CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 1318 of 2012

(Arising out of Order-in-Appeal No. 123/2012 dated 02.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Amar Marine Enterprises
C-12, Industrial Estate, Bykampady,
Mangalore – 575 011.

Appellant(s)

VERSUS

The Commissioner of Central Excise
5th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

Respondent(s)

WITH

Service Tax Appeal No. 1319 of 2012

(Arising out of Order-in-Appeal No. 123/2012 dated 02.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Amar Marine Enterprises
C-12, Industrial Estate, Bykampady,
Mangalore – 575 011.

Appellant(s)

VERSUS

The Commissioner of Central Excise
5th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

Respondent(s)

AND

Service Tax Appeal No. 1320 of 2012

(Arising out of Order-in-Appeal No. 123/2012 dated 02.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Amar Marine Enterprises Appellant(s)
C-12, Industrial Estate, Bykampady,
Mangalore – 575 011.

VERSUS

The Commissioner of Central Excise
5th Floor, Trade Centre, Respondent(s)
Bunts Hostel Road,
Mangalore – 575 003.

APPEARANCE:

Shri Pradyumna G.H, Advocate for the Appellant

Mrs. Money Jain, Joint Commissioner (AR) for the Respondent

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

FINAL ORDER NO. 21577 - 21579/2025

DATE OF HEARING: 06.06.2025

DATE OF DECISION: 07.10.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is whether the Appellant is liable to pay service tax under the category of 'Management, Maintenance or Repair Service' or the activities carried out by the Appellant is eligible for availing the benefit under Export of Service Rules, 2005. Appeal No.ST/1320/2012 pertains to period from March, 2005 to March, 2008; Appeal No. ST/1318/2012 is for the period from April, 2008 to March 2009 and Appeal No.ST/1319/2012 pertains to period from April, 2009 to March, 2010.

2. Appellant is mainly engaged in repair and maintenance of ships. During audit, it is observed that in respect of repair and

maintenance carried out on foreign ships, since the payments are received in convertible foreign currency, service tax was not discharged by them by claiming the benefit under Notification No.21/2003 dated 20.11.2003 which was reclined vide Notification No. 10/2005-ST dated 03.03.2005 with effect from 15.03.2005 under Export of Service Rules, 2005. Thereafter, adjudicating authority as per the Order-in-Original dated 11.03.2010 and 18.03.2011 confirmed the demands. Aggrieved by said orders, appeals were filed before the Commissioner (Appeals) and Commissioner (Appeals) also rejected the appeals filed by the Appellant herein. Aggrieved by said order, present appeals are filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant drew our attention to the finding in the impugned order and submits that the demand is *prima facie* unsustainable. Appellant is registered under the taxable service of 'Repair and Maintenance Service'. They have been, inter alia, carrying out the repair and maintenance in relation to both Indian and foreign ships which dock at the Mangalore Port. In respect of repair of Indian ships, they receive payment in INR on which applicable service tax is discharged. As far as foreign ships are concerned, they carry out the repair and maintenance of ships and receive the payment in convertible foreign currency. As accepted in the show-cause notice itself, any consideration received in convertible foreign currency in relation to a taxable service was exempt from payment of service tax as per Notification No.21/2003-ST dated 20.11.2003. However, the said Notification was rescinded by Notification No.10/2005-ST dated 03.03.2005 as the Government introduced Export of Services Rules, 2005 vide Notification No.9/2005-ST dated 03.03.2005. Thus, from the impugned order, it is an admitted fact that the

Appellant has carried out the activities as declared under 'Management, Maintenance or Repair Service'. The only dispute is whether the repair service rendered to foreign ships amounted to "delivery outside India" and "used outside India" for the period prior to 01.03.2007. In this regard, the Learned Counsel submits that the activity carried out by the Appellant on the foreign ships certainly amounts to delivery outside India and used outside India. The Learned Counsel drew our attention to the Circular No.111/5/2009-ST dated 24.02.2009. Thus, for the service falling under 3rd category of services under Rule 3(1)(i), it is possible that Export of Service may take even when all the relevant activities take place in India so long as the benefit of these services accrued outside India. Further vide Circular No.141/10/2011-TRU dated 13.05.2011, the Board reiterated that till 28.02.2010, when relevant provisions were amended, the word used "outside India" should be interpreted to mean the benefit of service should accrued outside India.

3.1 The Learned Counsel further submits that the issue is no more *res integra* and settled in the matter of **M/s. BA Research India vs Commissioner of Service Tax: 2010 (18) STR 439 (Tri.Ahd**) and the Larger Bench in the matter of **M/s. SGS India Pvt Ltd vs Commissioner of Service Tax, Mumbai: 2011 (24) STR 60 (Tri. Mumbai)** which was affirmed by the Hon'ble High Court of Bombay as reported at **2014 (34) STR 554 (Bombay**). Also covered by the Larger Bench decision in the matter of **M/s. Mital Stainless Steel Pvt Ltd vs Commissioner of Service Tax, Mumbai: 2023 (11) CENTAX 269 (CESTAT.LB).**

4. The Learned Counsel further submits that the demand by invoking the extended period of limitation for the period from

March 2005 to March 2008 and penalty imposed by Adjudicating Authority is also unsustainable since the entire allegation is made on the strength of audit objection, balance sheet and ST-3 returns of the Appellant for the relevant period. Since the Appellant had made declaration under the category of Export of Services in ST-3 returns, there is no reason or justification to allege suppression of fact and the entire transactions are reflected in the books of accounts. Since the demand is based on the audit objection, it is hit by the limitation. Further the penalty is also unsustainable even if it is held that the Appellant is liable to pay service tax for the activity since it is not paid due to *bona fide* belief of non-levy arising out of interpretation of statutory provisions which constitutes sufficient reasonable cause. This view was upheld by Hon'ble High Court of Karnataka in the matter of **Commissioner of Service Tax, Bangalore vs. M/s. Motor World: 2012 (27) STR 225 (Kar)**.

5. The Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order.

6. Heard both sides. As regarding the demand by invoking extended period of limitation and penalty we find that it is a pure interpretation of the provision of law and considering the ratio of decision relied by appellant, the demand confirmed by invoking the extended period of limitation and penalty imposed by Lower Authority are unsustainable.

7. Further, the Tribunal in the matter of **M/s Arcelor Mittal Stainless (I) Pvt. Ltd. vs. CST, Mumbai-II: (2023) 11 Centax 269 (Tri.-LB)** observed as:

"**45.** The 2005 Export Rules were introduced to achieve the destination based consumption tax concept and so exemption is provided from payment of service tax to services exported out of India. The 2005 Export Rules set out various conditions for a service to qualify as export of service. Basically, the service recipient should be outside India; service should be provided from India and delivered outside India; and payment should be received in foreign currency.

46. Prior to 19-4-2006, under rule 3(3) of the 2005 Export Rules, the export of taxable service would mean, in relation to taxable services, such taxable services which have been provided and used in or in relation to commerce or industry and the recipient of such service is located outside India. For the period between 19-4-2006 and 1-3-2007, export of taxable service in relation to business or commerce, is the provision of such service to a recipient located outside India when such service is delivered outside India, and used outside India; and payment for such service provided outside India is received by the service provider in convertible foreign exchange. However, as the phrase delivered outside India' in rule 3(2)(*a*) did not provide clarity with respect to intangible services, this expression was replaced w.e.f. 1-3-2007 by 'is provided from India and used outside India'. The Circular dated 29-4-2009 issued by CBEC clarifies that the relevant factor is the location of the service receiver and not the place of performance and the phase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. The term 'used outside India', therefore, means that the service is provided to such a service recipient who is located outside India. It is the location of the service-recipient which determines where the service is used. The use of intangible services should be seen with respect to the location of the service recipient and not the place of performance."

8. As regarding the issue on merit, we find that as per the Circular No.111/5/2009-ST dated 24.02.2009, it is clarified that:-

> "**(iii) Category III [Rule 3(1)(iii)] :** For the remaining services (that would not fall under category I or II), which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and Other Financial services, Business Auxiliary services and Telecom services), it has been specified that they would be 'export', -
>
> (a) If they are provided in relation to business or commerce to a recipient located outside India; and
>
> (b) If they are provided in relation to activities other than business or commerce to a recipient located outside India at the time when such services are provided.
>
> 3. It is an accepted legal principle that the law has to be read harmoniously so as to avoid contradictions within a legislation. Keeping this principle in view, the meaning of the term 'used outside India' has to be understood in the context of the characteristics of a particular category of service as mentioned in sub-rule (1) of rule 3. For example, under Architect service (a Category I service [Rule 3(1)(i)]), even if an Indian architect prepares a design sitting in India for a property located in U.K. and hands it over to the owner of such property having his business and residence in India, it would have to be presumed that service has been used outside India. Similarly, if an Indian event manager (a Category II service [Rule 3(1)(ii)]) arranges a seminar for an Indian company in U.K. the service has to be treated to have been used outside India because the place of performance is U.K. even though the benefit of such a seminar may flow back to the employees serving the company in India. For the services that fall under Category III [Rule 3(1)(iii)], the

> relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the **benefits of these services accrue outside India**. In all the illustrations mentioned in the opening paragraph, what is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well."

9. In the instance case as noted by the Commissioner in the impugned order, we find that the appellant had undertaken repair and maintenance service of the foreign ships which are docked at Indian Port and after repair they leave the Indian Territorial Waters and enter the International Maritime Zone. It is also a fact that for the above repairs payments were received in convertible foreign currency. Thus, the conditions laid down vide Rule 3(2) of the Export Service Rules read with the Board Circular No. 111/5/2009-ST dated 24.02.2009 and the clarification by TRU -141/10/2011 dated 13.05.2011 stands satisfied. The Circular states that "used outside India should be interpreted to mean that the benefit of the service should accrue outside India". Thus, following the ratio of the decision of the Larger Bench in the matter, the impugned order confirming demand is unsustainable. Accordingly, appeals are allowed with consequential relief if any in accordance with law.

(Order pronounced in Open Court on 07.10.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)