IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 41726 of 2016

(Arising out of Order in Appeal No. 270/2016 (STA-I) dated 28.4.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

M/s. Raam Paper Company **Appellant**
21, Panthadi, 5th Street
Madurai – 625 001.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Smt. Rajni Menon, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41446/2025

Date of Hearing: 08.09.2025
Date of Decision: 09.12.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 270/2016 (STA-I) dated 28.4.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that the appellant is registered for providing taxable service under Business Auxiliary Services, which includes a 'Commission Agent' as defined under section 65(19)(a) of the Finance Act 1994 (**The Act**). They are getting a commission from their principals for their indenting activities which amounts to

promotion of goods and services of their client. During the course of audit, it was found that the appellant had received commission from their principal, M/s. Seshasayee Paper and Paper Boards Ltd. amounting to Rs.2,44,35,620/- towards their services whereas they declared only Rs.1,83,62,342/- as taxable income in their ST-3 returns pertaining to the period from October 2004 to March 2009. Hence Show Cause Notice dated 19.4.2010 was issued to recover Rs.6,54,499/- along with interest and for imposing penalties. After due process of law, the Ld. Original Authority confirmed the demand of Rs.6,54,499/- payable under BAS for the above said period along with interest and imposed equal penalty under sec. 78 of the Finance Act, 1994. Penalty under section 77 was also imposed on the appellant. The appeal preferred by the appellant was rejected by the Ld. Commissioner (Appeals). Hence the present appeal.

3. The Ld. Advocate Shri N. Viswanathan appeared for the appellant and Ld. Authorized Representative Smt. Rajni Menon appeared for the respondent.

3.1 The Ld. Counsel stated that the appellant is engaged in trading paper products and acting as a sales agent for Seshasayee Paper & Paper Boards Ltd. They are registered under "Business Auxiliary Service" for service tax purposes. They are receiving commission as a "commission agent" as per the explanation to Section 65[19] of the Finance Act. An internal audit found discrepancies between taxable values declared in ST 3 returns and the commission reported in financial statements from October 2004 to March 2009, resulting in a tax demand of Rs. 6,54,499/- plus interest and penalties. The Ld.

Counsel submits that as per rule 6 of the Service Tax Rules till it was amended in the year 2011 the tax payer was only required to pay the tax on the actual value collected and not on the value billed or accrued whereas in terms of Sec. 154 of the Income tax Act the assessee has to follow the mercantile system namely reporting their financial transactions on accrual basis. This was the basic reason for the difference in value arrived between the ST3 return and financial statement and inspite of the appellant bringing the above clear position of law and supported their submissions explaining the difference by producing certificates from their Chartered Accountant, their appeal was rejected. Both authorities failed to consider differences in revenue recognition under various statutory requirements and did not acknowledge Chartered Accountants' certificates regarding accrued but unrealised income. The Ld. Counsel stated that the alleged suppression is not sustainable since the issue stems solely from accounting entries found during audit, making the extended period and penalties unjustified. Judicial precedents support this view, and Section 80 relief should have been granted.

3.2 The Ld. Authorized Representative Smt. Rajini Menon appeared for the respondent-department. She drew our attention to para 11 of the OIO, wherein it was recorded that the appellant had accepted the contention in the SCN and had agreed to pay the differential tax along with interest. The same was noted by the First Appellate Authority at para 8 of the impugned order. There is no murmur in the Appeal Memorandum regarding this acquiescence by the appellant. Hence the appeal merits to be rejected.

4. We have considered the rival submissions and perused the material placed on record. We find that the Original Authority at para 11 of the OIO has examined the issue and recorded his findings as under.

> "During the personal hearing, the representative of the assessee has produced copies of e certificates of chartered accountant of the company for the year ending 31.3.05, 1.3.06, 31.3.07, 31.3.08, 31.3.09 all dated 31.12.2012 for the period under demand. **I do not intend to take into cognizance these certificates for the following reasons**. While computing the tax paid and payable, the departmental officers have placed reliance on the profit and loss account and the ST-3 returns of the assessee which are considered as reliable records for financial accounting by them. Their investigation and the subsequent demand are based on the ST-3 Returns and. Profit and Loss account for the material time furnished by the assessee. Finalization of the accounts had been done by the professionals engaged by the noticee at the material time and the records so maintained are produced as statutory record by the noticee during the audit. **Further, the assessee has not produced any material evidence depicting reason for the difference in the amounts as seen in the P& L account and the present certificates except for stating that service tax is to be leviable on accrual basis.** Hence I hold that the computation of tax and the subsequent demand is legal and proper. **It is pertinent to mention here that the assessee have accepted the contention in the notice and have agreed to pay the difference in tax with interest.** In view of the above discussion, I hold that the notice is required to pay the impugned service tax along with appropriate interest thereon under section 75 of the Finance Act, 1994." (emphasis added)

The appellant has stated that as per the legal position, till the introduction of Point of Taxation Rules 2011 on 31.03.2011 and the resultant changes made in the Service Tax Rules, 1994, the taxpayer was only required to pay the tax on the actual value collected and not on the value billed or accrued. From the Order it is seen that while it was for the appellant to show that this was the factual position as

entered in their accounts, they could not produce any material evidence showing the difference was on account of the different methods of accounting between the Service Tax and Income Tax laws. It appears that they have instead agreed to pay the duty and interest which led to the Original Authority recording the same and confirming the amount. It does not appear that the Original Authority has made a mistake in recording the acquiescence as the appellant has not filed an application for rectification of mistake before the said Authority or even resiled on that position before the Commissioner Appeals. It is curious that their earlier acceptance of duty payment was not disclosed upfront before us and it was left to the Ld. A.R. to draw our attention to it. An appellant who seeks equity must come with clean hands. In **S.P. Chengalvaraya Naidu Vs Jagannath** [1994 (1) SCC 1] the Apex Court in no uncertain terms observed:

> "The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands."

5. Given this context, it is shocking to see the appellant's submissions in paragraphs A, B, D and E of their Appeal Memorandum, which show a lack of respect for the First Appellate Authority—an office with significant responsibility in the scheme of quasi-judicial dispute resolution. The relevant portion is reproduced below:

> "A. The order of the learned lower appellate authority is **unfair, unfounded, unjust, misconceived**, contrary to the true position of law and therefore not legally sustainable.
>
> B. The learned lower appellate authority committed gross error and **injustice** and violation to the principles of natural justice in **not properly and judiciously** considering the various subtle contentions raised by them

> before verbatim approving the order of the lower adjudicating authority **exposing his bias and non-application of mind**.
>
> *** *** ***
>
> D. The learned lower appellate authority due to a **sheer revenue bias** held by him had come to the erroneous conclusion that the appellant had not shown the actual taxable value in the ST-3 returns filed by them and thereby failed to pay the appropriate tax amount by merely placing reliance on the profit and loss account of the appellant company without taking cognizance of the certificate of the chartered accountants of the appellant company produced by them giving the due details of the amount accounted and realized for the period in question, which renders his order totally arbitrary and grossly incorrect.
>
> E. …… which findings of the authorities below is not only erroneous but also exposes the **clear bias and prejudice held by them in unbecoming of a quasi-judicial authority**.
>
> (emphasis added)

6. While we may have been persuaded to believe that it was the submissions of the appellant who perhaps unfamiliar with the drafting of an appeal had made a linguistic mistake, even though the same has been counter signed by the appellants legal representative, however, we find that para 4 of the 'SYNOPSIS' submitted by the Ld. Counsel during the hearing, carries a similar language as is reproduced below:

> 4. On the appellant carrying the matter in appeal the learned appellate authority **exposing his bias and prejudice** verbatim approved the finding recorded by the original authority in para 11 of his order and dismissed their appeal. Hence this appeal."
>
> (emphasis added)

7. We are pained to note this Tribunal's counsel for restraint in language, stated in Final orders NO. 40631/2025 dated 20.06.2025 in the case of **M/s RAJ BROTHERS Vs COMMISSIONER OF CUSTOMS (IMPORT), CHENNAI,** has not been heeded to. Averments grounded

on relevant facts and supported by appropriate case law, presented in a dignified and measured language, are without doubt more persuasive and credible than relying on rhetoric or attempting to obscure weak arguments or hide facts by immoderate language against the earlier authorities when litigating the matter up the appeal ladder. Our attention is drawn to the judgment of the Hon'ble Supreme Court in the case of **D.P. Chadha Vs Triyugi Narain Mishra**, [(2001) 2 SCC 221] wherein it was stated that:

> "An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. **Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness**."
>
> (emphasis added)

We are hopeful that the above judgment would be educative and prudence would prevail in future.

8. We find that the appellant has now resiled from their earlier position of acquiescence. Hence issues of fact and law, which were not examined earlier due to the appellant accepting to pay duty and the perceived lack of supporting evidence, needs to be addressed. The matter hence needs to be examined afresh. The appellant too may take this opportunity to put forward evidence in support of their submissions including the Chartered Accountants Certificate.

9. In view of the above, we set aside the impugned order and remit the matter back to the file of the Original Authority for fresh disposal in accordance with law. The Original Authority shall grant reasonable opportunity to the appellant of being heard and to submit any evidence

in their favour which shall be examined before passing a denovo order. The appellant should also cooperate in the matter so that final orders are passed within 90 days of receipt of this order. All the contentions are left open. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 09.12.2025)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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