CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 232 of 2012

(Arising out of Order-in-Original No.15/2011-ST dated 10.10.2011 passed by the Commissioner of Central Excise, Cochin.)

M/s. Sabari Millennium Impex (P) Ltd.
No.1, Pioneer Towers,
Marine Drive,
Cochin – 682 031.

Appellant(s)

VERSUS

The Commissioner of Central Excise
C.R. Building,
I.S. Press Road,
Cochin – 682 018.

Respondent(s)

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant

Shri M. A. Jithendra, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20704 /2025

DATE OF HEARING: 07.04.2025
DATE OF DECISION: 07.04.2025

PER : R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Sabari Millennium Impex (P) Ltd. against Order-in-Original No. 15/2011/ ST dated 10.10.2011 passed by the Commissioner of Central Excise and Customs, Cochin.

2. Briefly the facts of the case are that the appellant was engaged in the activity of procurement and sale of scrips and it

was alleged that the appellant was liable to pay service tax on the income earned from the sale of these scrips and the Commissioner confirms the same under the category of 'Business Support Service' for the period from May 2006 to March 2010. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel submits that the appellant had entered into an agreement with various exporters for purchase of licenses for a consideration and these licences are purchased at a value which is less than the face value of the license/scrip and the license so procured are sold by the appellant on payment of Value Added Tax (VAT). Since, it is a case of buying and selling, there is no service as such provided by the appellant and it is stated that the activity of sale of DEPB licenses is included in the schedule to the Kerala Value Added Tax Act, 2003. The learned counsel further places on record VAT returns for the period 2006-07 to 2009-10 where VAT at the rate of 4% is paid, which is taken on record by the Commissioner in the impugned order but disputes it on valuation. It is further submitted that the agreement relied upon by the Commissioner at Clause-3 clearly states that the consideration is fixed as 94% of the face value of the scrip and therefore, there is no service as such rendered.

3.1 The Learned Counsel vehemently argues that the profit earned on purchase and sale of goods cannot be taken as the taxable value for levy of service tax and relies on the decisions in the case of **Idea Mobile Communication Ltd. Vs. CCE, Trivandrum 2006 (4) STR 132 (Tri. Bang.) and ASL Motors Pvt. Ltd. Vs. Commissioner of Central Excise, Patna 2008 (9) STR 356 (Tri. Kolkata).** It is also submitted that the entire demand is time barred as the only allegation is that the appellant has failed to take service tax registration of the activity of purchase and sale of license, which according to the Revenue is 'Business Support Service'. Countering these arguments, it is submitted that the appellant had registered in the year 2009 and paid tax on 'Consultation Services'. Relies on following decisions:

- **Uniworth Textile Ltd. Vs. Commissioner of Central Excise, Raipur 2013 (288) ELT 161 (S.C.)**
- **Rolex Logistics Pvt. Ltd., vs. Commissioner of Service Tax, Bangalore 2009 (13) STR 147 (Tri. Bang.)**

4. The learned Authorized Representative reiterated the findings of the learned Commissioner in the impugned order.

5. Heard both sides. The only issue to be decided is whether the activity of procurement and sale of scrips for exporters amounts to 'Business Support Service'. The Commissioner observing that for procuring license, the appellant enters into an agreement with the exporters, does all the documentation, submits the same to the authorities concerned, bears all the expenses to obtain the licenses and that these activities fall under the category of 'Business Support Service'. One of the agreements placed on record entered into by the appellant with M/s. IN Vitro International Pvt. Ltd. reads as follows:

> "Whereas Sabari has offered its expertise and Invitro International has accepted to avail the services of Sabari for the exports year 2006-2007 for getting benefits under VKUY on the following terms and conditions.
>
> 1. Total value of the exports is calculated as per the actual exports for the period of 2006-2007 for which the entitlement is worked out the 5% of the FOB value of the exports.
>
> 2. Sabari will do all documentations, including preparation of application, its submission to the concerned authorities and follow up etc., till the license is issued and it made operative.
>
> 3. Invitro International will sell and Sabari or its designated nominee will purchase the duty credit scrip for a consideration of 94% (Ninety four percent) of the value of the scrip for the year 2006-07 export periods.
>
> 4. On receiving the licenses, the licenses along with its proper transfer letters, required documents for customs verification and

debit notes will be handed over to Sabari. INVITRO INTERNATIONAL will bear all expenses for Licence verification at Customs.

5. The consideration is inclusive of taxes and duties. Presently VAT @ 4% is applicable which will be in to Invitro International account.

6. The Business Support Service/Business Auxiliary Service are defined as 'any service in relation to

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client,

(ii) promotion or marketing of service provided by the client; or

(iii) any customer case provided on behalf of the client;

(iv) procurement of goods ………………

(v) production or processing of goods…………..

(vi) provision of service on behalf of the client

(vii) a service incidental or auxiliary to any one of above……….

7. The Commissioner in the impugned order does not specify as to which of the above services were rendered by the appellant and moreover from which clauses of the above agreement, we do not find any payment being received by the appellant for rendering any of the above services. As rightly pointed out by the appellant, they had in fact purchased the scrips at discounted prices and sold them for a simple margin of profit and on these sales, VAT is being discharged which is not in dispute. The valuation adopted also is not on any service charges received by the appellant but on the difference of the face value of the license and the price at which the appellant had purchased the scrip which is not in accordance with the valuation rules. Therefore, there being no service rendered as such and the imaginary value adopted also being not in accordance with the

legal provisions of law, we do not find any reason to sustain the impugned order on merits.

8. The Tribunal in the case of **ASL Motors Pvt. Ltd. vs. Commr. of C. EX. & Service Tax, Patna: 2008 (9) S.T.R. 356 (Tri. - Kolkata)** dated 21-11-2007 in similar circumstances observed as follow:

> "**4.** We find that the Ministry in its Circular No. 28/2006-Cus. (sic) (Circular No. 87/05/2006-S.T.), dated 6-11-06 has clarified that where service charges are reimbursed by the vehicle manufacturers, such reimbursement should be subjected to service tax. However, it is well-known that free servicing is normally provided by the dealers in the vehicle trade meeting the expenses from the dealers' margin, yet the Ministry has chosen to keep silent regarding taxability of such free servicing provided by the dealers for which no reimbursements are made by the vehicle manufacturers. It appears to us that such silence about the dominant practice of providing free servicing has resulted in some field officials taking unilateral action as in this case while majority of the dealers are not taxed on free servicing provided by them.
>
> **5.** We also find that in the constitutional scheme of things, there is mutual exclusivity between the taxability of sale of goods, which is charged to sales tax by the State; the excise duty on manufactured goods which is levied by the Centre; and the tax on services, which is also levied by the Centre. The impugned amount in question is a part of the dealers' margin which has been recovered by the appellants as a part of the sale value of the cars from the customers and the entire amount has been subjected to sales tax by the concerned State Government authorities. When the appellants sold the cars and recovered the amount including the dealers' margin, the dominant intent, was to sale the goods, namely, cars and not to provide free after sales service. In our view, the entire amount including the dealers' margin has been rightly taxed to sales tax representing the value of the cars. The provision of free servicing is merely incidental and intended to promote the sale of the cars. Hence, we are of the view that no service tax can be levied on the amount representing

the dealers' margin or any part of it which already has been subjected to sales tax. Consequently, we set aside the impugned order and allow the appeal".

9. The period of dispute involved in this appeal is from May 2006 to March 2010 and the notice was issued on 31.01.2010 invoking extended period of limitation. We also do not find any valid reasons implicated by the learned Commissioner to invoke suppression as is held by the Hon'ble Supreme Court in the case of **Uniworth Textile Ltd.** (supra). In view of the above, the impugned order is set aside both on merits as well as on limitation. Appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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