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

REGIONAL BENCH- COURT NO. 02

Service Tax Appeal No. 10196 of 2017
(Arising out of OIA-CCESA-VAD-APP-II-VK-280-2016-17 dated 07/10/2016 passed by the Commissioner (Appeals), Central Excise Customs & Service Tax-VADODARA-II)

Godhani Gems Pvt Ltd **.....Appellant**
231-236, Pajava Falia, Gotalawadi,
Green Lines Katargam Road,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.....Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

APPEARANCE:
Shri. Rahul Gajera, Advocate for the Appellant
Shri. Sunita Menon, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 11422/2025

DATE OF HEARING:28.11.2025
DATE OF DECISION:10.12.2025

SOMESH ARORA

At the outset, it is submitted that appellant is contesting the demand of service tax both on merits and on limitation and the grounds of appeal are being re-iterated in this behalf. In addition to and without prejudice to the grounds of appeal, the following submissions were advanced:

2. The issue in the present appeal relates to demand of service tax under the category information technology software service falling under clause (zzzze) of section 65 (105) of the Finance Act, 1994. It was contended in the show cause notice that appellant during the period 16-5-2008 to 31-3-2013 has made payments to foreign based supplier viz. M/s. Sarin Technologies, Israel and Diamsoft, UAE towards customized software for use in relation to the purchase of Diamond Processing Machine from the said foreign based suppliers. It was further contended that Indian Subsidiary of the said supplier/service provider cannot be said to have permanent establishment in India and hence in terms of section 66A read with Rule 3(iii) of Taxation of services Rules, 2006, appellant, a recipient of services, was liable to pay service tax under reverse charge mechanism. The said demand was confirmed by the adjudicating authority. It was submitted by the advocate of

the party that bunch of appeals on the identical issue came up before the first appellate authority advocate, and later before this Tribunal. The Division Bench of this Tribunal set aside the service tax demand both on merits as well as on limitation vide Final Order No. 10494-10499/2024 dated 26-2-2024.

2.1 In view of above, since the issue is squarely covered by the decision of division bench of this Tribunal, the impugned Order cannot be sustained, and appeal of the present appellant is allowable with consequential relief.

3. The Authorised representative reiterated the detailed findings of the lower authority, confronted with the order.

3.1 From the impugned order, it was noted that the appellant had placed the order for the said taxable service directly to the said foreign companies who had issued invoices directly in the name of the appellant and supplied the software and/or License/Right to use/End use agreement to them only. The appellant had made payment for the said services by remitting the amount in convertible foreign currency to said foreign companies. In his statement dated 03.09.2013, Shri Rakesh Thakorlal Gandhi, Accountant and Authorized Representative of the appellant had stated that as per his knowledge, none of the above companies was having any permanent establishment/business establishment in India and hence, the buyer had to place order for purchase of the diamond processing machines and software, directly to the said companies in respective foreign countries that all transactions were made directly with these foreign companies but a person of M/s. Sarin Technology India Private Limited was engaged for installation of machines and software supplied by the foreign companies, he visited their factory premises and downloaded the said software through internet and installed the said software in the said diamond processing machines. However, after initiation of inquiry by the DGCEI, the appellant had voluntarily deposited total service tax amounting to Rs. 20,47,612/-along with interest of Rs. 2,96,111/-.

3.2 It was found that the contention of the appellant that M/s. Sarin Technologies India Pvt. Ltd. is a permanent establishment of M/s. Sarin, Israel had already been dealt in the show cause notice and since the appellant had failed to adduce any new arguments, the adjudicating authority had also endorsed the same view in the impugned order.

3.3 Again, the appellant has not made any new submission and they investigation and during adjudication proceedings. It may be accepted that have basically reiterated the same submissions which were made during M/s. Sarin, India is a branch (subsidiary company) of M/s. Sarin, Israel but for the purpose of leviability of service tax under reverse charge mechanism, the said Indian company cannot be treated as permanent establishment of M/s. Sarin, Israel as the activities undertaken, as narrated in the grounds of appeal (which were also submitted before the adjudicating authority) are pre-sale activities and incidental post-sale support services in which they have done only installation and repair or maintenance service on behalf of M/s. Sarin, Israel. The taxable event of the "Information Technology Software Service" had taken place on import of Diamond Machines along with software through email. All the dealings of purchasing the machines and software were directly between the appellant and the foreign supplier/provider of the software. The Indian company viz. M/s. Sarin, India is in no way involved in the agreement or license provided by M/s. Sarin, Israel to the appellant. The appellant had placed the order for the machines and software directly M/s. Sarin, Israel who had issued invoice directly in the name of the appellant and supplied the software and/or License/Right to use/End use agreement to them only. The appellant had made payment for the said services by remitting the amount in convertible foreign currency to said foreign companies directly and not to M/s. Sarin, India. Mere carrying out the pre-sales and post-sale services does not render to treat M/s. Sarin, India as permanent establishment for service tax as specified under reverse charge mechanism. The business establishment is the principal place of business, usually head office or headquarters or the seat from which business is run. There can be only one such place. A business may have headquarters in one country but branches in many other countries. A company may be incorporated in one country but does the business entirely from a head office in another country. In such cases, business establishment is treated to be in a country where the business is entirely done from the head office. Under the existing provisions of service tax during the period under dispute, the appellant is clearly liable for payment of service tax under reverse charge mechanism as the service was imported; the provider of service is located outside India and the appellant (receiver of the service) is located in India with permanent/business establishment in India. The appellant is trying to throw their responsibility to pay service tax on M/s. Sarin, India contending that it is a permanent establishment of M/s. Sarin,

Israel and as if M/s. Sarin, India had provided the service. M/s. Sarin, India cannot be said as service provider in this case rather the case is of direct import of service from M/s. Sarin, Israel by the appellant and accordingly, they are liable to pay service tax under reverse charge mechanism which they had also paid voluntarily.

4. Rival submissions have been considered. The question involved on merits is whether Reverse Charge Mechanism can be applied when a foreign company has an Indian subsidiary which provides services of loading of software etc in the diamond cutting machine and the payments are made directly to the company outside India. In this regard, this Court has gone through the decision of the Division Bench as reported in 2024 (3) TMI-344-CESTAT, Ahmedabad dated 26th February, 2024 which dealt with the same issue in relation to same company i.e. M/s. Sarin India and M/s. Sarin Israel. Following observations have been made, which are relevant in this matter.

> *"It was erroneous conclusion on the part of the department to allege that Sarin India will not be considered a Permanent Establishment of Sarin Israel. It can be observed from the records that Sarin had head office in Israel and that Sarin India Technology Ltd. was operating as an agency to carry out business of trading in a different country that in the instant case is, India and by flow of that it is opined that by way of Section 66A discharge of liability of service tax cannot be made applicable to the Appellants. Therefore there is no second thought required to be arrived at the conclusion that the Appellants had received goods from a foreign country and services in its extension from service provider in India through the said foreign company's Branch office at that time one of which is located in India thereby sufficiently establishing that they have a permanent establishment hence the Appellants cannot be fastened with the liability of service tax for being a recipient of service under section 68(2) of the Finance Act read with rules 2(1)(d) as a deemed service provider in India*
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> *Revenue neutrality time limitation HELD THAT: The statements authorized signatory were recorded from time to time. The statements were exculpatory in nature to the extent that no one stated that the Appellant had any intention to evade the liability for payment of Service Tax. In such circumstances, when the Appellant has no mala fide intention to evade the payment of Service Tax, larger period of limitation is not invokable there are force in the submissions on behalf of the appellants that the issue involved is an interpretational issue and the bonafide interpretation of the Appellants was that they were not liable to pay Service tax as the suppliers were providing service through their Indian arm having a fixed establishment in India and therefore, based on a strict reading of the provisions of law, the Appellant was not liable to pay Service Tax*
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> *Thus, there are no merit in the claim of the Department that there was wilful suppression of facts on the part of the Appellants. Therefore, demand beyond normal period in those show cause notices issued invoking extended period cannot sustain. Hence the Appellants succeed on limitation as well.*

> *Thus, under the purview of Section 66A of the Finance Act, 1994 when a permanent establishment of the foreign service provider exists in India the recipient of service in India cannot be made liable to pay service as under reverse charge mechanism – the impugned orders are not sustainable in law and in fact – appeal allowed."*

5. As the matter is not more *res integra* and stands decided on merits as well as on limitation in favour of the party by the Division Bench of this Tribunal. Therefore following the decision and the ratio in that case, appeal on merits and limitation is decided in favour of the party.

6. Appeal allowed with consequential relief.

(Pronounced in the open court on 10.12.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi