no service tax is payable on receipt of commission during April 2014 to September 2014 as the service during that period was export of service.
- The adjudicating authority did not consider their submissions and confirmed the entire demand of service tax alongwith interest and penalty equal to 10% of the service tax amount. They prayed to set aside the balance demand and penalty.

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- The appellant mentioned that they are not liable to make any payment of service tax on commission amount paid to foreigner commission agents for services received by the appellant. These

are exempt from payment of service tax under reverse charge basis on account of Rule 9(C) read with Rule 2(f) of the POPS Rules, 2012.

- W.e.f. 01.10.2014, the said services were covered under Intermediary service, where location of the service provider was the criteria for liability of service tax. In this case, as the location of the service provider was in a non taxable territory, no service tax was leviable on such amount. He, therefore, pleaded for setting aside the demand of service tax of Rs. 68,385/- on commission amount of Rs.4,57,618/- paid by them to their foreign commission agents during the period October, 2015 to June-2017 along with interest and penalty.

3. During arguments, learned advocate relied on Final Order No. E/10934/2023 dated 20.04.2023 and Final Order No. 10704/2024 dated 28.03.2024 passed in their very own case, wherein their appeals have been allowed treating the said services as export of service. He states that vide both the above orders, the matters have been decided in their favour. As the same issue is involved in the present cases, the demand adjudged by the Learned Adjudicating authority be set aside alongwith interest and penalty. He also relied on various other case laws as mentioned below:

- Evonik Specialty India Pvt. Ltd. Final Order No. 11778/2022 dated 28.11.2022
- Medgenome Labs Ltd. 2022-283-CESTAT-BANG
- Verizon Communication India Pvt. Ltd. 2018 (8) GSTL 32 (Del.)
- Linde Engineering India Pvt Ltd. 2022 (57) GSTL 358 (Guj.)
- Bellatrix Consultancy Services 2022 (67) GSTL 59 (Kar.)
- Celtic Systems Pvt. Ltd. 2023 (70) GSTL 74 (Tri. Amd.)
- CST vs Gupshup Technolody India Pvt.Ltd. 2018 (9) GSTL 305 (Mum)
- Yamazaki Mazak India Pvt. Ltd. 2018 (12) GSTL 66 (Tri. Mum)
- Pulera Chemicals India Pvt. Ltd. 2015 (39) STR 700 (Tri. Mum)
- Wartsila India Ltd. 2019 (24) GSTL 547 (Born.)
- Citi Bank N.A. 2018 (18) GSTL 580 (Born.)
- Life Care Medical Systems 2018 (18) GSTL 587 (Born.)
- ATE Enterprises Pvt. Ltd. 2018 (8) GSTL 123 (Born.)

4. Learned AR, on the other hand, reiterated findings of the lower authorities. Regarding service tax demand of Rs. 98,424/- and Rs. 68,385/- on the amount of commission paid to foreign commission agents, he argued that the appellant was required to pay service tax on reverse charge mechanism for services received by them from the foreign based commission Agents. The appellant have mis-placed reliance on Rule 9 of the POPS Rules, 2012 as Foreign Commission Agents cannot be treated as intermediary as they are providing the main service of sales promotion. "Intermediary" has been defined under Rule 2(f) of POPS, Rules 2012 to mean:

> (f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account."

He therefore, pleads that only in case of intermediary service, place of provision of services shall be the location of service provider and not otherwise. As foreign based sales commission agents are providing main service to the appellant which is excluded from the definition of intermediary, location of the service recipient shall be taken as the place of provision of service and the appellant would be liable to pay service tax under RCM basis in terms of Notification 30/2012-ST dated 20.06.2012. He therefore, pleads that the demands adjudged by the lower authority may be sustained by dismissing the appeals filed by the appellant.

5. We have heard the rival submissions. Apparently two broad issues are involved in the present matters.

A) Whether services of foreign commission agents availed by the appellant during the period from April 2014 to June 2017 are leviable to service tax on reverse charge basis or, are exempt from service tax in view of POPS, 2012?

B) Whether appellant is liable to pay service tax on commission amount received from foreign clients for sales promotion of their goods in Indian Territory?

5.1 As regards service tax demand of Rs.1,66,809/- (i.e. Rs.98,424/- for the period April 2014 to September 2015 and Rs.68,385/- for the period October 2015 to June 2017) on commission paid to foreign based agents towards the service of sales promotion and marketing received by the appellant, we find that this issue has already been decided in appellant's own case vide Final Order No. A/10934/2023 dated 20.04.2023. The relevant portion of para 6 of the said order is reproduced below:

> *"We find that there is no dispute that the receipt of service from the service provider located outside India and the recipient of service is in India, the appellant is liable to pay service tax under reverse charge mechanism in terms of Section 66A of the Finance Act, 1994. The appellant up to 30.09.2009 paid service tax along with interest. As regard the balance service tax amount for the period 01.10.2009 onwards, the appellant claimed exemption Notification No. 18/2009-ST dated 07.07.2009. We find that exemption was denied only on the ground that the appellant have not mentioned invoice number in the shipping bills for export of goods. However, the use of input service received is meant for export of goods only. Except the lapse, of not mentioning invoice number in the shipping bill, there is no other violation of notification. Merely for the small procedural lapse exemption cannot be denied as held in various*

decisions cited by the appellant. Therefore, we are of the view that the appellant is entitled for the exemption Notification No. 18/2009-ST dated 07.07.2009."

Since the issue is no more res-integra, we therefore set aside the service tax demand of Rs.1,66,809/- for the period from April 2014 to June 2017. Since service tax itself is not payable by the appellant, we also set aside the demand of interest and penalty imposed under Section 76 of Finance Act, 1994

5.2 Regarding the second issue, there are two periods involved i.e. one from April 2014 to September 2014 when "intermediary" as per Rule 2(f) of POPS Rules, 2012 was defined as:

> f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account;"

The above definition was substituted vide Notification No. 14/2014-ST dated 11.07.2014 w.e.f. 01.10.2014. The substituted definition reads as under:

> "f) intermediary" means a broker, an agent or any other person, by service (hereinafter called the 'main' service) or a supply of goods, provides the main service or supplies the goods on his account:"

5.3 It is the contention of the appellant that w.e.f. 01.10.2014, Intermediary also covered broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (herein after called the main service) **or a supply of goods** between two or more persons. Their claim is that since they were engaged in promotion of sale of goods of their foreign clients in India and therefore, they fall within the definition of intermediary service w.e.f. 01.10.2014. Prior to this period (i.e. from April 2014 to September 2014), they were not covered within this definition and therefore, whatever commission has been received by them prior to this date on account of promotion of sale of goods of their foreign clients is not leviable to service tax. Their claim is that as per Rule 9(C) of POPS Rules 2012, in the case of intermediary service, the place of provision of service shall be the location of service provider. As they are covered within the definition of intermediary service w.e.f. 01.10.2014 only, they are liable to pay service tax only after this date. They also claim to have paid the service tax on the amount of commission received after this date. We find that in respect of show cause notice dated 13.04.2016 issued for the period April 2014 to September 2015, the appellant has paid service tax of Rs. 1,51,90,918/- commission

amount of Rs.11,73,07,770/- received from 01.10.2014 to 30.09.2015. They are only in challenge for the service tax demand on commission of Rs. 5,71,37,998/- received prior to 01.10.2014. In the light of above discussions, we find force in the contention of the appellant.

5.4 We also find that CBIC vide Circular No. 111/05/2009-ST dated 24.02.2009 has clarified this issue as under:

> *"In terms of rule 3(2)(a) of the Export of Services Rules 2005, a taxable service shall be treated as export of service if "such service is provided from India and used outside India". Instances have come to notice that certain activities, illustrations of which are given below, are denied the benefit of export of services and the refund of service tax under rule 5 of the Cenvat Credit Rules, 2004 [Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006] on the ground that these activities do not satisfy the condition 'used outside India', -*
>
> *(i) ……*
>
> *(ii) …..*
>
> ***(iii) Indian agents who undertake marketing in India of goods of a foreign seller. In this case, the agent undertakes all activities within India and receives commission for his services from foreign seller in convertible foreign exchange;***
>
> *(iv) …….*
>
> *The departmental officers seem to have taken a view in such cases that since the activities pertaining to provision of service are undertaken in India, it cannot be said that the use of the service has been outside India.*
>
> *2. The matter has been examined. Sub-rule (1) of rule 3 of the Export of Services Rule, 2005 categorizes the services into three categories :*
>
> ***(i) Category I [Rule 3(1)(i)] :*** *For services (such as Architect service, General Insurance service, Construction service, Site Preparation service) that have some nexus with immovable property, it is provided that the provision of such service would be 'export' if they are provided in relation to an immovable property situated outside India.*
>
> ***(ii) Category II [Rule 3(1)(ii)] :*** *For services (such as Rent-a-Cab operator, Market Research Agency service, Survey and Exploration of Minerals service, Convention service, Security Agency service, Storage and Warehousing service) where the place of performance of service can be established, it is provided that provision of such services would be 'export' if they are performed (or even partly performed) outside India.*
>
> ***(iii) Category III [Rule 3(1)(iii)] :*** *For the remaining services (that would not fall under category I or II), which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and Other Financial services, Business Auxiliary services and Telecom services), it has been specified that they would be 'export', -*
>
> *(a) If they are provided in relation to business or commerce to a recipient located outside India; and*
>
> *(b) If they are provided in relation to activities other than business or commerce to a recipient located outside India at the time when such services are provided.*
>
> *3. It is an accepted legal principle that the law has to be read harmoniously so as to avoid contradictions within a legislation. Keeping this principle in view, the meaning of the term 'used outside India' has to be understood in the context of the characteristics of a particular category of service as mentioned in sub-rule (1) of rule 3. For example, under Architect service (a Category I service [Rule 3(1)(i)]), even if an Indian architect prepares a design sitting in India for a property located in U.K. and hands it over to the owner of such property having his business and residence in India, it would have to be presumed that service has been used outside India. Similarly, if an Indian event manager (a Category II service [Rule 3(1)(ii)]) arranges a seminar for an Indian company in U.K. the service has*

to be treated to have been used outside India because the place of performance is U.K. even though the benefit of such a seminar may flow back to the employees serving the company in India. For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the ***benefits of these services accrue outside India****. In all the illustrations mentioned in the opening paragraph, what is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well."*

5.5 Therefore, agreeing with the appellant, we hold that no service tax was leviable on commission amount of Rs.5,71,37,998/- received by the appellant from foreign clients for the period prior from April to September 2014. As far as service tax liability on commission received from foreign clients after 01.10.2014 till June 2017, we confirm the order of the lower authority. The appellant had alreadypaid full service tax alongwith interest for the period October 2015 to June 2017 which has also been appropriated by the adjudicating authority. The appellant has also paid service tax of Rs.1,51,90,918/- for the period 01.10.2014 to 30.09.2015, in respect of appeal No. ST/10954/2017

5.6 In view of above discussion, we remit the matter to the adjudicating authority to verify correctness of payment of service tax for the above period and pass order for recovery of service tax in case of any short payment or recovery of interest in case of delayed payment of service tax. We also set aside penalty imposed on the appellant under Section 76 of the Finance Act, 1994.

6. Both the above appeals are disposed of in above terms.

(Order Pronounced in the open court on 09.12.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Neha