

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

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60632 of 2017**

[Arising out of Order-in-Appeal No. JAL-EXCUS-001-APP-11/17-18 dated 16.05.2017 passed by the Commissioner (Appeals), CE & Cus, Ludhiana]

**The Merchants**

C-4, Focal Point,  
Jalandhar, Punjab 144012

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Jalandhar/Ludhiana**

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

**.....Respondent**

**APPEARANCE:**

Mr. Sudhir Malhotra and Ms. Kanika Malhotra, Advocates for the Appellant

Mr. Yashpal Singh, 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. 61735/2025**

DATE OF HEARING: 05.08.2025

DATE OF DECISION: 02.12.2025

**S. S. GARG :**

The present appeal is directed against impugned order dated 16.05.2017 passed by the Commissioner (Appeals), Ludhiana, whereby the learned Commissioner (Appeals) has rejected the appeal of the Appellant and upheld the Order-in-Original.

2. Briefly stated facts of the present case are that the Appellant were engaged in export of goods; the appellant sold their goods either directly or through commission agent; the payments against export were received through banking channels. Audit of the Appellant was conducted by A.G. Audit and it was observed that the Appellant during the financial years 2007-08 to 2011-12 have paid an amount of Rs.43,78,280/- in foreign currency to various foreign based persons for various services in relation to their activities in India; the services provided by these foreign bases persons are covered by the scope of taxable category of services of 'Business Auxiliary Services' and 'Banking and Other Financial Services' as these found to have been defined under Section 65(19) & Section 65(12) of the Finance Act, 1994. As per the allegation of department, the Appellant are liable to pay service tax under Section 66A of the Finance Act in respect of the commission paid to overseas agents. The department also observed that the Appellant are liable to pay service tax in respect of payment made through American Express Card under reverse charge basis. On these allegations, a show cause notice dated 22.10.2012 was issued to the Appellant. After following the due process, the Adjudicating Authority vide the Order-in-Original dated 01.01.2014, confirmed the demand of service tax of Rs.1,55,125/- under proviso to Section 73(1) of the Finance Act, along with interest under Section 75 and penalty under Sections 77 & 78 of the Act, by denying the benefit of Notification No. 18/2009-ST dated 07.07.2009. Being aggrieved by the said Order-in-Original, the Appellant filed appeal before the

Commissioner (Appeals) who, vide the impugned Order-in-Appeal, has rejected their appeal and upheld the Order-in-Original. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 The learned Counsel further submits that the Appellant have exported the goods either directly or through commission agent and have paid the commission through banking channels to overseas agents for rendering services in relation to the goods exported. He further submits that the only issue involved in the present case is whether the Appellant is liable to pay service tax under Section 66A of the Finance Act in respect to the commission paid to overseas agents and to pay service tax in respect of payments made through American Express Card under reverse charge basis. He further submits that the Adjudicating Authority in the Order-in-Original has not disclosed the category of service against which service tax has been demanded under Section 66A for the period 2007-08 to 2011-12 which comes to Rs.5,15,808/-; the Appellant had paid the service tax of Rs.3,60,683/- and balance of Rs.1,55,125/- has been demanded.

4.2 The learned Counsel further submits that the benefit of exemption Notification No. 18/2009-ST dated 07.07.2009 has arbitrarily denied to the Appellant on procedural violation. He further

submits that as per the said notification, it is incumbent upon the Appellant to file EXP-2 returns within 15 days of completion of six months; the Appellant submitted EXP-2 returns for the period April 2010 to September 2010 on 18.10.2010 and for the period April 2011 to September 2011 on 17.10.2011. He further submits that the Adjudicating Authority has denied the benefit of exemption notification for delay in filing EXP-2 return for the period April 2010 to September 2010 and April 2011 to September 2011.

4.3 He further submits that in fact, there is no delay in filing the EXP-2 returns as the Adjudicating authority failed to note that on 18.10.2010 & 17.10.2011 it was Monday; the returns for half year ending September 2011 was submitted in time being 15 & 16 October, 2011 were holidays on account of Saturday and Sunday and the limitation extends to next working day in case last date falls on a holiday; similarly 16 & 17 October 2010 were holidays on account of Saturday and Sunday and 15 October 2010 was 'Punjab Bandh' and therefore, there was delay of only one day in filing EXP-2 returns.

4.4 The learned Counsel cites the various decisions of the Tribunal as well as of the Hon'ble Supreme Court, wherein it has been held that substantive benefit cannot be denied on procedural lapse. For this, he relies on the following decisions:

- **HEG Limited Vs. Commissioner of Customs, Central Excise and Service Tax - 2019 (29) GSTL 730 (Tri - Del)**
- **Premier Indus Oxygen & Air Product Vs. CCE - 2004 (174) ELT 243 (Tri - Chennai)**

- **Thermax Pvt. Ltd Vs CCE - 1992 (61) ELT 352 (SC)**

4.5 The learned Counsel further submits that the show cause notice has been issued by invoking the extended period of limitation. He further submits that the period involved in the present case is 2007-08 to 2011-12 whereas the show cause notice has been issued on 22.10.2012. He further submits that the Appellant have not suppressed the any material facts from the department and have been paying the service tax and regularly filing the returns. He further submits that it is only during the course of audit of the records of the Appellant that the issue was raised by the department regarding the denial of benefit of exemption notification. He further submits that department has not been able to bring on record any evidence to satisfy the elements which are necessary for invoking the extended period of limitation.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on records, we find that the only issue in the present case is whether the Appellant is liable to pay service tax on reverse charge basis for the commission paid to overseas agents for export of goods. We find that the Appellant have been paying the service tax but the department has questioned the quantification of the same and has also raised the issue that the Appellant are liable to pay the service tax in respect of the payment made through American Express Cards. The submission of the learned Counsel for

the Appellant is that the American Express International has office in Gurugram in India and since service provider has office in India, therefore, it is incorrect to demand the service tax from the Appellant on reverse charge basis. Further, we find that the benefit of exemption Notification No. 18/2009-ST has been denied to the Appellant merely on the basis of delay in filing the EXP-2 returns. We have noted that the Tribunal in the case of **HEG Limited** (supra) has held that substantial benefit of notification cannot be denied on account of procedural lapse. By following the ratio of the said decision, we hold that the Appellant are entitled to the benefit of exemption Notification No. 18/2009-ST.

7. As regards the invocation of extended period of limitation, we hold that the show cause notice has been issued by invoking the extended period of limitation based on the audit objection and it is a settled law that extended period cannot be invoked on the basis of audit as held in the following cases:

- **Maruti Suzuki India Ltd – 2024 (4) TMI 724 CESTAT Chandigarh**
- **Hoshiarpur Automobiles – 2024 (4) TMI 432 CESTAT Chandigarh**
- **Sunshine Steel Industries - (2023) 8 Centax 209 (Tri. Del.) - affirmed by Hon'ble Supreme Court (2023) 8 Centax 210 (SC)**

We also find that the department has not established any ingredients for invoking the extended period as the Appellant have been regularly filing the returns and paying the service tax. In these circumstance, we hold that when the demand for extended period fails, the demand for normal period will also go as held by the

Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks Ltd vs. UOI - [2014 (36) STR 37 (Cal.)]** wherein the Hon'ble High Court has held as under:

"**92.** When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transaction, once it is found that the extended period of limitation is not invocable. This proposition find support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4 SCC 630 = 2003 (153) E.L.T. 241 (S.C.)."

Further, we also find that the Principal Bench of the Tribunal, in the case of **Shyam Spectra Private Limited vs. Commr of ST, Delhi-II** [vide **Final Order No. 56196/2024 dated 31.07.2024** in **Service Tax Appeal No. 50583 of 2017**] has also followed the ratio of the judgment of Hon'ble Calcutta High Court in **Infinity Infotech Parks Ltd** (supra)'s case.

8. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable in law and accordingly, we set aside the same by allowing the appeal of the Appellant.

(Order pronounced in the open court on 02.12.2025)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**