CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.382 Of 2012

[Arising out of OIA No.10/ST/APPL/DLH-IV/2011 dated 30.08.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s Goodyear India Limited : **Appellant (s)**
Mathura Road, Ballabgarh,
Faridabad, Haryana

Vs

The Commissioner of Central Excise and Service Tax, Delhi : **Respondent (s)**
17-B.I.A.E.A. House, M.G. Road,
I.P. Estate, New Delhi-110002

With

Service Tax Appeal No.545 Of 2012

[Arising out of OIA No.18/CE/APPL/DLH-IV/2011 dated 26.12.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s Goodyear India Limited : **Appellant (s)**
Mathura Road, Ballabgarh,
Faridabad, Haryana

Vs

The Commissioner of Central Excise and Service Tax, Delhi : **Respondent (s)**
17-B.I.A.E.A. House, M.G. Road,
I.P. Estate, New Delhi-110002

APPEARANCE:
Shri Ajay Aggarwal and Shri Naveen Bindal, Advocates for the Appellant
Shri Siddharth Jaiswal and Ms. Shivani, Authorised Representatives for the Respondent

CORAM:
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.60725-60726/2023

Date of Hearing: 13.12.2023

Date of Decision: 22.12.2023
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Per: P. ANJANI KUMAR

The appellants, M/s Goodyear India Limited, are engaged in manufacture of tyres and tubes which are sold in the domestic market as well as overseas; the appellants have engaged commission agents abroad to provide certain services with respect to their exports and have paid the commission thereof; Revenue was of the opinion that the commission paid by the appellants is chargeable to service tax under the Reverse Charge Mechanism whereas the appellants entertained a view that as the services are rendered and received in a territory beyond India, the same are not taxable. Two show-cause notices, dated 25.04.2008 and 30.06.2009, covering the period January 2004 to November 2007 and December 2007 to March 2009, demanding service tax of Rs.29,05,153/- and Rs.12,00,588/- respectively, were issued to the appellants; the show-cause notices were confirmed by the OIOs dated 22.02.2011 and 30.08.2010 respectively; on an appeal filed by the appellants, Commissioner (Appeals) vide impugned orders dated 26.12.2011 and 30.08.2011 respectively, upheld the Orders-in-Original.

2. Shri Ajay Aggarwal, assisted by Shri Naveen Bindal, learned Counsels for the appellants, submits that there is no dispute on the fact that the service has been rendered and received at the same time and entirely outside India; learned Commissioner has categorically held more than once in the impugned orders that the services were rendered abroad. He relies on the decision of the Tribunal in the case of Orient Crafts – 2006 (4) STR 81 (Del.) and CBEC Circular dated

19.04.2006 and submits that only services received in India are taxable under these provisions. He submits that as per Section 64 (1) of the Finance Act, 1994, provisions of service tax do not extend beyond India; Rule 3 (iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 are not applicable as there is no service received in India; he relies upon Hon'ble Supreme Court's decision in the case of Carborundum Vs CIT, Madras – (1997) 2 SCC 862 and submits that operations/ activities are carried out of India, question of rendition of services in India does not arise.

3. Learned Counsel submits that it is incorrect on the part of the Department to rely upon the ratio of Indian National Ship Owners Association – 2009 (13) STR 235 (Bom.) and Hindustan Zinc Limited – 2008 (11) STR 338 (Tri.); he submits that the said decisions relate to the period before 18.04.2006. He also submits that the issue is revenue neutral as the amount of service tax, if any, paid by the appellant would be available to them as credit; the same was clarified by Trade Notice dated 11.09.2008 issued by Madurai Commissionerate.

4. Learned Counsel submits that the show-cause notice dated 25.04.2008 is time-barred; prior to 25.04.2008, Department attempted to tax the very same transaction under "Clearing and Forwarding Agent Service"; continuous correspondence was on between the appellants and the Department; the Department knew the facts as early as 08.03.2007; in a subsequent proceedings, in respect of a subsequent show-cause notice issued to the appellants,

Department vide Order dated 03.11.2007 held that extended period cannot be invoked. He submits that as the case is revenue neutral, extended period cannot be invoked as held by the Hon'ble Supreme Court in the case of Nirlon Limited – 2015 (320) ELT 22 (SC); as there was no suppression of material facts, extended period cannot be invoked as held by the Hon'ble Supreme Court in the case of Pahwa Chemicals – 2005 (189) ELT 257 (SC); as held by the Hon'ble Supreme Court in the case of Nizam Sugar – 2008 (9) STR 314 (SC), extended period cannot be invoked in the subsequent show-cause notice dated 30.06.2009.

5. Shri Siddharth Jaiswal, assisted by Ms. Shivani, learned Authorized Representatives for the Department, reiterates the findings of the impugned order. He submits that the validity of Section 66A of Finance Act, 1994 is not in dispute; the services received by the appellants are in the category of "Business Auxiliary Service", which were used by the appellants in the manufacture and export of tyres and therefore, the services of the overseas agents, though performed outside India have been received by none other than the appellants situated in India; the Adjudicating Authority was correct in holding that the services rendered are taxable in view of Rule 2(1)(d)(iv) of Service Tax (Fifth Amendment) Rules, 2005 and sub-Section- (iii) of Section 66A of Finance Act, 1994. He relies on Melange Developers Pvt. Ltd. – 2020 (33) GSTL 116 (Tri. LB) and Northern Operating Systems Pvt. Ltd. – 2022 (61) GSTL 129 (SC).

6. Heard both sides and perused the records of the case. The appellant has appointed commission agents abroad who would book orders for the sale of tyres for the appellants; the appellant export the tyres manufactured in India and accordingly realise the sale proceeds, for the services rendered by the overseas agents, the appellants pay them a commission. Revenue seeks to levy service tax on the commission paid by the appellants to the commission agents; it is alleged that the agents are performing "Business Auxiliary Service" to the appellants; the services rendered by the overseas agents are received and utilized in India. On the other hand, the contention of the appellant is that the services are rendered and received abroad.

7. We find that it is beneficial to have a look at the statutory provisions in this regard.

7.1. Section 66A as amended from 18.04.2006 read as under:

> **6A.** (1) Where any service specified in clause (*105*) of section 65 is,—
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> (*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
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> (*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.

7.2. Rule 2 (1)(d)(iv), as amended by the Service Tax (Fifth Amendment) Rules, 2005, by Notification No.23/2005-ST dated 07.06.2005, w.e.f. 16.06.2005, reads as under:

2(1) In these rules, unless the context otherwise requires,
(d) person liable for paying the service tax means:
(iv) "in relation to any taxable service 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 such service provider does not have any office in India, the person who receives such service and has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India."

7.3. Rule 2 (1)(d)(iv) as further amended by the Service Tax (Second Amendment) Rules, 2006 vide Notification No.10/2006 dated 19.04.2006, reads as under:

2(1) in these rules unless the context otherwise requires-
(d) person liable for paying the service tax means:
(iv) "in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under Section 66A of the Finance Act, 1994, recipient of such service;

7.4. Section 68 (2) of the Finance Act, 1994 provides:

> 68(2) Notwithstanding anything contained in section 68 (1) in respect of any taxable service notified by the Central Government in the Official Gazette the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in Section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.
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> 7.5. In terms of sub-rule (iii) of Rule 3 of the Taxation of Service (Provided from Outside India and Received in India) Rules, 2006, as notified vide Notification No.11/2006-ST dated 19.04.2006 that all other services other than the above specified in clause (105) of section 65 of the Act, but excluding the services mentioned in sub-clauses (zzzo) and (zzzv) and those specified in clauses (d) (zzzc) and (zzzr) in so far as they do not relate to immovable property, shall be taxable of the said services as are received by a recipient located in India for use in relation to business or commerce.

8. The appellant submits that the reliance of the Department on the case of Indian National Ship Owners Association (supra) is incorrect. On going through the provisions of the statute, it is seen that applicability of service tax on Reverse Charge Mechanism is not in dispute w.e.f. 18.04.2006 at least; the impugned period is after the said date; therefore, there is no dispute as regards the applicability of Reverse Charge Mechanism. The appellants basically dispute the fact that the services are received in India and heavily rely on the averments, in a couple of places, in the Order-in-Original that the service has been rendered and received abroad. The appellants are manufacturers of tyres; they are clearing the tyres in the domestic market and are also exporting to other countries; they have appointed agents, overseas, to procure orders for such tyres; as per the orders confirmed by the agents, the appellants export the tyres and pay the agents a certain commission. The services rendered by agents abroad

results in the export of the goods manufactured by the appellant. Thus, the services rendered by the agents are in the direction of promoting the business of the appellants. Undoubtedly, the business of the appellant is in India. We find that the effect of the services rendered by the overseas agents, results in export of tyres by the appellant, which is their business; to this extent, we find that the categorization of the services under "Business Auxiliary Service" is correct. Moreover, it cannot be said that the services are received abroad though, they are certainly performed outside India; as long as the recipient and his business are in India, it cannot be said that the said service is not received in India. Receipt of the service takes the colour of recipient of the service that is to say receipt of service is decided by the recipient. The services rendered by the agents are not a personalized service availed by the appellants on their visit to abroad; moreover, by no stretch of imagination, the appellant being a body corporate, services cannot be held to have been received and enjoyed overseas, as they have no place of business abroad. Understandably, the benefit of the service accrued to the business of the appellant in India and therefore, to that extent, receipt of the services is certainly in India and not abroad. To this extent, we find that the contention of the Revenue is correct. We find no infirmity in the findings of the OIO and OIA to the extent that the appellants have received services from foreign agents who have procured order outside India against which they had supplied the goods and thus have rendered themselves liable to pay service tax on Reverse Charge Mechanism in terms of Section 66A of Finance Act, 1944 and the

Taxation of Service (Provided from Outside India and Received in India) Rules, 2006.

9. Coming to the other issue of neutrality of revenue, we find that the Scheme of Service Tax and Excise Duty work on the principle of a chain of paying the duty and availing the credit. It is not correct to argue that the service tax paid could have been availed as credit and therefore, non-payment of service tax has not made any material difference to the Revenue. The principle of netting of duty is not in operation. For a smooth flow of goods and seamless procedures, a system of payment of duty and availing credit has been put in place. Breaking of this chain for whatever logic would entail in chaos which is neither a principle envisaged nor an intended result under the Scheme of taxation.

10. The appellants have further submitted that the Department was aware of the issue long before the impugned period; in fact, a show-cause notice was issued to the appellants to tax the same item under the Head "Clearing and Forwarding Agents Service"; the issue at the best can be said to be a result of difference in appreciation of law. Moreover, we find that vide OIO dated 08.11.2017, pursuant to the findings by CESTAT vide Final Order No. ST/A/51060/2016-CU (DB) dated 21.03.2016, that the issue is barred by limitation; the Original Authority has dropped the proceedings against the noticee. It is apparent from the records that the appellant and the Department were in constant correspondence and litigation in this regard. Therefore, in view of the facts discussed above, we are of the

considered opinion that Revenue has not made out any case for invocation ofthe extended period. Therefore, we are of the considered opinion that extended period cannot be invoked to this extent. We borrow strength from the ratio of the cases cited above by the appellants in this regard. As the Department has not made out any case for invocation of extended period and considering the facts of the case, we hold that the penalties imposed are liable to be set aside.

11. In view of the above, both the appeals are partially allowed to the extent of limitation; we hold that the demands be restricted to the normal period; however, penalties imposed on the appellants are set aside.

(Pronounced on 22/12/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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