CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>HYDERABAD</u>

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 317 of 2012
(Arising out of **Order-in-Appeal** No.98/2011 (H-III) ST dated 31.10.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-III), Hyderabad)

Electrical Testing & Service Engineers .. **APPELLANT**
Plot No. 10w, Anupuram,
Andhra Bank Lane, Kapra,
Hyderabad,
Telangana – 500 062.

VERSUS

Commissioner of Central Excise and Service Tax Hyderabad - III .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

<u>APPEARANCE:</u>
Shri V.M. Chakrapani, Advocate for the Appellant.
Shri V. Srikanth Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30378/2026

Date of Hearing: 09.04.2026
Date of Decision: 21.07.2026

[ORDER PER: ANGAD PRASAD]

M/s Electrical Testing and Service Engineers (hereinafter referred to as appellant) have filed present appeal against the Order-in-Original No.98/2011 (Hyderabad - III) dated 31.10.2011, whereby, the Commissioner (Appeals) upheld the demand of service tax along with interest while extending benefit of Section 80 of the Finance Act, 1994 setting aside the penalties.

2. The fact in brief is, that the appellant is a partnership firm engaged in testing Dielectric strength of Transformer Oil and Protective Relays and

issuance of Test Certificates recognised by the Electrical Inspection Division of the State Government before release of electricity connection. The appellant was registered under taxable category Testing, Inspection and Certification Service and regularly discharged service tax on such services.

3. Audit conducted by the Department noticed that the appellant had collected certain amounts termed as liaison charges during the year 2005-06 to 2008-09.

4. Revenue formed a view that such liaison charges were taxable under Business Auxiliary Services (BAS).

5. Show Cause Notice issued by dated 22.10.2010 and demanded service tax of Rs. 4,66,230/-, interest and penalties under Section 76, 77 and 78 of the Finance Act, 1994.

6. The Adjudicating Authority confirmed the demand. The appellant had filed appeal before the Commissioner (Appeals) who upheld tax and interest but waived penalties under Section 80 of the Finance Act, 1994.

7. Aggrieved by the impugned order, the appellant is before this Tribunal.

8. Learned Counsel for the appellant submits that the appellant merely conducts technical testing and certification. Liaison charges are reimbursement/out-of-pocket expenses. No activity of promotion or marketing of client’s business was undertaken. The SCN is vague and legally unsustainable.

9. It is also argued that Section 65(19) of the Finance Act, 1994 contains multiple independent taxable limbs and unless specific clause is invoked, assessee cannot defend effectively.

10. The Learned Authorised Representative reiterates the findings of the Lower Authorities and submits that liaison activity facilitates of business of clients and therefore falls under Business Auxiliary Services.

11. We have carefully considered the submissions of both the sides and perused the records.

12. The following issues arise for adjudication:

i) Whether liaison charges collected by the appellant are classifiable under Business Auxiliary Services ?

ii) Whether the SCN is legally sustainable when it fails to specify the exact clause of Section 65(19) of the Finance act?

iii) Whether demand can survive on merit?

13. Section 65(19) of the Finance Act, 1994 defines Business Auxiliary Services as follows:

> (19) "business auxiliary service" means any service in relation to, —
>
> (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
>
> (ii) promotion or marketing of service provided by the client; or
>
> (iii) any customer care service provided on behalf of the client; or
>
> (iv) procurement of goods or services, which are inputs for the client; or
>
> [Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]
>
> (v) production or processing of goods for, or on behalf of the client; or
>
> (vi) provision of service on behalf of the client; or
>
> (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or

> vendor, public relation services, management or supervision, and includes services as a commission agent, [but does not include any activity that amounts to "manufacture" of excisable goods.]

14. Business Auxiliary Service is wide but structural definition. Its limb constitutes a separate taxable activity. Therefore, classification under Business Auxiliary Service cannot be made in generic terms.

15. On perusal of the SCN, we find that the Department merely reproduced the entire definition of Business Auxiliary Services. The SCN nowhere satisfies; whether the appellant promoted client's business, whether service was rendered on behalf of the client, whether activity fall under clause (vii) as incidental service or under which precise statutory limb tax is proposed.

16. This omission goes to the root of the proceedings. Show Cause Notice is the foundation of adjudication. If the foundation is defective, subsequent proceedings cannot survive. In the case of United Telecom Ltd., Vs CST, Hyderabad [2011 (22) STR 571 (Tri-Bang)], Tribunal held that no demand can be sustained where notice fails to specify precise statutory provision. Relevant para of the decision is as follows:

> 6. We find that no demand can be confirmed against any person towards service tax liability unless he/it is put on notice as to its exact liability under the statute. In the show-cause notice basic to the proceedings, the impugned activities were proposed to be classified under BAS and BSS. This proposal was confirmed by the Original Authority. We find that this order is not in accordance with the law. The impugned order held that UTL provided services on behalf of the client i.e. Director, e-Seva and sustained the demand. We find that under BAS, there are seven sub-clauses. Demand under sub-clause (vii) could be on activities relatable to either one of the preceding six sub-clauses. Therefore, if a notice issued proposing demand under BAS, the noticee will not be aware as to the precise ground on which tax is proposed to be demanded from him unless the sub-clause is specified. In the instant case, service tax was proposed to be demanded for an activity under BAS and BSS. Under BSS also several activities are listed as exigible under that head. In the absence

of proposal in the show-cause notice as to the liability of the assessee under the precise provision in the Act, we find the demand to be not sustainable.

In the case of CC & CE, Goa Vs Swapnil Asnodkar [2018 (10) GSTL 479 (Tri-Mum)], it was held that without satisfying exact business auxiliary service clause, demand is vague and unenforceable. In the case of Balaji Enterprises Vs CCE and ST, Jaipur [2022 (33) GSTL 97 (Tri-Del)] Principal Bench, New Delhi held that out of 7 clauses under Section 65(19), Revenue must clearly indicate which clause applies. The relevant paras of the judgment are reproduced below for ready reference:

21. The submission of Learned Counsel for the Appellant is that it was necessary for the Department to specify the activity and the nature of service that was to be taxed and for this it was necessary for the Department to point out the specific clause out of seven clauses mentioned in Section 65(19) of the Act but that was not mentioned in the show cause notice. In support of this contention, Learned Counsel has placed reliance upon the decisions of the Tribunal in *Commissioner of Customs & Central Excise, Goa* v. *Swapnil Asnodkar* [2018 (10) G..S.T.L. 479 (Tri. - Mumbai)] and *United Telecoms Ltd.* v. *Commissioner of Service Tax, Hyderabad* [2011 (22) S.T.R. 571 (Tri. - Bang.)].

22. In *Swapnil Asnodkar*, a Division Bench of the Tribunal observed as follows :-

> "4. We have carefully considered the submission made by both sides. *We find that though in the SCN the Respondent was made liable to pay Service Tax but as rightly held by the adjudicating authority, no specific clause of Section 65(19) defining Business Auxiliary service has been shown to be applicable to levy Service Tax*. It is not appearing from the show cause notice as to what goods or services the Respondent has promoted or helped to promote. The Appellate Commissioner also on the same ground has held that the demand being vague is not enforceable against the Respondent. We do not find any reason to infer any different view than expressed by the lower authorities as without specifying the activity and the nature of service of the Respondent he cannot be taxed. Further out of the seven clauses under Section 65(19) no clause has been pointed out under which the Respondent is liable for Service Tax."

23. In *United Telecoms Ltd.*, another Division Bench of the Tribunal observed as follows :-

> "6. We find that no demand can be confirmed against any person towards Service Tax liability unless he/it is put on notice as to its exact liability under the statute. In the show-cause notice basic to the proceedings, the impugned activities were proposed to be classified under BAS and BSS. This proposal was confirmed by the Original Authority. We find that this order is not in accordance with the law. The impugned order held that UTL provided services on behalf of the client i.e. Director, e-Seva and sustained the demand. We find that under BAS, there are seven sub-clauses. Demand under sub-clause (vii) could be on activities relatable to either one of the preceding

> six sub-clauses. Therefore, if a notice issued proposing demand under BAS, the noticee will not be aware as to the precise ground on which tax is proposed to be demanded from him unless the sub-clause is specified. In the instant case, Service Tax was proposed to be demanded for an activity under BAS and BSS. Under BSS also several activities are listed as exigible under that head. In the absence of proposal in the show-cause notice as to the liability of the assessee under the precise provision in the Act, we find the demand to be not sustainable."

> **24.** The aforesaid two decisions of the Tribunal clearly hold that it is imperative for the Department to specify which specific service contained in the seven clauses of Section 65(19) of the Act is being provided and in the absence of any specific service pointed out in show cause notice, the demand cannot be confirmed as the noticee will not be aware as to which precise service contained in the sub-clause has been rendered by him.

Therefore, in absence of specific classification vitiates the demand. We respectfully follow the above settled law.

17. The assessee can defend only when exact allegations are disclosed. In the present case, the appellant was merely told that service falls under Business Auxiliary Services. This is insufficient in law. The Supreme Court has consistently held that adjudication cannot travel beyond allegations in Show Cause Notice and precise charge must be communicated. Thus, the SCN suffers from incurable vagueness.

18. Even on merits, Revenue has not established how liaison charges amount to Business Auxiliary Services. No evidence has been brought on record to show that appellant; promoted client's business, marketed services, procured customers, rendered customer care, or acted as commission agent. Mere collection of liaison charges or reimbursement cannot automatically become Business Auxiliary Service. Taxability cannot be based on presumption. Burden lies on Revenue to establish taxable activity with cogent evidence. Such evidence is not available in the present case.

19. Therefore, we hold that (i) Show Cause Notice is vague and defective for non-specification of exact Business Auxiliary Service sub-clause under Section 65(19) of the Finance Act 1994 (ii) such defective Show Cause

Notice cannot sustain adjudication (iii) Revenue has failed to establish taxable service even on merits. Consequently, demand of service tax, interest and penalties are not sustainable.

20. Therefore, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 21.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

jaya