IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI
COURT HALL – III

Service Tax Appeal No. 40383/2016

(Arising out of Order in Appeal No. 09/2016-ST dated 5.1.2016 passed by the Commissioner of Central Excise (Appeals – I), Salem)

M/s. SKM Egg Products Export (India) Ltd. **Appellant**
Cholangapalayam, Erode – 638 154.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulks Compound
Anaimedu, Salem – 636 001.

APPEARANCE:

Shri S. Satishchandrasekaran, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Anjani Kumar, Member (Technical)

FINAL ORDER NO.40569/2025

Date of Hearing: 02.06.2025
Date of Decision: 02.06.2025

Per P. Anjani Kumar,

M/s. SKM Egg Products Export (India) Ltd., the appellant, assail the Order in Appeal No. 09/2016-ST dated 5.1.2016 passed by the Commissioner of Central Excise (Appeals – I), Salem.

2. Briefly stated the facts of the case are that the appellants are exporters of egg yolk powder and albumen powder. It was noticed on scrutinizing the records that the appellants did not receive the export proceeds in full and their foreign bankers have deducted some amounts towards the service they rendered. It appeared to the Revenue that the appellants have received service classifiable under 'Banking and Other Financial Service' and have not paid appropriate service tax on

reverse charge mechanism, in terms of Rule 2(1)(d)(i)(G) and Rule 6 of Service Tax Rules, 1994. Hence, Show Cause Notice dated 21.4.2015, demanding a service tax amount of Rs.1,38,016/- along with interest and penalty, was issued to the appellant. The demand raised in the Show Cause Notice was confirmed by the Assistant Commissioner vide Order in Original dated 3.8.2015 and on an appeal filed by the appellants, the Commissioner (Appeals) vide the impugned order upheld the original order.

3. Shri S. Satishchandrasekaran, Ld. Advocate for the appellants submits that the issue is no longer res integra having been decided by this very Bench vide Final Order No. 40223/2023 dated 31.3.2023 and Final Order No. 40113/2025 dated 21.1.2025.

4. Shri N. Satyanarayanan, Ld. Authorized Representative for the respondent, however, reiterates the findings of the impugned orders.

5. Heard both sides and perused the records of the case. We find that this Tribunal has decided the very same issue in favour of the appellants in their own case vide Final Order No. 40223/2023 dated 31.3.2023 on a Show Cause Notice issued to the appellants covering the period 2006 – 2007 and vide Final Order No. 40113/2025 dated 21.1.2025 on a Show Cause Notice issued to the appellants covering the period July 2012 to March 2013. We find that the present proceedings are for the period from 1.4.2013 to 30.9.2013. We find that this Bench vide Final Order No. 40223/2023 dated 31.3.2023 has held as under:-

> "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?

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. v. CST, Delhi (supra), by relying on the ratio laid down by the Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. v. 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. v. CCE, Jaipur - 2017 (10) TMI 1231-CESTAT, New Delhi. The relevant paragraph in the said decision is extracted herein below:-*
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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. The identical issue has come up before the Tribunal in the case of Greenply Industries Ltd. v. CCE, Jaipur (Final Order No. 50149/2014 dated 3-1-2014) where it was observed that-*
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> *"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"."*
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> *5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."*

6. In view of the above, we find that the impugned order cannot be sustained. Hence, we set aside the same and allow the appeal with consequential benefits, if any, as per law.

(Operative portion of the order was pronounced in court
on completion of hearing)

(**P. ANJANI KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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