

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI  
[COURT : Division Bench B1]**

**Appeal No.: ST/00588/2012**

---

[Arising out of Order-in-Appeal No. 167/2012 dated  
16.07.2012 passed by the Commissioner of Central Excise  
(Appeals), Madurai]

**M/s. Sundaram Industries Ltd.,** : **Appellant**  
Rubber Factory, Post Box No. 6,  
Usilampatti Road, Kochadai,  
Madurai – 625 016

**Versus**

**The Commissioner of G.S.T. & Central Excise,** : **Respondent**  
Madurai Commissionerate

Appearance:-

Ms. P. Kanthai Visalakshi, Advocate  
for the Appellant  
Shri. B. Balamurugan, AC (AR)  
for the Respondent

CORAM:

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing: 10.12.2018

Final Order No. **43100 / 2018**

**Per P. Dinesha :**

The appellant is a holder of Central Excise Registration as well as Service Tax Registration and manufactures moulded rubber products and other rubber articles. They were paying service tax on Clearing and Forwarding Services (C&F services) provided by M/s.

Project Management Inc., U.S.A. for the goods manufactured and exported by them up to June 2008, but stopped paying service tax and other dues on the above service from July 2008 onwards on the ground that the same is classifiable under Sub-clause (j) of Clause 105 of Section 65 of the Finance Act which is a specified service under Rule 3 of the Taxation of Services (provided from outside India and received in India) Rules, 2006.

2. A Show Cause Notice dated 30.04.2010 was issued to the appellant proposing to demand service tax to the extent of Rs. 2,98,046/- under Section 73 of the Finance Act, 1994 along with interest under Section 75 and penalty under Sections 76 and 77 *ibid.*, on the ground that the said service had been rendered outside India in entirety and thus taxable in terms of Section 66A of the Act. After due process of law, the Original Authority vide Order-in-Original dated 06.07.2011 confirmed the proposals made in the Show Cause Notice. Thereafter, the appellant preferred an appeal before the first appellate authority who vide impugned Order-in-Appeal No. 167/2012 dated 16.07.2012 rejected the appeal filed by the appellant while upholding the Order passed by the adjudicating authority. Aggrieved by the same, the appellant has come in appeal before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Ms. P. Kanthai Visalakshi appeared on behalf of the assessee-appellant while Ld. AC (AR) Shri. B. Balamurugan appeared on behalf of the Revenue-respondent.

4.1 During the course of hearing, Ld. Advocate submitted that Rule 3(ii) of the Taxation of Services (provide from outside India and received in India) Rules, 2006 totally excludes the liability of tax when the service has been performed wholly outside India; that Section 66A has to be read together with the said Rules and that isolation of the Rules from Section 66A would amount to denial of application of the Rules. She submitted that the appellant having performed the activity wholly outside India, was not liable to pay service tax and hence, prayed for setting aside of the impugned Order.

4.2 Further, Ld. Advocate relied on the Order of this very Bench of the CESTAT in the case of *M/s. Bnazrum Agro Export Pvt. Ltd. Vs. Commissioner of Central Excise & S.T., Madurai in Final Order No. 40350/2018 dated 05.02.2018* wherein, this Bench after considering the judgements of various judicial fora, has held in favour of the appellants therein.

5. *Per contra*, Ld. AR supported the findings of the authorities below.

6. We have heard the rival contentions, perused the materials placed on record and have also gone through the Order of this Bench (*supra*) relied upon by the Ld. Advocate.

7. There is no dispute that the service is provided outside the territory of India, but the Revenue wants to tax the assessee since it collects sale proceeds in India. But the legislature in its wisdom, has framed Rule 3(ii) to encourage exports and in turn foreign exchange remittances. We find force in the contention of the Ld. Advocate that the activity of the appellant being wholly performed outside India, is excluded from service tax liability as per Rule 3(ii) of the Taxation of Services (provided from outside India and received in India) Rules, 2006. Further, we note that on an identical set of facts this very Bench of the Tribunal in the case of *M/s. Bnazrum Agro Export Pvt. Ltd.* (*supra*) has held that such activity would not be exigible to service tax by virtue of Rule 3(ii) of the Rules. The relevant portion of the judgement is extracted below for the sake of convenience :

*“ 5. We find that the Ld. Advocate is correct in his assertion that since services have been wholly performed outside India, the activity will not be exigible to service tax by virtue of Rule 3 (ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. We find that the case laws relied upon fully support his assertion. Following the ratio already laid down, we find that the impugned order cannot sustain and will have to be*

*set aside, which we hereby do. Appeal is allowed with consequential relief, if any, as per law."*

8. We are therefore of the considered opinion that the issues being similar, the above ratio is required to be followed in the case on hand. Hence, following the same we are of the view that the impugned Order is unsustainable for which reason we set aside the same.

9. The appeal is allowed with consequential benefits, if any, as per law.

*(Operative part of the order was pronounced in open court)*

**(P Dinesha)**  
Member (Judicial)

**(Madhu Mohan Damodhar)**  
Member (Technical)

Sdd