

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 53350 OF 2018

[Arising out of Order-in-Appeal No.295(CKJ)ST/UDR/2018 dated 15.06.2018/29.06.2018 passed by the Commissioner (Appeals), Central Excise and CGST, Udaipur (Raj.)]

M/s.PSV Polymers Pvt Ltd.

....Appellant

Plot No.E-156, Mandore Industrial Area,
Distt.-Jodhpur (Rajasthan).

Vs.

**Commissioner of Central GST and
Central Excise, Jodhpur
G-105, New Jodhpur Industrial Area,
Jodhpur(Rajasthan).**

....Respondent

Appearance:

Present for the Appellant :Shri Om P.Agarwal, Advocate

Present for the Appellant : Shri Aejaz Ahmad, Authorised Representative

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Final Order No. 50820/2025

Date of Hearing : 01/05/2025

Date of Decision: 03/06/2025

BINU TAMTA:

1. Challenge in the present appeal is to the Order-in-Appeal No. 295(CKJ)ST/UDR/2018 dated 15.06.2018/29.06.2018 conforming the demand of service tax along with interest and penalty under the provision of the Finance Act, 1994.

2. Briefly stated, the appellant is engaged in manufacturing the gaur gum powder for export and were availing CENVET credit duty and taxes paid on inputs, Capital goods and inputs services. During audit of

the records, it was noticed that the appellant had availed the services of the agent/intermediary for getting the export orders and for which they had remitted an amount of Rs 75,43,666 to the agents located outside India during the period from April, 2010 to September, 2014 and in terms of Section 66(A) of the Act, they were liable to deposit service tax under the Reverse Charge Mechanism, which they failed to pay. It was also noticed that the appellant had taken a go-down on rent from the Director of the company and paid Rs.5,32,000 towards rent for the period July, 2010 to August, 2015. In terms of Notification No.30/2012-ST dated 20.06.2012, as amended vide Notification No. 45/2012 dated 07.08.2012, the appellant was required to pay service tax of Rs.66,444/- on the said amount of rent under Reverse Charge Mechanism. Show cause notice dated 21.10.2015 was issued to the appellant proposing demand of Rs.9,98,841 under Section 73(1) of the Act invoking the extended period of limitation along with interest and penalty. The Adjudicating Authority vide order dated 23.01.2017 confirmed the entire demand. The Commissioner (Appeals) by the impugned order upheld the demand of service tax amounting to Rs. 99,07,111/- along with interest and penalty of Rs.50,71,88/- under Section 78 of Act and set aside penalty imposed under Section 77 of the Act. Being aggrieved, the appellant has preferred the instant appeal.

3. Heard Shri O.P. Agarwal, Advocate for the appellant and Shri Aejaz Ahmad, Authorised Representative for the Revenue.

4. Shri O.P.Agarwal, learned counsel for the appellant submitted that the demand of service tax on the commission paid to a foreign agent for booking of export orders is not sustainable on the principle of 'revenue neutrality' as the appellant was entitled to avail Cenvat credit of tax so demanded. He submitted that tax was refundable under Rule 5 of the Cenvat Credit Rules, 2004 (as a cenvat credit accumulated due to export) and also under Rule 18 of the Central Excise Rules, 2002 (as input or as a output rules of tax due to export) as the commission was related to export of goods. The tax so demanded was also refundable under notification no.41/2007-ST dated 7.10.2007. On the second issue of demand on rent paid on godowns to the Director of the company was also argued to be legally not sustainable as the godowns were rented out by the Director in his individual capacity and not as Director of the Company. The learned counsel also challenged the invocation of the extended period of limitation on the ground that the entire transactions were duly recorded in the books of accounts and entire payments were made through banking channels. According to him, it is merely a case of non-payment of tax under bona fide belief.

5. The learned Authorised Representative for the Revenue has reiterated the findings of the authority below and submitted that :-

- The appellant had availed the services of the foreign commission agents for export of the goods during April 2010 to sept.2014 and had remitted Rs. 75,43,666/- to their foreign commission agent or booking of the export orders during the period. The revenue has demanded service tax of Rs. 9,32,397/- on these services as the availing of services of foreign commission agents for booking of export order and payment of commission on the

export sales, on the FOB value of orders procured, is a taxable services and is covered under business auxiliary services as defined under Section 65(19) of finance Act, 1994 upto 30.06.2012 and thereafter it falls under the category of services defined under Section 65(44) of The Finance Act 1994.

- As per the provision of Taxation of Services (provided in India) Rules, 2006, the service is to be considered as imported and is taxable in the hands of the appellant was liable to pay service tax under reverse charge mechanism in terms of provisions of Section 68(2) Finance Act 1994. Similarly for the period from 01.07.2012, as per rule 3 of Place of Provision of Services Rules, 2012, the place of provision of a service shall be the location of the recipient of service. Thus, in both the periods i.e. prior to 01.07.2012, service tax on the services which have been received by the appellant from the persons located abroad, the place of service is the location of the appellant and therefore, the appellant is liable to pay service tax on these services under the provisions of Sections 68(2) of the Act.
- The appellant has taken a Godown under rent from one of the Directors of the company under 'Rental of Immovable Property Services' and are paying rent to the Director. After issuance of Notification No. 45/2012-ST dated 07.08.2012 the company was responsible for payment of service tax on any taxable services provided by its director to the company. The assessee, being a body corporate, is required to pay Service Tax on the 100% value of the rent paid to the Director under Reverse Charge Mechanism.

6. From the submission of the parties, the issue involved in the present appeal is whether the commission paid to the foreign agents and the rent paid to the Director of the company is liable to service tax under Reverse Charge Mechanism when the entire exercise is revenue neutral, in view of availability of Cenvat credit and also whether the extended period is invocable when the entire exercise is revenue neutral due to availability of Cenvat Credit. We find that the issues raised are no more *res integra* and has been decided by this Tribunal and also by the Apex Court. Reliance placed by the learned

counsel on the decision in **Texyard International Vs. CCE** ¹, where the issue related to the demand of service tax under reverse charge on the commission paid to the Overseas agents for export of finished goods. The Tribunal took the view that the service tax, if any, payable under reverse charge is permissible to be availed as Cenvat credit and that may be refundable under Notification No.41/2007. Further, relying on the decision in **CCE Vs. Coca Cola India Pvt. Ltd.** ², where the Apex Court accepted the submission of the learned counsel for the assessee that the consequences of payment of excise duty after availing Modvat credit was revenue neutral, the demand of service tax under reverse charge was set aside on the principle of revenue neutrality. Following the said decision of the Tribunal, the Single Member in **M/s. Satyam Enterprises**³ observed that whatever service tax is paid by the appellant, the same is refundable in terms of notification no.41/200 and, therefore, the appellant is entitled to refund claim. It was accordingly held that it is a situation of revenue neutrality and service tax cannot be demanded from the appellant. In view of the consistent stand taken by the Tribunal, we find that the demand of service tax on the amount of commission paid to the foreign agents for booking of export orders is not maintainable on the principle of revenue neutrality as in the event of charging service tax, the appellant would be entitled to Cenvat credit. Therefore, the demand on this account is not maintainable.

¹ 2015(40) STR 322 (Trib.)

² 2007 (213) ELT 490 (SC)

³ Final Order No.56255/2017 dated 21.08.2017

7. On the issue of rent paid on godowns to the Director of the Company, we find the Tribunal in the case of **Cords Cable Industries Ltd. Vs. CCE, Jaipur**⁴ have decided the said issue in favour of the appellants observing that the Directors provided the service of renting of immovable property in their individual capacity as owners of the premises and not as the Directors of the appellant. Hence in such a situation, it was held that the appellant could not have asked to pay service tax on reverse charge mechanism. Similar view was taken by the learned Single Member of the Tribunal in the case of **Varaha Infra Ltd. Vs. C, CGST, Jodhpur**⁵, where the appellant had not paid the service tax under reverse charge mechanism on renting of immovable property in respect of rent charges paid to its Directors. The Bench accepted the plea of the appellant that on payment of service tax on the rent, the appellant was entitled to Cenvat credit of the same and, therefore, the situation is wholly revenue neutral. On this ground itself, the demand was set aside. Following the said decisions, we hold that no service tax is leviable on the rental amount paid to the Director of the Company, as the same was paid to him in his individual capacity as the owner of the godown. The demand on this account is accordingly set aside.

8. Since we have decided the issue on merits in favour of the appellant with regard to the demand of service tax on both the counts, it is not necessary to go into the issue of limitation for invoking the extended period, although this Tribunal has held that in case of

⁴ Final Order No.50456/2023 dated 12.04.2023

⁵ 2023 (3) Centax 69 (Tribunal-Delhi)

revenue neutrality, the extended period of limitation cannot be invoked.

9. We do not find any merits in the impugned order and hence, the same is hereby set aside. The appeal is, accordingly, allowed.

[Order pronounced on 3rd June, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.