CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 25724 of 2013

(Arising out of Order-in-Original No. 47/2012 dated 05.11.2012 passed by the Commissioner of Central Excise, Bangalore II Commissionerate, Bangalore.)

M/s. Quantium Mail Logistics Solutions (India) Private Limited
(Formerly G3 World Wide Mail Logistics (India) Pvt. Ltd.)
No. 1 / 2, 1st Cross Lalbag Road,
Bangalore – 560 027.

Appellant(s)

VERSUS

The Commissioner of Service Tax,
No. 16/1, 5th Floor, S P Complex,
Lalbagh Road,
Bangalore.

Respondent(s)

<u>APPEARANCE:</u>

Mr. Ravi Raghavan, Advocate for the Appellant

Mr. P. Saravana Perumal, Addl. Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>Final Order No. 20736 /2025</u>

DATE OF HEARING: 02.12.2024
DATE OF DECISION: 30.05.2025

PER : D.M. MISRA

This is an appeal filed against Order-in-Original No.47/2012 dated 05.11.2012 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in providing courier service, storage and warehousing service, mailing list compilation and management consultant service. During the course of audit of their records, it was noticed that the appellant, while providing mailing service, had collected various charges on account of unstuffing, fork lifting charges, management fee and customs clearance from one M/s. Reader's Digest Book and Home Entertainment (India) Pvt. Ltd. (RD India for short). From the said total charges, the amount collected towards customs clearance and unstuffing is consolidated and billed as shipping and clearance charges and no service tax was paid on the ground that the said amount is cost of reimbursement. It was alleged that the amount received is includable in the taxable value and liable to discharge service tax under 'Mailing and Compilation Service' during the period April 2005 to March 2010; the total service tax payable was worked out to Rs.29,60,509/-. Further, it is alleged that even though in their books of accounts, the appellant have been showing earnings in foreign currency towards export of international mail and other services; however, they could not produce proof of foreign inward remittance certificate, bank realisation certificate, thus as per the provisions of Rule 3(1)(b) of Export of Service Rules, 2005, the requisite conditions as prescribed under the said Rules being not satisfied, the appellant was required to pay service tax of Rs.2,85,72,898/ on the said services rendered for the period from April 2005 to March 2010; also on scrutiny of their ST-3 returns and balance sheet, it is noticed that there has been short payment of service tax amounting to Rs.10,60,195/- for the Financial Year 2005-06 and 2006-07. Consequently, a show-cause notice was issued to the appellant on 21.10.2010 for recovery of a total amount of service tax of Rs.3,25,93,602/- along with interest and penalty. On adjudication, the learned Commissioner has confirmed the said amount with interest and imposed penalty under Section 78 of the Finance Act, 1994. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant are engaged in providing specialised mail and logistics services to its overseas group companies and businesses within the Asia-Pacific region. It was originally incorporated as G3 Worldwide Mail Logistics (India) Private Limited and later changed its name to Quantium Mail Logistics Solution (India) Private Limited w.e.f. 06.01.2010. He has further submitted that during the relevant period, the appellant was providing international mail services which involved the distribution of mail, documents and parcels received from its foreign parent company i.e. M/s. Quantium Singapore to addressees located in India on behalf of its foreign parent company. In terms of the arrangement with parent company, the appellant raised invoices for the services provided to them at the end of each month. On the basis of such invoices, the appellant received charges in Singapore Dollars (SGD) for the services provided to the overseas company. Besides, the appellant since receiving similar international mail services from QS wherein QS delivered the mails, documents and parcels sent by the appellant to the addressees located outside India and for such services received from overseas company, they also required to pay them in SGD as per invoices raised by the said overseas company. The appellant made necessary entries in its books of accounts to adjust the receivable and payable in SGD. Accordingly, net amount of such adjustments was received by the appellant in convertible foreign currency.

3.2. He has further submitted that also during the relevant period, the appellant entered into 'Fulfillment and Lettershop Services Agreement' dated 01.04.2005 with RD India wherein the appellant provided 'Mailing List Compilation and Mailing Service' which involved distribution of subscribed magazines including subscription renewals and promotional offers of RD India. As per the said agreement, RD India was required to pay appropriate service charges to the appellant for rendering such services. Also the appellant was liable to be reimbursed all the out of pocket expenses and statutory dues which was incurred by the appellant. Accordingly, the appellant raised invoices on RD India for provision of the said services.

3.3. The learned advocate has further submitted that previously a show-cause notice was issued to them on 23.10.2008 demanding service tax of Rs.14,94,705/- with interest and penalty alleging that the appellant had short paid service tax during the period May 2007 and July 2007. On adjudication, the demand was confirmed to the extent of Rs.7,47,656/- vide Order dated 19.10.2009 and finally had reached the CESTAT and by Order dated 22.06.2012, it was set aside and remanded to the adjudicating authority for de novo adjudication which later was adjudicated and the proceeding was dropped.

3.4. The learned advocate has submitted that the appellant had provided international mailing service to QS whereunder the appellant distributed mails received from the said overseas company to addressees located in India on their behalf. It is his argument that the said services do not satisfy the definition of "Mailing List Compilation and Mailing Services" introduced through Finance Act, 2005 w.e.f. 16.06.2005 inasmuch as mere sending of documents is not covered under clause (ii) of the definition of "Mailing List Compilation and Mailing Service" since the said provision contemplates sending document, information, goods or any other material in a packet, by addressing, stuffing, sealing, metering or mailing, for or on behalf of the client. In the present case, the appellant merely collects the mail bag and arranges the delivery to the addressees in India. QS is engaged in the activity of sending materials and documents by addressing, stuffing, sealing and also by mailing; therefore, the mail / documents sent are already stuffed and packed in a proper cover, sealed and affixed address before being sent to

India. The activity undertaken by the appellant are that on receipt of the mails / documents at the port or airport, segregation and sending the same to various destinations in India for ultimate delivery. There is no activity of addressing, stuffing, sealing, metering or mailing in respect of the documents received from QS. Further, it is submitted that mere activity of segregating and delivering of mails cannot fall under the scope of said taxable entry "Mailing List Compilation and Mailing Service" since the delivery is not involved by addressing, stuffing, sealing, metering or mailing as contemplated under the said definition. Besides, the overseas company cannot be considered as a client of the appellant; therefore, the said definition of 'Mailing List Compilation and Mailing Service" is not satisfied in the present case. It is their argument that services at best be proposed under the category of 'Courier Agent Service'. In support, they have referred to the judgments in the case of Radiowani Vs. CST, Mumbai-I [2019(21) GSTL 157 (Tri. Mum.)] and Mahakoshal Beverages Pvt. Ltd. Vs. CCE, Belgaum [2007(6) STR 148 (Tri. Bang.)].

3.5. Alternatively, it is submitted that the services provided to QS by the appellant amounts to export of service; hence no service tax is leviable on the same. Referring to the definition of Export of Service Rules, 2005, it is submitted that the services rendered by the appellant are used in relation to commerce or industry and the recipient of such services is located outside India in Singapore. Rebutting the contention of the Department that their case is covered under proviso to Rule 3(3) of the said Rules, it is submitted that the appellant is a separate and distinct entity incorporated under Companies Act in India, whereas QS is a separate legal entity incorporated under the laws of Singapore. Therefore, the appellant cannot be construed as an office of QS in India. Further, referring to the amendment brought to the said Export of Service Rules, 2005 w.e.f. 19.04.2006, they have submitted that the condition prescribed under Rule 3(1) and 3(2) are entirely different set of conditions and it is nowhere prescribed that the conditions under Rule 3(1) and Rule 3(2) must be cumulatively satisfied to qualify export of service; therefore as long as a person satisfies any of the conditions provided under Rule 3(1) or Rule 3(2), such services would qualify as an export of service. There is no necessity to comply with both the clauses under Rule 3 of the said Rules. It is their contention that only w.e.f. 01.03.2007, both the rules had been linked by amendment through Notification No.2/2007-ST dated 01.03.2007. In support, they referred to the judgment of the Tribunal in the cases of Nipuna Services Ltd. Vs. CCE,C&ST, Hyderabad [2009(14) STR 706 (Tri. Bang.) and Muthoot Fincorp Ltd. Vs. CCE, Visakhapatnam [2010(17) STR 303 (Tri. Bang.)].

3.6. In the present facts of the case, there is no allegation that the appellant had not complied with the condition under Rule 3(1) of the said Export of Service Rules, 2005; therefore, the benefit of export service cannot be denied. Consequently, the services provided by the appellant till 28.02.2007 be considered as an export service as there was no statutory requirement to receive payment in foreign currency until 28.02.2007. They have further submitted that for the period from 01.03.2007, the requirement of receipt of money in foreign convertible exchange should be interpreted liberally in cases where it has been established that services in fact have been exported. It is submitted that had the appellant made payments to QS, they would have utilised foreign exchange and then received consideration from the said overseas company in convertible foreign currency. Thus, there would be only a cross flow of foreign exchange and by netting of the amount payable in foreign exchange, the appellant had avoided flow of foreign currency out of the country.

3.7. Referring to the letter No.PSA/SICAL/RBI dated 17.04.2002 issued by RBI on the subject of "Deemed Foreign

Exchange Earnings", they have submitted that under the said circular, it is clarified that any payments which would have been otherwise received in foreign exchange but paid in Indian rupees out of the amount remittable to overseas principal, thereby reducing outgo of foreign exchange can be considered as (i) deemed to have been received in foreign exchange and (ii) deemed to be earned in foreign exchange. In support, they have referred to the following judgments:-

i. J.B. Boda and Co. Pvt. Ltd. Vs. CBDT [(1997) 223 ITR 271]
ii. Supreasesh General Insurance Services and Brokers P. Ltd. Vs. CST, Chennai [2016(41) STR 34 (Mad.)]
iii. Arafaath Travels Pvt. Ltd. Vs. CST, Chennai [2017(7) GSTL 437 (Tri. Chennai)]
iv. National Engineering Industries Ltd. Vs. CCE, Jaipur [2008(11) STR 156 (Tri. Del.)]

Consequently, it is submitted that receipt of the net amount receivable by the appellant from QS after adjusting the amounts payable in foreign currency is deemed to be received in convertible foreign exchange and qualifies as export service after 01.03.2007.

3.8. Further, the learned advocate has submitted that the demand has been confirmed under the category of 'Mailing List Compilation and Mailing Service' from the amount shown in the balance sheet wherein the Department has adopted the entire value even though some amount includes various other heads; hence the computation of demand is incorrect. Further, they have submitted that even though learned Commissioner acknowledged that the appellant had submitted FIRC dated 27.03.2007 amounting to Rs.22,74,645/-, but the said service tax demand to that extent has not been reduced.

3.9. On the issue of reimbursements received from RD India, the learned advocate has submitted that the appellant has received various amounts from RD India towards customs clearance expenditure, out of pocket expenses and other charges as reimbursements which were not included in the gross taxable value for determination of tax liability. He has submitted that it is settled position of law that there is no service tax payable on reimbursements prior to 14.05.2015. In support, they have referred to the judgment in the case of UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018(10) GSTL 401 (SC)] wherein the Hon'ble Apex Court held that Rule 15(1) of the Valuation Rules, 2006 is *ultra vires* and repugnant to Section 66 and 67 of the Finance Act, 1994.

3.10. On the issue of demand of short payment of duty by the Department in comparison with ST-3 returns for the period 2005-06 and 2006-07 with their balance sheet, they have submitted that the ST-3 returns were prepared manually and it did not reflect the actual figures; however, that service tax was rightly paid on the actual income. They have submitted a detailed reconciliation statement of the same along with copies of challan evidencing payment of tax on the actual income through their letter dated 25.04.2008. However, the learned Commissioner without taking cognizance of the said reconciliation statement furnished by the appellant confirmed the demand on this count. He referred to the Board's Instruction No.I/35447/2021 dated 26.10.2021 and they have referred to the following cases:-

i. CST, Ahmedabad Vs. Purni Ads. Pvt. Ltd. [2010(19) STR 242 (Tri. Ahmd.)]
ii. CCE, Jaipur-I Vs. Tahal Consulting Engineers Ltd. [2016(44) STR 671 (Tri. Del.)]
iii. Alpa Management Consultants P. Ltd. Vs. CST, Bangalore [2007(6) STR 181 (Tri. Bang.)]

3.11. Further, they have submitted that the extended period of limitation cannot be invoked in the present case inasmuch as no fact was suppressed from the knowledge of the Department and they have been filing periodical ST-3 returns. Therefore, the demand is barred by limitation up to the period April 2009; also, penalty imposed on the appellant cannot be sustained.

4. *Per contra*, the learned AR for the Revenue reiterating the findings of the learned Commissioner has submitted that the services provided by the appellant to their group company at Singapore clearly fall under the taxable category of "Mailing List compilation and mailing service". Also, the claim of the appellant that the services so provided would fall under the scope of "Export of service" under Rule 3 of the Export of Service Rules, 2005 has been rightly rejected by the learned adjudicating authority in the impugned order. The learned Commissioner analysing Rule 3 of the Export of Taxable Service Rules held that the services provided in relation to business or commerce and it is to a recipient located outside India, hence would fall outside the purview of export of services. Further, he has submitted that the appellant had received Rs.2,85,72,898/- and claimed as reimbursement of expenditure incurred; hence, service tax not discharged also rejected by the Commissioner since the appellant could not establish that they being a Pure Agent and satisfied all the conditions mentioned under Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. In support, he has referred to the judgment of the Tribunal in the cases of Sri Bhagavathy Traders Vs. CCE, Cochin [2011(8) TMI 430 – CESTAT, Bangalore-LB] and Sercon India Pvt. Ltd. Vs. CST, Delhi [2018(14) GSTL 375 (Tri. Del.)].

5. Heard both sides and perused the records.

6. The issues involved in the present appeal for determination are whether:

(i) the amount received towards distribution of mail received from their group company to the addressees in India would fall under the taxable category of 'Mailing List Compilation and Mailing Service' as defined under Section 65(63a) of the Finance Act, 1994 for the period from 01.04.2005 to 31.03.2010;

(ii) service tax of Rs.29,60,509/- is payable on reimbursable expenses for the period 01.04.2005 to 31.03.2010;

(iii) service tax short-paid amounting to Rs.10,60,195/- is recoverable consequent to the reconciliation of the taxable value shown in the ST-3 returns and their balance sheet for the period 2005-06 and 2006-07; and

(iv) extended period is invocable.

7. On the issue of liability towards rendering services to their group company M/s. Quantium Singapore for distribution of the mails to the addresses mentioned therein, it is submitted by the appellant saying that an interpretation of the said taxable entry would reveal that the activity undertaken by the appellant do not satisfy the definition of 'Mailing list compilation and mailing services', whereas Revenue is of the view that the activities of the appellant squarely fall under the scope of the said definition.

8. To appreciate the rival claims, it is necessary to reproduce the relevant definition of 'Mailing List Compilation and Mailing Services' prescribed under Section 65(63a) of the Finance Act, which reads as below:-

> **Section 65(63a) "mailing list compilation and mailing**" means any service in relation to ---
> (i) Compiling and providing list of name, address and any other information from any course; or
> (ii) Sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing, for, or on behalf of, the client.

9. Assailing the finding that receiving of the mail at the port or airport and segregating them to dispatch to various addresses already mentioned on the packets, in India, would satisfy Clause (ii) of the said definition, the learned advocate has submitted that the service of mere sending/delivering a document to the addresses already mentioned on the packets would not satisfy the ingredients of the said definition. The activities precisely

undertaken by the appellant are only to receive the documents from their overseas group company at the port/airport, segregate and deliver the same through their delivery people at various addresses in India as mentioned in the respective packets.

10. A plain reading of Clause (ii) of the said definition, it reveals that the service of sending document, information, goods or any other material in a packet, by addressing, stuffing, sealing, metering or mailing for or on behalf of the client are necessary to satisfy the said definition. A literal interpretation of the said expression would make it further clear that to fall under the scope of mailing list compilation and mailing services, mere segregation of the documents at the airport and dispatching / delivering the same to the addressees in India would not come within the scope of the said definition as the service provider in addition to sending the documents on behalf of the client would also be required to do a host of activities like stuffing, sealing etc. In other words, on receiving the blank packets in the event a person carries out the activity of addressing, stuffing, metering or mailing for and on behalf of the client, then only it would fall under the scope of Mailing List Compilation and Mailing Service. Thus, mere segregating and delivering documents to the addresses already affixed on the packages, in our view, cannot be considered to fall within the scope of the 'Mailing List Compilation and Mailing Service'. The learned Commissioner while confirming the demand under the taxable category of Mailing List Compilation and Mailing Service also reasoned that the services provided by the appellant is a commercial service; hence, would fall within the scope of the said definition being the service rendered to a client, which is in the nature of commercial. However, besides being a commercial activity, the activities should fall under the scope of taxable entry as defined under Section 65(63a) of the Finance Act, 1994. On merit, since the activity carried out by the appellant does not fall within the

scope of ‘Mailing List Compilation and Mailing Services’ as defined under Section 65(63a) of the Finance Act, 1994, the demand on this count cannot be sustained. Consequently, the alternate argument advanced by the appellant that the services rendered is an export service becomes academic; hence not delved into.

11. Regarding the issue of levy of service tax on reimbursable expenses, we find that it is covered by the judgment of the Hon’ble Supreme Court in the case of UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018(10) GSTL 401 (SC)] wherein the Hon’ble Apex Court observed that Rule 5(1) of the Valuation Rules, 2006 which sought to include reimbursable expenses within the scope of value of taxable service, being contrary to the principle of Section 67 of the Finance Act, 1994 as was existed prior to 2014; hence *ultra vires*. Thus, demand on this account cannot be sustained.

12. On the issue of short payment of service tax on account of difference in ST-3 returns and balance sheet, the appellant though said that such demand cannot be sustained without examining the correctness of the figures mentioned in each of the demand; however, furnished the reconciliation statement of the same which has not been considered by the Commissioner. *Prima facie*, we find merit in the contention of the advocate for the appellant that even though such reconciliation statement has been submitted however not analysed by the Commissioner and the demand was confirmed observing that the appellant had not followed the procedure declaring the taxable value mentioned in the ST-3 returns and balance sheet. Therefore, the said findings without verification of the reconciliation statement cannot be sustained.

13. On the issue of invocation of extended period of limitation, we find that the appellant has been filing the ST-3 returns

specifying all the facts relevant and subjected to audit from time to time. In these circumstances, invocation of extended period of limitation in absence of misdeclaration or suppression of fact cannot be sustained.

14. In view of the above finding, the impugned order is modified and the demands relating to service tax on 'Mailing List Compilation and Mailing Services' and reimbursement amount received are set aside. For re-computation of demands relating to reconciliation of the figure shown in ST-3 returns and the balance sheet, the matter is remanded to the adjudicating authority. However, in any case, the demand, if any, after reconciliation be restricted to normal period. Penalty is set aside. Appeal is disposed of accordingly.

(Order pronounced in Open Court on 30.05.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…