

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40063 of 2016

(Arising out of Order-in-Original No. LTUC/440/2015-C, dated 12.10.2015 passed by the Commissioner, CE & ST, Large Tax Payer Unit, 1775 Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extn. Chennai 600 101).

M/s. MRF Ltd.

114 (Old No.124), Greams Road
Chennai, Tamil Nadu.

...Appellant

VERSUS

The Commissioner of Central Excise and Service Tax, ...Respondent

Large Taxpayer Unit
No.1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar Western Extn.
Chennai 600 101.

APPEARANCE:

For the Appellant : Shri Karthik Sundaram, Advocate

For the Respondent : Shri Sanjay Kakkar, Authorised Representative

CORAM:

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

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

FINAL ORDER No. 40831/2025

DATE OF HEARING : 17.04.2025

DATE OF DECISION : 19.08.2025

Per Mr. AJAYAN T.V.

MRF Ltd., the appellant, has appealed against an order dated 12-10-2015, issued by the Adjudicating Authority. The order demanded payment of Rs. 58,38,707/- as service tax on services purportedly received from their overseas offices between October 2008 and September 2013, along with interest and penalties under the Finance Act 1994.

2. Brief facts are that the appellant manufactures tires, tubes and flaps, which fall under Chapter 40 of the Central Excise Tariff Act 1995. Appellant is registered with the Large Taxpayer Unit in Chennai for both excise and service tax purposes and operates overseas offices in Australia, Dubai, Vietnam and Sri Lanka. During an audit conducted by the Large Taxpayer Unit's audit wing in September 2013, on examining the records, the Department observed that the expenses at the overseas officers are booked in the appellant's account. The Department was of the view that in as much as the offices located abroad are deemed to be a separate person for the purposes of Section 66A and the expenses incurred in these officers are booked into the expense account of the appellant it is implied that services are being rendered by the overseas officers of the appellant to the operations of the appellant in India, which would fall in the definition of the erstwhile business support services classifiable under Section 104(c) of the Finance Act 1994. The Department was therefore of the view that irrespective of the reasons for the expenses incurred at the overseas offices, the objective of the overseas offices is to bring in business to the appellant and that it is for that reason that the said expenses are booked in the appellant's account.
3. Revenue was of the view that the appellant is required to pay service tax on the entire reimbursed amount under reverse charge mechanism, and that had it not been for the audit, this tax liability would never have been discovered. Therefore, being of the opinion that the appellant had deliberately concealed material facts with the intention of evading service tax payments, in violation of the Finance Act provisions, Revenue issued a Show Cause Notice dated 04-04-2014, invoking the extended period of limitation.
4. After due process of law, the Adjudicating Authority issued the Order in Original dated 12-10-2015 confirming the service tax

demand of Rs. 58,38,707/- and appropriated this amount along with interest of Rs. 37,19,494/- that MRF had already paid and imposed a penalty of equivalent amount under Section 78 of the Finance Act. Dissatisfied with this decision, MRF filed an appeal and is now before this Tribunal.

5. Shri Karthik Sundaram, Ld. Advocate appeared on behalf of the appellant and submitted that the appellant had paid the entire duty, 25% of the penalty and interest under protest, and, save for an amount of Rs.11,01,745/- paid to consultants in Australia and Sri Lanka, which is not being contested by the appellant; the balance liability is being contested in toto. The Ld. Counsel contended as under:

- a) The overseas branches are simply extensions of the same company, not separate entities. The branches coordinate business activities, procure orders from local customers, and handle collections in those countries. All expenses incurred by these branches - including employee salaries, office rent, car hire, and stationery - are reimbursed by the head office at actual cost without any profit margin added.
- b) Since the branch offices and head office are legally the same entity, there cannot be a taxable "service" transaction between them. The activities performed by a branch under instructions from its head office cannot be considered as providing services to the head office. Similarly, salaries paid to overseas employees and expense reimbursements cannot be subject to service tax because these are internal transactions within the same legal entity.
- c) Section 66A of the Finance Act is not designed to tax services from overseas branches to Indian head offices, and that various tribunal decisions support this

interpretation. It is emphasized that reimbursements made at actual cost without mark-up cannot constitute taxable consideration, citing a Supreme Court decision in *Intercontinental Consultants & Technocrats Pvt Ltd v UOI*, 2013 (29) STR 9 (Del).

d) This is purely a matter of legal interpretation with no element of tax evasion or wilful misstatement, so no penalties should apply.

e) Reliance was placed on the decisions in *Steel Authority of India Ltd v CST, New Delhi*, 2020 SCC Online CESTAT 1747, *CCT v Indo US MIM Tec (P) Ltd*, 2024 SCC Online CESTAT 1505, *Torrent Pharmaceuticals Ltd v CST, Ahmedabad*, 2015(39) STR 97 (Tri-Ahmd), *KPIT Technologies Ltd v CCE, Pune*, 2014 (36) SGTR 1098 (Tri-Mumbai), *KPIT Technologies Ltd v CCE, Pune*, 2017 (7) GSTL 468 (Tri-Mumbai), *Intercontinental Consultants & Technocrats Pvt Ltd v UOI*, 2013 (29) STR 9 (Del) and *Krishna Auto Sales v CCE & ST*, 2015 (40) STR 1121 (Tri-Del) in this regard.

6. Shri. Sanjay Kakkar, Ld. Authorised Representative, appearing for the Respondent reiterated the findings in the impugned OIO and placed reliance on the decisions in *Glyph International Ltd v UOI*, 2012 (25) STR 209 (All), *M/s. Prithvi Information Solutions Ltd v CCT, GST*, 2025 (2) TMI 901-Cestat Hyderabad, *3I Infotech Limited v CST, Mumbai-II*, 2017(1) TMI 437-Tri Mumbai and *M/s Sahara India v CCE, Lucknow*, 2024 (2)TMI- CESTAT Allahabad in this regard. He also submitted that the matter may also require verification whether the payments were indeed made for the purposes stated and are in fact on actuals, and therefore it may be remitted back to the adjudicating authority for the said purpose.

7. We have heard the rival submissions, carefully perused the appeal records, as well as the case laws cited as relied upon.
8. The issue that arises for determination is whether by virtue of the appellant's offices located abroad being deemed to be a separate person for the purposes of section 66A of the Finance Act 1994, the demand of service tax on the entire reimbursed amount of expenses of these overseas offices under reverse charge mechanism, confirmed invoking Rule 5(1) of the Service tax (Determination of Value) Rules 2006, on the allegation that the appellant is receiving business support services, is tenable?
9. We find that the issue has already come up for decision before coordinate benches of this Tribunal. It is seen that in the decision in ***Commissioner of Central Tax v Indo US MIM Tec Private Limited, reported in 2024 SCC Online CESTAT 1505***, a case where the respondent therein was reflecting foreign currency expenditure for the period October 2007 to March 2013 in their balance sheet as branch expenditure which had been incurred towards expenses by the overseas branch offices, the tribunal has noted the issue and its determination, and the relevant portions of the decision are reproduced below:
 - "6. The issue involved in the present appeals for consideration is whether the expenses incurred by the branch office of the respondent at USA and Germany in rendering certain services for and on behalf of respondent's main office in Bangalore would attract service tax under Section 66A of the Finance Act, 1994. Revenue's contention is that the branch office of the respondent at USA and Germany had rendered certain services in the nature of meeting the customers, scheduling orders, follow-up of payments, deliveries, marketing, etc., which is nothing but Business Support Service by the branch office to the main office of the respondent, since the expenditure had been paid in foreign exchange, service tax under Section 66A of the Finance Act, 1994 is required to be paid by the Respondent.
 7. We find that the issue is already considered by this Tribunal in *KPIT Technologies Ltd. (supra)*. The Tribunal after analysing the provisions of Section 66A held as follows:
 - "5. We have carefully considered the submissions. The short question for consideration is whether a branch of a corporate body situated abroad can be said to have rendered a service to the head office of the body corporate situated in India.

Section 66A in our *prima facie* view, does not provide for such a situation. In the facts of the case before us, the branch situated abroad has rendered service to the foreign clients and tax liability has been discharged abroad. The branch situated abroad has incurred certain expenditure which has been reimbursed by the head office to its branch office. Such reimbursements of expenditure by way of salaries or other expenses cannot be said to be consideration paid for any service rendered by the branch to the head office. The purpose of Section 66A is for taxing the import of services and not for taxing monetary transactions between the branch and head office. For e.g. if a branch of an Indian bank is situated abroad, Section 66A does not envisage treating the foreign branch as a separate entity so far as the internal transactions are concerned, if the head office reimburses to the foreign branch expenses incurred by them abroad. It cannot be said to be a consideration for any services rendered. The services rendered abroad has been received by the branch office located abroad. Merely because the expenditure incurred for receipt of the services were reimbursed to the foreign branch, the transaction does not amount to import of services. The reason is that the service provider, service recipient and place of performance of service are all located abroad. The purpose of Section 66A is not to tax service transactions taking place abroad. Such transactions are beyond the taxing jurisdiction of the Indian authorities. This view is supported by the decisions relied upon by the appellant cited *supra*. Further, in respect of outbound tourism, in the case of *Cox & Kings India Ltd. v. Commissioner of Service Tax* [2013-TIOL-1907-CESTAT-DEL : 2014 (35) S.T.R. 817 (Tri.-Del.)] this Tribunal held the view that though the service provider and service recipients are Indian entities, since the service is rendered abroad, there is no jurisdiction to tax the transactions in India. The ratio of the said decision applies squarely to the facts of the case before us."

8. More or less similar view has also been held by the Tribunal following the said judgment in the case of *Infosys Ltd.* (*supra*). Following the judgments rendered in *KPIT Technologies Ltd.* and analysing the findings in the impugned order, it had observed as:

".....The above conclusion has been reached on the ground that a branch office also has to be treated as a separate person for the purpose of Section 66A. If the branch office has to be treated as a separate person for the purpose of Section 66A, when the invoice is raised on the branch office for service rendered and contract is entered into between the branch office and the service provider, it cannot be said that such contract has been entered into by the company located in India. This is because for the purpose of levy of Service Tax in the hands of receiver, the branch office is treated as a separate person but for the purpose of determining as to who has received the service, the branch office is treated as part of the appellant. This, in our opinion, is not correct.

7.10 In view of the above observations and discussions, we find that Revenue has not been able to show that ITSS has been received through their branch office in India and in the absence of receipt of service, in our opinion, there is no taxable event and therefore there is no liability on the receiver to pay tax. Therefore, the entire demand of Rs. 132,35,71,266/-cannot be sustained and has to be set aside and is set aside."

9. Following the ratio laid down in the aforesaid judgments, we do not see merit in the appeals filed by the Revenue. Consequently, the impugned order is upheld and the appeals are rejected. The Cross Objections filed by the Respondents are in the nature of written submission, accordingly, disposed of."

10. Likewise, in the decision in ***Steel Authority of India Limited v. Commissioner of Service Tax, New Delhi, reported in 2020 SCC OnLine CESTAT 1747***, the Principal Bench of this Tribunal at Delhi, has held as under:

"**11.** The submissions advanced by the learned counsel for the Appellant and the learned Authorised Representative have been considered.

12. The show cause notice issued to the Appellant alleges that the Appellant received services from the overseas office in China which is for furtherance of business and would be classifiable under BSS as defined in section 65(104c) of the Act and this service is taxable under section 65(105)(zzzq) of the Act. Thus, in terms of section 66A of the Act read with rule 3 of the 2006 Rules, the Appellant being a recipient of the service in India, was liable to pay service tax as a deemed service provider.

13. The contention of the Appellant is that the office in Beijing is not a separate legal entity and no independent business is carried out in Beijing. The activities performed by the representative office in Beijing cannot be covered by any sub-clause of section 65(105) of the Act and reliance on section 66A of the Act is misplaced.

14. To appreciate the contentions, it would be appropriate to reproduce the relevant provisions of the Act and they are as follows:
i) Section 65(104c) — "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, Operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. — For the purposes of this clause, the expression “infrastructural support services” includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.

ii) Section 65(105)(zzzq) — “taxable service” means any service provided or to be provided - to any person, by any other person, in relation to support services of business or commerce, in any manner;

iii) Section 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:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1. — A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2. — Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

15. According to the Appellant, the representative office in Beijing was opened in September 2007 and an employee was posted as its chief representative. The said office did not have any independent income as no business operations were carried out there and the expenses borne by the office were reimbursed from India. It is, therefore, the contention of the Appellant that it did not have a permanent establishment for business purpose in Beijing.

16. In *Torrent Pharmaceuticals Ltd.*, a Division Bench of the Tribunal examined a similar issue and the observations are as follows:

“2. ----- **Appellant has established representative offices in the countries like Russia, Vietnam etc. where they have their branch offices. Exports and sales are made by the appellant directly from India to overseas customers and**

representative branch offices/establishments of the appellant abroad do not stock the goods or sale the goods. All the sale proceeds are directly received by the appellant in India from the overseas customers. Appellant's overseas representative office facilitates the export business of the appellant. **Appellant's branch offices/establishment office abroad do not earn any revenue on their own and expenditures incurred by such branch offices are remitted by the appellant from India.** The amount remitted to the branch offices also included salaries paid to the employees working in the branch offices abroad. One of the element of demand raised by the Revenue is that branch offices situated abroad are providing services to the appellant and all the foreign remittances made by the appellant to its branch offices are taken to be a considerations for providing services to the appellant".

[Emphasis supplied]

17. The Tribunal noted the following contentions of the Appellant:
 "3.4 With respect to demand of service tax under Annexure D-I of the show cause notice, appellant argued that out of total demand in this annexure a demand of service tax of Rs. 7 crores (Approx.) pertains to the remittances to the foreign representative offices/branches towards salary paid to the employees and cannot be considered as a service and will not attract service tax. That for the employment of people appellant entered into employment agreement with employees in overseas branches where appellant is clearly shown as an employer and the amount paid to the employees is reflected as salary in their books of accounts and in the financial statements. **That relationship between employer and employee clearly is a master-servant relationship and cannot be considered as taxable services as per Section 65(105) of the Finance Act, 1994. That the adjudicating authority has considered the branch offices of the appellant located outside India as a separate legal person in view of Section 66A(2) of the Finance Act, 1994.** It is the case of the appellant that one cannot provide services to one own-self, therefore, by creating a fiction in Section 66A(2) of the Finance Act, 1994, it cannot be said that branch offices of the appellant is to be considered as a separate legal person for the purpose of charging service tax on reverse charge basis".

[Emphasis supplied]

18. Ultimately, the Tribunal held:
 "Section 66A(1) above is talking of service provider and service recipient as 'persons' which has to mean as different business persons. Section 66A (2) and its Explanation I only make a clarification and to fix service tax liability on recipient of services under reverse charge mechanism that both the permanent establishments in India and abroad of a business person are to be treated as separate persons. **The above clarification/distinction made in Section 66A in our opinion is only for making an identification to determine whether a service is provided and consumed in India or abroad.** It is an accepted legal position that one cannot provide service to one's own self. If the 'permanent establishment' of the appellant abroad is treated as a service provider to its own head office in India then it will amount to charging service tax for an activity provided to one's own self. Similarly placed branches of the appellant undertaking similar

activities in India will not be held so. **Therefore, a comprehensive reading of Section 66A of the Finance Act 1994, a permanent establishment situated abroad as a 'separate person', will be understood to have been prescribed only to determine the provision of service whether in India or out of India".**

[Emphasis supplied]

19. A similar issue as to whether service tax could be levied on a reverse charge basis was examined by a Division Bench of the Tribunal

in *Kusum Healthcare Pvt. Ltd. v. Commissioner of Central Excise, Jaipur -I* and the observations are as follows:

"5. On the first issue regarding tax liability of the appellant on reverse charge basis under the category of business auxiliary service, we note that the whole Service Tax liability was confirmed on the expenses incurred for setting up and running the branch offices in foreign countries by the appellant. The branch offices were engaged in activities of promoting and liaising the business of the appellant in such countries. The lower authority held that such activity will be taxed under BAS as these branches are engaged in promotion and marketing of goods of the appellant. In this connection, we have perused the provisions of Section 66A, more specifically the proviso to the said Section.

6. We find that the Revenue has taken a stand that since as per the proviso, a branch office located outside India shall be treated as a separate business establishment, the services rendered by such establishment should be treated for tax liability.

8. The ratio of the above decision and also the close reading of the proviso to Section 66 A along with explanation therein is make it clear that the legal fiction of considering a branch of an assessee as a separate establishment is not to tax a service rendered to its head office. Further, here there is no such service also has been identified with supporting evidence.

9. We find that the ratio adopted by the Tribunal in examining the application of the said proviso is appropriate to the facts of the present case and accordingly, we hold that the tax liability under BAS cannot be sustained. **We note here that the whole expenses now sought to be taxed are only with reference to setting up, running and also expenses of the branch incurred by the appellant and not relating to any expenditure in their branches with reference to BAS".**

[Emphasis supplied]

20. It is clear from the aforesaid two decisions that section 66A (1) refers to 'service provider' and 'service recipient' as 'persons' which would mean different business persons. Section 66A(2) and its Explanation I only fix service tax liability on a recipient of service under a reverse charge mechanism by treating the permanent establishments in India and abroad as separate persons. This only clarifies whether a service is provided and consumed in India or abroad. If the 'permanent establishment' is treated as a 'service provider' to its own head office in India then it will amount to charging service tax for an activity provided to own self. Therefore, a comprehensive reading of Section 66A of the Act, would indicate that a permanent establishment situated abroad as a 'separate person', is

only to determine whether the provision of service is in India or out of India. The contention of the Appellant, therefore, deserves to be accepted.

21. The Commissioner (Appeals) also observed that section 66A is an independent charging section for levy of service tax on services provided or to be provided to a person located in India. This observation of the Commissioner (Appeals) is not correct. The charging section is section 66 of the Act and not section 66A, as was observed by the Allahabad High Court in *Glyph International Ltd. v. Union of India*. The observations of the High Court in this connection are as follows:

"34. It was clarified in the letter dated July 16, 2009 issued by the Joint Secretary (TRU-II), Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India, that Section 66A is not a charging section by itself. In fact, it only creates a legal fiction to deem import of service, as provision of service within India, so that the provisions of Chapter-V of the Finance Act, 1994 can be applied to. The charging section remains Section 66, even for the service imported. In other words, the tax collected from the recipient in terms of section 66A, is also tax chargeable under Section 66 of the Finance Act, 1994 and thus there is no mistake in the relevant provision of the CENVAT Credit Rules, 2004 and that credit of tax paid on imported services should be allowed, if they are in the nature of input services".

22. Though the aforesaid decision of the Allahabad High Court was placed before the Commissioner (Appeals), but the Commissioner (Appeals) has not followed it.

23. The confirmation of demand under the impugned order, therefore, cannot be sustained.

24. It would, therefore, not be necessary to examine the contention of the Appellant that the extended period of limitation could not have been invoked in the present case.

25. Thus, for all the reason stated above, the impugned order dated 26 November 2015 passed by the Commissioner (Appeals) is liable to set aside and is set aside. The Appeal is, accordingly, allowed."

11. In light of the aforesaid decisions of this Tribunal, we are not persuaded to take a different view and we hold that the demand of service tax on the entire reimbursed amount of expenses of these overseas offices under reverse charge mechanism, confirmed invoking Rule 5(1) of the Service tax (Determination of Value) Rules 2006, on the allegation that the appellant is receiving business support services, save for that which already stood conceded by the appellant, is untenable and cannot sustain. For the aforesaid reasons, we find that the decisions relied upon

by the Ld. A.R also do not advance the Respondent's case in any manner. Further, we do not find any merits in the submission of the Ld. A.R. that the matter may also require verification whether the payments were indeed made for the purposes stated and are in fact on actuals, and therefore it may be remitted back to the adjudicating authority for the said purpose. When the impugned show cause notice itself characterises the remittances as reimbursements and when the Order in Original also recognizes and acknowledges these payments as reimbursements while confirming the demand, such apprehensions expressed are wholly misplaced.

12. That apart, we find that the demand is sought to be made and sustained invoking Rule 5(1) of the Service tax (Determination of Value) Rules 2006. We find that the issue on levy of service tax on reimbursable expenses is no more res-integra in view of the decision of the Honourable Supreme Court in the case of ***UOI v Intercontinental Consultants and Technocrats Pvt Ltd, 2018 (10) GSTL 401 (SC)*** which has affirmed the decision of the Delhi High Court in ***Intercontinental Consultants & Technocrats Pvt Ltd v UOI, 2013 (29) STR 9 (Del)***, wherein Rule 5(1) of the Service Tax Valuation Rules, 2006 which provided for inclusion of expenditures or costs incurred by the service provider in the course of providing taxable services, in the value of such taxable services, was struck down as ultra vires Section 66 and Section 67 of the Act and as travelling beyond the scope of the said sections. Thus, the contested demand sought to be sustained invoking the provisions of Rule 5(1) *ibid* are unsustainable on this count too. Incidentally, we also notice that not only was the said Rule 5(1) *ibid* ever put to the notice of the appellant in the show cause notice, but also the activities of the appellant purported to be business support services as spelt out in the impugned order in original, were never crystallised as such in the show cause notice which only stated that the overseas offices

of the appellant were impliedly providing business support services.

13. We are bound by the principles enunciated in the aforementioned decisions of the coordinate benches of this Tribunal as well as the Judgement of the Honourable Apex Court noticed above, and respectfully following the judicial dicta therein, we hold that the demand of service tax, save for the amount not contested, along with applicable interest thereon, as well as penalty imposed under the impugned order in original do not sustain. We also find that the issue involved being an interpretational one, the invoking of extended period of limitation and imposing of penalty was untenable and the decisions relied on by the appellant in this regard are apposite.

14. For the reasons stated above, we modify the impugned Order in Original, passed by the Commissioner of Central Excise, LTU, Chennai, and while upholding the demand that has not been contested along with applicable interest thereon, we set aside the demand to the extent it has been contested, along with the consequent interest thereon, as well as the whole of the penalty imposed thereunder. The appellant is entitled to consequential relief in law, if any.

The appeal is allowed in these terms.

(Order pronounced in open court on 19.08.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)