CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40741 of 2015

(Arising out of Order-in-Original No.39/2014-Commr dated 26.12.2014 passed by Commissioner of Central Excise, Customs and Service Tax, Coimbatore)

M/s. Cotton Blossom India (P) Ltd., **....Appellant**
Shed No.188-189,
Tekic Tea Nagar, Mudalipalyam,
Tirupur-641 606.

Versus

Commissioner of GST & Central Excise **... Respondent**
6/7, A.T.D. Street,
Race Course,
Coimbatore-641 018.

APPEARANCE:

Dr. S. Sathianarayanan, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40562/2025

DATE OF HEARING: 05.12.2024
DATE OF DECISION: 30.05.2025

Per: Shri P. Dinesha

The admitted fact, as we gather from the impugned order and upon hearing both the sides are that the appellant is a manufacturer and exporter of knitted garments; one of the appellant's customer namely M/s. C & A Buying GMBH & Co., Germany (in short, **C&A**) had placed orders on the appellant through appellant's agent viz., Mondial Services. The said customer appears to have outsourced the function of verifying export documents and payment processing to their Agent viz. M/s.Amsco Finance Limited, Hong Kong (in short, **AFL**), which in fact was communicated to the appellant as well through an email. The said AFL was using the services of Deutsche Bank, Singapore for remittance of export proceed funds to the appellant.

2. The appellant appears to have given a discount on the gross value of the exports which was reflected in the invoice raised by the appellant as well and hence, appellant received 97% of the gross value of the export in its bank account (Bank of Maharashtra). The said 3% was in fact retained by AFL as its fees. Deutsche Bank also deducted the processing fees out of the amount paid to the appellant. The said 3% was considered by the Revenue as the charges/fees for

Banking and Financial Services and hence, the appellant was liable to pay Service Tax on the said amount on Reverse Charge Mechanism. The same was proposed and communicated in the form of Show Cause Notice 24.10.2013 and it appears that the appellant filed its reply for the charges/proposals made in the SCN. But however, the Original Authority having considered the same in adjudication, *vide* Order-in-Original No39/2014 dated 26.12.2014, proceeded to confirm the proposals made in the Show Cause Notice. The said demand in the Order-in-Original has been assailed in this appeal by the appellant.

3. Heard Dr. S. Sathianarayanan, Ld. Advocate for the Appellant and Smt. O.M. Reena, Ld. Additional Commissioner for the Revenue; we have carefully perused the documents placed on record and we have also considered the judicial precedents relied upon by the Ld. Advocate. Upon hearing both sides, the only issue to be decided is, "whether the demand of Service Tax for an alleged banking and financial service is justified ?"

4. We have carefully considered the Final Order No.40531-40533/2024 dated 08.05.2024 of this very Chennai Bench of CESTAT in the case of **Eastman Exports Global Clothing Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Coimbatore** in Service Tax Appeal No. 40637 of 2015 etc. wherein an almost similar issue was considered. This Bench in the said case also considered various other judicial pronouncements and after considering the rival contentions, it was found proper to set aside the demand since, according to the Bench, the conditions of Banking and Financial Services were not satisfied. The relevant portion is reproduced for convenience :

> Further, 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 Bench of this Tribunal has disposed of 22 appeals and allowed the appeals of the exporters by setting aside the impugned orders. It is pertinent to reproduce the relevant findings of the Tribunal in the above cited case, which is reproduced herein below:
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> > "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: - 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 „(44) …any activity carried out by a person 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/85779-85783/2020dated 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.

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.

10. Accordingly, all the orders impugned before are set aside and appeals allowed."

11. 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, we may also refer 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:-

> 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."

12. Since both the issues have been decided in favour of the appellant in the above cited cases, hence, by following the ratios of the said decisions cited supra, we are of the considered opinion that the impugned orders in all the three appeals are not sustainable in law and therefore, we set aside the same by allowing the appeals of the appellant with consequential relief, if any, as per law.

5. We find that since the issue is similar in the present case as well, the above ruling would apply squarely and following the ratio decidendi, we are of the view that impugned order and demand therein cannot sustain, for

which reason we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

Order pronounced in open court on 30.05.2025

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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