

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

REGIONAL BENCH - COURT NO. 2

SERVICE TAX Appeal No. 10951 of 2017-DB

[Arising out of Order-in-Appeal No VAD-EXCUS-001-APP-477-2016-17 dated 27.12.2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I (Appeal)]

Vcan Technologies Pvt Limited

.... Appellant

105, Silver Line, Opp. BBC Tower, Sayajigunj
VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-1

.... Respondent

1st Floor, Central Excise Building,
Race Course Circle, Vadodara,
Gujarat -390007

APPEARANCE :

Shri A Banerjee, Advocate for the Appellant

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

CORAM:

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

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

DATE OF HEARING : 25.09.2025

DATE OF DECISION: 27.01.2026

FINAL ORDER NO. 10050/2026

MR. SATENDRA VIKRAM SINGH :

M/s. Vcan Technologies Pvt. Limited, Vadodara (Appellant) are registered with Service Tax department under the category of 'Information Technologies Software Service' for providing taxable service such as Corporate Website designing, Application Development, Search Engine Marketing, Flash development, Web-hosting etc. On the basis of intelligence, the department conducted investigation against the appellant by recording the statement of Shri Nipul Chandrakant Patel, one of the Director on 10.05.2013 and 15.10.2013 regarding non-payment of service tax on various services being provided to their customers. Shri Nipul

Chandrakant Pael stated that they are engaged in web solutions services in which they are providing various services to their customers that included:

- (i) Corporate Website Designing - We design the website for our clients.
- (ii) Application Development or Content Management Systems - As per requirement of the clients, we customize the application especially for data base usage at the end of clients.
- (iii) Online Marketing or, Search Engine Marketing - We develop the content for on-line information, data base access or retrieval services for marketing purpose.
- (iv) Flash Development On-line animation for up gradation service related to IT software.
- (v) Web Hosting -To access website through computer network
- (vi) Web server Domain sale packages - To provide space vide internet

1.1 After completing the investigation, department issued Show Cause Notice dated 18.10.2013 proposing demand of service tax of Rs. 34,93,328/- (inclusive Cess) under Section 73(1) read with Section 73A of the Finance Act, 1994 alongwith interest under Section 75 read with Section 73B of Finance Act, 1994 and proposal to impose penalty under Section 76, 77 and 78 of the said Act. This Show Cause Notice was adjudicated by vide order dated 26.05.2016 wherein demand of service tax of Rs. 15,81,805/- alongwith interest was confirmed and the remaining demand in respect of services relating to domain registration/ renewal, hosting space renewal, hosting space, hosting backup space, hosting space registration was dropped. An amount of Rs. 8,46,709/- already paid by the appellant under

various challans was appropriated. Penalty of Rs. 15,81,805/- under Section 78 and penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 was imposed on the appellant. Aggrieved with this order, Revenue filed appeal before Commissioner (Appeals), Vadodara-1 who vide impugned order dated 27.12.2016 set-aside the impugned Order-in-Original relating to dropping of above demand and allowed the department's appeal. Aggrieved with the order of the Commissioner (Appeals), the appellant filed the present appeal before this Tribunal.

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

(a) Service tax is not applicable on domain hosting/ sale amount. As per Section 65(45) of the Finance Act, 1994, Online Information and Data base access or Retrieval service (OIADR) means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network. Therefore, the service must be with regard to providing data or information to a customer. It is vague whether domain name would be considered as service purchased in regard to providing data information.

(b) Domain name registration and web hosting providers do not provide any information or data to customers. They provide web space which allows either free or paid information to their customers. Thus, they facilitate the provision of information but not provide information or data to their customers. The web space / domain name so provided by them may be used by their customers for an information portal or a simple anonymous, FTP location, or a free website or a website of school, or a community service. Since their sale does not necessarily involve information provision and since customers may or may not use their services for information provision,

their services are not related to providing online information (OIADR) to customers.

(c) Provision of selling domain and hosting space is like retail shop of cloths or other items where seller purchases the products and keep employees to sell the product.

(d) The Revenue has assumed and presumed that activities provided by the appellant to their customers as domain registration/ renewal, hosting space renewal, hosting space, hosting back-up space, hosting space registration is a service with effect from 01.07.2012 and for the period prior to this date. The Adjudicating Authority has erred in excluding the value of expenditure cost referred above in the Show Cause Notice in the gross taxable value of website development activity as ascertained under Section 67 of Finance Act, 1994. The department has erred in concluding that sale is a temporary transfer of right to possession whereas it is actually a permanent transfer of rights for the website concerned. Hence, the ISP will not be liable to any tax or state levy and not the agent or franchisee as he has acted only a pure agent.

(e) For the valuation, they relied on the decision of the Principal Bench New Delhi in Bhayana Builders Pvt. Limited vs. Commissioner of Service Tax, Delhi – 2013(13) STR 0049 (Tri. LB), in the case of Karamjeet Singh & Company Limited Vs. Commissioner – 2013 (32) STR 740 (Tri.) and in the case of Intercontinental Consultants & Technocrats Pvt. Limited Vs. UOI – 2013 (29) STR 9 (Del.). They also cited decision of Calcutta High Court in the case of Naresh Kumar & Company Pvt. Limited Vs. UOI – 2014 (35) STR 506 (Cal.) and decision of CESTAT Ahmedabad in the case of KB Mehta Construction Pvt. Limited Vs. CCE -2014 (33) STR 183 (Tri. Ahmd.), Blossom

Industries Limited Vs. CCE&ST, Daman – 2016 (41) STR 872 (Tri. Ahmd.) and Torrent Pharmaceuticals Limited Vs. CST, Ahmedabad – 2015 (39) STR 97 (Tri. Ahmd.).

(f) Learned Appellate authority upheld the department's appeal and confirmed the demand for the period prior to 01.07.2012 simply based on the law of the future period and placing it as relevant for the period even before July 2012. This is an unacceptable proposition. The stand taken by the learned Adjudicating Authority was correct and should have been upheld by the appellate authority.

(g) Learned Commissioner (Appeals) has ignored the findings of the Tribunal in the case of M/s. Global Transgene Limited – 2013 (32) STR 86 (Tri. Mumbai) and held that the decision in Direct Internet Solutions Pvt. Limited vs. CST, Mumbai – 2014 (36) STR 849 (Tri. Mum) is applicable in the case. In the case of M/s. Direct Internet Pvt. Limited it was held that :-

"Appellant is engaged in the activity of registration of website domain names and also accredited by International Corporation for Assigned Names and Numbers (ICANN) for certain top level domains. Demands have been on the reverse charge basis under the category of "franchise services" under Section 65(105) (z) of the Finance Act, 1994. Revenue have not been able to bring on record any service or process identified with ICANN which is required to be provided by various registries accredited by ICANN. It appears that registries are also accredited like registrars. ICANN might have provided minimum standards for registries but that does not imply that registries are providing any service or process identified with ICANN. Agreement clearly indicates that this is an agreement between registry and the appellant and has nothing to do with ICANN. Appellant are reselling the services of registrar being provided by the appellant. After reselling the services of the registrar they remit the money to the appellant as per the agreement. The agreement is of a nature of principal to principal basis and resellers cannot be considered as franchisee or associate franchisor of ICANN. No Service Tax is leviable under the franchise service and hence demand and penalties are not sustainable. Appeal allowed."

(h) The department has invoked extended period of limitation in this case which is not available to the department as there is no fraud or collusion. There is also no intention to evade payment of duty in this

case and therefore, extended period in disputed areas of interpretation is not invokable.

In view above, they prayed to set-aside the Order-in-Appeal and drop the demand confirmed by the appellate Commissioner.

3. During hearing, learned advocate explained the grounds taken by him in their appeal. He also explained various case laws relied upon to substantiate that the issue was rightly decided by the learned Adjudicating Authority, whose decision should be upheld and decision taken by the Commissioner (Appeals) may be set-aside being bad in law.

4. Learned AR mentioned that out of total demand of Rs. 34.93 Lakh raised against the appellant, the Adjudicating Authority had confirmed demand of Rs. 15.81Lakh and dropped the remaining demand. In appeal, learned Commissioner (Appeals) vide impugned order set-aside the order of the Adjudicating Authority to the extent of dropping the demand of service tax on sale of domain registration/ renewal, hosting space renewal, hosting space, hosting backup space, hosting space registration etc. He reiterated the findings of the learned Commissioner (Appeals) wherein demand has been confirmed by relying on the decision of Dimakh Consultants Pvt. Limited vs. CCE, Pune-III -2019 (2) TMI 411 -CESTAT Mumbai which categorically holds that web hosting, domain registration etc. are taxable service. In view of above, he prays for dismissing appeal of the party and upholding the order of Commissioner (Appeals).

5. We have heard the rival submissions. We find that Show Cause Notice was issued to the appellant for demand of service tax on the differential value (i.e. value as per their financial records – the taxable value shown in

their ST-3 returns). After considering various aspects, the Adjudicating Authority in para 29.2 of his order, determined the value of taxable services as Rs. 1,42,86,737/- which escaped payment of service tax of Rs. 15,81,805/- which he accordingly confirmed under Section 73(1) of the Finance Act, 1994. He found that value of Rs. 1,63,13,929/- relating to sale of domain registration/ renewal, hosting space renewal, hosting space, hosting backup space, hosting space registration and Rs. 42,00,257/- on export of service are not leviable to service tax. In appeal against this order, the Commissioner (Appeals) set-aside the order of the Adjudicating Authority to the extent of dropping of service tax demand..

5.1 The appellant has relied on the decision of Directi Internet Solutions P. Limited Vs. Commissioner of Service Tax, Mumbai – 2014 (36) STR 849 (Tri. Mumbai) and decision in Jet Airways (I) Limited Vs. Commissioner of Service Tax, Mumbai – 2016 (44) STR 465 (Tri. Mumbai). We however find that decision in the case of Directi Internet Solutions P. Limited (supra) is not applicable as the issue which has been discussed therein relates to franchisee service. In the case of Jet Airways (I) Limited (supra), the issue discussed pertains to online information and database access or retrieval service from foreign based service providers. The present matter deals with service provided by the appellant under Information Technology service and therefore, both the cases relied upon by the appellant are not applicable in this case.

5.2 We find that CESTAT Mumbai in the case of Dimakh Consultants Pvt. Limited vs. CCE, Pune (supra) while dealing with similar issue of demand of service tax on web hosting, server co-location, domain name registration etc. held that services rendered by the appellant are under the taxable

category of Information Technology brought into statute with effect from 16.05.2008 and accordingly, confirmed the demand of service tax for the said period alongwith interest and penalty. The relevant para of the said decision is as under:-

“5. We have carefully considered the submissions advanced by both sides. We find that the appellant during the relevant period October 2007 to March 2010 failed to discharge service tax amounting to ₹ 31,14,678/- in providing taxable service under the category of advertising agency services. It is not in dispute also that during the period they have failed to furnish any returns with the department informing the collection of service tax along with service charges from the customers. In these circumstances, even if the appellant subsequently pays the amount on being pointed out by the department, along with interest, imposition of penalty under Section 78 of the Finance Act cannot be waived. Therefore, we find merit in the orders of the authorities below imposing penalty under Section 78 of the Finance Act, 1994, relating to non-payment of service tax in providing advertising agency service for the period October 2007 to March 2010. As far as the demand relating to web hosting, server collocation, domain name registration etc. are concerned, the learned Commissioner (Appeals) in the impugned order at para 11, considered the evidences on record and submission of the appellant in verifying at the conclusion that the services rendered by the appellant all in the taxable category of information technology software service brought into statute with effect from 16.5.2008 and accordingly, confirmation of demand of Rs. 8,12.493/- for the said period with interest and penalty. Thus, the appellant's plea that they have not raised the issue of taxability for rendering services viz. domain name registration, web hosting, web design etc. is devoid of merit and liable to be rejected.”

Accordingly, we dismiss the appeal of the appellant and hold that they are liable to pay service tax on the activity of sale of domain registration/ renewal, hosting space renewal, hosting space, hosting backup space, hosting space registration etc. For correct determination of service tax amount and interest liability thereon alongwith penalty proposals, the matter is required to be remanded to Original Adjudicating Authority to pass a reasoned order.

5.3 The appellant has also raised the issue of limitation on the ground that they had not suppressed anything from the department and therefore, extended period is not invokable in this case. We find that the appellant obtained registration under service tax only on 20.12.2011. Prior to that, they were conducting business but were neither paying any service tax nor filing any return. The issue came to light only after investigation was initiated against them. Due to non-registration and not filing of returns, department had no means for scrutinizing the correctness of payment of service tax by the appellant. We also find that the Adjudicating Authority has justified invocation of extended period while confirming service tax demand of Rs. 15,81,805/- for the period 2008-09 to 2012-13, which has not been challenged by the appellant. If extended period has been accepted by the appellant for a part of the demand, their argument now for the remaining portion of the demand has no merit and hence, does not survive.

5.4 We rely on the following decisions:-

(a) Dharampal Satyapal vs. CCE, New Delhi – 2005 (183) 241 (SC) – Wherein, the Hon'ble Supreme Court has held that Clandestine manufacture of compound (kimam) without payment of duty - Assessee in business of manufacturing Tulsi Zafrani Zarda for couple of years - Similar kimam brought from various traders who operated from licensed units - Units where compound (kimam) was manufactured not registered or licensed - No Central Excise records maintained - Plea of bona fide belief not acceptable - Demand not barred by time - Section 11A of Central Excise Act, 1944.

(b) Annai Angammal Akakkattalai (Pre Mahal vs. Jt. Commissioner of GST (Appeals), Coimbatore – 2025 (96) GSTL 446 (Mad.) – In para 15, the Hon'ble Madras High Court has held that – “The entire claim

against the petitioner had arisen of its own failure to register itself under the GST Act as required under law. Only pursuant thereto, the petitioner had remitted the tax that he is liable to pay. Even though, such action is claimed to be a voluntary payment by the petitioner, it should be seen that the petitioner had attempted to evade payment of tax which is liable to be taxed and only pursuant to the inspection effected by the respondent, the petitioner had submitted himself for payment of tax and hence, the same cannot be said to be a voluntary payment and has been made only to wriggle out of the penal consequences. This conduct of the petitioner to evade tax will also fall under suppression and fraudulent activities envisaged under Section 74 of the GST Act. Hence, the contention that Section 74 cannot have been invoked against the petitioner cannot be countenanced.”

(c) Pawan Engineering Works vs. Commissioner of Customs, CE, &ST, Raipur - 2019 (31) GSTL 10 (Chhattisgarh) - The Hon'ble Chhattisgarh High Court has held that - Non-registration of appellant definitely amounts to suppression of relevant facts, which came to the notice of the Department, only later, on the basis of some intelligence gathered by the Preventive Officers of the Central Excise - In fact, registration taken in respect of the sister concern belonging to the very same appellant as proprietor - Conduct of appellant not bona fide - Extended period invocable - Section 73 of Finance Act, 1994.

6. We therefore, do not find any merit in the appeal filed by the appellant. Agreeing with the decision of Mumbai Tribunal in the case of Dimakh Consultants Pvt. Limited (supra), we uphold the impugned order of learned Commissioner (Appeals). Accordingly, we hold that they are liable

to pay service tax on the activity of sale of domain registration/ renewal, hosting space renewal, hosting space, hosting backup space, hosting space registration etc. For quantification of demand, interest and penalty the matter is remanded to the Original Adjudicating Authority to pass a reasoned order.

7. The appeal is disposed of in the above terms.

(Pronounced in the open court on 27.01.2026)

(Dr. Ajay Krishna Vishvesha)
Member (Judicial)

(Satendra Vikram Singh)
Member (Technical)

KL