

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

REGIONAL BENCH-COURT NO. 2

Service Tax Appeal No. 10712 of 2020-DB
(ST/CROSS/10105/2021)

(Arising out of OIA-VAD-EXCUS-02-APP-031-2020-21 Dated 22/06/2020 passed by Commissioner (Appeals), CGST & Central Excise, VADODARA)

Commissioner of C.E. & S.T.-VADODARA-II

.....Appellant

1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

VERSUS

NETAFIM IRRIGATION INDIA PVT LTD

.....Respondent

268-270, 271B, GIDC MANJUSAR, TAL: SAVLI
VADODARA, GUJARAT

APPEARANCE:

Shri M P Solanki, Assistant Commissioner (AR) appeared for the Appellant
Shri Jigar Shah, Advocate with Shri Amber Kumrawat, Advocate appeared for the Respondent

CORAM:

HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10055/2026

DATE OF HEARING: 29.09.2025
DATE OF DECISION: 29.01.2026

SATENDRA VIKRAM SINGH

1. M/s. Netafim Irrigation India Pvt. Ltd., Vadodara (Appellant) are engaged in manufacturing and sale of Drip Irrigation Systems and import drippers, polyethylene resin and master batches. They availed the facility of various shipping agencies and incurred expenses on ocean freight which as per Notification No.15/2017-ST dated 13.04.2017 was leviable to service tax under reverse charge basis w.e.f. 23.04.2017. The department initiated investigation against the appellant by calling for the copies of the Bills of entry and also recorded the statements of Shri Deepak Shahdadpuri, DGM Finance on 09.04.2019. After conducting investigation, the department issued a show cause notice dated 11.10.2019 demanding service tax of Rs.84,31,277/- (including Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC)) under proviso to Section 73(1) of the Finance Act, 1994 read with Section 74(1) of

CGST Act, 2017 along with interest under Section 75 and penalty under Section 78 of the Finance Act, 1994.

1.1 The show cause notice was adjudicated by the Additional Commissioner, Central GST and Central Excise, Vadodara(II) vide impugned order dated 14.01.2020, wherein, he confirmed the above demand of service tax along with interest. He also imposed equal penalty on the appellant. Aggrieved with the above order, the appellant filed appeal before Commissioner (Appeal) who vide impugned order dated 22.06.2020, allowed appeal of the party and set aside the demand confirmed by the lower authority. Aggrieved with the above order, the department filed the present appeal before this Tribunal.

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

- The Commissioner (Appeal) has allowed appeal of the party on the ground of decision of Hon'ble Gujarat High Court in the case of SAL Steel Limited Vs. UOI reported at 2020-TIOL-163-HC-AHM-ST. Hon'ble Court has failed to appreciate that the activity of transportation of goods has been carried out by a vessel from a place outside India upto Customs Station in India and service is partially provided in India. Further, Section 66B of the Finance Act, 1994 empowers the Central Government to collect Service Tax even if the place of provision of service in terms of Place of Provision of Services Rules, 2012, is in taxable territory even in cases where the service is partially performed in India.
- In the case of All India Federation of Tax Practitioners Vs. Union of India reported at [2007] 9 VST 126 (SC), it was held that service tax is a destination based consumption tax and thus, the relevance of the place where the services are rendered or consumed assumes critical importance for sustaining the levy of service tax. In the present case, the service is finally consumed at Indian Port.

- Hon'ble Gujarat High Court has clearly erred in ignoring the relevant provisions of the Finance Act, 1994 which are crucial for levy of service tax on impugned service. Section 66C(2) states that sub section 1 of Section 66C shall not be invalid merely on the grounds that both service provider and service receiver are located at place outside the taxable territory.
- Hon'ble Supreme Court in GVK Industries Limited vs. Income-tax Officer, 2017(48) STR 177(SC) examined various aspects regarding extra-territorial legislative power of the Parliament under Article 245 of the Constitution of India to conclude that "Parliament may nonetheless exercise its legislative powers with respect to extra-territorial aspects or causes, only when such extra territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, wellbeing of, or security of inhabitants of India, and Indians."
- In case of Glyph International Ltd. Vs Union of India, Hon'ble High Court of Allahabad, 2012 (25) S.T.R. 209 held that the Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist or may be expected to do within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India.
- The Hon'ble Supreme Court in Gujarat Ambuja Cements Vs UOI 2005 (182) ELT33 (SC) held that "the point at which the collection of the tax is to be made is a question of legislative convenience and part of the machinery for realization and recovery of the tax. Subject to the legislative competence of the Taxing Authority a duty can be imposed at the stage which the authority finds to be convenient and the most effective, whatever stages it may be. The Central Government is therefore legally competent to evolve suitable machinery for collection

of the service tax subject to the maintenance of a rational connection between the tax and the person on whom it is imposed. It is outside the judicial ken to determine whether the Parliament should have specified a common mode for recovery of the tax as a convenient administrative measure in respect of a particular class. That is ultimately a question of policy, which/must be left to legislative wisdom”.

- A nine member Constitutional Bench of Hon'ble Supreme Court in the case of *Mafatlal Industries Limited vs Union of India* [1997(89)E.L.T 247 (SC)] has held that :

“104. In view of these propositions, which have been reiterated by this Court on several occasions and thus constitute sound law, it is clear that actions by way of suits or petitions under Article 226 of the Constitution cannot be completely eliminated. The claims for refund can arise under three broad classes and the issue of ouster of jurisdiction of civil courts can be understood by focussing on the parameters of these classes which are as follows :

Class I : “Unconstitutional levy” — where claims for refund are founded on the ground that the provision of the Excise Act under which the tax was levied is unconstitutional. Cases falling within this class are clearly outside the ambit of the Excise Act. In such cases assesseees can either file a suit under Section 72 of the Contract Act, 1872 (hereinafter called “Contract Act”) or invoke the writ jurisdiction of the High Court under Article 226 of the Constitution.

Class II : “Illegal levy” — where claims for refund are founded on the ground that there is mis-interpretation/mis-application/erroneous interpretation of the Excise Act and the Rules framed thereunder.

Ordinarily, all such claims must be preferred under the provisions of the Excise Act and the Rules framed thereunder by strictly adhering to the stipulated procedure. However, in cases where the authorities under the Excise Act arrogate to themselves jurisdiction even in cases where there is clear want of jurisdiction, the situation poses some difficulty. Reddy, J. has held that in all cases, except where unconstitutionality is alleged, the remedy is to be pursued within the framework of the Excise Act. This is a dangerous proposition for it will not cater to situations where the authorities under the Excise Act assume authority in cases where there is an inherent lack of jurisdiction. This is because, if one were to follow Reddy, J.’s reasoning, the authorities under the Act will have the final say over situations in which they totally lack inherent jurisdiction. In such a situation, there is nothing to prevent the authorities from exercising jurisdiction in cases which are ultra vires the Excise Act but intra vires the Constitution. To that extent, I would hold that in cases where the authorities under the Excise Act initiate action though lacking in inherent jurisdiction, the remedy by way of a suit under Section 72 of the Contract Act or a writ under Article 226 of the Constitution, will lie. Such a conclusion will not frustrate the exclusion of jurisdiction of civil courts by the Excise Act because the areas where an authority acting under a statute is said to lack inherent jurisdiction have been clearly demarcated by several decisions of this Court.

Class III : “Mistake of Law” — where claims for refund are initiated on the basis of a decision rendered in favour of another assessee holding the levy to be : (1) unconstitutional; or (2) without inherent jurisdiction.

Ordinarily, no assessee can be allowed to reopen proceedings that have been finally concluded against him on the basis of a favourable decision in the case of another

assessee. This is because an order which has become final in the case of an assessee will continue to stand until it is specifically recalled or set aside in his own case.

105. In cases where the levy of a tax has been held to be (1) unconstitutional; or (2) void for want of inherent jurisdiction (as explained in Class II), it is open for the assessee to take advantage of the declaration of the law so made and claim refunds on the ground that they paid the tax under a mistake of law. This is because such claims are outside the ambit of the Excise Act. In such cases, the limitation period applicable will be that specified in Section 17(1)(c) of the Limitation Act."

In view of the above, they prayed to examine whether the order of the Commissioner (Appeal) is correct in allowing the appeal of the party and pass a suitable order.

3. Learned AR during arguments, reiterated the grounds taken by Revenue in their appeal. He also mentioned that the appeal against the decision of Hon'ble Gujarat High Court in SAL Steel Case is still pending before Hon'ble Apex Court. He prayed to grant relief to the department by setting aside the order passed by the Appellate Authority.

4. Learned Counsel for the respondent argued that the matter regarding levability of service tax on Ocean Freight is no more res-integra after the decision of the Hon'ble Gujarat High Court in the case of SAL Steel (cited supra). He also mentioned that this Tribunal has passed Final Order No.10654/2025 dated 20.08.2025 in the case of Polycab Wires Pvt Ltd. by allowing appeal of the party. In this decision, Tribunal has also referred to the decision in the case of M/s. Balbir Metals & Power Private Limited vide Final Order No.10621/2025 dated 29.07.2025. In view of the above, he prayed that the appeal filed by the department may be set aside.

5. We have heard the rival submissions and also considered the various decisions including the decision in the case of M/s. SAL Steel Ltd. (cited supra) and M/s. Kiri Dyes and Chemical Ltd (2023) 10 Centax 134 (Tri-Ahmd) which was also upheld by Hon'ble Supreme Court vide decision reported at (2023) 10 Centax 135 (SC). We have gone through the case laws quoted by the learned Advocate. We find that the Hon'ble High Court of Gujarat in the case

of M/s. SAL Steel Limited Vs. Union of India cited (supra) in para-58 has held as under:-

"58. *In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos. 15/2017-S.T. and 16/2017-S.T. making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No. 30/2012-S.T. is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportation service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits."*

5.1 We also find that CESTAT Delhi, in the case of Gravita India Ltd. Vs. Commissioner of Central Excise & Central GST, Jaipur reported at (2024) 17 Centax 135 held that assessee being neither service provider nor service recipient could not be made liable to pay service tax on ocean freight paid by foreign seller to a foreign shipping line. Relevant para 41 of the said decision is reproduced below:-

"41. *Hon'ble Supreme Court has held that the levy of IGST on the amount of Ocean Freight as unconstitutional in the case of UOI v. Mohit Mineral Pvt. Ltd. & Ors. vide its order dated 19-5-2022 passed in Civil Appeal No. 1390/2022/[[2022 \(61\) G.S.T.L. 257](#) (SC)]. The adjudicating authority had not considered said judgement on the ground that the same has been passed in GST regime. These findings are therefore liable to be set aside."*

6. Accordingly, we dismiss the appeal filed by the department and uphold the impugned order of the Commissioner (Appeal). Cross Objection filed by the respondent also stands disposed of.

(Pronounced in the open court on 29.01.2026)

**(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)**

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