CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40520 of 2016

(Arising out of Order-in-Appeal No. 195/2015 dated 21.12.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Annur Cotton Mills **...Appellant**
(A unit of Sharadha Terry Products Limited),
Badrakaliamman Koil Road,
Mahadevapuram PO,
Mettupalayam – 641 301.

Versus

Commissioner of GST and Central Excise **...Respondent**
Coimbatore Commissionerate,
No. 6/7, ATD Street,
Race Course Road,
Coimbatore - 641 018.

APPEARANCE:

For the Appellant : Mr. S. Durairaj, Advocate
For the Respondent : Mr. Harendra Singh Pal, Authorised Representative

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

FINAL ORDER No.40537/2025

DATE OF HEARING : 20.03.2025
DATE OF DECISION : 27.05.2025

Per Mr. VASA SESHAGIRI RAO

Brief facts of the case are that M/s. Annur Cotton Mills (hereinafter referred to as 'Appellant') are the holders of Service Tax Registration Certificate and paying service tax under the category of "Transport of Goods by Road". It appears that the Appellant receives grey terry towels from their main unit, M/s. Annur Cotton Mills, Annur for bleaching and dyeing processes. After processing, the goods are returned back to the main unit. The unit in Annur was working under 100% EOU scheme up to 09.06.2011 and their unit at Mettupalayam is an additional location. Both the units at Mettupalayam and Annur started working as DTA unit after de-bonding with effect from 10.06.2011.

2.2 A scrutiny of the records of the unit has revealed that they have not paid any service tax on foreign bank charges paid on realization of export proceeds and for other financial services. In the process of foreign trade transactions, the Appellant realizes export proceeds from foreign buyers and makes transactions with foreign customers through their bank in India and also foreign banks. These two banks *viz.,* Appellant's Bank in India and Nodal Bank in foreign country render their services and both of them recover Bank charges for services rendered by them from the Appellant. The Appellant's Bank in India is found to be paying service tax but the bank charges paid to the foreign bank appears to have escaped the service tax liability. The services rendered by the foreign banks are taxable under the category of 'Banking and Financial Services' and in respect of services received from outside

India, the recipient of service i.e., the Appellant is liable to discharge the service tax under Reverse Charge Mechanism. As the Appellant has not paid any service tax on the said foreign bank charges paid on the realization of the export proceeds, a Show Cause Notice dated 06.03.2014 was issued to the Appellant, demanding service tax on the said bank charges paid and proposing imposition of penalties.

2.3 After the due process of the adjudication, the Assistant Commissioner of Central Excise & Service Tax, Coonoor Division who *vide* Order-in-Original No. 05/2015 dated 26.03.2015 has confirmed the demand of service tax of Rs.4,07,014/- along with interest and imposed penalties under Sections 76, 77(1)(a) and 77(2) of the Finance Act, 1994 and also demanded late fee under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

2.4 Being aggrieved, the Appellant has filed an appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeals-I), Coimbatore who have rejected the appeal by upholding the Order-in-Original No. 05/2015 dated 26.03.2015. Against this order of the Commissioner (Appeals), the Appellant came on appeal before this Tribunal.

3. The Ld. Advocate Mr. S. Durairaj argued for the Appellant and Ld. Authorized Representative Mr. Harendra Singh Pal represented the Department. The Ld. Authorized Representative has affirmed the findings of the Lower Adjudicating Authorities.

4.1 The Ld. Advocate Mr. S. Durairaj representing the Appellant has submitted that during the period from 01.04.2012 to 30.06.2015, the pre-condition to attract levy under Section 66A read with Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 was that the services must be received by the Appellant but in the present case, the services were not received in India. He has also pointed out that in the Show Cause Notice dated 06.03.2014, Order-in-Original dated 26.03.2015 and Order-in-Appeal dated 21.12.2015, there is no allegation and finding that the services were received in India. He has argued that as such there is no service tax applicable. He has submitted that in his own case of the Appellant, the Tribunal Chennai in Final Order No. 40084/2024 dated 24.01.2024 has held that service tax is not applicable on such foreign bank charges paid for the period from 01.04.2012 to 30.06.2012.

4.2 For the period from 01.07.2012 to 31.03.2013, the Ld. Advocate has submitted that levy on such activities must be determined under Section 66C read with Place of Provisions of Services Rules, 2012. Again, these provisions were not relied upon in the Show Cause Notice dated 06.03.2014 and Order-in-Original dated 26.03.2015. He has pointed out that even in case of Order-in-Appeal, Rule 3 of the Place of Provisions of Services Rules, 2012 was relied upon but not Section 66C and as in the impugned Order-in-Appeal, Section 66A was relied on which is not at all applicable with effect from 01.07.2012. The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 was superseded by Place of Provision of Services Rules, 2012 w.e.f. 01.07.2012 and demand raised was based on non-existent legal provisions and so, is not sustainable. In support of this contention, reliance was placed upon the Tribunal New Delhi's decision in the case of *M/s. Sanjay Electricals Vs. CST [2024 (1) TMI 891 – CESTAT New Delhi]* which set aside the demand as the provisions of negative list were not invoked in the Show Cause Notice. That decision was also followed by the Tribunal in the case of *M/s. Borthakur and Co. Vs. CCE [2024 (3) TMI 455].*

4.3 He has further submitted that the foreign bank act as an intermediary in terms of Rule 2(f) of Place of

Provision of Services Rules, 2012 between the Appellants and their customers to facilitate the realization of sale proceeds of the exported goods and the place of provision service is the location of the service provider as per Rule 9 of Place of Provision of Services Rules, 2012. In the instant case, it is the location of the foreign bank which is outside India as per Rule 2(h) of Place of Provision of Services Rules, 2012 and therefore, services are provided in a non-taxable territory and not in taxable territory and therefore service tax cannot be levied under Section 66B and services are not taxable services. Further, the Ld. Advocate has relied upon the decision rendered by the Chennai Tribunal in the case of *M/s. Fashion Knits Vs. Commissioner of CGST [2025 (2) TMI 75].*

5. We have heard both sides and considered all the documentary evidence and the submissions of rival parties and also relied upon case laws.

6. The period covered is between April 2012 and March 2013. The Place of Provision of Services Rules, 2012 came w.e.f. from 20.06.2012 and thus the period of dispute includes partly pre-negative list regime. The main allegation against the Appellant is that the Appellant realizes export proceeds from foreign buyers and makes transactions with

foreign customers through their bank in India and also foreign banks. These two banks *viz.*, Appellant's Bank in India and their Nodal Bank in foreign country render their services to the Appellant and both recover Bank charges for such services. As far as, the Bank in India providing services to the Appellant is concerned, is paying the necessary services tax. However, the foreign Bank charges escaped the service tax liability. The Department was of the view that the service tax was demandable under Reverse Charge Mechanism for such services of the foreign banks received by the Appellant classifiable under Banking and Financial services.

7. The issue involved in this appeal is no more *res integra* and on identical facts, the Tribunal has already decided in favor of the Assessee. The relevant portion of the Final Order No. 40084/2024 dated 24.01.2024 in the Appellant's own case is extracted below: -

> *"**6**. After hearing both sides, we find that the main issue that arises for our consideration is: whether the amount deducted by the foreign banks towards banking charges was taxable under the category of "banking and other financial services"?*
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> ***7.1** At the outset, we find that this Bench of the Tribunal in the case of M/s. Kadri Mills (CBE) Ltd. v. Commissioner of G.S.T. and Central Excise, Salem [Final Order No. 40711 of 2023 dated 24.08.2023 in Service Tax Appeal No. 41066 of 2014 – CESTAT,*

Chennai], relied upon by the Ld. Advocate, has, while analysing an identical issue, held as under: -

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

7.2 *In view of the above decision of this Bench in M/s. Kadri Mills (CBE) Ltd. (supra), we do not find any merit in the demand* *raised in the case on hand, for which reason the impugned order deserves to be set aside.*

***8**. Resultantly, the impugned order is set aside and the appeal is allowed."*

8. Further, in the case of *Fashion Knits Vs. Commissioner of GST and Central Excise, Coimbatore Commissionerate [2025 (2) TMI 75-CESTAT CHENNAI]*, wherein the Tribunal Chennai held as follows: -

*"**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

> *'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:-*
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> > *"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). …

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***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, as there is no service provider and service recipient relationship between the appellant and Foreign Banks, we are of the considered opinion that the demands raised cannot sustain and requires to be set aside. Ordered accordingly.

11. Thus, the impugned Order-in-Appeal No. 195/2015 dated 21.12.2015 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore is set aside, and the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 27-05-2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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