

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

REGIONAL BENCH-COURT NO. 1

**Service Tax Appeal No. 10296 of 2018- DB**

(Arising out of Order in Appeal AHM-EXCUS-002-APP-185-186-17-18 dated 23.11.2017 passed by Commissioner (Appeals), Central Tax, Ahmedabad)

**Ashutosh Metal Pvt Ltd**

18/21, Mahagujarat Indl. Estate,  
Sarkhej-Bavla Highway, Moraiya, Changodar,  
AHMEDABAD, GUJARAT

.....Appellant

*VERSUS*

**PRINCIPAL COMMISSIONER, CGST &  
Central Excise Ahmedabad South**

7th Floor, Central GST Bhavan,  
Nr. Polytechnic, Ambawadi, Ahmedabad -380015

.....Respondent

With

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.....Respondent

**APPEARANCE:**

Shri V M Doiphode, Advocate appeared for the Appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) appeared for the Respondent

**CORAM:**

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

**HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)**

**Final Order No. 11432-11433/2025**

DATE OF HEARING: 27.08.2025  
DATE OF DECISION: 15.12.2025

**SATENDRA VIKRAM SINGH**

1. The issue in brief is that during audit for the period December-2010 to January-2012, it was noticed that M/s. Ashutosh Metal Pvt. Ltd., Ahmedabad (Appellant) had shown gross receipt of commission of Rs.4,10,54,003/- in their statements of particular to be furnished under Section 44AB of the Income Tax Act,1961 (Form No. 3CD) for the year 2010-11. They had shown gross receipt of Rs.14,72,66,715/- in their trial balance for 2010-11 whereas, in sales ledger, they showed sale of Rs.10,62,12,712/-. The differential

amount of Rs.4,10,54,003/- was revealed by the appellant to be on account of commission and premium towards transfer of right in land created by banakhat. Out of above commission amount, appellant paid service tax of Rs.8,88,439/- on an amount of Rs.86,25,621/- .The appellant neither filed proper ST-3 returns nor paid the service tax on the said amount. After completing investigation , a show cause notice dated 21.04.2016 was issued to the appellant demanding service tax of Rs.33,40,123/- on the balance commission amount towards Business Auxiliary Service along with interest under Section 75 and penalty under Section 78 of the Finance Act, 1994.

1.1 It was also found that the appellant had shown commission income of Rs.4,27,20,445/- for the year 2011-12. During audit, they agreed and paid service tax of Rs.34,67,440/- on commission income of Rs.3,36,64,565/- but did not agree to pay service tax on the remaining amount of Rs.90,56,280/- stating to be relating to sale of agricultural produce. After conducting investigation, the department issued show cause notice dated 11.11.2016 asking them to pay service tax of Rs.9,32,797/- under Business Auxiliary Service along with interest and penalty under Section 77, 77(I)(a) and penalty under Section 78 of the Finance Act, 1994.

1.2 The show cause notice dated 21.04.2016 was decided by the Assistant Commissioner vide Order No.SD-04/21/AC/16-17 dated 09.02.2017 thereby, confirming service tax demand of Rs.33,40,123/- along with interest and equal penalty under Section 78 and penalty of Rs.10,000/- each under Section 77 & 77(I)(a) of the Finance Act, 1994. The other show cause notice dated 11.11.2016 was decided by the Assistant Commissioner vide Order No.SD-04/22/AC/16-17 dated 16.02.2017 wherein, he confirmed demand of service tax of Rs.9,32,797/- along with interest and imposed equal penalty under Section 78 and penalty of Rs.10,000/- each under Section 77 & 77(I)(a) of the said Act respectively. Aggrieved with the above orders, the appellant filed appeals before Commissioner (Appeal) who vide impugned order dated 28.11.2017 upheld the orders of the lower authorities and dismissed their appeals. Hence, the present appeals before this Tribunal.

2. In their appeals, the appellant took the following grounds: -

- a) The Commissioner (Appeal) failed to consider that the allegation in the show cause notice was that the difference in value as reported in ST-3

vis-à-vis 3CD report under Income Tax law is leviable to service tax under "Business Auxiliary Service". The premium received by the appellant for relinquishing the rights in immovable property acquired under agreement to sale is neither promotion or marketing of sale of goods nor any service. They have not acted on behalf of anyone as they were purchaser of property under an agreement to sale and later made an agreement with another buyer and final sale deed was made. The appellant was third party confirming the sale deed between the original land owner and the ultimate buyer. They therefore do not come within the definition of Commission Agent. Furthermore, service is defined to mean any activity carried out by a person for another for consideration and includes a declared service but shall not include (a) An activity which constitutes merely (i) A transfer of title in goods or immovable property, by way of sale, gift or in any manner.

- b) In the case of DLF Commercial Projects Corporation Vs. Commissioner of ST Gurugram reported at 2019 (27) G.S.T.L. 712 (Tri.-Chan.), the Tribunal held that transfer of development rights is immovable property in terms of Section 3(26) of the General Clauses Act. The Tribunal relied upon the judgment of Hon'ble Bombay High Court in para 16 in the case of Shadoday Builders Pvt. Ltd. and Ors. Vs. Joint Charity Commissioner and Ors. and held that any benefit arising out of the land is immovable property.
- c) The appellant acquired interest in the land by virtue of agreement to sale dated 25.08.2010 and that right they surrendered/ sold at a premium which was higher because of developments happening in that area in 2010-11.
- d) Learned Commissioner (Appeal) has travelled beyond show cause notice which never doubted genuineness of agreement and the final sale deed which is duly registered and payments are received through banking channel and they have also claimed short term capital gain in their Income Tax returns. Hon'ble Tribunal in the case of Elegant Developers Vs. Commissioner of Service Tax, New Delhi reported at 2019 (29) GSTL 477 (Tri.-Del.) in para 31, 32 and 33 held that purchase and sale of land was on principal-to-principal basis and assessee may have surplus/ profit or incurred loss.

- e) They also rely on the decision in the case of ESS.GEE Real Estate Developers Pvt Ltd. Vs. Commissioner of Central Excise, Jaipur reported at 2022(34) GSTL 486 (Tri-Del) { also upheld by Hon'ble Supreme Court vide order reported at 2022 (34) GSTL. J93(SC)} which in para 25 to 30 held that appellants selling plots to client to prospective buyers at principal-to-principal basis after acquiring development rights from owner. The owner of land had assigned exclusive rights to appellants to develop land mass.
- f) Commissioner (Appeal) did not grant exemption to the commission received for export of agricultural produce under Notification No.13/2003-ST on the grounds which were not raised in the show cause notice. The said grounds are baseless and unfounded as it is settled law that there can be oral agreement. They rely on the decision dated 17.12.2008 of Hon'ble Supreme Court in the case of Alka Bose Vs. Pramatra Devi and Ors. which in para 7 observed that even an oral agreement to sale is valid. They received commission through banking channel on the basis of debit notes issued on M/s. S Raja Export Pvt. Ltd.
- g) The commission earned for sale of agricultural produce for export is exempt from service tax. Likewise, premium received for surrendering rights in land did not require payment of service tax. They therefore had no intention to evade service. They also challenged invocation of extended period in this case as period involved is 2010-11 & 2011-12 whereas, SCNs have been issued on 19.04.2016 & 11.11.2016. They rely on the decision of Hon'ble Supreme Court in the case of Uniworth Textile Ltd Vs. Commissioner of Central Excise Raipur, where it is held that mere non payment of duties is not equivalent to collusion or wilful misstatement or suppression of facts. Therefore, they prayed to set aside the impugned order and allow their appeals.
3. During hearing, learned Advocate highlighted various case laws relied upon them and stressed that as per Section 65B (44) of the Finance Act, 2012 "Service" shall not include an activity which constitutes merely- (i) Transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii).....

Since, transaction relating to transfer of right in the land relates to immovable property and hence, this activity is not covered within the definition of "Service" and therefore, no service tax is liable to be paid by them. He also produced newspaper cutting titled "Nano turns Sanand land into gold" published in 'Times of India' on 23.07.2010 to impress that the land which two years ago was barely of Rs.20 Lakhs, had appreciated to Rs.5 Crs. He states that the land right which appellant purchased for a small sum had appreciated considerably and therefore, they transferred their rights in favour of a new buyer against consideration but the same being related to land, is not a service as per Section 65B (44) of the Finance Act, 1994. For commission on agricultural produce exported by M/s. S Raja Export Pvt. Ltd. he states that the appellant is eligible to the benefit of Notification No.13/2003-ST dated 20.06.2003. He also states that there was no intent to evade payment of service tax and so extended period is not invocable. On the same grounds, he questioned imposition of penalty on the appellant and prayed for setting aside the impugned order and allowing their appeals.

4. Learned AR on the other hand reiterates findings of the lower authorities and states that for year 2010-11, the appellant had shown income of Rs.14.72 Crs. in their trial balance sheet but shown sale of Rs.10.62 Crs., in their sales ledger. The differential amount of Rs.4.10 Crs. was on account of commission income and premium received towards cancellation of Banakhat of land which is an agreement to sale in Gujarat, a precursor to the sale deed. He states that the entire land deal was for Rs.20 Lakhs whereas, commission paid to the appellant by the purchaser Sri Sri Ravishankar Vidyamandir Trust, as per sale deed dated 01.08.2012 was of Rs.252.53 Lakhs for relinquishment of selling rights. The above amount was paid between September to December, 2010 during which there was no agreement/ banakhat between the appellant and Sri Sri Ravishankar Vidyamandir Trust which was notarised on 28.06.2011. Regarding commission of Rs.71.75 Lakhs received in 2010-11 and commission of Rs.90,56,280/- from M/s. S Raja Exports Pvt. Ltd., learned AR states that the appellant could not provide any justifiable evidence to show that the commission income was pertaining to export of raw cotton and therefore, benefit of Notification was rightly denied to them. He prays that these appeals have no justified ground and therefore, may be dismissed.

5. We have heard rival submissions. We find that there are primarily two issues on which the department has demanded service tax- one pertains to

premium income of Rs.252.53 Lakhs on account of transfer of right in immovable property and the second relates to commission received for alleged supply of Indian raw cotton.

5.1 Regarding first issue, the Appellant produced English translation of agreement to sale/ banakhat dated 25.08.2010 showing appellant as first part and Mr. Navnitlal Jagjivandas Shah alias Mehta as second part. The conditions of the said banakhat are as under:-

1) Said property is saleable and agreed price is Rs. 20,00,000/- (Rs. Twenty Lacs)

2) Whereas, as per terms and conditions in this agreement with time limit, the party (seller) has to execute agreement to sale/banakhat of the said property

3) That the time limit of this agreement/banakhat is fixed up to six (6) months and during this time limit party (seller) has to obtain the permission of non-agriculture land and on receipt of the said permission agreement to sale/banakhat will be executed by making the payment of saleable price

4) That the second part (seller) has already received a sum of Rs.100,000/- (One Lac) which will be adjustable at the time of sale deed of the said property.

5) That the second part (seller) shall pay the government/semi government, taxes, all kind of charges, education cess, taxes of gram panchayat and outgoing and dues of any in respect of said property till the date of registered sale deed.

6) That the purchaser shall bear the entire expenses of this agreement as well as registered sale deed etc like stamp duty, registration fees, typing charges, advocate's expenses fees and all incidental

7) That the seller indemnifies that they will handover all the original documents and papers regarding the titles and ownership of the said property at the time of executing the registered sale deed.


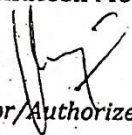
5.2 In terms of above banakhat, the appellant claims his right on the said land which he subsequently transferred in favour of Sri Sri Ravishankar Vidyamandir Trust for a consideration of Rs.252.53 Lakhs and in accordance with that, sale deed was registered on 01.08.2012 between Sri Sri

Ravishankar Vidyamandir Trust and Mr. Navnitlal Jagjivandas Shah. We have also gone through the decisions cited by learned Advocate on transfer of rights in land which is recognised in relation to immovable property and therefore, the said activity does not come within the definition of "Service". We find that in the present case, banakhat was entered into between the appellant and Shri Navnitlal Jagjivandas Shah alias Mehta on 25.08.2010. As per condition No.3, the seller was to obtain permission of Non Agricultural land within 6 months and then only, agreement to sale was to be executed by making the payment of saleable price. It is on record that the appellant received an amount of Rs.160 Lakhs in September 2010, Rs.60 Lakhs in October 2010 and Rs.27.53 Lakhs in December 2010 from the new purchaser Sri Sri Ravishankar Vidyamandir Trust but it is not clear if same was received after execution of banakhat. It is also to be ascertained if right on land can be created before execution of sale agreement/ banakhat? Further, when all the money was received by December 2010, then why was delay caused in execution of sale deed for the land between the land owner and the new buyer which was done only on 01.08.2012. We are conscious of the fact that every state has own laws/ regulations governing sale and purchase of immovable property and therefore, following issue needs to be examined with, reference to laws/ regulations framed by State of Gujarat.

- (a) Whether banakhat is a valid document for creating right in immovable property and if, such rights can be transferred against receipt of amount?
- (b) When was banakhat in this case between the appellant and Mr. Navnitlal Jagjivandas Shah alias Mehta, executed?
- (c) Whether condition No.3 of banakhat was fulfilled within the specific time frame which provided that the seller has to obtain permission of non-agricultural land within six months and then, only agreement to sale/ banakhat will be executed by making the payment of saleable price?
- (d) Whether right of the appellant on land was created when they received the amount from the new purchaser?

5.3 Regarding second issue, there is no dispute that the appellant received commission income of Rs.71,75,382/- in financial year 2010-11 and Rs.90,56,280/-in financial year 2011-12 from M/s. S Raja Exports Pvt. Ltd. which they claim to be exempt on the ground that the said commission income is on account of sale of Indian Raw Cotton which was further exported to

Bangladesh. In support of their claim, they produced copy of debit letters addressed to M/s. S Raja Exports, copy of one such letter is reproduced below:-

 (AN ISO 9001:2000 COMPANY)	ॐ क अहम् 110 56 75 90	<b>ASHUTOSH METAL PVT. LT</b>
		Date: 31.03.2011
To, S. Raja Exports Pvt. Ltd. Kadi-Nandasan Road, Kadi - 382 715.		
<b><u>Debit Note</u></b>		
We have debited your account by sum of Rs. 71,75,382/- on sale of Indian Raw Cotton total amounting of Rs. 35,87,69,103/- made through us during the period from 01.04.2010 to 31.03.2011.		
The details of the sales are enclosed herewith.		
For, Ashutosh Metal Pvt. Ltd.		
		
Director/Authorized Signatory		
PAN: AADCA 2246 A		
<hr/> Reg. Off : 89/19, Ramesh Bhawan, Tamba Kanta, Mumbai - 400 003. INDIA Ph: +91 22 23414200, +91 22 32445988, Fax : +91-22-23424; Unit I : 255, Maha Gujarat Industrial Estate, Village Moraiya, Taluka Sanand, Changodar, Dist. Ahmedabad 382 213. Ph : +91 2717 3221 Unit II : 18 & 21, Maha Gujarat Industrial Estate, VIII, Moraiya, Taluka Sanand, Changodar, Dist. Ahmedabad 382 213. Fax : +91 2717 2501; Phone : +91 2717 250516, +91 2717 250517, +91 2717 250519 E-mail: ashutoshmetal@gmail.co		

These documents were not found sufficient by the lower authorities to support their claim in absence of any agreement between them and M/s. S Raja Exports Pvt. Ltd. We find that the Commissioner (Appeal) has elaborately discussed this point in para 8 of his order while denying benefit of exemption under Notification No.13/2003-ST dated 20.06.2003 to them. We further find

that while arguing their case before this bench, the appellant could not produce any other documents in support of receipt of commission from sale of Indian raw cotton except above debit letter dated 31.03.2011 intimating M/s. S Raja Exports Pvt. Ltd. about debiting of account. What appears to us is that these are one sided debit letters one dated 31.03.2011 for a sum of Rs.71,75,382/- and the other one dated 31.03.2012 showing debit of sum of Rs.90,56,280/- for sale of Indian Raw Cotton during the period 2010-11 and 2011-12 respectively without any confirmation/ approval from the other end. The documents produced by the appellant do not support their case and therefore, we are not convinced with the reasoning advanced by the learned Advocate. We accordingly uphold the order of the learned Commissioner (Appeal) on this issue.

5.4 Regarding invocation of extended period, the appellant pleads that show cause notices have been issued in 2016 for demanding service tax for the period 2010-11 & 2011-12 which is barred by limitation as they had no intention to evade tax and as per them, commission income was exempt from service tax. They have relied on the decision of Hon'ble Supreme Court in the case of Uniworth Textile Ltd Vs. Commissioner of Central Excise Raipur cited supra wherein, it is held that non-payment of tax is not equivalent to collusion or wilful mis-statement or suppression of fact. We however find that in the instant case, the appellant had shown receipt of commission in their books of account but did not disclose to the department in their ST-3 returns or at any other point of time. There was mis-match in the sales figures as shown in their books of accounts vis-à-vis that reflected in ST-3 returns during successive years. These discrepancies were detected during conduct of audit which otherwise would have remained undetected. We therefore find that the element of suppression is existing in the instant case with intent to evade payment of service tax. Therefore, the case law cited by the appellant does not come to their rescue. We are therefore convinced with the reasoning advanced by the learned Commissioner (Appeal) for invocation of extended period in this case.

6. We accordingly uphold the order of learned Commissioner (Appeal) to the extent of confirming service tax demand on commission amount of Rs.71,75,382/- and Rs.90,56,280/- received by the appellant during the year 2010-11 and 2011-12 respectively. Regarding the first issue, as documents for receipt of such permission by the seller and execution of agreement to

sale/ banakhat are not before us, we remit this matter to the Adjudicating Authority to examine aspects as per para 5.2 above with reference to laws/ regulations of Gujarat State before deciding service tax liability on the amount in dispute claimed to be premium income by the appellant out of such transfer of right. In remand proceedings, the appellant is given liberty to submit documentary evidences before the said authority.

7. The appeals are disposed of in above terms.

*(Pronounced in the open court on 15.12.2025)*

**(SOMESH ARORA)**  
**MEMBER ( JUDICIAL )**

**(SATENDRA VIKRAM SINGH)**  
**MEMBER ( TECHNICAL )**