

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI
REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41987 of 2015

(Arising out of Order-in-Appeal No. 101/2015-ST dated 26.06.2015 passed by Commissioner of Central Excise (Appeals-I), No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Vinayaka Electro Alloys Pvt. Ltd.

No. 2/27-A, Chennimalai Road,
Near Power House, Ingur,
Perundurai – 638 058.

...Appellant

Versus

Commissioner of GST and Central Excise

Salem Commissionerate,
No. 1, Foulks Compound,
Anai Road,
Salem – 636 001.

...Respondent

APPEARANCE:

For the Appellant : Shri S. Murugappan, Advocate

For the Respondent : Shri N. Satyanarayana, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40565 / 2025

DATE OF HEARING : 29.01.2025

DATE OF DECISION : 30.05.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/41987/2015 has been filed by M/s. Vinayaka Electro Alloys (I) Pvt. Ltd. (hereinafter referred to as 'Appellant') assailing the Order-in-Appeal No. 101/2015-ST dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals-I), Salem.

2.0 Brief facts of the appeal are as follows: -

2.1 The Appellants are the manufacturers of Alloy Steel Casting and Stainless-Steel Castings and are duly

registered under the Central Excise Act and also under the Service Tax Act. During the course of audit of financial records of the Appellants, the Department noticed that the Appellants have paid remuneration amount to Shri K. Muthurathinam, S. Venkatachalamurthi and P. Chinnusamy, the Directors of the Appellant company for the services rendered by them to their company. Therefore, the Department issued a Show Cause Notice No.29/2014 AC(ST) dated 14.10.2014, wherein the Department alleged that the Appellants contravened the provisions of Section 68 of Finance Act 1994, read with Rule 2(1)(d)(i)(EE) and Rule 6 of Service tax Rules, 1994 and also Notification No.30/2012-ST dated 20.06.2012 inasmuch as they failed to pay appropriate service tax under the reverse charge on the services rendered by the Directors of the company and received by the Appellant during the period from 07.08.2012 to 31.03.2014.

2.2 In terms of the aforesaid Show Cause Notice, the Appellants were called upon to show cause as to why: -

- i. Service Tax of Rs.4,67,208 (Service Tax Rs.4,53,600/- + Education Cess - Rs.9,072/+SHE Cess - Rs.4,536/-) should not be demanded from them under Section 73(1) of the Finance Act, 1994.
- ii. Interest at the applicable rates on the amount at (i) above should not be demanded from them under Section 75 of the Act and

- iii. Penalty should not be imposed on them under Section 76 of the Finance Act, 1994.

2.4 In response to the Show Cause Notice, the Appellants filed a detailed reply *vide* their letter dated 18.12.2014, wherein the Appellants submitted that there is no service provided by the aforesaid Directors to the Company as they are whole time directors engaged in day-to-day affairs of the company, hence, no tax is liable to be paid under reverse charge mechanism.

2.5 After due process of Adjudication, the Original Adjudicating Authority has dropped the proceedings initiated in terms of the aforesaid Show Cause Notice.

2.6 Against the aforesaid order, the Department filed an appeal before Commissioner (Appeals) *vide* Appeal No. 121/2015-ST(D). The Appellants also filed written submissions before the Commissioner (Appeals). After due process of law, the Commissioner (Appeals) decided the matter and passed the impugned order, in terms of which he set aside the order of the Adjudicating Authority and confirmed the demand proposed in the Show Cause Notice along with interest and imposed a penalty under Section 76 of Finance Act, 1994. Aggrieved by the aforesaid order

passed by the Lower Appellate Authority, the Appellants have come before this forum.

3.1 The Ld. Advocate Shri S. Murugappan has argued for the Appellant. He has contended: -

- i. that the remuneration paid to their whole time directors is for managing the day to day affairs of the company as employees of the company and any service provided by the employee to the employer in the course of or in relation to employment has been excluded from the definition of service.
- ii. that as per Section 65B(44) of Finance Act. 1944, "service" means any activity carried out by a person for any other person for consideration but does not include a provision of service by an employee to his employer in the course of or in relation to his employment. Hence, as long as there is a relationship between an employee & employer & the employee is remunerated by the employer for his services, then such remuneration will not be chargeable to service tax.
- iii. that the Commissioner (Appeals) misconceived with the fact that Service tax is payable on services provided by non-executive, nominee and independent directors to the company w.e.f. 1-7-2012.

- iv. that the respondents failed to appreciate the legal position, that if the director is in full time employment of the company, service tax is not payable. Director may be a Managing Director, whole time director or executive director and as long as there is employer-employee relation, the mode of payment will not alter the nature of service.
- v. that all the three Directors of the company were appointed as Executive Directors of the company by way of Extra Ordinary General Meeting on such salary and other perquisites, which are equivalent and on par with other employees of the company. The Executive Directors were delegated with the work of managing the day-to-day affairs of the company and they are not giving any advice/consultancy to the management, in order to term them as Service providers to levy service tax.
- vi. that when there is employee-employer relationship, then there is no service tax. Once, the company establishes that there is an employee and employer relationship between the Managing Director and the Company, then any mode of payments by way of commission, stock options, performance related bonus, *etc.*, will not alter the nature of the service.

- vii. that CBE&C, *vide* letter No. 324/Comm.(ST)/2008, dated 1-12-2008 has clarified that commission paid by a company to its directors (even if linked with performance or with financial results of the company) is nothing but remuneration paid by employer to employee. The relationship between employer and employee is distinct from relationship between a service receiver and service provider. Hence, so long as activities performed are duties within the framework of terms of the employment, amount paid by employer to employee, even if termed as commission, would not be treated as service and service tax would not be leviable. This view has been reiterated and confirmed *vide* CBE&C Circular No. 115/09/2009-ST. dated 31-7-2009, and this clarification would apply even under new provisions w.e.f. 1-7-2012.
- viii. that the managing director and whole-time directors would normally be the employees of the company. This view is also corroborated from the fact that the remuneration paid to whole time directors and Managing Director are regarded as income from salary and is subjected to TDS under Section 192 of the Income-tax Act, 1961. Accordingly, the payment of salary, allowances, PF contribution, perquisites, *etc.* to Managing Director and Whole-Time Directors being the

employees of the company in the course of or in relation to his employment; would not constitute a taxable service. and,

- ix. that the Lower Appellate Authority confirmed the demand along with interest and penalties on the erroneous assumption and that once there is no provision of service, there shall not be any liability to pay service tax.

4. The Ld. Authorized Representative Shri N. Satyanarayana represented Department. He has reiterated the findings in the impugned Order-in-Appeal No. 101/2015-ST dated 26.06.2015.

5. We have heard both sides and considered the written and oral submissions made and evidences available on records.

6. The only issue that arises for determination in this appeal is whether the Appellant is required to pay service tax on the salary and other remuneration paid to the Directors of the Appellant?

7. Facts in this appeal indicate that the Appellant had paid remuneration to Shri K. Muthurathinam,

S. Venkatachalamurthi and P. Chinnusamy, the Directors for the services rendered by them. As the Appellant has failed to pay appropriate service tax under Reverse Charge Mechanism on the remuneration paid to the Directors of the Company for the period from 07.08.2012 to 31.03.2014 amounting the Rs.4,67,208/-, proceedings were initiated *vide* Show Cause Notice dated 14.10.2014. The Original Adjudicating Authority has come to the conclusion that services provided by the Directors to the Appellant are excluded for charging service tax and dropped the proceedings. The Department filed an appeal to the Commissioner (Appeals) on the ground that the order has not clearly discussed about the employer and employee relationship of the Managing Director of the Company and in the Negative List regime of taxation, services provided or agreed to be provided by the Director of a company is made taxable w.e.f. 07.08.2012. Thus, the main ground raised for filing an appeal to the Commissioner (Appeals) is that the services rendered by the Directors of the Appellant will amount to services as defined under Section 65B(44) of the Finance Act, 1994 and does not qualify as a provision of service by an employer to the employee company in the course of employment to be included in the exclusion clause (6) to Section 65B(44) of the finance Act, 1994 and salary paid to the Directors shall be the 'consideration' in money

and being treated as value as per Section 67 of the Finance Act, 1994 for the services rendered by the Directors to the Appellant.

8. The provision of Section 65B(44) of the Finance Act, 1994 reads as given below: -

“(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,--

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.- For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,--

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

¹⁴***[Explanation 2.-For the purposes of this clause, the expression “transaction in money or actionable claim” shall not include--***

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another

form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out--

¹⁷[(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998.);]

(b) by a foreman of chit fund for conducting or organising a chit in any manner.]

Explanation 3.- For the purposes of this Chapter,-

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;"

9. It is not disputed in this case that the remuneration paid to the Directors was subjected to TDS under Section 192 of the Income Tax Act. In this connection, we refer to the Board Circular No. 115/09/2009-ST dated 31.07.2009 which is binding on the Authorities, and which reads as given below: -

"....

3. In view of the above, it is clarified that remunerations paid to Managing Director/Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.

.....

...."

10. The Appellant has all along argued that these whole-time Directors have been paid salary and other remuneration which was subjected to Tax Deducted at Source (TDS) under the Income Tax Act and as such there is an employer-employee relationship which is excluded from the payment of service tax. All the three Directors of the Company were appointed as Executive Directors of the Company by way of Extra Ordinary General Meeting decision of the Company on the condition of payment of salary and other pre-requisites which are equivalent and on par with other employees of the Company. It appears that these Executive Directors were delegated with the work of managing the day-to-day affairs of the Company and they were not giving any advice to the Company in order to term them as service providers to levy service tax.

11. The contention of the Ld. Advocate for the Appellant that there is an employee-employer relationship and so, there could not be any service tax payment and any payment by way of commission, stock options, performance related bonus, etc. will not alter the nature of the service is acceptable. The issue of payment of service tax on the remuneration paid to the Directors is no more *res-integra* where it is termed as salary and subjected to TDS under the Income Tax Act, the employer and employee relationship

gets established and the same is excluded from the purview of the service tax. In the case of *M/s. Dixcy Textiles Pvt. Ltd. Vs. The Commissioner of Central Excise & Service Tax, Salem* [2025 (5) TMI 316-CESTAT CHENNAI], wherein the Tribunal Chennai held as follows: -

"6) *The singular issue that arises for determination is whether the demand made on the appellant on the remuneration paid to its directors is tenable.*

7) *We note that the adjudicating authority has chosen to ignore the appellant's contention that there is an employer employee relation on the grounds that no appointment order has been produced. It is also seen that the adjudicating authority has noted the definition of salary as defined under Section 17(1) of the Income Tax Act, 1961 yet has chosen to hold that the directors are not employees as in his view, the term salary does not include remuneration, sitting fee etc., paid to the directors and thereby the exclusive clause of Section 65B(44) is inapplicable. Strangely, he has chosen to do so, without controverting the evidence adduced by the appellant along with its reply, by way of resolutions passed by the Board of Directors in accordance with the Companies Act which stated inter-alia that the directors concerned in the notice have been appointed as whole time directors and will be entitled to a salary as may be fixed from time to time. He has also ignored the Form 16 issued as a Certificate under Section 203 of the Income Tax Act, 1961 for tax deducted at source on salary in respect of these directors that was adduced in evidence.*

8) *We find that this Tribunal in Maithan Alloys Ltd v. Commissioner of C.Ex & ST, Bolpur, 2020 (33) GST 228 (Tri-Kolkata) has held as under:*

"6. In the instant case, it is not in dispute that service tax has been duly paid on remuneration paid to directors who are not whole-time employee directors. The only dispute herein is for payment of remuneration to whole time directors, which is a fact on record. The provisions of Companies Act, 2013, contained in Section 2(94), duly defines 'whole-time director' to include a director in the whole-time employment of the company. A whole-time director refers to a director who has been in employment of the company on a full-time basis and is also entitled to receive remuneration. We further find that the position of a whole-time director is a position of significance under the Companies Act. Moreover, a whole-time director is considered and recognized as a 'key managerial personnel' under Section 2(51) of the Companies Act. Further, he is an officer in default [as defined in clause (60) of Section 2] for any violation or non-compliance of the provisions of Companies Act. Thus, in our view, the whole-time director is essentially an employee of the Company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, is pursuant to employer-employee relationship and the mere fact that the whole-time director is compensated by way of variable pay will not in any manner alter or dilute the position of employer-employee status between the company assessee and the whole-time director. We are thoroughly convinced that when the very provisions of the Companies Act make whole-time director (as also in capacity of key managerial personnel) responsible for any default/offences, it leads to the conclusion that those directors are employees of the assessee company.

7. Further, in the present case, the appellant has duly deducted tax under Section 192 of the Income-tax Act which is the applicable provisions for TDS on payments to employees. This factual and legal position also fortifies the submission made by the appellant that the whole-time directors who are entitled to variable pay in the form of commission are 'employees' and payments actually made to them are in the nature of salaries. This factual position cannot be faulted in absence of any evidence to the contrary. The submission of Ld. DR as well as the finding made by the Commissioner in the impugned order that since the whole-time directors are compensated by way of variable pay and hence not employees, does not have any legal basis and is completely misplaced, and the same cannot be sustained. The decision of the Tribunal in

Rent Works India (supra) has clearly set the legal position that when the Income Tax Department considers payment in the nomenclature 'consultancy fee' as salaries, on which TDS is also made, the said payments cannot be said towards rendition of taxable service for levy of service tax. The decision in case of PCM Cement Concrete Pvt. Ltd. (supra) has set the legal proposition that consideration paid to whole-time directors would be treated as payment of salaries inasmuch as there would be employer-employee relationships and in such case the levy of service tax cannot be sustained.

8. In view of the above discussions and the settled legal judicial precedence and provisions contained in statutes referred to above, demand of service tax on remuneration paid to whole-time directors cannot be sustained and hence set aside. Since demand of service tax is set aside, penalty and interest are also not sustainable."

Similar view is seen taken in the decision of this Tribunal in Amar Raja Batteries v Commr of Central Tax, Tirupathi-GST, (2024) 21 Centax 216 (Tri-Hyd), and Allied Blenders & Distillers Pvt Ltd v CCE & ST, Aurangabad, 2019 (24) GSTL, 207 (Tri- Mumbai).

9) We also note that the appellant has enclosed the very same evidence of Board Resolutions as well as Form 16 of the concerned Directors, along with the appeal records, which in our view, given the earlier decisions of this Tribunal cited supra, evidence the employer employee relationship between the appellant and the directors involved in this notice. There is no contrary evidence let in that the Directors mentioned in the notice are rendering any other services to the appellant. We are therefore of the view that the adjudicating authority has grossly erred in his finding that these directors were not employees of the appellant and in confirming the demand made along with applicable interest on the appellant and imposing penalty on the appellant. We hold that the impugned Order in Original is wholly unsustainable and set aside the impugned Order in Original.

10) The appeal is allowed with consequential relief in law, if any.”

12. Appreciating the ratio of the above decisions as applicable to the facts of the appeal, the impugned Order-in-Appeal No. 101/2015-ST dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals-I), Salem cannot be sustained and as such, ordered to be set aside. As such, both the demand of service tax and penalties confirmed are set aside.

13. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 30.05.2025)

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

MK

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