CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 25917 of 2013

(Arising out of Order-in-Original No.11/2012-Commr. dated 24.12.2012 passed by the Commissioner of Central Excise and Customs, Belgaum.)

M/s. Shree Renuka Sugars Ltd.
B.C. 105, Havelok Road,
Cantonment,
Belgaum. — Appellant(s)

VERSUS

The Commissioner of Central Excise
No.71, Club Road,
Central Excise Building,
Belgaum – 590 001. — Respondent(s)

APPEARANCE:

Shri Rahul Patil, Associate Vice President-Legal & Taxation (Authorised Representative) for the Appellant.

Ms. Money Jain, Joint Commissioner, 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. 21905 / 2025

DATE OF HEARING: 07.07.2025
DATE OF DECISION: 28.11.2025

PER : R. BHAGYA DEVI

This appeal is filed by the Appellant M/s. Shree Renuka Sugars Ltd. against Order-in-Original No. 11/2012 (Commr.) dated 24.12.2012 passed by the Commissioner of Central Excise and Customs, Belgaum.

2. Briefly the facts are that the appellant are manufacturers of sugar and other products having their head office at Belgaum.

The appellant also has sugar factory located at Brazil and entered into a contract with the service providers on behalf of the subsidiary company Shree Renuka Global Ventures Ltd., Mauritius to acquire the sugar factory at Brazil. The appellant received an amount of USD 42,89,383 and claimed this amount as reimbursement of the payments incurred by the appellant for acquisition of the unit at Brazil on behalf of their subsidiary company. However, the Revenue considering these payments were received on account of services received by the appellant in the category of 'Management and Business Consultancy Services' from various service providers located outside India confirmed service tax amount of Rs.67,38,277/- on the basis of reverse charge mechanism. Accordingly, the Commissioner confirmed the amount along with interest and imposed penalty under various sections of the Finance Act, 1994.

3. The Learned Authorised Representative on behalf of the appellant submitted that the demand on reverse charge mechanism under Management and Consultancy Services for acquiring sugar factory in Brazil cannot be sustained. It is submitted that the appellant had entered into agreements with various foreign service providers on behalf of its Mauritius subsidiary company and hence, the service provider and service recipient were located outside India. It is submitted that it is a normal and accepted practice that the parent company enters into an agreement on behalf of its subsidiaries to facilitate and extend the financial support by way of working capital to its subsidiary company. It is also stated that subsequently the appellant raised debit notes to get the reimbursement of the said expenses incurred by the appellant on behalf of the subsidiary company and the same has been refunded by the subsidiary company. Therefore, the provisions of Section 66A of the Finance Act 1994 is not applicable, since the conditions of the Section are not satisfied. It is further submitted that the Mauritius company had received services from Brazilian service providers abroad and they consume the said services abroad and

Section 66A applies only if the services are received in India. Relied on the decisions in the case of **Infosys Ltd. vs. Commissioner of Service Tax, Bangalore: 2015 (37) STR-862** and **Sharda Cropchem Ltd. vs Commissioner of CGST & CE, Mumbai West** vide **Final Order No. FINAL ORDER No. 86143/2023 dated 19.07.2023**, wherein it is held that liability does not arise only for the reason that invoices were raised in India in Indian address and payments were made from India. Also, relied on the following decisions:

- **KPIT Cummins Infosystems Ltd. vs. Commissioner of Central Excise, Pune: 2014 (33) STR-105**
- **KG Denim Ltd. vs. Commissioner of Service Tax, Salem: 2015 (37) STR 616**
- **Tata Technologies Ltd. vs. Commissioner of Central Excise, Pune: 2014 (34) STR 404**

3.1 On the ground of limitation, it is submitted that the issue involved is interpretation of statute and there is no intention to evade service tax since any payment made under reverse charge mechanism would be available to the appellant as cenvat credit. Moreover, the appellant was under a *bona fide* belief that the activity of entering into a contract on behalf of their subsidiary company extending working capital did not qualify as import of service as per the provisions of Section 66A of the Finance Act, 1994. Hence there is no suppression of facts, the question of penalty also does not arise.

4. The Learned Authorized Representative on behalf of the Revenue reiterated the findings of the Commissioner submitted that the Commissioner in the impugned order at para 18.2 has elaborately explained that on perusal of the agreements entered by the appellant with the foreign companies clearly establish the fact that the services were rendered to the Indian company. Further, it is submitted that in the statement of the accounts, the Manager also confirmed that the services were received in India. Further, it is stated that the records show that appellant had entered into agreements with various service providers at Brazil and not with their subsidiary company at Mauritius and no

evidence was placed on record to prove their point that these agreements were entered on behalf of their subsidiary company at Mauritius. The Revenue also submitted that it was evident from the agreements that the appellant had received the services directly from the service providers located in Brazil, hence, they are liable to service tax under reverse charge mechanism.

5. Heard both sides. The period of dispute is from 2009 to 2010. The Services Agreement placed on record is entered into on 28.05.2009 between Shree Renuka Sugars Ltd. (the appellant and Datagro Publicacoes Ltda. Brazil (the consultant). The relevant provisions of the agreement are produced below:

Services Agreement

"This SERVICES AGREEMENT, made this 28th day of May of 2009 between Shree Renuka Sugars Ltd. a company organized and existing under the laws of India having a place of business at 7th floor-Devchand House, Shiv Sagar Estate, Mumbai, -400 018 (hereof referred to "RS") and Datagre Publicacoes Ltda. a company organized and existing under the laws of Brazil having a place of business at Calçada das Magnolias n. 56, Centro Comercial Alphaville, Barueri, SP, Brazil and registered under the Brazilian Tax Payer n. 65.649.154/0001-54 (hereto referred to as "Consultant")

Considering that:

(i) Consultant is engaged in, inter alia, consulting services specialized in cane sugar, sugar, and ethanol;

(ii) RS is interested in assessing information on the cane sugar, sugar and ethanol industries, and in evaluating the feasibility of purchasing a sugar cane processing plant in Brazil;

(iii) KS requested Consultant, who has agreed, to supply the Services as hereinafter specified.

In order to have available Consultant's knowledge, experience, and advice relative to certain research, product development and/or M&A activities of RS, and in exchange for good and valuable consideration, RS and Consultant hereby agree as follows:

1) SERVICES: Consultant agrees to perform consulting, advisory, and related services to and for RS as may reasonably be requested from time to time by RS. Such services, in the following defined as the "Services", may include, but not be limited to, the following:

a) Review and evaluate cane sugar and Biofuel proposals of interest to RS.
b) Review competitive landscape to determine comparative advantage of target investments.
c) Conduct site visits as necessary to assess management capabilities, technical progress and commercialization prospects.
d) Consult and advise on strategic, political, legislative and other external facters of interest to prospective investment decisions.
e) Interact as necessary with appropriate RS functional specialists to establish fundamental understanding of strategic direction and investment priorities.
f) Assist RS in defining the scope and areas of research/investigation as well as relevant information under its control and knowledge in order to RS assess the economic and strategic advantages of sugar cane processing in Brazil.
g) Advise on, review and evaluate targeted company documents.
h) Advise RS in contracting other consulting companies that may be hired to conduct duz diligences and auditing procedures.
i) Analyze and provide expert opinion on the results of due diligence efforts, assessing economic risks involved in labor and fiscal liabilities, if any.
j) Any other services or activities as reasonably requested by RS.

RS and CONSULTANT shall not assign or anyhow transfer this Agreement and/or any of the rights and obligations set forth hereunder without the prior written consent of the respective other party.

2) COMPENSATION: The Consultant shall be paid a fixed remuneration of:

a) 150,000.00 US dollars (in words: US dollars one hundred and fifty thousand), to be paid in three monthly installments, starting on the Ist of June, 2009.
b) An additional fee 50,000.00 US dollars (in words: US dollars fifty thousand), to be paid if within the validity of this contract, Consultant provides efforts considered to be above initially estimated

c) An additional fee 100,000.00 US dollars (in words: US dollars one hundred thousand), to be paid if RS actually succeeds in making an investment in sugar and ethanol in Brazil".

6. Similar Agreements have been entered into with various other service providers. Now to examine the various provisions of the Finance Act, the relevant provisions are reproduced below:

Section 65(105) of the Finance Act, 1994 reads as follows:

Section 65(105): "management or business Consultant" means, "any person who is engaged in providing any service, whether directly or indirectly, in connection with the management of any organization or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management".

65(105)(r) of the Finance Act, 1994 reads as follows:

"to any person, by a management or a business consultant in connection with the management of any organization or business in any manner".

Section 66A of the Finance Act, 1994 reads as follows:

Charge of service tax on services received from outside India.
66A. (1) Where any service specified in clause (*105*) of section 65 is,-

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be the taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.- A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2.- Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.]

7. As per the Taxation of Services (provided from outside India and received in India) Rules, 2006 – the recipient of the service is liable to pay service tax under reverse charge mechanism (RCM). The agreements reproduced above are entered into by the appellant in India and the payments were made by the appellants in India for the services rendered by the foreign companies. Based on the balance sheets placed on record by the appellant, it is seen that the payments have been made by the appellant in India and hence the claim by the appellant that the payments were made on behalf of their appellant at Brazil cannot be proof that the services were not being received by them. Therefore, the services as per the agreements being in the nature of evaluation of cane sugar and biofuels, financial advisory services, legal services, engineering and technical related services, etc., clearly fall under the category of 'Management and Business Consultancy Services'.

8. Since the agreements are in the name of the appellant and the services being tangible services, the recipient is necessarily the appellant who has made the payments, therefore, the service tax demanded by the Revenue is upheld along with the interest. Since the entire amount of service tax of Rs,67,68,277/- along with interest of Rs.14,30,873/- has been paid by the appellant on 09.08.2011 much before the issue of show-cause notice dated 16.08.2011, imposition of penalty under Section 77 and 78 of the Finance Act, 1994 does not arise, in view of the settled decision in the case of Hon'ble High Court of Karnataka in the case of CCE., Mangalore Vs. Shree Krishna Pipe Industries 2004 (165) ELT 508 (Kar). wherein it was held as follows:-

> **"5.** ..... We find that Tribunal has in fact given a reason i.e., the disputed duty has been paid by the party even before the issue of show cause notice and this would show that there was no question of any fraud, misrepresentation or suppression of facts. In fact, the Tribunal in *Rashtriya Ispat Nigam Ltd.'s* case, held that where assessee deposits the duty even prior to the issue of a show cause notice, penalty should not be imposed and interest should not be levied. The Supreme Court has rejected the appeal filed against the said order. Therefore we find that order of the Tribunal is a reasoned order though brief and no question of law arises in regard to the said order. Petition is therefore dismissed."

9. In view of the above discussions, Appeal is allowed only to the extent of penalties.

(Order pronounced in Open Court on 28.11.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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