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

SERVICE TAX APPEAL NO. 52302 OF 2022

[Arising out of Order in Original No. 24/AK/COMMR./CGST/DSC/2022-23 dated 26.08.2022 passed by the Principal Commissioner of Central Goods and Service Tax, Delhi South]

M/S PRO-INTERACTIVE SERVICES INDIA PVT LTD. **APPELLANT**

31-32, Begumpur Shivalik
Malviya Nagar, New Delhi-110017

Vs.

PRINCIPAL COMMISSIONER, CGST-NEW DELHI **RESPONDENT**

Central GST Commissioenrate
Plot No. 2-B, 3rd Floor, EIL Annexe
Bhikaji Cama Place, New Delhi
110066

Appearance:

Present for the Appellant : Shri A.K.Batra and Ms. Sakshi Khanna, Chartered Accountants
Present for the Respondent: Shri Manoj Kumar, Authorised Representative

CORAM:
HON'BLE MR. P DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51263 /2025

DATE OF HEARING : 01/09/2025
DATE OF DECISION : 04/09/2025

P. ANJANI KUMAR

1. The appellant, M/s Pro-Interactive Services India Pvt Ltd is engaged in providing taxable services under the category of "security/ detective agency services" and manpower recruitment/ supply agency services and construction services. On the basis of an investigation conducted against the appellant revenue formed an opinion that the appellants were availing exemption on account of the services provided to foreign embassies, personal and were claiming the exemption without fulfilling the conditions

contained therein. A show cause notice dated September 04, 2019 were issued to the appellant demanding service tax of Rs. 3,75,95,778/- along with interest and penalty. The Commissioner of Central Goods and Services Tax, Delhi South Commissionerate vide order dated 26.08.2022 confirmed the duty with interest while imposing equal penalty under section 78 of the Finance Act, 1994 and penalty of Rs. 5,000/- under section 77 ibid. Hence this appeal.

2. Shri A.K. Batra, learned Chartered Accountant assisted by Ms. Sakshi Khanna, appearing for the appellant submits that the main allegation of the revenue is that the appellants have not followed the conditions prescribed under clauses (v) and (vi) of the Exemption Notification No. 27/2012-ST dated 20.06.2012. He submits that the appellant duly raised the invoices against the different embassies and payments were received through proper banking channels; the fact of provision of services to various embassies is established by the certificates issued by the respective embassies. He further submits that the impugned show cause notice is issued without conducting the Pre-show cause notice consultation as directed by the CBIC vide Master Circular 1053/2017-C.EX. dated 10.03.2017. He relies on the **IT Solutions Pvt Ltd. vs. Union of India & Others [MANU/DE/0696/2021/Delhi High Court]; Hitachi Power Europe GMBH vs. CBI and C.[02.04.2019-MADHC) MANU/TN/4412/2019** and submits that a show cause notice issued in violation of the instruction of CBIC on pre-consultation is *ab initio* void and non-est.

3. Learned counsel further submits that the department erred in denying the benefit of the notification no. 27.2012-ST dated June 20, 2012 on the basis of minor discrepancies observed in the invoices issued by the appellant; the conditions prescribed under the said Notification are procedural in nature; substantive benefit of the exemption cannot be denied merely on account of procedural lapses or on technical infirmities; non mentioning of the date of undertaking or Sr. No. of the invoices is but a minor valuation. Learned counsel takes us through the certificates issued by various embassies and submits that though the impugned order submits that the certificates issued by the embassy of Japan was provided by the embassy on December 10, 2019 and was submitted to the adjudicating authority; However, the adjudicating authority confirmed the demand on that count also. He submits that it was held in the following cases that substantive benefit cannot be denied for procedural violations.

- SOTC Travels Services Pvt Ltd. 2021 (55) GSTL 332 (TR-Del);
- Mangalore Chemicals & Fertilizers Limited [1991 (55)ELT 437 (SC)];
- National Engg. Industries Ltd. vs. CCE, Jaipur [1996 (16) RLT 770 (CEGAT-NB);
- State of Andhra Pradesh vs. Hyderabad Asbestos Cement Production Ltd. [1994 (4) TMI 302-Supreme Court;
- M/s Roxy Agencies vs. The appellate Deputy Commissioner (CT) [2020 (12) TMI 512-Telangana High Court];
- A.B.B Ltd., (formerly known as Asea Brown Boveri Ltd.) vs. The Commissioner Tax Officer, The Appellate Assistant Commissioner (CT) III, Sales

Tax Appellate Tribunal [2020 (2)TMI 1191-Madras High Court. He further submits that cum-tax benefit was not allowed to the appellants and interest and penalty cannot be imposed. Even if the penalty is to be confirmed, he should be restricted to 50%.

4. Learned counsel fairly submits that they are not contesting the demand of service tax on services rendered to embassies of Georgia, Philippines, China, Gabon and High Commission of Sri Lanka and Bill and Melinda Gate foundation, who have not issued any certificates; He submits that service Tax of Rs 3,46,210 is payable by them. He further submits that the show cause notice and the Order in Original acknowledged that in respect of some embassies, certificates have been placed on record; however, entire duty demanded has been confirmed without considering the available certificates. He further submits that cum-duty benefit was not given. He submits also that the issue being interpretational in nature, all the transactions are recorded in the books of accounts and ST-3 returns have been filed by the appellant. Therefore, no *mala fide* intention can be attributed to the appellants and extended period cannot be invoked.

5. Shri Manoj Kumar, learned authorized representative appearing for the department reiterates the findings of the OIO and submits that the adjudicating authority rightly held that the conditions of the Notification No. 27/2012 are not fulfilled; in terms of the Notification the Exemption services in respect of the services provided to foreign missions is available subject to production of duly authenticated exemption certificates issued by Protocol division of Ministry of External Affairs; the Adjudicating

Authority has clearly mentioned that during the personal hearing the appellant submitted certificates in respect of 21 embassies, out of 29 embassies, the certificates were issued after the issue of show cause notice in many cases; the appellant has not submitted invoice/ bills / challans bearing Sr. No., date of undertaking and Unique Identification No. (UIN).

6. Learned authorized representative relies on Commissioner of Cus. (Import), Mumbai vs. Dilip Kumar & Company [2018 (361) ELT 577 (SC)] and Inox Wind Ltd. vs. Commissioner of Service Tax, Noida [2020 (35) GSTL 123 (Tri.-All.)].

7. Heard both sides and perused the records of the case. We find that Notification No. 27/2012 exempts taxable services provided by any person, for the official use of a foreign diplomatic of Consular Post in India or for personal use or for the use of the family members of diplomatic agents or carrier consular officers who stood therein from whom whole of the service tax leviable under section 66 B of the said Act subject to the conditions that are specified therein the conditions are as follows:

> "(i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from service tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;
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> (ii) that in case of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the Protocol Division of the Ministry of External Affairs or the Protocol Department of the State concerned issues to each of such diplomatic agent or career consular officer an identification card bearing unique identification number and containing a photograph and name of such diplomatic agent or career consular officer and the name of the foreign diplomatic mission or consular post in India, where he is posted;
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> (iii) that the head of the foreign diplomatic mission or consular post, or any person of such mission or post authorised by him,

shall furnish to the provider of taxable service, a copy of such certificate duly authenticated by him or the authorised person, alongwith an undertaking in original, signed by him or the authorised person, bearing running serial number commencing from a financial year and stating that the services received are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of his/her family mentioning the unique identification number as appearing in the identification card issued to them and stating that the services received are for personal use of the said diplomatic agent or career consular officer or members of his/her family;

(iv) that the head of the foreign diplomatic mission or consular post or the authorized person shall maintain an account of the undertakings issued during a financial year and the account shall contain;-

(a) the serial number and date of issue of the undertakings;
(b) in case of personal use of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the name, designation and unique identification number of the diplomatic agent or career consular officer in favour of whom the undertaking has been issued;
(c) the name and the registration number of the provider of taxable service; and
(d) the description of taxable service and invoice number.

(v) The invoice or bill, or as the case may be, the challan issued under the provisions contained in rule 4A of the Service Tax Rules, 1994, shall, in addition to the information required to be furnished under the said rule, contain the serial number and the date of the undertaking furnished by the said head of foreign diplomatic mission or consular post or in case of diplomatic agents or career consular officers posted in such foreign diplomatic mission or consular post in India, the unique identification number of the diplomatic agent or career consular officer, as the case may be; and

(vi) that the provider of taxable service shall retain the documents referred to in the conditions (i), (ii) and (iii) alongwith a duplicate copy of the invoice issued, for the purposes of verification."

8. On going through the adjudication order, we find as submitted by the learned counsel for the appellant we find that there is no dispute regarding this fact that the appellants have provided services to diplomatic missions and consular persons. Learned adjudicating authority seeks to deny the exemption notification contained in the Notification on the basis that certain conditions have not been complied with. Learned Commissioner finds that invoice/ bills/ challans bearing Sr. No. and date of

undertaking issued by the foreign diplomatic mission were not submitted and in a few cases the purpose of this service i.e. whether official or personal was not mentioned. However, the adjudicating authority accepts that in respect of 21 embassies certificates were issued by the protocol divisions of the Ministry of External Affairs. It is not the case of the department that the appellant has not rendered the said services to diplomatic missions etc. Therefore, department accepts though indirectly that the substantial provision, of the Notification has been complied and some of the procedural conditions have not been complied with in some cases. Learned authorized representative seeks to rely on the judgment of the Hon'ble Supreme Court in the case of **Dilip Kumar & Company**. We find that the Apex Court held as follows:

> "10.There cannot be any doubt that the ratio in Sun Export case (supra) that, if two views are possible in interpreting the exemption notification, the one favourable to the assessee in the matter of taxation has to be preferred. This principle created confusion and resulted in unsatisfactory state of law. In spite of catena of judgments of this Court, which took the contra view, holding that an exemption notification must be strictly construed, and if a person claiming exemption does not fall strictly within the description of the notification otherwise then he cannot claim exemption."

9. We find that in case of **Dilip Kumar** the Hon'ble Apex Court, though held that the conditions have to be followed by any person who wishes to avail the exemption also held that any interpretation which defeats the purpose of the Notification and renders it a futile piece of legislation has to be avoided. In that case Hon'ble Supreme Court held that the condition requiring payment of RND Cess is substantive condition and is not

relatable to procedural aspect, we of the view that non-fulfillment of the same rendered the appellant disentitled to the benefit of the notification. We find that the Hon'ble Apex Court acknowledges that there could be substantial Conditions and Procedural Conditions. Hon'ble Court find that any interpretation which goes to nullify the effect of Notification itself is to be avoided. In the case before Supreme Court was the condition regarding the payment of R&D Cess, which was held to be a substantial Condition, which has to be followed strictly. In the instant case, no such substantial condition is there regarding payment of any duty or Cess. Therefore, we find that reliance placed on the case of Dilip kumar and Company is over stretching.

10. We find that as far as the Notification No. 27/2012 is concerned substantive condition is that of provision of services to embassies/diplomatic missions. There is no dispute regarding the same. Among the procedural conditions, the appellant submits that they have since complied now by having the certificates (except in 6 cases) issued by respective embassies/ diplomatic missions; some certificates were submitted before the adjudication and some have been since obtained. Therefore, we are of the considered opinion that the substantive compliance of the Notification No. 27/2012 is fulfilled when the appellants have rendered services to the diplomatic missions and obtained certificates. We find that the adjudicating authority did not have an opportunity to go through all the certificates and to extend the benefit of the Notification. Under these circumstances, we are of the considered opinion that the matter should go back to the

adjudicating authority to verify the certificates produced by the appellants and to allow the exemption to the extent of availability of the certificates. We are of the view that cum-duty benefit needs to be extended, wherever applicable. Penalties are however, set aside.

11. Thus, the appeal is allowed by way of remand, in above terms.

[Order pronounced on **04.09.2025**]

(P. DINESHA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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