

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No.40056 of 2017

(Arising out of Order in Appeal No.CMB-CEX-000-APP-228-16, dated 04.10.2016 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals – II), 6/7 A.T.D. Street, Race Course Road, Coimbatore 641 018)

Lingeswara Creation

S.F.No.244, Muthanampalayam
Kangeyam Main Road, Vijayapuram Post
Nallur, Tripur 641 606

...Appellant

Versus

Commissioner of Central Excise and Service Tax

Coimbatore Commissionerate
No.6/7, ATD Street
Race Course Road
Coimbatore 641 018

...Respondent

APPEARANCE:

Mr. J.V. Niranjana, Advocate for the Appellant
Ms. J. Aparna, Advocate for the Appellant
Ms. G. Krupa, 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.40564/2026

DATE OF HEARING:23.01.2026
DATE OF DECISION :05.05.2026

Per Mr. AJAYAN T.V.

Lingeswara Creation, the Appellant herein has preferred this appeal against the Order in Appeal No. CMB-CEX-000-APP-228-16, dated 04.10.2016.

2. The relevant facts of the case are that the Appellant is a manufacturer and exporter of knitted garments. On verification of the records of the Appellant, it was noticed that in respect of the exports made, the Appellant was receiving the export sales proceeds in its Indian Bank

account to which it was transferred by the foreign banks situated abroad. These foreign banks deducted their specified charges from the sales proceeds due to the Appellant and transferred the balance amount to the Appellant's Indian Bank account. It appeared to the department that such amounts deducted was the consideration paid by the Appellant for the services rendered by the foreign bank while transferring the export proceeds. The department therefore issued a Show Cause Notice dated 17.04.2015 (SCN) alleging that the Appellant has failed to pay service tax on the taxable service of "Banking and other financial Services" by the Appellant from a non-taxable territory, as envisaged under reverse charge mechanism in terms of Section 66A read with the provisions of Rule 3 (iii) of erstwhile Taxation of Services (Provided from Outside India and received in India), Rules 2006. The notice invoked the extended period of limitation under *proviso* to Section 73 (1) alleging that the Appellant had failed to discharge the service tax liability, and had not taken registration and also has failed to file the ST-3 returns. After due process of law, the Adjudicating Authority confirmed the demand along with appropriate interest, imposed an equivalent penalty under Section 78 and penalties under Section 77 (1) (a) and Section 77 (2) of the Act. Aggrieved, the Appellant preferred an appeal before the Commissioner (Appeals -I), Coimbatore. However, the Appellate Authority vide the impugned order rejected the appeal and upheld the order passed by the Adjudicating Authority. Hence this appeal.

3. Shri J V Niranjan, along with Ms. J. Aparna, Ld. Advocates appeared on behalf of the Appellant. Ld. Counsel after arguing at the bar summarised his contentions in writing and inter-alia, submitted that the matter is no longer res integra as this Tribunal in ***M/s. SKM Egg Products export (India) Ltd v. Commissioner of GST & Central Excise, 2025 (6)TMI 184-CESTAT CHENNAI*** held that this matter is no longer res integra and that service tax under reverse charge on foreign bank charges deducted from export proceeds is payable only by the actual service recipient, which is the Indian Bank for collection and remittance, following prior rulings.

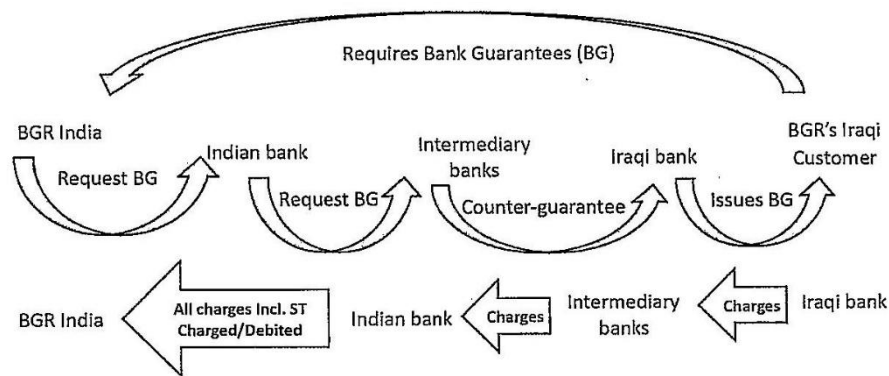
4. Ms. G. Krupa, Ld. Authorised Representative for the Respondent reiterated the findings of the Appellate Authority and placed reliance on the decisions in ***State Bank of Bikaner & Jaipur v CCE & ST, Alwar, 2021 (45) GSTL 293 (Tri-Del)*** and ***BGR Energy Systems Ltd. v Addl. Commr of GST & C.Ex, 2020 (32) GSTL 186 (Mad)***. Ld. A.R. took us through the decision of the Jurisdictional High Court wherein the Ld. Single Judge after the discussions pertaining to the furnishing of a bank guarantee by the bank in Iraq to the supplier of the petitioner, went on to render a finding that the petitioner therein was the recipient of the service of furnishing of bank guarantee.
5. The Ld. Counsel in his rejoinder in writing, inter-alia, submitting that during the period from October 2009 to March 2014, while repatriating the export proceeds, the remitting bank of the Appellants foreign customer deducted certain charges as per its terms, before transferring its funds to the Appellants nominated Indian Bank, which is the collecting banker under the export contract and documentation. The Indian Bank upon receiving the remittance net of the foreign bank's charges, further deducted its own collection charges and credited the balance to the Appellants account. Ld. Counsel submits that while there is no dispute that the Indian bank has already discharged service tax on the commission retained by it, in this case the service tax demand pertains solely to the commission retained by the foreign bank.
6. Ld. Counsel argues that remittance of export proceeds is a 'transaction in money expressly excluded from the definition of 'service' under Section 65B(44)(a)(iii) of the Finance Act, 1994. As affirmed in ***Vodafone India Ltd. v. Commissioner, 2015 (39) STR 145 (Bom)*** and clarified via CBIC Circular No. 163/14/2012-ST, the mere transmission of funds lacks the 'activity for consideration' required for a levy. This principle is no longer *res integra*, having been settled in Paul Merchants Ltd, ***2013 (29) STR 257 (Tri-Del)***, which held that such financial movements do not constitute a taxable service in the hands of the Indian exporter.
7. It is further contended that there is no privity of contract between the Appellant and the foreign remitting bank. The foreign bank acted on

instructions from the foreign buyer to fulfil the buyer's obligation to remit payment. The service provider (Foreign Bank) and the service recipient (Foreign Buyer) are both located outside India. Per Section 68(2), RCM liability only triggers for the "recipient" of the service. Since the Appellant did not engage the foreign bank, it cannot be deemed the service recipient. This principle is settled in ***Paul Merchants Ltd. v. Commissioner, 2013 (29) STR. 257 (Tri. - Del.)***

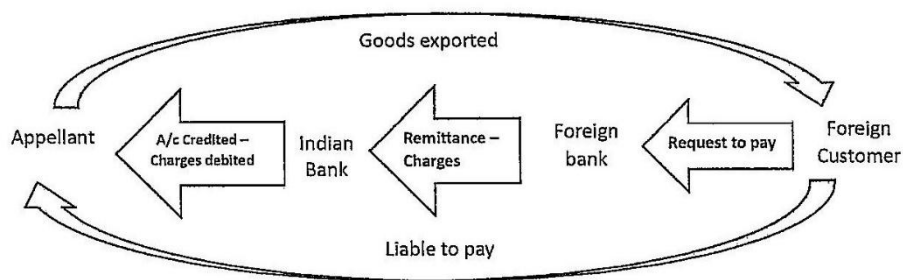
8. It is further argued that per Place of Provision of Services Rules, 2012, read with the 2012 Circular *supra*, any fees charged by the remitting bank is not liable to service tax as the provider and the activity is located outside India.
9. It is further submitted that the decisions in BGR Energy Systems relied on by the Respondent was the subject matter of the subsequent Writ Appeal, reported in 2020 ***(12) TMI 151 -Madras High Court.*** Furnishing the decision, it is pointed out that the Hon'ble Division Bench observed that the matter in BGR involved mixed questions of fact and law, lacking jurisdiction for writ proceedings. It held that BGR ought to have exhausted statutory appellate remedies and allowed withdrawal of the writ petition with liberty to pursue appeals. The Bench directed appellate authorities to decide on merits uninfluenced by the Single Judge's observations, rendering the relied upon BGR infructuous and that therefore no ratio survives that can be relied upon.
10. Ld. Counsel further argued that notwithstanding that BGR stands vacated *supra*, the Appellant's case is differentiated from BGR Energy Systems 2019 (11) TMI 1130 since the facts in BGR was that BGR must contractually provide "bank and performance guarantees" to its Iraqi customer via an Iraqi bank. Lacking direct means, BGR's Indian bank engages intermediaries JP Morgan, Singapore and Credit Agricole Bank, Paris who collaborate with the Trade Bank of Iraq (TBI) in Baghdad, the customer's banker. At the Indian bank's request, the intermediaries issue counter-guarantees to TBI, which in turn issues the final guarantees to the customer. The Indian bank debits BGR's account for facilitation, collects service tax (remitted to the government), and passes on charges from the intermediaries and TBI. The department

contends that these services from the Iraqi bank and intermediaries to BGR create service tax liability.

The above transaction is pictorially represented as below:



In contrast, the Appellant's case is as below:



- 11. It was reiterated that, even if a taxable service were to be inferred, which is denied for reasons stated *supra*, the liability would rest with the Indian bank as the entity receiving the "remittance service" from the foreign intermediary. This is settled law in **2025 (6) TMI 184**, wherein this Hon'ble Tribunal held that an exporter cannot be burdened with tax for services received by their bankers.
- 12. It was therefore submitted that in light of the statutory exclusion for "transactions in money" and the neutralization of the BGR Energy precedent, the impugned order is contrary to law and merits being set aside with consequential relief.
- 13. We have heard the rival submissions and perused the material available on record.
- 14. The only issue that arises for our determination is whether the amounts deducted by foreign banks towards bank charges on export proceeds while transferring the same to the Appellant's Indian Bank account are

exigible to service tax at the hands of the Appellant by virtue of Section 66A read with the provisions of the erstwhile Taxation of Services (Provided from Outside and Received in India) Rules, 2006, under reverse charge mechanism.

15. We find from the records that the SCN issued merely alleges "*It appears that various banks stationed abroad deduct their specified charges from the sale proceeds of the exports effected by M/s. Lingeswara for transferring the foreign exchange to the account of M/s. Lingeswara, maintained in India. Such amount deducted appear to be the consideration paid by them for the services rendered by the foreign banks while transferring the export proceeds. Therefore, it appears that the foreign banks have been providing taxable service to M/s. Lingeswara, located in India the taxable territory, for which M/s. Lingeswara as service recipient is liable to discharge service tax liabilities under reverse charge mechanism...*". Thus, it is evident that the SCN is premised on a mere assumption without any evidence that there did exist a service provider and a service receiver relationship between the appellant and the foreign banks, either by way of an agreement between the appellant or the said banks or any invoice/bill raised by the said banks on the appellant. This bench of the Tribunal, in its decision in ***M/s. Adayar Gate Hotel Ltd v. Commissioner of GST & Central Excise, 2026 (4) TMI 1081- CESTAT CHENNAI***, had held that "*It is settled that in order to render a transaction liable to service tax, the nexus between the activity of service undertaken and the consideration therefore agreed to, has to be identified. It has to be established that a specified consideration has been agreed upon which has to be paid by the service recipient as quid pro quo for the service provider providing any service, and such payment of consideration cannot be assumed. It therefore becomes necessary not only to identify the taxable service as such in accordance with the definitions under the Act, but also to identify as to what was the mutually agreed upon consideration, its nature and quantum, and to also evidence its payment and receipt.*" A similar view is seen taken by a coordinate bench of this Tribunal in the decision in the case of ***Ms/. Intellect Design Arena Ltd v. Commissioner of GST and Central Excise, by***

Final Order No.41468/2025 dated 15.12.2025 wherein it has been held as under:

“7.4 Further Section 65B (44) requires:(a) an Activity; (b) by one person for another;(c) for consideration.

In the present case, none of the Agreements create an activity performed “for” the Appellant. The Department has not produced a single document evidencing any service obligation owed by the Licensee to the Appellant.

Thus, the first and foundational requirement of a taxable service is absent.”

16. It is equally settled that demand cannot be based on assumptions and presumptions. The decisions in ***CCE & ST Pune III v. Intermedia Cable Communication Pvt Ltd, 2016 (41) STR 187 (Tri-Mumbai), A.G. Engineers v CCE, Ghaziabad, 2012 (25) STR 52 (Tri-Del)*** and ***Indus Motor Company v. CCE, Cochin, 2008 (9) STR 18 (Tri-Bang)*** refer for the said principle. Thus, in the absence of the foundational requirement of establishing the rendering of a taxable service to the appellant by the foreign banks, the demand is unsustainable on this count alone.

17. We also find merits in the contention of the Appellant that there is no privity of contract between the Appellant and the foreign remitting bank. Nothing has been brought on record to evidence that the foreign bank has acted on the Appellant’s instructions so as to treat the Appellant as the recipient of service in India and consequently to attract the provisions of Section 66A read with read with the provisions of the erstwhile Taxation of Services (Provided from Outside and Received in India) Rules, 2006, so as to make the appellant liable to pay service tax under reverse charge mechanism. Further, we find that a coordinate bench of this Tribunal, on the same issue, has in its decision in ***M/s. SKM Egg Products export (India) Ltd v. Commissioner of GST & Central Excise, 2025 (6)TMI 184-CESTAT CHENNAI***, has held as under:

5. Heard both sides and perused the records of the case. We find that this Tribunal has decided the very same issue in favour of the appellants in their own case vide Final Order No. 40223/2023 dated 31.3.2023 on a Show Cause Notice issued to the appellants covering the period 2006 – 2007 and vide Final Order No. 40113/2025 dated 21.1.2025 on a Show

Cause Notice issued to the appellants covering the period July 2012 to March 2013. We find that the present proceedings are for the period from 1.4.2013 to 30.9.2013. We find that this Bench vide Final Order No. 40223/2023 dated 31.3.2023 has held as under:-

"5.1 The main issue involved in this case is whether the amount which was deducted by the Foreign bank towards the bank charges are taxable under the service "Banking and other Financial Service" for the period 2006-2007 to 2010-2011? The other issues involved are whether invocation of extended period and imposition of penalties are sustainable in the facts of the case?

5.2 We find that the appellants have submitted the documents for realization of export sale proceeds to their bank namely SBI, which in turn has used the services of the foreign bank for collection of export sale proceeds. Obviously, the foreign banks who have rendered their services, have deducted their charges while remitting the export sale proceeds to SBI. The appellant has never dealt with the foreign bank on his own and the Banking and Other Financial Service if at all was rendered only to SBI. Amount charged by the foreign bank while remitting export sale proceeds, whether can be subjected to service tax or not has been decided by the CESTAT Principal Bench, New Delhi in the case of Theme Exports Pvt. Ltd. v. CST, Delhi (supra), by relying on the ratio laid down by the Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. v. CCE, Jaipur (supra), where the Tribunal held as under:-

4. We find that the issue arising out of present dispute is no more res integra, in view of the decision of this Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. v. CCE, Jaipur -2017 (10) TMI 1231-CESTAT, New Delhi. The relevant paragraph in the said decision is extracted herein below:-

"4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up before the Tribunal in the case of Greenply Industries Ltd. v. CCE, Jaipur (Final Order No. 50149/2014 dated 3-1-2014) where it was observed that-

"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged under Section 66A read with Rule 2 (1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order in appeal dated 12.11.08 has set aside that order and as per the appellant's counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed"."

5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."

6. In view of the above, we find that the impugned order cannot be sustained. Hence, we set aside the same and allow the appeal with consequential benefits, if any, as per law."

18. We find no reason to differ from the view taken as noticed above. Therefore, we hold that there arises no liability to service tax on the Appellant on this front. The decision in *State Bank of Bikaner & Jaipur v CCE & ST, Alwar*, relied upon by the Ld. A.R. was a case wherein the Appellant bank was disputing the levy of service tax on it. The said case would not come to the aid of the Department in support of its contention that the Appellant is exigible to tax, as it is thus clearly distinguishable from the facts of the Appellant's case herein, the facts pertaining to which have been elaborated supra. Likewise, the reliance placed on the Judgement in *BGR Energy Systems Ltd. v Addl. Commr of GST & C.Ex, 2020 (32) GSTL 186 (Mad)* by the Ld. A.R. is inapposite, in light of the order rendered in Writ Appeal reported in *2020 (12) TMI 151-Madras High Court*, and has been rightly distinguished by the Ld. Advocate as elaborated above, as has been noticed by us supra.

19. In light of our aforesaid reasons, respectfully following the decision of the coordinate bench noticed above, we set aside the impugned order.

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

(Order pronounced in open court on 05.05.2026)

AJAYAN T.V.)
MEMBER (JUDICIAL)
ra

(M. AJIT KUMAR)
MEMBER (TECHNICAL)