

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

REGIONAL BENCH – COURT No. I

**Service Tax Appeal No. 41890 of 2017**

(Arising out of Order-in-Appeal No. 118/2017(CXA-I) dated 09.05.2017 passed by Commissioner of Central Excise (Appeals-I), No. 26/1, Mahatma Gadhi Marg, Nungambakkam, Chennai – 600 034)

**M/s. Faiveley Transport Rail Technologies (I) Ltd.**

**...Appellant**

P.B. No. 39, Harita,  
Hosur – 635 109.

***Versus***

**Commissioner of GST and Central Excise**

**...Respondent**

Salem Commissionerate,  
No. 1, Foulkes Compound,  
Anaimeedu,  
Salem – 636 001.

**APPEARANCE:**

For the Appellant : Mr. Karthick Sundaram, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

**CORAM:**

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

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

**FINAL ORDER No. 40536 / 2026**

DATE OF HEARING : 02.03.2026

DATE OF DECISION : 24.04.2026

**Per Mr. VASA SESHAGIRI RAO**

The present appeal is directed against Order-in-Appeal No. 118/2017(CXA-I) dated 09.05.2017 passed by the Commissioner (Appeals-I), whereby Order-in-Original No. 13/2016-ST dated 20.7.2016 confirming demand of service tax amounting to Rs. 16,36,718 along with interest

and equal penalty under the Finance Act, 1994 for the period 2010 -2011 to 2011-12 has been upheld.

1.2 M/s. Faiveley Transport Rail Technologies, Hosur (hereinafter referred to as "the Appellant") is engaged in manufacture and provision of services including maintenance and consultancy. During 2010-12, the Appellant rendered services to South Western Railway and also executed services as a sub-contractor under a contract involving its foreign affiliate in connection with the DAMEL project. Exemption under Notification No. 24/2009-ST was claimed for the domestic services, while the DAMEL-related services were claimed as export on the ground that invoices were raised in foreign currency and consideration was received in convertible foreign exchange. A Show Cause Notice dated 17.04.2015 proposed demand of service tax, along with interest and penalty, which was confirmed by Order-in-Original and partly allowed by the Commissioner (Appeals) vide Order-in-Appeal dated 09.05.2017 after due process of Law.

2. Aggrieved by the portion of the Order-in-Appeal adverse to them, the Appellant has filed the present appeal before this Tribunal.

3. The Ld. Advocate Mr. Karthick Sundaram appeared on behalf of the Appellant. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram appeared for the Revenue.

4. The Ld. Counsel for the Appellant submitted that: -

- i. the services rendered to South Western Railway are squarely covered under “management, maintenance or repair” of railways and are fully exempt under Notification No. 24/2009-ST as amended. It was argued that the agreements, invoices and scope of work clearly demonstrate that the services relate to maintenance of railway assets.
- ii. It was further contended that denial of exemption on procedural grounds such as invoice format or non-mention of registration number is unsustainable, relying on *Auro Laboratories Ltd. v. CCE [2016 (344) ELT 391 (Tri. -Chennai)]*, wherein it was held that substantive benefit cannot be denied for procedural lapses.
- iii. With respect to export of services, it was submitted that services provided to overseas entity were received in convertible foreign exchange and satisfy conditions under Export of Services Rules, 2005. Reliance was

placed on *Paul Merchants Ltd. v. CCE [2013 (29) STR 257 (Tri.-Del.)]* and *Vodafone Essar Cellular Ltd. v. CCE [2025 (33) Centax 152 (SC)]*.

- iv. On limitation, it is argued that all transactions were recorded in books and returns, and extended period cannot be invoked, relying on Cosmic Dye Chemical, Pushpam Pharmaceuticals, and Uniflex Cables Ltd.

5.1 The Ld. Authorized Representative submitted that the Appellant wrongly classified services and availed exemption. It was contended that invoices did not satisfy statutory requirements and the Appellant failed to produce quantification of exempted services.

5.2 It was further argued that services rendered include consultancy elements and therefore are not eligible for exemption. The Department relied on findings in OIO that services were classified under "Management Consultancy Service" and exemption was wrongly availed.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, and considered the statutory provisions and the case laws cited.

7. Upon consideration the following questions arise.
- i. Eligibility to Exemption under Notification No. 24/2009-ST and Taxability of Services Rendered under Different Contracts.
  - ii. Whether the demand is sustainable on limitation and penalty.

8. We now proceed to examine the issues arising for determination in the present appeal, one by one, seriatim.

**ISSUE NO. (i): Eligibility to Exemption under Notification No. 24/2009-ST and Taxability of Services Rendered under Different Contracts**

9.1 At the outset, the present issue pertains to the taxability of services rendered by the Appellant under two distinct contractual arrangements, namely (i) services provided to South Western Railway within India, and (ii) services rendered to a foreign principal under a sub-contracting arrangement in connection with a project relating to Delhi Airport Metro Express Ltd. (DAMEL). Both sets of transactions are required to be examined in the context of classification, exemption and export of services under the Finance Act, 1994 and the Export of Service Rules, 2005.

9.2 The first limb of the issue relates to services rendered to South Western Railway, which are evidenced by two invoices and the corresponding contractual documents placed on record. On careful perusal of these records, it is evident that the Appellant has undertaken activities such as maintenance, overhaul and testing of air dryers forming part of railway locomotives.

9.3 The nature of these activities is technical and execution-oriented, involving physical servicing and functional restoration of equipment that is integral to railway operations. These services cannot be categorized as advisory or consultancy in nature. The classification adopted by the Department under "Management Consultancy Service" is therefore contrary to the factual matrix.

9.4 The Hon'ble Supreme Court in *Bharat Sanchar Nigam Ltd. v. Union of India*, 2006 (2) S.T.R. 161 (S.C.), has held that classification of services must be determined based on the dominant nature of the transaction and not on incidental elements. Applying this principle, the dominant nature of the services rendered by the Appellant is clearly that of maintenance and repair of railway equipment.

9.5 Notification No. 24/2009-ST dated 27.07.2009, as amended by Notification No. 54/2010-ST dated 21.12.2010, grants exemption to services of "management, maintenance or repair" in relation to railways. In the present case, the services rendered by the Appellant directly relate to maintenance of railway locomotives and are therefore are squarely covered by the said notification. There is no dispute regarding the identity of the service recipient or the nature of the infrastructure. The denial of exemption by the lower authorities is thus unsustainable. Accordingly, we hold that the services rendered to South Western Railway are classifiable as "management, maintenance or repair" of railways and are fully exempt under Notification No. 24/2009-ST as amended. The demand on this portion is liable to be set aside.

9.6 The second limb of the issue pertains to services rendered by the Appellant to a foreign principal under a sub-contracting arrangement in connection with a project relating to Delhi Airport Metro Express Ltd. (DAMEL). The Appellant has contended that such services qualify as export of services on the ground that invoices are raised on the foreign entity and consideration is received in convertible foreign exchange.

9.7 From the records, it is evident that the primary contract was entered into between the foreign affiliate and DAMEL, and the Appellant executed part of the contractual obligations as a sub-contractor. The Appellant has raised invoices on the foreign entity in foreign currency and received consideration in convertible foreign exchange. There is no direct contractual relationship between the Appellant and DAMEL.

9.8 The determination of whether such services qualify as export must be examined in the light of Rule 3 of the Export of Service Rules, 2005, as applicable during the relevant period. The said rule provides that a service shall be treated as export if the recipient of service is located outside India and the consideration is received in convertible foreign exchange. The rule does not mandate that the place of performance or the location of ultimate consumption should be outside India.

9.9 In this context, CBEC Circular No. 111/05/2009-ST dated 24.02.2009 clarifies that services performed in India may still qualify as export if the benefit of such services accrues to a recipient located outside India. The said circular further emphasizes that the relevant factor is the location of

the service recipient and not the place where the service is performed.

9.10 This position has been reiterated in CBEC Circular No. 141/10/2011-TRU dated 13.05.2011, wherein it has been clarified that export status is to be determined based on the location of the recipient of service and not the place of performance.

9.11 The legal position is further settled by the Larger Bench of the Tribunal in *Paul Merchants Ltd. v. CCE, Chandigarh, 2013 (29) S.T.R. 257 (Tri.-LB)*, wherein it was held that the relevant test for determining export is the location of the service recipient and not the ultimate beneficiary. The Tribunal categorically held that services rendered to a foreign entity would qualify as export even if such services are used in India.

9.12 The Tribunal in *Gap International Sourcing (India) Pvt. Ltd. v. CST, Delhi, 2014 (35) S.T.R. 737 (Tri.-Del.)*, has held that services rendered to a foreign principal under a sub-contracting arrangement qualify as export of services when consideration is received in foreign exchange, even if the activities relate to operations in India.

9.13 A similar view has been taken in *Microsoft Corporation (I) Pvt. Ltd. v. CST, New Delhi, 2014 (36) S.T.R. 766 (Tri.-Del.)*, wherein it was held that services provided to a foreign entity on a principal-to-principal basis qualify as export, notwithstanding that certain activities are performed in India.

9.14 Applying the above statutory provisions, circulars and judicial precedents to the facts of the present case, it is evident that the Appellant has rendered services to its foreign principal under a sub-contracting arrangement and has received consideration in convertible foreign exchange. The Appellant has no privity of contract with DAMEL and has not received any consideration from any Indian entity.

9.15 The mere fact that the services ultimately relate to a project in India does not alter the nature of the transaction between the Appellant and its foreign principal. The test of export is satisfied when the service is provided to a recipient located outside India and payment is received in foreign exchange.

9.16 In the absence of any evidence to establish that the Appellant has directly rendered services to DAMEL, the contractual arrangement between the Appellant and the

foreign principal cannot be disregarded. The transaction must therefore be evaluated based on its true legal character, which is that of services rendered to a foreign principal under a sub-contracting arrangement.

9.17 In view of the above discussion and in light of the statutory provisions, binding circulars and judicial precedents, we hold that the services rendered by the Appellant to a foreign principal under a sub-contracting arrangement qualify as export of services under the Export of Service Rules, 2005 and are not liable to service tax.

9.18 The objection of the Department regarding deficiencies in invoices, absence of registration particulars and lack of standardized documentation has also been considered. In this regard, it is well settled that procedural lapses cannot defeat substantive benefit. The Hon'ble Supreme Court in *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, 1991 (55) E.L.T. 437 (S.C.)*, and the Tribunal in *Auro Laboratories Ltd. v. CCE, 2016 (344) E.L.T. 391 (Tri.-Chennai)*, have held that exemption cannot be denied on account of procedural infractions when the substantive conditions stand satisfied. In the present case, the nature of services, contractual arrangements and receipt

of consideration are not in dispute. Therefore, the denial of exemption on procedural grounds is unsustainable.

9.19 In view of the foregoing analysis, we hold that the services rendered to South Western Railway are exempt under Notification No. 24/2009-ST as amended and the services rendered to a foreign principal under a sub-contracting arrangement in connection with the DAMEL project qualify as export of services and are not liable to service tax.

Accordingly, the entire demand under Issue No. (i) is unsustainable on merits and is liable to be set aside.

**Issue No (ii): Limitation and Penalty**

10.1 The Show Cause Notice in the present case has been issued on 17.04.2015 seeking to demand service tax for the period 2010–12. It is thus evident that the demand has been raised beyond the normal period of limitation prescribed under Section 73(1) of the Finance Act, 1994 as it stood during the relevant period.

10.2 The Department has invoked the extended period of limitation under the proviso to Section 73(1) alleging suppression of facts, misstatement and intent to evade payment of service tax. It is therefore necessary to

examine whether the ingredients required for invoking the extended period are satisfied in the facts of the present case.

10.3 On perusal of the records, it is observed that the entire demand has arisen out of audit objections raised by the CERA audit. The transactions in question were duly recorded in the books of accounts of the Appellant and were also reflected in statutory returns ST-3 filed with the Department. There is no allegation, much less evidence, that the Appellant had concealed any material facts or had made any wilful misstatement with intent to evade payment of service tax.

10.4 It is further observed that the dispute essentially pertains to classification of services, eligibility of exemption under Notification No. 24/2009-ST as amended, and applicability of export of services provisions. These issues are interpretational in nature involving understanding of statutory provisions, notifications and contractual arrangements. It is well settled that in cases involving interpretation of law, the extended period of limitation cannot be invoked.

10.5 The Hon'ble Supreme Court in *Cosmic Dye Chemical v. CCE* [1995 (75) E.L.T. 721 (S.C.)] has held that

mere failure to pay duty is not suppression of facts unless there is deliberate intent to evade. Similarly, in *Pushpam Pharmaceuticals Co. v. CCE* [1995 (78) E.L.T. 401 (S.C.)], it was held that suppression must be wilful and with intent to evade duty. Further, in *Uniflex Cables Ltd. v. CCE* [2011 (271) E.L.T. 321 (S.C.)], the Apex Court held that where the issue is interpretational and all facts are known to the Department, extended period is not invocable.

10.6 In the present case, the fact that the demand has arisen from audit scrutiny itself indicates that the relevant information was available with the Department. There is no positive act on the part of the Appellant indicating suppression or intent to evade payment of tax. Therefore, the essential ingredients for invoking the extended period are absent.

10.7 In view of the above, the invocation of extended period of limitation is not sustainable and the demand is liable to be set aside on the grounds of limitation alone.

10.8 Consequently, the penalty imposed under Section 78 of the Finance Act, 1994 also cannot be sustained, as the same requires the existence of fraud, suppression or wilful misstatement with intent to evade

payment of tax. In the absence of such ingredients, penalty is not imposable, as held by the Hon'ble Supreme Court in *Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)]*.

10.9 The demand raised in the Show Cause Notice dated 17.04.2015 for the period 2010-12 is barred by limitation and is therefore unsustainable. Consequently, the penalty imposed under Section 78 of the Finance Act, 1994 is also liable to be set aside.

11.1 In view of the detailed findings recorded hereinabove on the issues framed for determination, we hold that the demand raised in the Show Cause Notice dated 17.04.2015 for the period 2010-12 is unsustainable both on merits as well as on limitation. The invocation of extended period is not justified, and the demand is barred by limitation.

11.2 On merits, it is held that the services rendered to South Western Railway are exempt under Notification No. 24/2009-ST as amended. In respect of services rendered under the DAMEL contract, the same qualify as export of services as held under Issue No. (i) and are not liable to service tax.

11.3 Accordingly, the impugned Order-in-Appeal dated 09.05.2017 and the Order-in-Original are set aside.

12. The appeal is allowed, with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 24.04.2026)

Sd/-  
**(AJAYAN T.V.)**  
MEMBER (JUDICIAL)

MK

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