

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 907 of 2012

(Arising out of Order-in-Original No.04/2012 dated 09.02.2012
passed by the Commissioner of Central Excise, Bangalore-III
Commissionerate, Bangalore.)

**M/s. Witness Systems Software
(India) Pvt. Ltd.**

H.M. Tower, No.58, 6th Floor,
Brigade Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise**

Bangalore-III Commissionerate,
P.B. No.5400, C. R. Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

WITH

Service Tax Appeal No. 20177 of 2016

(Arising out of Order-in-Original No.29/2015 dated 30.11.2015
passed by the Commissioner of Service Tax, Bangalore.)

**M/s. Witness Software Systems
(India) Pvt. Ltd.**

No.32, ACR Tower Residency Road,
Bangalore – 560 025.

Appellant(s)

VERSUS

The Commissioner of Service Tax

Bangalore – I Commissionerate,
Above Domlur BMTC Bus Stand,
Old Airport Road, Domlur,
Bangalore – 560 071.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri M. A. Jithendra, Assistant Commissioner (AR) for the Respondent.

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

FINAL ORDER NO. 20475 - 20476 / 2026

DATE OF HEARING: 12.01.2026

DATE OF DECISION: 12.01.2026

PER: R. BHAGYA DEVI

These two Appeals No.ST/901/2012 and No. ST/20177/2016 are filed by the appellant M/s. Witness Systems Software (India) Pvt. Ltd. against Order-in-Original No. 4/2012 dated 09.02.2012 and Order-in-Original No.29/2015 dated 30.11.2015, respectively.

2. Briefly the facts are that the appellant M/s. Witness Systems Software (India) Pvt. Ltd. is a subsidiary unit of Americas Inc. and are into providing software related services to the clients of their parent company. The question was whether the services rendered by the appellant were to be classifiable under the category of 'Management', Maintenance or Repair Service'. The contention of the appellant was that since the services were in the nature of Information Technology Software Service (ITSS) were not taxable prior to 16.05.2008 and post they are in the nature of Export of Services. However, the Commissioner in the impugned orders confirmed the demand of service tax invoking the extended period of limitation on the ground that the service was classifiable under the category of 'Management, Maintenance or Repair Service' rejecting the claim of the appellant that these services were in the nature of Export of Service. Aggrieved by these orders, the appellant is in appeal before us.

2. The Learned Counsel submitted that the appellant is an 100% Export Oriented Unit (EOU) – Software Technology Park of India (STPI) Unit involved in development of software/IT enabled services. It is stated that two show-cause notices were issued; one for the period from 01.04.2006 to 31.03.2010 and another from 01.04.2010 to 31.03.2012. It is submitted that prior to 2007, the appellant was involved in software development and was exporting software; while post-2007, they were providing services to call centres on IT related services. It is stated that the appellant entered into Memorandum of Understanding (MOU) with the two foreign companies for providing support and services to the customers of these companies for which consideration was received in convertible foreign exchange. It is further submitted that the services rendered in terms of the MOUs is in the nature of Business Auxiliary Services as defined under Section 65(19)(vi) of the Finance Act, 1994. These services, therefore, are to be considered as Export of Services in view of Rule 3(1)(iii) of the Export of Service Rules, 2005 read with CBEC Circular No. 111/5/2009-ST dated 24.02.2009. Relied on the following decisions:

- **Microsoft Corporation (I) Pvt. Ltd. Vs. CST. 2014 (36) STR 766 (Tri-Del.)**
- **CST Vs. Vodafone India and Ors. 2025 (33) CENTAX 152 (S.C.)**

2.1 With regard to limitation, it is submitted that under the *bona fide* belief the services were considered to be Business Auxiliary Services and thus, claimed to be Export of Services, hence, no *mala fide* intention can be alleged against the appellant. It is also submitted that the Revenue has not discharged their burden of proof to classify the services under 'Management, Maintenance or Repair Services'. It is further stated that in appeal No. ST/20177/2016, the entire demand is

barred by limitation since the show-cause notice was issued on 17.10.2013 for the period 01.04.2010 to 31.03.2012.

3. The learned Authorized Representative (AR) for the Revenue reiterated the findings of the Commissioner in the impugned orders.

4. Heard both sides. We find that the MOU entered by the appellant on 01.04.2006 with their parent company was for providing support and services to the customers of the parent company. The consideration agreed was cost plus mark-up as per the transfer pricing method. It is further submitted that the appellant rendered ITS Service resolving customer complaints of all the clients of the parent company. These services prior to 16.05.2008 are not liable to service tax since ITSS since they were introduced only w.e.f. 16.05.2008.

5. For the period from 16.06.2008 to 2012, these services as rightly claimed by the appellant cannot be classified under 'Management, Maintenance or Repair Services' but are classifiable under 'Business Auxiliary Services', which are reproduced below:

Business Auxiliary Services as defined under Section 65(19) is as follows:

(19) "business auxiliary service" means any service in relation to, -

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

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

[Explanation. For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organised,

conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;]

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

[Explanation. For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of, the client;

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, 5[but does not include any activity that amounts to manufacture of excisable goods].

Management and Maintenance Repair Services as denied under Section 65(64) reads as follows:

[(64) "management, maintenance or repair" means any service provided by -

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorised by him, in relation to, -

(a) management of properties, whether immovable or not;

(b) maintenance or repair of properties, whether immovable or not; or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]

clause, -2[Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this

(a) "goods" includes computer software;

(b) "properties" includes information technology software;]

From the above definitions, it is seen that the services rendered by the appellant are in the nature of provision of service on behalf of the client as these services are provided by the appellant to the customers of their parent company on behalf of the parent company, for which the cost along with the mark-up is paid to the appellant, hence, rightly classifiable under Business Auxiliary Service.

6. The Export of Service Rules, 2005 is reproduced below:

Export of Services Rules, 2005

[Notification No. 9/2005-ST, dated 3-3-2005 as amended]

In exercise of the powers conferred by sections 93 and 94) of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely

RULE 1. Short title and commencement. (1) These rules may be called the Export of Services Rules, 2005

(2) They shall come into force on the 15th day of March, 2005

RULE 2. Definitions. In these rules, unless the context otherwise requires,

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "input" shall have the meaning assigned to it in clause (k) of rule 2 of the CENVAT Credit Rules, 2004

(c) "Input service shall have the meaning assigned to it in clause (1) of rule 2 of the CENVAT Credit Rules, 2004

RULE 3. Export of taxable service. (1) Export of taxable services shall, in relation to taxable services,-

(i) specified in sub-clauses (d), (p), (q), (v), (zzq), (zzza), (zzzb), (zzzc), (zzzh), (zzzr), (zzzy), (zzzz) and (zzzza) of clause (105) of section 65 of the Act, be provision of such services as are provided in re-lation to an immovable property situated outside India;

(ii) specified in sub-clauses (a), (f), (h), (i) (j) (l) (m), (n), (o), (s), (t), (u), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzp), (zzzzg), (zzzzh) and (zzzzi)) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India

Provided that where such taxable service is partly performed outside India, it shall be treated as performed outside India:

Provided further that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any im-movable property, as the case may be, situated outside India at the time of provision of service. through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India;].

(iii) specified in clause (105) of section 65 of the Act, but excluding,-

(a) sub-clauses (zzzo) and (zzzv),

(b) those specified in clause (i) of this rule except when the provision of taxable services specified in sub-clauses (d), (zzzc) and (zzzr) does not relate to immovable property; and

(c) those specified in clause (ii) of this rule,

when provided in relation to business or commerce, be provision of such services to a recipient located outside India and when provided otherwise, be provision of such services to a recipient located outside India at the time of provision of such service

Provided that where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India:

[**Provided** further that where the taxable service referred to in sub-clause (zzzzj) of clause (105) of section 85 of the Act is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.]

[(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

(a) such service is provided from India and used outside India; and

(b) payment for such service (x x x) is received by the service provider in convertible foreign exchange.

[**Explanation.** - For the purposes of this rule "India" includes the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India;].

RULE 4. Export without payment of service tax. Any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax.

RULE 5. Rebate of service tax. Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

6.1 As per clause 3(iii) the services are clearly Export of Services since the recipient is the parent-company who is located outside India and for these services, the appellant receives consideration in convertible foreign exchange.

7. We also find that the Hon'ble Supreme Court in the case of **Commissioner of Service Tax -III, Mumbai Vs. Vodafone India Ltd. and Others: 2025 (33) CENTAX 152 (S.C.)** dated 06.05.2025, in similar set of facts, has held that "*the CESTAT was right in granting benefit of the exclusion from taxable services to the activities of the respondent assessee as being an activity of export of service. We find that CESTAT in all these cases as rightly analysed the activity and granted the relief*". With regard to limitation, we also find that the second show-cause notice dated 17.10.2013 cannot be sustained beyond the normal period since on similar set of facts earlier show-cause notice were issued on 13.10.2010.

8. In view of the above, we do not find any substance in the impugned orders and therefore, considering the services as Export of Services, the impugned orders are set aside and the Appeals are allowed.

(Operative portion of the order was dictated and pronounced
in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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