CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41334 of 2015

(Arising out of Order-in-Original No. 04/2015-Commr. dated 14.01.2015 passed by Commissioner of Central Excise, Customs and Service Tax, No. 6/7, A.T.D. Street, Race Course, Coimbatore – 641 018.)

M/s. Fashion Knits **...Appellant**
No. 81 and 82, Angeripalayam Main Road,
Gandhinagar Post,
Tirupur – 641 603.

Versus

Commissioner of GST and Central Excise **...Respondent**
Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course,
Coimbatore – 641 018.

APPEARANCE:

For the Appellant : Shri M.N. Bharathi, Advocate
For the Respondent : Shri M. Selvakumar, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40140 / 2025

DATE OF HEARING : 17.01.2025
DATE OF DECISION : 31.01.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/41334/2015 have been filed by the M/s. Fashion Knits, Tirupur assailing the Order-in-Original No. 04/2015 dated 14.01.2015 of the Commissioner of Customs, Central Excise and Service Tax, Coimbatore confirming demands of Rs.8,06,971/- and Rs.79,91,346/- under Section 73 of the Finance Act (Act) read with Section 66A and 68(2) *ibid* along with appropriate interest and imposing equal penalty under Section 78 *ibid*, penalties of Rs.10,000/- or Rs.200 per day of default under Section 77(1) *ibid* and Rs.10,000/- under Section 7(2) *ibid*.

2.1 The brief facts leading to the institution of this appeal is that the Appellant, engaged in manufacture and export of knitted garments, had been paying a service fee to (i) M/s. Amsco Finance Ltd., Hongkong, (AFL) an intermediary, for receipt of payments relating to exports made to M/s. C&A Buying, Germany and (ii) to the foreign banks remitting the export sale proceeds to the Appellant's bank account.

2.2 Verification of the export invoices raised to M/s. C&A indicated that M/s. Fashion Knits had been allowing a deduction of 3% from the price agreed in the Purchase Orders and such deductions were named as 'other deductions' in their invoices and related Shipping Bills. While some of the Purchase Orders and invoices were silent about these deductions, related Shipping Bills have invariably shown it as 'other deductions'. Copy of

Bank documents like Foreign Bills Transaction through Bank in India, *inter alia*, indicate the drawee / applicant / importer name (as Amsco Finance Ltd.), Bill amount, Amount realized, other bank charges *etc*. These particulars clearly specify the amount deducted from Invoice Value at the importer end and also by the foreign bank towards their charges while transferring the proceeds to India.

2.3 Further inquiry on the flow of payment revealed that the buyer, M/s. C&A is effecting the payment through their agent, M/s. Amsco Finance Limited (AFL), a company based at Hong Kong on the basis of a Trade Payment Arrangement (TPA). Scrutiny of the related documents like emails sent by M/s. C&A and their Retail Service Division (RSC) revealed that M/s. Amsco Finance Ltd. is engaged to facilitate the payments to C&A's supply partners for all orders shipped to C&A Europe with increased TPA figure (service fee) of 3% w.e.f. May 1st 2008. In this regard, M/s. AFL has issued an email letter to M/s. Fashion Knits, with the following content: -

"RE: Service engagement on handling settlement on behalf of C&A Buying KG

Dear Sirs,

"As from July 7th 2000. C&A buying KG, having its office located at Wertheimer Strasse, 7040468 Dusseldorf-Germany engaged our company to render the Trade Payment Arrangement (TPA), covering all of their contracts which are handled by Mondial service (HK) Ltd or Mondial Orient Ltd or its subsidiary/branch offices in Asia. We currently collect a service fee equivalent to 3% of purchase value, the said amount of which is deducted from the payment of your invoice presented for collection.

Please will you confirm your acceptance of this new level of T.P.A. by signing and returning a copy of this letter to the above address as a document requirement for the supplier process.

Thank you in advance for your understanding and cooperation.

Yours Sincerely

Amsco Finance Ltd."

2.4 Investigation also revealed that M/s. Deusche Bank, Singapore and other banks abroad have deducted their charges from the supplier's invoice value towards their service charges like Telegraphic Transfer of export proceeds to the Appellant in respect of various exports effected by the Appellant.

2.4 The Department was of the view that AFL and the foreign banks located in a non-taxable territory were providing services under banking and other Financial Services to the Appellant who paid for the services and is located in the taxable territory. As the Appellant were not maintaining any account either with AFL or such foreign banks, it appeared that the services provided by the aforesaid institutions does not qualify as a service provided to an account holder and hence Rule 3 of the Place of Provision of Services Rules, 2012 appeared to be operative in this case, as the place of provision of service would be the place of the Appellant and the service was deemed as provided in the taxable territory and in terms of Rule 2(1)(d)(g) of Service Tax Rules, 1994, the Appellant were liable for payment of Service Tax, in terms of clause 65(105)(zm) and Rule 3 of the Place of Provision of Services (Provided from India and Received in India) Rules, 2012, on the banking and other financial services received by them, under reverse charge mechanism in terms of Section 66A(1)(b) and Section 68 of Finance Act, 1994 (ACT).

2.5 A Show Cause Notice dated 24.10.2013 was issued to the Appellant seeking to assess the service received by them from AFL and other foreign banks, to

Tax under Section 65(105)(zm) the ACT *ibid* and proposing to demand Service Tax of Rs.8,06,971/- towards payment to AFL and Rs.79,91,346 /- to various banks abroad, during the period 2008-09 to 2012-13, under Section 73 of the ACT *ibid* along with applicable interest, besides proposal to impose penalties under Sections 76,77(1), 77(2) and 78) of the Act *ibid*.

2.6 After due process of law, the Adjudicating Authority *vide* impugned Order-in-Original confirmed the demand as proposed and imposed equal penalties under Section 78 and Sections 77(1) and 77(2) *ibid*.

2.7 Being aggrieved, the Appellant has filed the present appeal before this forum.

3. The main contentions of the Appellant specified in the grounds of appeal have been summarised below: -

(i) It was submitted that there was no service provider and service recipient relationship between the Appellant and AFL and therefore the allegation that the Appellants have imported service or have received service from AFL was not sustainable. It was contended that there is no contract between AFL and the Appellant as the deduction in the invoice was made as agreed to between the Appellant and the buyer and the Appellant did not approach AFL for early payment. It was pointed out that there is no nexus between the Appellant and AFL as the service engagement was made between the foreign buyer and AFL and the consideration flows from the buyer to AFL and therefore the Appellant cannot be construed as a service receiver and activities considered as import of service under Section 66 A of the ACT *ibid*.

(ii) It was submitted that the demand on import of services was not tenable as the value of demand of service tax was the actual discount offered on the price of goods to the buyer, in an activity involving pure sale and there was no service element.

(iii) It was averred that the service tax demanded on service fees debited by banks was not sustainable as the entire transaction had happened within India only and the service providing banks are within the taxable territory and there was no import of service. Further it was pointed out that the intermediary for collection of fund from the buyers situated abroad were also banks situated outside India who collect the cash and remit proceeds to the banks located within India who were rendering service to the Appellant and there was no contractual agreement between Appellants and the foreign banks. It was contended that the engagement of the banker was at the instance of the buyer and it is in their agreement terms.

(iv) It was pointed out that the CBEC have clarified in Circular No. 16/14/2012-ST dated 10.07.2012 that the above service was merely a transaction in money and outside the scope of levy of service tax.

(v) It was contended that the "other deduction" shown in the export invoice is nothing but trade discount allowed to the buyer in invoice itself for arranging prompt payment and in this regard It was pointed out that the valuation provisions under the Central Excise Act, 1944 and the Customs Act, 1962 have been strictly adhered to in as much as only the transaction value i.e, the sale consideration net of discounts is recorded in the books of accounts. Hence it was contended that the other deductions given by the Appellants to overseas customers cannot be construed as "consideration" payable to AFL for rendering any service to the Appellant.

(vi) It was contended that the engagement of the banker was at the instance of the buyer and it is in their agreement terms, AFL agreed to transfer the sale proceeds through the designated banks. It was averred that the appellants have not remitted any amount payable in foreign currency to the banks abroad or AFL and have received sale proceeds after deduction of 3% by the buyer through their authorised bank. Moreover, the deductions of 3% from invoice value would only point to deductions allowed only to the buyer. It was pointed out that, if the service receiver and Service provider are in the foreign territory, the payment of Service Tax does not arise as per Board Circular No.16/14/2012-ST dated 10.07.2012. In the instant case, as the services were provided by AFL to the buyer overseas, it was contended that payment of service tax does not arise as per the Circular *ibid*.

(vii) It was submitted that the entire quantification of service tax demand was erroneous as the value of term loans and working capital loans were included in the demand and therefore the impugned order was liable to be set aside on this core.

(viii) It was submitted that as there was no Service Tax liability, interest payable under Section 75 of the ACT *ibid* will not sustain.

(ix) It was stressed that the Appellant has not suppressed anything with a *mala fide* intention of evading tax and hence invocation of extended period and imposition of penalties were not warranted. Reliance was placed on the ratio of various decisions of the Tribunals and the Supreme Court decision in *Tamilnadu Housing Board Vs. CCE [1994 (74) ELT 9 (SC)].*

4. The Ld. Counsel for the Appellant reiterated the grounds of appeal and submitted that the issue is no more res integra, as the issues were settled in view of the decision in the case of *M/s. AKR Textile and Others [2020 (10) TMI 479 CESTAT CHENNAI*] which was followed by this Hon'ble Tribunal in *M/s. Sumeru Knits Vs. Commisioner of GST & Central Excise in Final Order No. 41621 of 2024 dated 17.12.2024*.

5. Shri M. Selva Kumar, Authorised Representative representing the Department reiterated the findings in the impugned order and submitted that

the Appellants were liable for payment of Service Tax under reverse charge mechanism under Section 66A of the Finance Act,1994 in respect of services rendered by AFL to the Appellant, up to 01.07.2012, as the service was liable to be taxed under Banking and Financial Service and therefore Prayed for dismissal of the appeal filed by the Appellant by upholding the impugned order.

6. Heard both sides and carefully considered the rival submissions and evidences on record.

7. We find that the issues which arise for consideration in this appeal are: -

(i) Whether the appellant has received payment processing services from AFL engaged by M/s. C&A Buying, Germany-the foreign buyer to process payments to the appellant and if so, whether the demand of Service tax under Reverse Charge Mechanism is sustainable?

(ii) Whether the service tax demand under reverse charge pertaining to services rendered by foreign banks is sustainable?

8. We find that the identical issues as involved in the present case, were also involved in the case of M/s. AKR Textile and Others (*supra*) wherein Chennai Tribunal has allowed 22 appeals of the exporters by setting aside the impugned orders. It is pertinent to reproduce the relevant findings of the Tribunal in the cited case, which is reproduced herein below: -

> *"**5**. It has been pointed out that the levy of tax on charges deducted by overseas banks, in identical situation, has been held by the Tribunal, in Rogini Garments and ors v. Commissioner of Customs, Central Excise & Service Tax, Coimbatore [final order no. 41819-41832/2017 dated 29th August 2017], to be unsustainable in law. On perusal of the said order at*
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> > *'6. The case of the department is that when the foreign bank deducts the charges towards transfer of foreign exchange to the Indian bank, since the same Is deducted from the sale proceeds, it is a service rendered by the foreign bank to the appellants and that there is a service provider and service recipient relationship between the foreign bank and the appellant. It is to be noted that the foreign bank deducts such charges and transfers the foreign exchange to the Indian bank from where the appellant receives the money. The foreign bank in which the overseas buyer deposits the sale proceeds is chosen by the foreign buyer and not by the appellant, who is situated in India. By no stretch of imagination can such foreign bank be considered as a service provider for the appellant who in most cases would not even be aware of the identity of such foreign bank. The act of deduction of an amount as charges for transfer of the foreign exchange to the Indian bank from the sale proceeds of the appellant is only a facility for collecting such charges from the Indian bank. This cannot be considered as payment of charges for services by the*

appellant to the foreign bank. It is actual charges deducted being bank to bank transaction. The department by the Trade Notice dated 14.2.2014 has clarified the very same situation. The relevant portion is extracted as under:-

> *"5. The views of the banks that services provided by the foreign bank are-received by the importer or exporter in India is not factually and legally correct because, for a person to be treated as recipient of service, it is necessary that he should know who the service provider is and there should be an agreement to provide service, which may be oral or written. In the present case, the importer and exporter does not even know who the service provider is, as they are not aware of the identity of the foreign banks which would be providing services. Exporter or importer in India does not have any formal or informal agreement with the foreign bank, importer or exporter in India does not even know the quantum of charges which the foreign bank would be recovering. Therefore, in view of the above mentioned factual position and also in view of the various articles of URC 522/UCP 600, it is clear that services are provided by the foreign bank to the bank in India. Further, Tribunals have also prima facie held that in such cases, services are provided by the foreign bank to the Indian bank and not to the Indian Exporter. [M/s. Gracure Pharmaceuticals Ltd. v. Commissioner of Central Excise, Jaipur-1 -2013 (32) S.T.R. 249 (Tri.- Del.), M/s. Gujarat Ambuja Exports Ltd. v. Commissioner of Service Tax, Ahmedabad - 2013 (30) S.T.R. 667(Tri.-Ahmd.)]."*

Similar issue was considered by the Tribunal in the case of Greenply Industries Ltd. (supra). The relevant portion is reproduced as under: -

> *"5. We have considered the submissions from both sides and perused the records. 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 from them under Section 66A read with Rule 2(l)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in Appellant's 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 order-in-appeal dated 12-11-2008 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 the appeal is allowed."*

> *7. We have to say that the decision relied upon by the Id. AR in the case of Lupin Ltd. (supra), was rendered on 12.2,2013 which is much before the clarification issued by the Trade Notice and also the decision in the case of Greenply. Industries (supra). Therefore, following the judicial discipline in the case of Greenply Industries (supra), and the facts being identical, the levy of service tax is unsustainable. The impugned orders are set aside and the appeals are allowed with consequential relief, if any."*

We find that the issue is no longer res integra and that demand pertaining to „other financial services" has been erroneously confirmed in the orders impugned before us.

***6**. On the amounts retained by M/s Amsco Finance Ltd, which is sought to be taxed under „cash management" within section 65(12) of Finance Act, 1994, the definition comes into play for services rendered by „banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern" and the question that requires resolution is the nature of activity intended by „cash management" which has been invoked in the show cause notice for the period prior to 1st July 2012. Admittedly, the omission by specific exclusion of such activity, effected on 1st June 2007, is the sole description that could be fastened on the appellants for taxability as deemed provider of service. From the clarification in circular no. 96/7/2007-ST dated 23rd*

August 2007 of Central Board of Excise & Customs, issued soon after the legislative change, it would appear that the intent was limited to „chit funds" as seen from

> *"Reserve Bank of India has clarified that the business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management."*

thus negating the recourse to section 65(105)(zm) as taxable service for which appellants were liable till 30th June 2012. On the other hand, this may have the scope of inclusion within the taxable service as "bill discounting" for which exemption is afforded by notification no. 29/2004-ST dated 22nd September 2004 when provided to customers. As a customer of the provider of the service is not, under the notification, required to be an account holder, the benefit of such exemption is not deniable to the appellants.

***7**. For the period after 1st July 2012, the finding in the impugned order that*

> *"20. For the period from 1st July 2012: -*
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> *Service tax demand related to M/s Amsco Finance Ltd; - It has been argued by M/s, AKR Textile that after the advent of negative regime, they are not liable to pay service tax under reverse charge. For which, they have reiterated what was already stated and quoted in Issue 1 discussion. The argument put forth were already considered and were rejected as not tenable. From the records available and as per the legal position and in view of the clarification given in the CBEC Education Guide, para 5.3.3, M/s. AKR Textile are receiving the Banking and Financial service rendered by M/s Amsco Finance Ltd., and they are person who is making the payment of service fee for the service received. M/s C& A is neither receiving the service of M/s Amsco Finance Ltd nor paying the payment. It is M/s. AKR Textile (who are having a permanent establishment in*

> *the taxable territory) who are making the payment actually, hence, they are liable to pay service tax under Section 68 (2) of the Finance Act, 1994 for the receipt of service from the non-taxable territory to the taxable territory i.e. in India.Further it Is held that it is not the mere transfer of money is involved the issue to attract the negative list . What M/s. AKR Textile is receiving the comprehensive Banking and Financial Service with effect from 1.7.2012 i.e. as stated earlier processing of export Invoices, making the prompt payment through assistance of customized portal created with the help of foreign banks etc. Hence, it is held that it is not the mere transfer of money to attract the exemption but the comprehensive Banking and Financial Service is involved in the issue in hand. Hence, it is held that M/s. AKR Textile are liable to pay service tax Under Section 68 (2) of the Finance Act, 1994 with effect from 1.7.2012."*

implies that the adjudicating has not ascertained the nature of the activity in terms of "consideration" received to determine extent of service and the person "for" whom such activity is provided by M/s Amsco Finance Ltd which are the essential characteristics for conformity to "service" in section 65B(44) of Finance Act, 1994. The significance of the architecture of the "negative list" regime is elaborated thus

> *"12. With this ontogeny, and, coincidentally, corresponding to the age of attainment of majority, the stage was set to give free rein to taxation of services by phasing out the classificatory regime to make room for the "negative list" regime. Not unnaturally, the principal, and adjunct, machinery that had evolved till then were embedded in the new scheme of Finance Act, 1994, as section 66B, 66C, 66D and 66E, to resonate with*
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> > *"(44) ...any activity carried out by a person f for another for consideration, and includes a declared service, but shall not include - .."*

> *assigned to "service" in section 65B of Finance Act, 1994 not only to cover all "activities" save those exogenic to, and excepted in, the definition but also those excluded out of, and exempted from, levy in "negative list" or by notification. Also, here the expression "for another", as substitute for "to any person", eliminates the erstwhile touchstone of "recipient" for determination of the rendering of service and thus conflates the definition and "service" in its essential form; resort to "recipient" was henceforth restricted to situations, specifically articulated, where such recognition is necessary for harmony with the charging provision. In the new scheme of tax, "consideration", as also the "provider", continued to be no less vital than before for discerning the service transaction even as "recipient", with the obliteration of carefully crafted boundaries inherent to the definition of "taxable services" by the generalized explication as the substituting of selfperformance, had ceased to be."*

by the Tribunal in Sabre Travels Network India P Ltd v. Commissioner of CGST & Central Excise, Mumbai Central [final order no. A/85779-85783/2020 dated 11th September 2020] which may be usefully referred to.

***8**. It appears to us that, while "consideration" is passed from appellants to the overseas entity, it is the overseas customer who is, contractually, bound to repatriate value of exports to the appellant and, instead of doing so, authorises M/s Amsco Finance Ltd as delegate to effect that responsibility. It is not the contractual responsibility of the appellants to collect the dues and, therefore, by no stretch can it be held that the mediation of M/s Amsco Finance Ltd is a substitution for the task that would, otherwise, fall to the appellants. If at all, the Hong Kong entity is an "intermediary" within the meaning assigned in Place of Provision of Service Rules, 2012 to render the service, it has been performed in Hong Kong and, thus, not in the taxable territory. The*

> *demand for the period after 1st July 2012 also fails. Consequently, the liability for allegedly having received services provided by M/s Amsco Finance Ltd also does not sustain.*
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> ***9**. With the findings supra pertaining to the appeal of M/s AKR Textiles applicable equally to the several other appeals, the demands impugned therein also do not sustain.*
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> ***10**. Accordingly, all the orders impugned before are set aside and appeals allowed."*

We find that the above decision in *M/s. AKR Textiles Vs. Commissioner of Central Excise [2020 (10) TMI 479 CESTAT CHENNAI]* have been followed in two other cases *Viz*. *Eastman Exports Global Clothing Private Ltd. [2024 (5) TMI 417 CESTAT CHENNAI]*, and *Carona Knitwear Vs. Commissioner of GST and Central Excise, Coimbatore [2024 (6) TMI 624-CESTAT CHENNAI]* decided by this Tribunal and in *M/s. Sumeru Knits Vs. Commissioner of GST and Central Excise [F.O.No. 41621/2024 dated 17.12.2024]* which has been relied upon by the Ld. Counsel in support of his contentions that the demand of service tax on Reverse Charge Basis under Banking & Other Financial Services.

9. Further, we find that the service of remittance by a foreign bank to Indian bank of the exporter is not liable to service tax at the hands of the exporter. In this

regard, reference is drawn to the decision of Chennai Bench of the Tribunal in the case of M/s. SKM EGG Products Export (*supra*) wherein the Tribunal after relying upon the decision of *M/s. Dileep Industries Pvt Ltd Vs. CCE, Jaipur [2017 (10) TMI 1231 CESTAT NEW DELHI]* has observed in para 5.2 as under: -

> *"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:-*
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> > *"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."

10. After appreciating the facts and in compliance to the judicial discipline, we are of the considered opinion that the demands raised cannot sustain and requires to be set aside. Ordered accordingly. Since the demands itself could not be sustained, invocation of extended period and imposition of penalties do not arise.

11. In the result, the impugned Order-in-Original No. 04/2015 dated 14.01.2015 is set aside. The appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 31.01.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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