

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Service Tax Appeal No.41066 of 2014**

(Arising out of Order-in-Appeal No. 69/2014-ST dated 18.2.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

**M/s. Kadri Mills (CBE) Ltd.**

**Appellant**

A Unit of Kadri Wovens  
Plot No. NN 1-SIPCOT  
Industrial Growth Centre  
P.V. Palayam Post  
Perundurai, Erode – 638 052.

Vs.

**Commissioner of GST & Central Excise**

**Respondent**

No. 1, Foulkes Compound  
Anaimeedu, Salem – 636 001.

**APPEARANCE:**

Shri S. Durairaj, Advocate for the Appellant  
Shri N. Satyanarayanan, AC (AR) for the Respondent

**CORAM**

**Hon'ble Shri P. Dinesha, Member (Judicial)**  
**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No.40711/2023

Date of Hearing : 18.08.2023

Date of Decision: 24.08.2023

**Per M. Ajit Kumar,**

This appeal is filed by the appellant against Order in Appeal No. 69/2014-ST dated 18.2.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. Brief facts of the case are that Kadri Mills (CBE) Ltd., the appellant herein, are manufacturers of Blankets, Throws, Sheets Duvet, Sham, Bed skirt falling under Chapter Heading 63 of the CETA, 1985; export them to various countries. During the period from

1.4.2007 to 31.5.2012, the appellant while receiving the export proceeds, had received lesser amount than what is due to them from the foreign banks viz. Capital One, USA, Wells Fargo Bank, Hong Kong, Bank of Ayuthiya Public Co. Ltd. Thailand, Bank of America, USA and Citi Bank, USA who have provided the services to M/s. Kadri Wovens do not have any fixed establishment in India. The amount deducted by such foreign banks being bank charges and for that amount the appellant had not paid any service tax since the service would fall under 'Banking and Other Financial Service' in terms of Section 66A of the Finance Act, 1994, and thus contravened the section and Rule 2(1)(d) and 6 of Service Tax Rules, 1994. Hence a Show Cause Notice dated 16.10.2012 was issued demanding service tax of Rs.3,56,283/- with interest and proposal to impose penalties under sections 76, 77 and 78 of the Finance Act, 1994. After due process of law, the original authority vide Order in Original dated 7.6.2013 confirmed the service tax demand of Rs.3,56,283/- with applicable interest under section 75 and a penalty of Rs.3,56,283/- under section 78 of the Finance Act, 1994 and penalty of @ Rs.200/- per day or Rs.1,000/- whichever is higher on them for non-registration under section 77(1)(a) of the Finance Act, 1994 was imposed. Aggrieved against the Order in Original, the appellant filed appeal before Commissioner (Appeals) who vide the impugned order rejected the appeal filed by the appellant. Hence assailing the order and its findings, the appellant is now before the Tribunal.

3. No cross-objections were filed by the respondent department.

4. We have heard learned counsel Shri S. Durairaj for the appellant and Shri N. Satyanarayanan, learned AR for Revenue.

5. The learned counsel for the appellant submitted that the issue is no longer res integra in view of the decision in the case of M/s SKM Egg Products Export (I) Ltd Vs CCE – 2023 (3) TMI 1384; M/s SKM Egg Products Export (India) Ltd Vs CCE – 2023 (7) TMI 756 and Dishman Pharmaceuticals & Chemicals Ltd Vs CST – 2023 (8) TMI 248. Section 65(105)(zm) of the Finance Act, 1994 falls under Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. To attract this provision, services must be received in India. In the instant case, no services are received in India. Therefore, it is not a taxable service.

6. Shri N. Satyanarayanan, learned AC (AR) reiterated the findings in the impugned order.

7. We have heard both sides and perused the case records. We find that the main issue involved in this case is whether the amount which was deducted by the foreign banks towards banking charges are taxable under the service 'Banking and Other Financial Services' during the period from 1.4.2007 to 31.5.2012. A similar matter came to be decided by a co-ordinate Bench of this Tribunal in the case of **SKM Egg Products Export (I) Ltd. Vs. CCE, Salem** – 2023 (3) TMI 1384 – CESTAT Chennai. The relevant portion of the said judgment is extracted below:-

*“5.1 The main issue involved in this case is whether the amount which was deducted by the Foreign bank towards the bank charges are taxable under the service “Banking and other Financial Service” for the period 2006-2007 to 2010- 2011? The other issues involved are whether invocation of extended period and imposition of penalties are sustainable in the facts of the case?”*

*5.2 We find that the appellants have submitted the documents for realization of export sale proceeds to their bank namely SBI, which in turn has used the services of the foreign bank for collection of export sale proceeds. Obviously, the foreign banks who have rendered their services, have deducted their charges while remitting the export sale proceeds to SBI. The appellant has never dealt with the foreign bank on his own and the Banking and Other Financial Service if at all was rendered only to SBI. Amount charged by the foreign bank while remitting export sale proceeds, whether can be subjected to service tax or not has been decided by the CESTAT Principal Bench, New Delhi in the case of Theme Exports Pvt. Ltd. Vs. CST, Delhi (supra), by relying on the ratio laid down by the Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur (supra), where the Tribunal held as under:-*

*4. We find that the issue arising out of present dispute is no more res integra, in view of the decision of this Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. Vs. CCE, Jaipur -2017 (10) TMI 1231-CESTAT, New Delhi. The relevant paragraph in the said decision is extracted herein below:-*

*"4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up before the Tribunal in the case of Greenply Industries Ltd. vs. CCE, Jaipur (Final Order No. 50149/2014 dated 03.01.2014) where it was observed that-*

*"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged under Section 66A read with Rule 2 (1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order in appeal dated 12.11.08 has set aside that order and as per the appellant's counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed".*

*5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."*

*5.3 As the issue is resolved on merits, there is no need to discuss about invocability of extended period in this case and also regarding legality of imposition of penalties.*

*6. We find that the issue is no more res integra and stands resolved by the orders of the Tribunal as cited supra. So, we set aside the impugned order which demanded service tax under "Banking and Other Financial Service" and allow the appeal with consequential relief, if any."*

We find that the matter is squarely covered by the judgment and we agree to the same.

8. Based on the discussions as above, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Pronounced in open court on 24.8.2023)

**(M. AJIT KUMAR)**  
Member (Technical)

**(P. DINESHA)**  
Member (Judicial)