

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

Service Tax Appeal No. 41830 of 2016

(Arising out of Order in Appeal No.318/2016 (STA-I), dated 7-6-2016 passed by the
Commissioner of Service Tax (Appeals-I), Chennai)

M/s. Baliga Lighting Equipments Pvt. Limited **.... Appellant**
No. 389 Medavakkam Road,
Chennai – 600 117.

VERSUS

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

APPEARANCE:

Shri . N. Sriprakash, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41481/2025

DATE OF HEARING: 15.09.2025
DATE OF DECISION:17.12.2025

Per AJAYAN T.V.

Baliga Lighting Equipments Pvt. Limited, the appellant herein, is challenging the Order in Appeal No.318/2016 (STA-I), dated 07-06-2016, whereby the appellate authority, except for setting aside the penalty imposed under section 77 of the Finance Act 1994, has otherwise upheld the Order in Original No.107/2012 dated 30.03.2012.

2. Brief facts are that, during an audit conducted by the officers of AG (Audit), CERA, the balance sheet, ST3 returns and other related documents of the Appellant, pertaining to the period from 2008-09 was verified. It was noticed that the appellant had received a commission of Rs. 96,06,293/- from K.W. (Kerpenwerk), Germany (K.W. in short) towards procuring orders in India for the products of K.W. The department was of the opinion that the said activity of the appellant of procuring orders in India for the

overseas firm is a taxable service under "Business Auxiliary Services" as defined under section 65 (19) of the Finance Act. Hence, a show cause notice dated 24-08-2011 demanding service tax on the said activity was issued. After due process of law, the adjudicating authority vide order in original no.107/2012 dated 30.03.2012, inter alia, confirmed the demand of service tax on the said services rejecting the appellant's contention that the provision of the said services amounted to export of service. The order also demanded appropriate interest, imposed equivalent penalty under section 78 of the act and a penalty of Rs.1,000/- under section 77 of the act. Aggrieved by the same the appellant filed an appeal before the Commissioner of Service Tax (Appeals-I), Chennai who has however, save for setting aside the penalty imposed under section 77 of the act, upheld the Order in Original as stated above. Aggrieved, and having preferred this appeal, the appellant is before this Tribunal.

3. Shri. N. Sriprakash Ld. Advocate appearing for the appellant submitted that the appellant's activity of procuring export orders for the foreign company is nothing but export of service as per Rule 3 (1) (iii) read with Rule 3 (2) of the Export of Service Rules 2005 since the benefit of such orders accrues to the foreign company. Ld. Counsel further contended that the appeal had bona fide a belief that his activities constituted export of services and since the subject matter of the present appeal revolves around the interpretation of the Export of Service Rules, 2005 the extended period of limitation could not have been invoked. Reliance was placed on the following citations:
- a) Paul Merchants Ltd vs Commissioner, 2013 (29) STR 257 (Tri-Del)
 - b) Commissioner vs Paul Merchants Ltd, 2014 (35) STR 1100(P&H)
 - c) Vodafone ESSAR Cellular Ltd vs Commissioner of C. Ex , 2013 (31) STR 738 (Tri-Del)
 - d) Commissioner vs Vodafone Essar Cellular Ltd, 2016 (41) STR 347 (Bom)
 - e) Gap International Sourcing (India) Pvt Ltd vs Commissioner of ST,, 2015 (37) STR 757 (Tri-Del)
 - f) A.T.E Enterprises Pvt Ltd vs Commissioner of Service Tax, 2015 (39) STR 81 (Tri-Mum)
 - g) Commissioner of Service Tax III vs Vodafone India Limited, 2025 (8) TMI 938 SC
 - h) Commissioner of C. Ex vs Bajaj Auto Ltd, 2010 (260) ELT 17 (SC)

i) Hero Honda Motocorp Ltd vs Commissioner of C. Ex, 2014 (310) ELT 364 (Tri-Del)

j) Anjuman Islahul Muslimin vs Commissioner (Appeals), CCE, 2019 (27) GSTL 685 (Tri- All).

He prays for the appeal to be allowed.

4. Ms. Anandalakshmi Ganeshram Ld. Authorised Representative appearing for the respondent reiterated the findings of the Ld. Appellate Authority and prayed that the appeal be rejected.
5. Heard both sides, perused the appeal records and the citations submitted.
6. The sole issue that arises for consideration is whether the appellant's activity of procuring export orders for the foreign company amounts to export of service.
7. The Ld. Appellate Authority has held that the appellant by soliciting orders from the Indian Customers for K.W. has rendered services in India which were consumed in India by those customers. Therefore, the services provided by the appellant does not amount to export of service. It was found that the reliance placed on the decisions in Paul Merchants case and ATE Enterprises has been appealed by the Department and has not attained finality and consequently is of no assistance to the appellant. The extended period was found invokable as but for audit by CERA the facts would not have come to light.
8. We find that indisputably the appellant procures orders on behalf of K.W situated in Germany and does not have any right to settle the order in the name of K.W. Pursuant to the orders received, the overseas company supplies the goods directly to the customers and after full payment of the invoice amount by the customer to the overseas company, pays the commission in respect of such orders to the appellant.
9. We find that in the decision in A.T.E Enterprises Pvt Ltd vs Commissioner of Service Tax, 2015 (39) STR 81 (Tri-Mum), a coordinate bench of this Tribunal, in identical fact circumstances has held that the services provided are not taxable. The relevant portions of the decision is as under:

7. The issue involved in this case is regarding whether the appellant is to be saddled with the service tax liability on an amount received by them as commission for procuring orders on behalf of overseas manufacturers. It is undisputed that the appellant is procuring orders from the Indian Companies and passing on to various overseas manufacturers with whom they have an agreement for receiving commission on materialization of the orders procured by the appellant.

8. We find from the records that the appellant does not engage himself in assembling and organizing of the imports. His duty as is ascertained from the agreement, indicates that he is supposed to procure the orders and pass it on to the overseas manufacturers; on receipt of such orders, the overseas manufacturers executes the same on his own and the consideration for such supplies is directly paid to the overseas manufacturers by the person who has placed the order. The entire transaction in our considered opinion seems to be of only procurement of orders and the rendering of services, if any, by the appellant is towards the foreign or overseas manufacturers. In our view, this activity though culminates in supplies to Indian Company, cannot be considered as services provided in India. We are fortified in our view by the ratio of the Tribunal in the case of *Vodafone Essar Cellular Ltd.* (supra).

9. In this case we find that there was an agreement between the appellant and the foreign telecom service provider as per which the appellant had agreed to provide telecom services to the customers of foreign telecom service provider when he is in India and using the appellant telecom networks. Revenue held a view that the consideration for services rendered in India is taxable under Business Auxiliary Service. The Bench after considering the provisions of "Export Services Rules" and Board clarifications, and the decision of Microsoft Corporation (I) Pvt. Ltd. case held in favour of the assessee by recording as under :

"54. In view of the above, the difference of opinion on various points is resolved as under :

- (i) That the business auxiliary services of promotion of market in India for foreign principal made in terms of agreement dated 1-7-2005 amount to Export of Services and the Hon'ble Supreme Court decision in the case of *State of Kerala and Others v. The Cochin Coal Company Ltd.* [1961 (12) STC 1 (S.C.)] as also *Burmah Shell Oil Storage and Distrusting Co. of India Ltd., v. Commercial Tax Officers* [1960 (11) STC 764] = 2002- TIOL-966-S.C.-CT-CB explaining the meaning of export is not relevant inasmuch as the same deals with the export of goods and not export of services;
- (ii) That the Business Auxiliary Services provided by the assessee to their Singapore parent company was delivered outside India as such was used

there and is covered by the provisions of Export of Service Rules and are not liable to Service Tax.

(iii) The principle of equivalence between the taxation of goods and taxation of services, as laid down by the Hon'ble Supreme Court in the case of *All India Federation of Tax Practitioners* [2007 (7) S.T.R. 625 (S.C.) = 2002-TIOL-149-S.C.-ST as also the principles of destination-based consumption tax where in the context of Constitutional Authority of levy of Service Tax on certain services and the issue of Export of Service in terms of Export of Service Rules was not the subject matter of said decision. The Export Service Rules, 2005, being destination-based consumption tax are in accordance with the declaration of law by the Hon'ble Supreme Court.

(iv) Inasmuch as the appeal No. ST/828/2010 was not argued by both the sides, the same can be listed for final disposal even though issue involved is identical.

(v) Having held that services involved were export of services, the same are not liable to be sustained against the appellants."

10. In case of *Paul Merchants Ltd.* case (supra) there was a difference of opinion between the Hon'ble Member (Judicial) and the Hon'ble Member (Technical) which was referred to 3rd Member, held in favour of the assessee and by a majority order it was held that :

"The point of difference as mentioned in Para 60 of the referral order has been answered by third Member as under :

"In view of the above discussion, the points of difference, mentioned in para 60 are answered as under :-

(i) The term "export" has not been defined either in Article 280(1)(b) or in any of the article of the Constitution of India. Though the Apex Court's judgments in the case of the *State of Kerala v. The Cochin Coal Company Ltd.* [(1961) 2 STC 1 (S.C.)] and *Burmah Shell Oil Storage & Distribution Co. of India v. Commercial Tax Officer & Others* reported in (1960) 11 STC 764 (S.C.) explain the meaning of the term "export", the ratio of these judgments which are with regard to export of goods, is not applicable for determining what constitutes the export of services. There is no question of Export of Services Rules, 2005, being in conflict with Article 286(1)(b) of the Constitution of India.

(ii) The principle of equivalence between the taxation of goods and taxation of service had been laid down by the Apex Court in the case of *Association of Leasing & Financial Service Companies v. Union of India* (supra) and *All India Federation of Tax Practitioners v. Union of India* (supra) in the context of constitutional validity of levy of Service Tax on certain services. This principle does not imply that Service Tax should be levied and collected in exactly the same manner as the levy and collection of tax on

goods or that export of service should be understood in exactly the same manner in which the export of goods is understood. In fact the question as to what constitutes the export or import of service was neither raised nor discussed in the above-mentioned judgments of the Apex Court. As discussed in this order, the Export of Services Rules, 2005 are in accordance with the Apex Court's ruling in the above-mentioned judgments that Service Tax is a value added tax, which in turn is a destination-based consumption tax in the sense that it is levied on commercial activities, and it is not a charge on the business but a charge on the consumers. There is nothing in Export of Service Rules, 2005 which can be said to be contrary to the principle that a service not consumed in India is not be taxed in India."

In yet another case of Microsoft Corporation (I) Pvt. Ltd., also ended up with a difference of opinion on similar facts by majority decision, issue was held in favour of the assessee.

11. In the recent case of *GAP International Sourcing (India) Pvt. Ltd.* (supra) the co-ordinate Bench of this Tribunal held in favour of the assessee wherein the facts were more or less similar. That is, the appellant *M/s. GAP International Sourcing (India) Pvt. Ltd.*, entered into a service support agreement with Gap USA for rendering various services relating to procurement of goods, recommending fabrics to be used for manufacture of garments, recommending vendors from which fabrics, yarn, zippers, buttons, snap, fasteners, etc. can be procured, reporting the status of manufacture of products by the chosen vendors, analyzing the reports of the samples sent by the vendors, giving recommendation about the product integrity, inspecting export consignments and issuing inspection certificates, etc. Issue as to these were export of service or taxable in India; it was held that when the service provided by a person in India is consumed and used by a person abroad, co-ordinate Bench relied upon the judgment of the *Paul Merchants Ltd.* case; interpreting provisions of export of service rules to hold such services as rendered by *M/s. GAP International Sourcing (India) Pvt. Ltd.* would be export of services and would not fall under the category of BAS. The said ratio is applicable in full force in the case in hand.

12. In view of the foregoing judicial pronouncements and in the facts of this case, we find that the impugned order is unsustainable and liable to set aside and we do so."

10. We find that the said decision has been affirmed by the Honourable High Court of Bombay, as reported in ***CST, Mumbai-VI v. A.T.E Enterprises Pvt Ltd, 2018 (8) GSTL 123 (Bom)***. We refrain from reproducing similar applicable citations to avoid prolixity.

11. In view of the aforesaid decision of the coordinate bench of this Tribunal, which has relied on earlier decisions of this Tribunal in similar facts and circumstances, we are of the considered view that the ratio would squarely apply to the facts and circumstances of this case. We therefore find that the impugned order in appeal is unsustainable and to the extent it sustains the demand and penalty on the appellant, it is liable to be set aside. Ordered accordingly.

The appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 17.12.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M.AJIT KUMAR)
MEMBER (TECHNICAL)

psd