

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

REGIONAL BENCH - COURT NO. - I

**Service Tax Appeal No. 31098 of 2016**

(Arising out of **Order-in-Original** No.HYD-EXCUS-001-COM-039-16-17 dated 29.07.2016  
passed by Commissioner of Central Excise & Service Tax, Hyderabad-I)

**M/s VAG Valves (India) Private Ltd.** .. **APPELLANT**  
APIIC, Phase III, Plot No. 57,  
Pashamylaram Medak District,  
Telangana - 502 307.

*VERSUS*

**Commissioner of Central Excise  
and Service Tax  
Hyderabad-I Commissionerate** .. **RESPONDENT**  
L.B. Stadium Road,  
Basheerbagh,  
Hyderabad,  
Telangana - 500 004.

**APPEARANCE:**

Shri Lakshman Kumar, CA & Ms. C. Asha Latha Advocate for the Appellant.  
Shri K. Raji Reddy, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)  
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30516/2025**

Date of Hearing: 03.09.2025  
Date of Decision: 25.11.2025

**[ORDER PER: P V SUBBA RAO]**

**M/s. VAG Valves (India) Ltd.**<sup>1</sup> filed this appeal to assail the order dated 29.7.2016<sup>2</sup> passed by the Commissioner in which he decided the proposals made in the Show Cause Notice dated 29.7.2015<sup>3</sup> covering the period July 2012 to June 2014 and confirmed demand of service tax of Rs. 66,58,811/- under section 73 of the Finance Act, 1994<sup>4</sup> on the commission received by the appellant from foreign clients along with interest under section 75 of the Finance Act and imposed penalty of Rs. 5,000/- under

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<sup>1</sup> **The appellant**

<sup>2</sup> Impugned order

<sup>3</sup> SCN

<sup>4</sup> Finance Act

section 77 of the Finance Act and penalty of Rs. 33,29,406/- under section 78(1) of the Finance Act.

2. The appellant manufactured 'valves' during the period and was registered with the Central Excise department and paid excise duty on the valves so manufactured. It was also registered under the service tax under the categories of 'Goods Transport Agency/Transport of goods by Road' and 'Business Auxiliary service', etc.

3. The appellant also acted as the authorized distributor/agent to M/s. VAG Armaturen GmbH, Germany<sup>5</sup> and M/s. VAG Armaturen GmbH, China<sup>6</sup> to sell their goods in India and received commission from VAG Germany and VAG China. The appellant did not pay service tax on the commissions so received as the service recipients were located outside India. During verification of records of the appellant, the departmental officers took a view that service tax had to be paid on the commission so received by the appellant from VAG Germany and VAG China because the service provided by it was 'intermediary service' and in respect of this service, the place of the service provider (the appellant in this case) was the place of provision of service as per Place of Provision of Service Rules, 2012. Accordingly, the SCN was issued which culminated in the impugned order.

4. We have heard learned Chartered Accountant and learned counsel for the appellant and learned authorised representative for the Revenue and perused the records. The short questions to be answered are:

- a) Was the service provided by the appellant to VAG Germany and VAG China 'intermediary service' and chargeable to service tax or was it

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<sup>5</sup> VAG, Germany

<sup>6</sup> VAG, China

not an 'intermediary service' and hence was not chargeable to service tax?

b) Can the demand of service tax with interest and imposition of penalties be sustained?

4. It would be profitable to briefly summarise the law relating to taxes and the Finance Act before examining the facts of this case.

5. There are four essential elements of any charge of tax or duty- (i) the taxable event which renders the tax payable; (ii) the person who is liable to pay tax; (iii) the rate at which the tax has to be paid; and (iv) the measure on which the tax should be computed (value, quantity, etc.). If any of these four elements is missing, there will not be any charge of tax. If there is charge of tax but some tax escaped assessment or has not been paid, the law itself provides for a remedy to the state in the form of provisions for recovery of such tax as per which alone the tax can be recovered. If tax is paid in excess, the act also has provisions which enable the assessee to seek refund of the tax so paid.

6. Service Tax was imposed by Finance Act in 1994 by the Parliament on 'taxable services' rendered up to the year 2012. Taxable service was defined in various clauses of section 65 (105) of the Finance Act and tax was leviable only if the service rendered was a taxable service and not otherwise. The Finance Act extended to the whole of India, i.e., including the territorial waters of India. Unlike some laws such as the Finance Act had no extra-territorial jurisdiction. Therefore, any service rendered outside India was not taxable under the Finance Act.

7. In 2012, the Finance Act was amended and all services except those in the negative list became exigible to service tax. The jurisdiction of the Finance Act continued to be to the whole of India.

8. The next question is who has to pay the service tax. As per section 67 of the Finance Act, the service provider has to pay service tax. However, in respect of some services (such as GTA services), the service recipient has been made liable to pay service tax. Further, where the service was rendered by a person outside India and received by a person residing in India, the service recipient has to pay service tax as if he was the service provider.

9. Whenever services are provided and received across national boundaries, the question which needs to be addressed is where has the service been provided because if the service has been provided outside India, it will not be exigible to service tax because the Finance Act does not extend to outside India. To answer this question, Place of Provision Rules, 2012<sup>7</sup> were framed. As per Rule 3 of the POPS Rules, the place of provision of service shall be the place of the service recipient with some exceptions. Thus, if the service was rendered by an entity in India and was received by an entity outside India, it was export of service and not exigible to service tax and if it was rendered by an entity outside India and was received by an entity in India, it was import of service and chargeable to service tax. Exceptions were made to this general position in Rule 3 of POPS Rules itself. In respect of some services such as online data access and retrieval services and intermediary services, the place of business of the service provider was the place of provision of service. Thus if 'A' an intermediary facilitated provision of service by 'B' to 'C', the place of provision of service was that of

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<sup>7</sup> POPS Rules

'A'. If 'A' is located in India, the service was taxable regardless of where B and C were located and if 'A' was located outside India, the service was not chargeable to service tax regardless of where 'B' and 'C' were located. This legal position during the relevant period is not disputed in this appeal.

10. The only question to be answered is whether the service rendered by the appellant was 'intermediary service' or not. During the relevant period ('July 2012 to June 2014'), the definition of 'intermediary service' under Rule 2(f) of POPS Rules read as follows:

(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service), between two or more persons, but does not include a person who provides the main service on his account;

From 1.10.2014, this definition was changed as follows:

(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) **or a supply of goods, between two or more persons**, but does not include a person who provides the main service on his account;

11. Thus, during the relevant period, the definition of intermediary included only person who arranged or facilitated provision of service but did not provide the service on his own account. If 'A' facilitated provision of service by 'B' to 'C', he was the intermediary but if A himself had provided the service then he was not the intermediary. After the amendment in 1.10.2014 (which is not relevant to this appeal), even facilitating supply of goods between 'B' and 'C' would make 'A' an intermediary.

12. We now advert to the facts of the case and examine the nature of the service rendered by the appellant. The most direct way of determining the nature of the service rendered by a person is to ask the question 'what was he paid for?' In this case, the appellant was paid a commission by VAG Germany and VAG China to get orders for supply of goods from Indian

buyers. Thus, he was facilitating the sale of goods to Indian buyers by VAG Germany and VAG China. This was the essence of the contracts. Other terms of the contracts were related to this essence.

13. Supply of goods by VAG Germany and VAG China to Indian buyers was NOT, during the relevant period, covered by the definition of 'intermediary' as per Rule 2(f) of the POPS Rules. Therefore, the default position under Rule 3 of the POPS Rules that the place of the service recipient was the place of provision of service would apply. The place of provision of the services rendered by the appellant to VAG Germany was accordingly, Germany and the place of provision of services rendered by the appellant to VAG China was China. Since the Finance Act, 1994 did not extend to outside India, these services were not exigible to service tax.

14. In view of the above, the impugned order confirming the demand of service tax with interest and imposing penalties cannot be sustained.

15. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant, if any.

(Pronounced in the open court on 25.11.2025 )

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**