CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41991 of 2015

(Arising out of Order-in-Appeal No. 62/2015 dated 23.06.2015 passed by Commissioner of Central Excise (Appeals I), Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai - 625 002)

M/s. Sundaram Industries Private Limited **...Appellant**
Rubber Factory,
Post Box No. 06, Usilampatti Road,
Kochadai – 622 001.

Versus

Commissioner of GST and Central Excise **...Respondent**
Madurai Commissionerate,
Centra Revenue Building,
Lal Bahadur Shastri Marg,
Bibikulam,
Madurai – 625 002.

<u>APPEARANCE:</u>

For the Appellant : Ms. Nagasundari Shruti, Advocate
For the Respondent : Mr. N. Satyanarayanan, Authorised Representative

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

<u>FINAL ORDER No. 40406 /2025</u>

DATE OF HEARING : 29.01.2025
DATE OF DECISION : 28.03.2025

Per Mr. VASA SESHAGIRI RAO

Service Tax Appeal No. ST/41991/2015 has been filed by the M/s. Sundaram Industries Private Limited (hereinafter referred to as 'Appellant') assailing the impugned Order-in-Appeal No. 62/2015 dated 23.06.2015 passed by Commissioner (Appeals), Madurai upholding the Order-in-Original No. 02/2015 dated 24.02.2015 confirming the demand of Service Tax and also imposing penalties under relevant provisions of the Finance Act, 1994 (ACT).

2. Facts briefly stated are that the Appellant was discharging service tax on reverse charge basis in respect of services rendered by M/s. Project Management Inc, USA for the goods manufactured and exported by them for the period upto June 2008. However, they ceased to pay service tax from July 2008 in terms of Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 which excluded service tax liability on the transactions carried out wholly outside India. It appeared to the department that the Appellant was liable to pay tax on the services received from abroad in terms of Section 66A of the Finance Act, 1994 (Act). Hence, a Show Cause Notice No. 04/2013 dated 20.02.2013 was issued to the Appellant for the period from October 2011 to June 2012 proposing to demand Service Tax & cess of Rs.4,20,064/- along with applicable interest and to impose penalties under Section 76&77 *ibid*. The Adjudicating Authority confirmed the demands proposed and imposed penalty of Rs.10,000/- under Section 77(2) and also under Section 76. Aggrieved, the Appellant filed an appeal before the Lower Appellate

Authority who *vide* the impugned order upheld the Order-in-Original No. 02/2015-ST dated 24.02.2015 passed by the Assistant Commissioner of Central Excise, Madurai-II Division. Hence, the present appeals by the Appellant before this forum.

3.1 The Ld. Counsel Ms. Nagasundari Shruti representing the Appellant reiterated the grounds of appeal and submitted that the taxable service received from abroad falls under Sub-clause (ii) to Rule 3 which shall be totally excluded when the service has been performed wholly outside India. It was further submitted that in view of the provisions of Rule 3(ii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, since the service was provided by the American company outside the Indian territory, the service was exempted from the liability to tax.

3.2 The Ld. Counsel submitted that their claim is based on Rule 3(ii) of the 2006 Rules for asserting its immunity to tax on the ground that the service was performed by an overseas company and is thus beyond the reach of the Indian service tax net.

3.3 The Ld. Counsel submitted that the issue was no more res integra as the Tribunal had on the same issue for earlier periods in respect of the Appellant *vide* Final Orders No. 43100/2018 dated 10.12.2018 and No. 40428/2023 dated 13.06.2023 decided the matter in favor of the Appellants by setting aside the impugned orders.

4. The Ld. Authorized Representative Mr. N. Satyanarayanan representing the Department affirmed the findings in the impugned order and submitted that the Appellant is liable to pay service tax under reverse charge mechanism in terms of Section 66A *ibid* and hence the demands are sustainable.

5. We have carefully considered the submissions made by both the sides and also evidences available on records.

6. The issue which arises for consideration in this appeal is whether the appellants are liable to pay service tax under the reverse charge mechanism on the services rendered outside India by service provider situated abroad?

7. The Appellant has with effect from July 2008, stopped payment of service tax on the taxable value paid to

the service provider and contended that Rule 3 of Taxation of Services (provided from outside India and received in India) Rules 2006 excludes the liability of tax on the transactions carried out wholly outside India and clearing and forwarding services wholly performed outside India are not liable to pay service tax. The Department maintained that service tax was payable under reverse charge mechanism in terms of Section 66 A *ibid*.

8. We find that the issue is no more *res integra* as this Tribunal had on the same issue involving the same Appellant for earlier periods, had *vide* Final Orders No. 43100/2018 dated 10.12.2018 and 40428/2023 dated 13.06.2023 decided the issue in favor of the Appellant. The relevant portion of the Final Order No. 40428/2023 dated 13.06.2023 reads as below: -

> *"**4**. The demand has been raised alleging that the appellant is liable to pay service tax by reverse charge mechanism under the category of 'Clearing and Forwarding Agency service'. It is not disputed that the services were provided as well as consumed outside India. Section 66A reads as under:-*
>
> > *"66A. (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 the 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:

***5**. The above Section has to be read along with the Taxation of Services (Provided from Outside India and Received in India) Rules 2006. Rule 17 reads as under:-*

"Rule 3 Taxable services provided from outside Indian and received in India, "Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services,-

i. ....

ii. Specified in sub-clauses (a), (f), (h), (i), (j), (l), (m), (n), (o), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zf), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzp), (zzzzg), (zzzzh), (zzzzi), (zzzzk) and (zzzzl) of clause (105) of section 65 of the Act, be such services as are performed in India:

Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder;

Provided further ...."

***6**. From the above, it is seen that clearing and forwarding agency service that falls under sec.*

65(105)(zj) is covered under sub-rule (ii) of the above Rule 3. It is clear that these category of services specified under sub-rule (ii) shall be totally excluded when the services are wholly provided / performed outside India. The adjudicating authority has held that the said Rule would not be applicable to the appellant on the ground that the same would be applicable only when part of the services are performed in India. On reading of the Rule, it is clear that if the services which are mentioned therein are performed outside India, there is no liability to pay service tax.

7*. The very same issue was considered by the Tribunal in the appellant's own case as reported in 2018 (11) TMI 1151 CESTAT, Chennai and observed as under:-*

> *"5. From the facts narrated above, it is seen that the appellants have provided clearing and forwarding services to the service recipient who is situated outside India. The Tribunal in the case of Bnazrum Agro Export Pvt. Ltd. (supra), had occasion to analyse the very same issue and it was held that the said activities having been performed outside India will not be exigible to service tax. The Tribunal had relied upon various decisions to reach such conclusion. Following the same, we are of the view that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief, if any."*

8*. In the case of the appellant, for a different period, the Tribunal as reported in 2018 (12) TMI 947 has held as under:-*

> *"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 5 set aside, which we hereby do. Appeal is allowed with consequential relief, if any, as per law."*

(Emphasis supplied)

***9**. The learned AR has relied on the decision in the case of Paramount Communications Ltd. Vs. CCE, Delhi – 2019 (29) GSTL 322 (Tri. Del.). On going through the said decision, it is seen that the demand has been upheld by the Tribunal observing that part of the services were provided within India. The said decision being distinguishable on facts, it is not applicable.*

> ***10**. After appreciating the facts, evidence and following the decisions in the appellant's own case, we are of the considered view that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law."*

9. After appreciating the facts and following the ratio of the Tribunal's decision in the Appellant's own case, the Order-in-Appeal No. 62/2015 dated 23.06.2015 cannot be sustained and so, ordered to be set aside.

10. In the result, the appeal is allowed with consequential benefits, if any, under law.

(Order pronounced in open court on 28.03.2025)

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

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

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