CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 50539 OF 2022

[Arising out of Order-in-Appeal No.346(SM)ST/JPR/2021 dated 08.11.2021/09.11.2021 passed by the Commissioner(Appeals) Central Excise and Central GST, Jaipur]

M/s Mitsui Prime Advanced Composites India Pvt Ltd **...Appellant**
SP2-54-55-56, Complex Industrial Area,Majarkath, Neemrana, Alwar, Rajasthan-301 705

Versus

Commissioner(Appeals), Central Excise & CGST, Jaipur **...Respondent**
NCRB, Statue Circle, Jaipur-302 005

APPEARANCE:
Shri Shashank Shekhar, Advocate for the appellant
Shri S.K. Meena, Authorised Representative for the respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50085/2026

Date of Hearing: 16.01.2026
Date of Decision: 20.01.2026

BINU TAMTA:

1. By the impugned order[1], the Commissioner (Appeals) confirmed the liability to pay service tax on 'Ocean Freight' under reverse charge along with interest and penalty.

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[1] Order in Appeal No. 346(SM)/ST/JPR/2021 dated 08.11.2021/09.11.2021

2. The appellant is primarily engaged in the manufacture of Polypropylene Compound falling under sub heading 39029000 of the First Schedule to the Central Excise Tariff Act, 1985[2]. The appellant, in order to carry out its manufacturing processes, imports various goods like Bag Polypropylene, etc. from foreign exporters who are situated in a non-taxable territory. For this purpose, the appellant enters into Cost, Insurance and Freight ('CIF') contracts with the foreign exporters for supply of goods and consequently, the exporter enters into an agreement/contract with the foreign shipper for the transportation of goods. The appellant Company discharges its Basic Custom Duty ('BCD') under the Customs Tariff Act, 1975 read with Customs Act, 1962 for the importation of goods. As a result, the appellant enters into a single contract with the foreign exporter for the import of goods and pays a single consideration to the foreign exporter for the import of goods which is inclusive of the value of insurance and freight. Therefore, no separate consideration/freight amount is charged to the appellant by the foreign exporter/shipping line for shipping of the goods to India.

3. The submission of the learned counsel for the appellant is that the issue of levying service tax on 'Ocean Freight' is no longer *res integra*. Reliance was placed on the decision of the Gujarat High Court in the case of **SAL Steel Limited Vs. Union Of India[3]**, whereby the

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[2] CETA
[3] (2020) 37 GSTL 1

taxability of 'Ocean Freight' was held ultra vires. The observation of the Gujarat High Court are as follows-

> **"2.5.** the service proposed to be taxed under the impugned provisions is admittedly that of transportation of goods upto the Indian Port i.e., land mass of the country, and this service covering sea transportation of hundreds or thousands of KMs is an event occurring beyond the land mass of the country, and hence in the nature of an extraterritorial event. The provisions of the Finance Act, 1994, which is an Act of the Parliament for levy of service tax, do not permit nor empower the Central Government to collect service tax on such extraterritorial events, and the services which are rendered and consumed beyond the land mass of the country.
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> **28.** The charging provision i.e. Section 668 provides for levy of service tax on the value of services provided or agreed to be provided in the taxable territory by one person to another. Section 658(52) defines "taxable territory" to mean the territory to which the provisions of this Chapter apply. As seen above, the provisions of this Chapter ie. Chapter V, apply to the whole of India by virtue of Section 64(1) of the Finance Act, and thus it is the mandate of the Parliament for applying the provisions of Chapter V of the Finance Act for service tax to whole of India, and not to extraterritorial events occurring outside the land mass of India.
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> **29.** It is a settled legal position as held by a Constitution Bench of the Supreme Court in the case of GVK Industries Ltd. v. Income Tax Officer, 2017 (48) S.1.R. 177 (S.C.) that the Parliament has power to enact laws for extraterritorial events subject to three conditions as referred to in para 41 of the judgement, but the Executives having delegated powers under any Act of the Parliament do not possess any jurisdiction to make Rules or Notifications for taxing extraterritorial events. In the present case, the Parliament has restricted the provisions of Chapter-V of the Finance Act in respect of service tax to events occurring in the taxable territory Le. India by virtue of Section 66B (the charging section). Section 66B(52) and Section 64(1) and therefore the impugned Notifications issued by the Executive Le. the Central Government by way of Rules, are beyond Sections 64, Section 66B and Section 65B(52) of the Finance Act. The impugned Rules and Notifications seek to levy and collect service tax on services rendered and consumed outside India, and therefore these provisions

> are ultra-vires the above referred three provisions of the Act made by the Parliament.
>
> (….)
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> **58.** In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos. 15/2017-ST and 16/2017-ST making Rule 2(1)(d) (EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No.30/2012-ST is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportation service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits."

4. Following the decision of the Gujarat High Court in **Sal Steel Ltd** the Delhi High Court in **Tavrur Oils and Fats Pvt Ltd versus Commissioner Central Goods and Service Tax**[4], the Bombay High Court in **Sanathan Textiles Pvt Ltd Versus Union of India**[5] and the Madras High Court in the case of **Chennai & Ennore Ports Steamer Agents Association versus Union of India**[6] held that no service tax can be demanded from the importers in India as they are not recipient of the service. The same view has been accepted by us in the case of **Birla Corporation**. The Ahmedabad Bench in **Commissioner of Service Tax versus Kiri Dyes and Chemicals Ltd.**[7] and also in the case of **Adani Power Mundra Limited versus Commissioner of Central Excise & Service Tax**[8] upheld the view that 'Ocean Freight' is not liable to service tax and hence no liability

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[4] (2024) 25 Centax 311 (Del.)
[5] 2025 (391) ELT 468 (Bom.)
[6] (2023) 7 CENTAX 63 (Mad)
[7] (2023) 10 Centax 134 (Tri.-Ahmd)
[8] Final Order No. 12764/2024

can be fastened on the appellant. The decision in the case of **Commissioner of Service Tax Versus Kiri Dyes and Chemicals Ltd.**[9] was challenged by the Revenue before the **Supreme Court**[10], however, the same has been dismissed, upholding the decision of the Tribunal.

5. In view of the consistent decisions rendered by the various High Courts and the Tribunal, there is no reason to differ. Following the same, the impugned order is set aside. The appeal is, accordingly allowed.

[Order pronounced on 20th January 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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[9] **(2023) 10 Centax 135 (S.C.)**
[10] **(2023) 10 Centax 135 (SC)**