

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

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 41254 of 2016

(Arising out of Order-in-Original No. 04/2016 (ST-Commr.) dated 23.03.2016 passed by Commissioner of Excise, No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Agni Steels Pvt. Limited

S.F. No. 562, Kavandanur Road,
Ingur, Perundurai Taluk,
Erode – 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 : Mr. S. Venkatachalam, Advocate

For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

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

FINAL ORDER No. 41499 / 2025

DATE OF HEARING : 20.08.2025

DATE OF DECISION : 18.12.2025

Per Mr. VASA SESHAGIRI RAO

This appeal is filed by M/s. Agni Steels (P) Ltd., Erode (hereinafter "the appellant") challenging the adjudicating authority's Order-in-Original confirming demand of service tax, interest and imposition of penalty on account of non-payment of service tax under reverse charge mechanism (RCM) in respect of remuneration paid to three

directors/chairman during the period 07.08.2012 to 31.03.2014.

2.1 The impugned adjudication order *vide* Order-in-Original No. 04/2016-ST-COMMR dated 23.03.2016 ('Impugned order' for short) concluded that (i) the payments to the Chairman/Directors constituted taxable "services" and, being services provided by directors to the company, the company was liable to pay service tax under RCM by virtue of Rule 2(1)(d)(i)(EE)/Rule 6 read with Section 68 and Notification No.30/2012-ST dated 20.6.2012 (as amended); (ii) tax aggregating Rs.1,07,53,200/- was due; (iii) interest under Section 75 and penalty of Rs.10,75,320/- under Section 76 (as amended w.e.f. 14.05.2015 / transitional provision Section 78B) were leviable. The Appellant challenges these findings.

2.2 The facts briefly stated as culled out from the records are that the appellant is registered under Service Tax (GTA service) and during 07.08.2012 – 31.03.2014 paid total remuneration of Rs.8,70,00,000/- to three persons who acted as directors / chairman of the company (Shri M. Chinnasami – Chairman, Shri R. Krishnamurthy – Director, Shri K. Thangavelu – Director).

2.3 During departmental Audit, it was observed that the appellant had not discharged service tax liability under reverse charge on remuneration paid to the directors. A Show Cause Notice was issued and after due process of Law, an order confirming tax, interest and penalty was passed (impugned order).

3. Aggrieved by the impugned Order, the Appellant is before this Tribunal.

4. The Ld. Advocate Mr. Venkatachalam appeared on behalf of the Appellant and Mr. M. Selvakumar, Authorized Departmental Representative, appeared on behalf of the Respondent and advanced their submissions.

5. The Ld. Counsel for the Appellant submitted as follows which is summarized below: -

5.1 That the impugned order is vitiated for failure to apply mind to the Appellant's documents and authorities; the Commissioner reproduced statutory text and audit objections but did not consider the Appellant's evidence that the payments were salary.

5.2 The SCN is defective as it does not identify the specific service allegedly rendered by the Directors and merely pleads RCM liability on the gross payments.

5.3 The three Directors (Shri R. Krishnamurthy, Shri M. Chinnasami and Shri K. Thangavelu) were full-time, day-to-day executives performing finance, production/marketing and purchase functions respectively, and were appointed/re-appointed by shareholders.

5.4 Documentary proof confirms an employer-employee relationship: appointment letters (29.09.2012), AGM resolution fixing salary (28.09.2012), ledger entries as "Director's Salary", TDS under S.192, Form-16, 24Q returns and auditor certified 3CA/3CD all showing treatment as salary in their Books of Accounts and tax returns.

5.5 Where a director is a whole-time employee and payments are treated as salary (with TDS/EPF etc.), that payment is excluded from "service" under Section 65B(44)(b) of Finance Act 1994 and is not taxable under the RCM Notification.

5.6 Binding precedents and CBEC Circular support this position as held in Maithan Alloys; Allied Blenders; Rent Works; Bhavna Desai; Board Circular No.115/9/2009 and none of which the impugned order has considered.

5.7 The Commissioner's contrary presumption (that directors were "principals") is factually incorrect and unsupported by the record and the order therefore rests on an improper appreciation of facts and law.

5.8 For these reasons, the demand of service tax, interest and penalty is unsustainable and the impugned order should be set aside.

6. On the contrary the Ld. Authorized Representative supported the findings in the Impugned Order. It was further submitted that Revenue maintains that the payments are in the nature of "remuneration" to directors and that the appellant failed to establish employer-employee relationship; on the contrary the corporate documents and appointment pattern suggest principal-to-principal relationship and that Rule 2(1)(d)(i)(EE) r/w Notification No.30/2012-ST makes the recipient (company) liable to pay 100% of tax under RCM for services provided by the Directors to the company.

7. We have heard the rival submissions advanced by both sides and have carefully perused the appeal records, the impugned order, the statutory provisions, AGM resolution, Form-16's, TDS returns, ledger extracts, audited

financials and other material and the case Laws relied upon by the Appellant as well as the Respondent. Upon consideration of the entire material on record, the following issues arise for our determination as to whether: -

- a) the amounts paid by the Appellant-Company to its Directors during the period 07.08.2012 to 31.03.2014 constitute "salary" paid in the course of employment, falling within the exclusion under Section 65B(44)(b) of the Finance Act, 1994; or whether such payments amount to "consideration" for taxable services rendered by the Directors in an independent capacity.
- b) in the facts and circumstances of the case, the Appellant is liable to discharge service tax under the Reverse Charge Mechanism (RCM) in terms of Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d)(i)(EE) of the Service Tax Rules, 1994 and Notification No. 30/2012-ST dated 20.06.2012, as amended.
- c) the findings recorded in the impugned order suffer from violation of principles of natural justice, including failure to consider documents, Form-16, AGM resolutions, ledger entries, and binding judicial precedents produced by the Appellant.

- d) the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 has been rightly invoked in the present case. and,
- e) interest under Section 75 and penalty under Section 76 of the Finance Act, 1994 are sustainable in this case.

8. Question No. 1 whether payments to directors are "salary" (excluded) or taxable consideration (RCM): -

8.1 The Appellant submits that the three directors Shri R. Krishnamurthy, Shri M. Chinnasami and Shri K. Thangavelu were appointed as whole-time directors and performed day-to-day management functions (finance, production/marketing and purchase respectively). Appointment / re-appointment letters dated 29.09.2012, AGM resolution dated 28.09.2012 fixing salary, ledger entries titled "Director's Salary", Form-16s, TDS compliance under Section 192 and classification of these amounts under "Salaries & Wages" in audited financial statements were placed on record to show a contract of service and employer-employee relationship. The Appellant relied on CBEC Circular No.115/9/2009-ST (31.07.2009) and Tribunal decisions in *Maithan Alloys Ltd. 2020 (33) GSTL 228 - Tri. Kolkata*; *Allied Blenders & Distillers 2019 (24) GSTL 207 - Tri. Mumbai*; *Rent Works India Pvt Ltd 2016 (43) S.T.R. 634 - Tri. Mumbai*; *Bhavna Jayantibhai Desai 2015 (37) S.T.R.*

412 – *Tri. Ahmedabad; Lilanand Magnesites (Centax 2025 etc.)*) to submit that remuneration paid to whole-time directors is not a taxable service under Section 65B(44)(b) because the definition specifically excludes “provision of service by an employee to the employer in the course of or in relation to his employment.”

8.2 The respondent on the other hand contends that the impugned payments are “remuneration” / consideration for services provided by the directors in their capacity as directors, and hence taxable under reverse charge as notified in Notification No.30/2012-ST read with Rule 2(1)(d)(i)(EE) of ST Rules. Relying on the content of the audit report and the Appellant’s corporate structure, the respondent argued that the directors acted as principals and not as employees; the Adjudicating Authority (AA) accordingly treated the payments as taxable consideration. The Revenue further submitted that mere labelling of entries as “salary” in accounts does not conclusively prove an employer–employee relationship.

8.3 We have carefully examined the documentary evidence made available on record. The test to determine whether a person is an employee (contract of service) or an independent service-provider (contract for service) requires

examination of substance over form. The record includes: (i) appointment / re-appointment letters; (ii) AGM resolution fixing the salary; (iii) ledger entries and audited classification under "Salaries & Wages"; (iv) TDS deduction under Section 192 and issue of Form-16; (v) statutory audit certificates/3CA/3CD and 24Q returns. These documents taken together raise a strong and coherent inference that the directors functioned as whole-time employees. Mere terminological difference between "salary" and "remuneration" is not decisive where the contractual and statutory treatment (TDS under Section 192, Form-16, PF/provisions where applicable) supports an employment relationship.

8.4 The Appellant's reliance on CBEC Circular No.115/9/2009-ST dated 31.07.2009 is well-founded as the Circular expressly clarifies that remuneration paid to whole-time directors for performance as directors is not chargeable to service tax as it falls within the employer-employee exclusion. The Adjudicating Authority should have considered and given his finding on the appellant's submission as to the compliance to the Circular. Failure to address the binding departmental instruction is material.

8.5 We find that the Appellant has relied upon several decisions which squarely support and are factually analogous as discussed below.

a) *Maithan Alloys Ltd. (2020 (33) GSTL 228 – Tri. Kolkata)*: held that remuneration/salary to whole-time director (with TDS u/s 192) is not a taxable service under RCM. The reasoning that the statutory income-tax treatment (TDS) is relevant to determine the nature of payment which is squarely applicable to the facts in this appeal.

b) *Allied Blenders & Distillers Pvt. Ltd. (2019 (24) GSTL 207 – Tri. Mumbai)*: Directors were on payroll, TDS/PF deducted, and the Tribunal held the same as salary and so not taxable.

c) *Rent Works India Pvt. Ltd. (2016 (43) S.T.R. 634 – Tri. Mumbai)*: where Income-tax records treated the payment as salary, the Service Tax demand could not be sustained as consultancy/management fees.

d) *Bhavna Jayantibhai Desai (2015 (37) S.T.R. 412 – Tri. Ahmedabad)*: A salaried director was held not to be a service provider.

e) *Lilanand Magnesites Pvt. Ltd. 2025(26) Centax 172 (Tri-Ahmd)*: Commission paid as part of whole-time director's remuneration is not taxable under RCM.

8.6 We also take note of the fact that this very Bench of the Tribunal has recently examined an identical question regarding taxability of remuneration paid to whole-time Directors in *M/s. Thriveni Earth Movers Pvt. Ltd. v. Commissioner of GST & Central Excise, Salem, 2025 (8) TMI 10 – CESTAT (Service Tax)* and in *M/s Dixcy Textiles Pvt. Ltd. v. Commissioner of C.Ex. & S.T., Salem, 2025 (5) TMI 316 – CESTAT (Service Tax)*. In both the decisions, after analysing Section 65B(44)(b), Notification No. 30/2012-ST, CBDT and CBEC clarifications, and the statutory treatment of remuneration under the Income Tax Act, this Tribunal held categorically that no service tax is leviable under reverse charge on remuneration/salary paid to Directors who function as employees of the company.

8.7 Thus, 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 Section 192 of the Income Tax Act, the employer and employee relationship gets established and the same is excluded from the purview of the service tax. We find that this issue has been discussed 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 has 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 also find that the 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 '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."

8.8 The factual matrix in the present appeal is not distinguishable from the above decisions: -

- (i) the Directors are whole-time, performing day-to-day operational, managerial and administrative functions;
- (ii) salary is fixed through AGM resolutions;
- (iii) TDS is deducted under Section 192 and Form-16 issued; and,
- (iv) payments are accounted under "Salaries & Wages" in audited financial statements; and (v) no sitting fee, commission or consultancy charges were ever paid.

8.9 We find that these records leave no doubt that the Directors were functioning strictly in the capacity of employees. The remuneration paid to them therefore falls squarely within the exclusion clause in Section 65B(44)(b), and consequently cannot be regarded as consideration for a taxable service.

8.10 In view of the case laws cited by the Appellant and the consistent line of decisions of this Bench itself, following *Maithan Alloys*, *Allied Blenders*, *Rent Works*, *Bhavna Desai*, *Lilanand Magnesites*, and now *Thriveni Earth Movers and Dixcy Textiles*, we are constrained to hold that the impugned demand confirmed under reverse charge on Directors' remuneration cannot be sustained. Accordingly, the issue is answered in favour of the Appellant.

9. Question No. 2 whether Notification 30/2012-ST (RCM) is attracted: -

9.1 The Appellant submitted that RCM applies only to a taxable service. If the payments are "salary" (excluded under Section 65B(44)(b)), there is no taxable service and therefore Notification No.30/2012-ST has no application. The Appellant relied upon the above Tribunal decisions and the CBEC circular to support this proposition.

9.2 But, the Revenue argued that Notification 30/2012-ST was correctly invoked because the Appellant received services from directors and is the recipient in terms of Rule 2(1)(d)(i)(EE), irrespective of the label attached by the assessee.

9.3 We reiterate that RCM is triggered only upon receipt of a taxable service. Since we have held *Supra* on Question No 1 that the payments were salary paid in the course of employment and not consideration for an independent service, there is no taxable service and consequently RCM cannot be invoked. The Revenue's reliance on the mechanical application of Notification 30/2012-ST without first establishing that a taxable service was rendered, is contrary to logic and the statutory exclusion in Section 65B(44)(b).

As such, the appeal is required to be allowed.

Based on our findings, we have already concluded on merits that the remuneration paid to the Directors constitutes "salary" under an employer-employee relationship and is therefore not exigible to service tax. Thus, the very foundation of the demand fails.

Based on our findings to the questions 1 & 2 framed by us, the issue is answered on merits in favour of the Appellant.

10. Consequently, the remaining questions framed by us *viz* namely, whether the Show Cause Notice and the impugned order suffer from violation of principles of natural justice, whether the extended period under Section 73 is invocable, and whether interest and penalties are sustainable are rendered academic and do not require adjudication. We therefore refrain from examining those issues.

11. Thus, the Appeal is allowed with consequential benefit(s) as per Law.

(Order pronounced in open court on 18.12.2025)

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)