

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 50378 of 2015

[Arising out of Order-in-Original No. LUD-EXCUS-000-COM-059-14-15 dated 20.11.2014 passed by the Commissioner of Central Excise & Service Tax, Ludhiana]

M/s Eastman Impex

Guru Gobind Singh Colony, Sua Road,
Industrial Area-C, Dhandari Kalan,
Ludhiana, Punjab-

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Ludhiana**

GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

.....Respondent

APPEARANCE:

Shri Naveen Bindal & Shri Bharat Jain, Advocates for the Appellant

Shri S.K. Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61686/2025

DATE OF HEARING: 12.11.2025

DATE OF DECISION: 19.11.2025

P. ANJANI KUMAR:

M/s Eastman Impex, the appellants, are registered as a receiver of Business Auxiliary Service and Goods Transport Agency Service. Revenue observed that the appellants have leased out machineries to M/s JVR Forgings and M/s Magma Mett Cast Ltd. and

the effective control of the machinery was not transferred to the lessees and as such they are required to pay service tax under Right to Use Tangible Goods Service. It was also observed that the appellant booked some amounts, incurred in Indian Rupees or Foreign currency being the expenditure on trade fairs participation, under the accounting head "Trade Fair Expenses"; Revenue was of the opinion that the appellants are required to pay service tax on reverse charge mechanism. It was further observed that the appellants have engaged the services of foreign service providers for market research and on that count also, the appellants are liable to pay service tax on reverse charge mechanism. Accordingly, a show cause notice dated 26.03.2013 was issued to the appellants, seeking to recover service tax amounting to Rs.55,90,634/- along with interest while seeking to impose penalties under Sections 76,77 &78 of Finance Act, 1994. The show cause notice was adjudicated by Commissioner vide the impugned order dated 19.11.2014 confirming service tax of Rs.55,49,508/- along with equal penalty under Section 78 and penalty of Rs.200/- per day under Section 77 and an amount as per Section 70 of the Finance Act, 1994. Hence, this appeal.

2. Shri Naveen Bindal, learned Counsel for the appellant submits that the Commissioner has erred in confirming the demand and also in quantification of the same. As regards the demand on Right to Use Tangible Goods Service, learned Counsel submits that the order considered the figure of rent as Rs.74,34,775/- in place of Rs.63,85,500/- and rent of immovable property also included; thus,

service tax of Rs.1,72,721/- was demanded in excess. He takes us through the definition of "Transfer of Right to Use Goods" and the CBEC Education Guide and submits that, in the instant case, in terms of the Agreement, the lessee has all rights to use the machineries in question with all consequences; there is no restriction of the use of the machineries; the lessee can use the machines freely at his own will; during the lease period, the lesser cannot use or assign the use to any other person; accordingly, the contract in the impugned case satisfies the criteria laid down by the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. Vs UOI - 2006 (2) STR 161 (SC); the appellants have paid VAT and therefore, service tax is not attracted.

3. Learned Counsel submits as regards the demand on Business Exhibition Service that the reverse charge applies where specified service is 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; in the present case, the service providers are situated in India and payments are made and therefore, reverse charge mechanism does not apply; cases where the appellant made remittances in foreign currency pertain to participation fee of exhibitions held outside India which also included expenses in purchase of material for exhibition, ocean freight and hotel rent abroad and these expenses are not exigible to service tax; service tax of Rs.6,48,045/- on the above counts needs to be set aside. He further submits that demand of

service tax of Rs.8,47,927/-on the participation charges paid for exhibitions held outside India to the organizers situated outside India are not taxable as per Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

4. As regards the service tax demand on Business Support Service on reverse charge basis is concerned, the learned Counsel submits that the appellant has taken services of foreign companies for market research of their products in a particular country; the show cause notice wrongly alleges the payment was for market survey of a particular customer whereas the survey was about the products of the noticee's company in a particular country.

5. Learned Counsel for the appellants also submits that the demand has been raised invoking extended period; however, show cause notice, dated 26.03.2013 was issued to cover a period, from 01.04.2007 to 30.09.2007, which is even beyond five years. He submits that even extended period cannot be invoked as the issue involved is about legal interpretation of provisions of Service Tax; the appellant cannot be penalized for entertaining different opinion as the issue was being discussed and deliberated by various Benches of the Tribunals and the High Courts; moreover, the appellant himself could have availed the credit of service tax paid and therefore, the issue is revenue neutral. Therefore, extended period cannot be invoked. He relies on the following case in respect of all his arguments:

6. Shri S.K. Meena, learned Authorized Representative for the Department, reiterates the findings of the impugned order. He takes

us through the provisions of the law and submits that as per terms of the contract/ agreement by the appellants with JVR Forgings, effective control is not given to the lessee and therefore, the arrangement is nothing but supply of tangible goods. He relies on Adani Gas Ltd. – 2020 (40) GSTL 145 (SC) and Idea Mobile Communication Ltd. – 2011 (23) STR 433 (SC).

7. Heard both sides and perused the records of the case. We find, on going through the agreement, that the agreement is for renting out machineries for which the lessor appellant receives the rent; the agreement provides that the machinery has been provided to the lessee and set up at the premises of the lessee by the lessor for a period agreed upon. Revenue depends on the clauses relating to repairs, loss and damage and argues that the possession and effective control of the tangible goods is not given to the lessee. The agreement provides, as regards the repairs, loss and damage are concerned, as follows:

Repairs: Lessee, at its own cost and expense, shall keep the equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the Leased equipment in goods mechanical working order.

Loss and Damage: Lessee hereby assumes and shall be bear the entire risk of loss and damage to the equipment from any and every cause whatsoever. No loss or damage to the equipment or any part thereof shall impair any obligation of the lessee under this lease which shall continue in full force and effect through the term of the lease. In the event of loss or damage of any kind whatever to the equipment, lessee shall, at lessor's option:

(i) Place the same in good repair, condition and working order; or

- (ii) Replace the same with like equipment in good repair, condition and working order, or;
- (iii) Pay to lessor the replacement cost of the equipment.

8. We find that the Revenue takes a cue from the above and comes to a conclusion that effective control is not transferred and therefore, the transaction amounts to taxable service of supply of tangible goods. We find that as per Section 65 (105) (zzzzj) of Finance Act, 1994 defines taxable service to mean **any services provided or to be provided**, to any person, by any other person **in relation to supply of tangible goods** including machinery, equipment and appliances for use, **without transferring right of possession and effective control of such machinery, equipment and appliances.**" We find that Revenue has lost sight of the fact that the right of possession of the machinery has been transferred as the machinery is set up at the premises of lessee. Thus, out of the two conditions of Transfer of Right of Possession and Effective Control, the first one is not satisfied as the possession of the machinery has been given. Unless the two conditions are satisfied, the service cannot be said to be of supply of tangible goods. On this count alone, the Department's argument fails. The conditions regarding repair loss and damage in the above agreement are of general nature and do not indicate that the right of effective control is not transferred. Further, as the appellants paid applicable VAT on the deemed sale, one should not have a doubt about the right of possession being transferred.

9. Coming to the demand on Business Exhibition Services, we find that the expenses are related to the exhibition held outside India for which payment was made outside India to the organisers of the event. The service is provided and received outside India and therefore, the same are not exigible to service tax. Moreover, we find that the expenses related to purchase of material for display in exhibition and ocean freight incurred on this count came to be included in the Business Exhibition Services w.e.f 01.05.2011; the demand of Rs.6,48,045/- in this case being for a period up to 28.02.2011, we find that the demand is not sustainable. We also find that in terms of Rule 3 (ii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, such service would have been taxable if the same is performed in India; as the services were performed outside India, we find that the expenses on exhibitions held outside India cannot be taxed at the hands of the appellants during the relevant period.

10. Coming to the demand under Business Support Service, the appellant submits that they have availed services of foreign service providers for market research of their product in a particular country; CBEC clarified, vide F. No. B-11/03/98-TRU dated 07.10.1998, the Market Research Agency Services include research relating to development of market for a product; in the instant case, the service availed is not about a particular product cannot be held to have been received in India; therefore, the demand cannot be sustained on this count also. We find that this Bench in the case of

Goodyear India Ltd. vide Final Order No.60614-60617/2025 held as follows:

8.1 Further, we find that once there are clear cut findings of fact that the services have been rendered entirely outside India, the same cannot be taxed in India by invoking the Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, because the said rule in its opening portion contemplates receiving of services in India, which is clearly absent in the present case. Here, it is relevant to reproduce the statutory provisions of Section 66A of the Finance Act as amended from 18.04.2006 as well as Rule 2(1)(d)(iv) and Section 68(2) of the Finance Act, which are reproduced herein below:

Section 66A: Charge of service tax on services received from outside India - "(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 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.” 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 –

“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.”

Rule 2 (1)(d)(iv) as amended by the Service Tax (Second Amendment) Rules, 2006 vide Notification No.10/2006 dated 19.04.2006 – “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”

Section 68(2) of the Finance Act, 1994 - “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.”

8.2 On going through the provisions of Section 66A, Rule 2(1)(d)(iv) and Section 68(2) cited supra, we find that the Reverse Charge Mechanism was introduced w.e.f. 18.04.2006 but in the present case, the said provision is not applicable because it is a clear cut finding that the impugned services have been performed/rendered entirely outside India and the same cannot be taxed in India under the provisions of Reverse Charge Mechanism. We also find that even the deeming provisions as contemplated under Rule 3(ii) not applicable in the present case in view of the clear cut findings that services were received entirely outside India.

8.3 We also find that the Hon'ble Delhi High Court in the case of Orient Crafts Ltd (supra), has clearly held that no service tax at all can be levied on services rendered and received outside India. By following the ratio of the said decision and also considering the CBEC's Circular dated 19.04.2006 (supra), we are of the considered view that the appellant is not liable to service tax under reverse charge basis; therefore, to this extent, we set aside the demand.

11. Thus, we find that on all the three counts as discussed above, the argument of the Revenue is not acceptable and therefore, the impugned order cannot be sustained. As we hold that the case of the Revenue does not sustain on merits, the arguments on time bar etc. become redundant. In view of this, the appeal is allowed.

(Order pronounced in the open court on 19/11/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)