

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70264 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-951 & 952-20-21
dated 12.02.2021 passed by Commissioner (Appeals) CGST, Noida)

M/s Panasonic AVC Networks

India Co. Ltd.,

(Formerly M/s Matsushita Television &
Audio India Ltd.)

(C-52, Phase-II, Noida-201305)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Noida-I**

(Renu Towers, C-56/42, Sector-62,
Noida)

....Respondent

WITH

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APPEARANCE:

Shri A. P. Mathur, Advocate, Shri Rajesh Kumar, Advocate & Shri
Praveen Agnihotri, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NOs.- 70115-70116/2026

DATE OF HEARING : 13.03.2026
DATE OF PRONOUNCEMENT : 30.04.2026

P. K. CHOUDHARY:

The present appeals have been filed by the Appellant assailing the Order-in-Appeal No. NOI-EXCUS-001-APP-951 & 952-20-21 dated 12.02.2021 passed by Commissioner (Appeals) CGST, Noida.

2. The facts of the case in brief are that the Appellants were engaged in the manufacture of Colour Television sets falling under Chapter Heading 8528.00 of the Central Excise Tariff Act, 1985 during the relevant period under the brand name of PANASONIC from 2011 to June, 2017, they were registered with the Central Excise Department. That they were regularly paying the service tax without fail. That the three Show Cause Notices¹ were adjudicated vide adjudication order dated 31.08.2018 and the 4th SCN was adjudicated vide order dated 18.05.2020, hence two appeals have been filed against Appellate orders dated 12.02.2021 before the Tribunal.

3. Heard both the sides and perused the appeal records.

4. We find that the Adjudicating Authority vide its Order-in-Original dated 31.08.2018 framed the following 04 issues as under:-

- (i) Whether or not the party has rightly availed exemption under Notification No.17/2004-ST dated 10.09.2004, as amended vide Notification No.47/2011-ST dated 19.09.2011 and Notification No.14/2012-ST dated 17.03.2012 in r/o taxable service involving import of technology, from so much of the service tax leviable thereon under Section 66B of the Finance Act, 1994, as is equivalent to the amount of cess payable on the said import of technology under the provisions of Section 3 of the Research and Development Cess Act, 1986.

¹ SCN

- (ii) Whether or not the exempted Service Tax should be demanded and recovered from the party under proviso to Section 73 (1) of the Finance Act, 1994.
- (iii) Whether or not interest at appropriate rate on short payment of Service tax should be demanded and recovered from the party under Section 75 of the Finance Act, 1994.
- (iv) Whether or not penalty should be imposed upon the party under Section 78 of the Finance Act, 1994 for their various acts of emission and commission.

That the Additional Commissioner decided all the three SCNs holding that the same related to interpretation of exemption notification. That the Adjudicating Authority as well as the first Appellate Authority, both have decided the issues on the wrong interpretation of Notification No.14/2012, ST dated 17.03.2012. That the Additional Commissioner held that in the instant case, the plain interpretation is, to avail the exemption of R & D cess, the two conditions under the Notification has to be satisfied. Therefore, the plea taken by the Appellant that R & D cess was paid even after payment of service is available for exemption, is not tenable and acceptable being against the conditions laid down in the notification i.e. exemption shall be available only if the Research and Development Cess is paid at the time or before the payment for the service and proper documents are maintained to establish the linkage.

5. We find that the Appellant have only mentioned about the provisional figures and tentative dates of payment of service remittance. They have not produced any convincing documentary evidence to establish exact date of remittance of payment of service to the overseas provider. The Additional Commissioner observed that conditions laid down in Notification No.17/2004-ST dated 10.09.2004 as amended vide Notification No.47/2011-ST dated 19.09.2011 and Notification No.14/2012-ST dated 17.03.2012 have not been fulfilled by the Appellant and they have not rightly availed exemption Under Notification No.14/2012-ST dated 17.03.2012 in respect of taxable service

involving import of technology from so much of Service Tax leviable thereon under Section 66B of Finance Act, 1994 as is equivalent to the amount of cess payable on the said import of technology under provisions of Section 3 of R & D Cess Act, 1986. Consequently, the Additional Commissioner held that Service Tax demanded under three SCNs is recoverable from the party under the provisions of Section 73 (i) of the Finance Act, 1994 along with interest under Section 75 of Finance Act, 1994. The Additional Commissioner also vide order dated 18.05.2020 confirmed the demand of Service Tax of Rs.1,00,03,170/- towards Service Tax but he set aside the penalty imposed under Section 78 of the Finance Act, 1994 holding that there is no suppression or misstatement of facts on the part of the assessee with intention to evade Service Tax. He imposed a penalty of Rs.10 Lakhs under Section 76 (I) of Finance Act, 1994 read with Section 174 of CGST Act, 2017. That the first Appellate Authority had confirmed the adjudication order holding that the Appellant had never disclosed at any point of time that they had adjusted R & D Cess before discharging payment for the service to their foreign based company. That the Appellate commissioner had observed that the Appellant has contended that he has correctly-paid the R & D Cess and availed equal amount of exemption of service tax payable on the Royalty amount against import of technical know-how and all records were submitted to the Department, and as such there was no suppression or misstatement of facts with intent to evade payment of service tax. Further, after the amending Notification No.47/2011-ST dated 19.09.2011, conditions were fixed for the entitlement and quantum of exemption available to an importer of technology and thus, for the period up to the date of coming into effect of the said Notification dated 19.09.2011, there is no issue for denying exemption equal to the amount of R & D Cess paid in relation to Intellectual Property Services. As such, larger period of limitation is not invokable.

6. In this regard, we find that the Adjudicating Authority has invoked extended period of limitation by observing that the

Appellant has never disclosed at any point of time that they have adjusted R & D Cess before discharging payment for the service to their foreign based company. It is also seen that prior to the said amendment, the Notification No.17/2004-Service Tax dated 10.09.2004 exempted the taxable services from so much of Service Tax which was equivalent to the R & D Cess paid towards the import of technology. However, with effect from 19.09.2011, specific conditions were introduced in the said exemption Notification. As per the said conditions, R&D Cess was required to be paid before payment of Service Tax only then the Service Tax exemption equivalent to R&D Cess would be available to the importer. This is not a case of any *bona fide* interpretation in as much as the wordings of the Notification are very clear and required the importer recipient to pay R&D Cess on or before the payment for service for service so as to avail exemption. The Appellants have not given any justifiable reasons for not paying R&D Cess in time and for availing exemption without such payment of R&D Cess. Further, adjustment of R&D Cess before discharge payment of Service Tax is in clear violation of substantive conditions of exemption Notifications. The Appellant's case is not a case of any *bona fide* interpretation is as much as wordings of exemption Notifications are very clear, requiring recipient to pay R&D Cess before payment of Service so as to avail exemption. As such, we are inclined to agree with the Adjudicating Authority in respect of the invocation of longer period of limitation.

7. We find that the Appellant had entered into an agreement dated 01.04.2014 for R&D Fee for Import of Technology for technical support for manufacturing Television sets with Panasonic Corporation, Osaka, Japan over and above Technical Knowhow agreement and for which the Appellant would pay R&D Fee to Panasonic Corporation, Japan as agreed and therefore, exemption was claimed on the R&D Fee paid by the Appellant for import of technology. However, as advised by the Department, the Appellant stopped claiming exemption of R&D Cess paid towards Trademark License Fee. It was also intimated in the

above letters that as per the Technical Knowhow Agreement between the Appellant and the foreign service provider, as both were associated enterprises and on account of practice of the Appellant, the Appellant took credit of the Service Tax payable on or before 31st March of a given year and made provisional entries in their books of account to be finalized within 6 months when actual payments were made while paying the R&D Cess and Service Tax. There was no question of short payment of Service Tax as figures given in the ST-3 were provisional and figures given later at the time of payment of the Royalty after deduction of the Service Tax was the actual figure. In fact, it is borne out by facts and figures that the Appellant had paid more than the credit availed by them. Hence, the amount of Rs.88,16,218/- paid by the Appellant as R&D Cess and R&D Fee during this financial year had been correctly claimed for exemption from payment of service tax. The Appellant had also enclosed a detailed chart for this purpose which gave all the correct figures and the relevant dates of payment of R&D Cess and the dates of payment of the service. All documents in support had also been submitted and these dates show that due compliance of the conditions in the exemption notification was met. Thus, there was no question of short payment of Service Tax as figures given in the ST-3 were provisional and figures given later at the time of payment of the Royalty after deduction of the Service Tax was the actual figure. Therefore, the figure of Rs.88,16,218/- is the correct figure. We find that the Appellant had paid the R&D Cess as applicable on Royalty payable on technical knowhow and R&D Fee amounts and had thereafter availed exemption of equivalent amount payable as Service Tax on the strength of proper documents. Department was all along aware of the working of the Appellant as they regularly filed the statutory ST-3 returns and had entered into agreements with the foreign service provider since the year 2005 and the Department was duly intimated and they had already issued notices for the earlier periods. Therefore, even the larger period of limitation was also not invocable. As there was no evasion of Service Tax

on the part of the Appellant, there was no question of imposition of interest on the alleged tax amount.

8. In view of the above discussions, the impugned orders cannot be sustained and are therefore set aside. Both the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in open court on – **30.04.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS