IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75158 of 2017

(Arising out of Order-in-Appeal No.252/ST-I/KOL/2016 dated 24.10.2016 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s. Blue Star Ltd.
(7, Hare Street, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Pulak Saha & Shri Bikash Gupta, both Chartered Accountant for the Appellant (s)
Shri S.Dutta, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77477/2025

DATE OF HEARING : 22.09.2025
DATE OF DECISION : 22.09.2025

Per : R. MURALIDHAR :

The Appellant is providing Commission Agent's Service (BAS) falling under Section 65(19) to the overseas exporters. They provide the details of the buyers, who are interested in buying the products of the overseas exporters. The overseas exporters after completion of the said transaction, pays commission by way of foreign exchange to the Appellant for the services rendered by them. The Department has issued a Show Cause Notice taking the view that the Appellant is required to pay the Service Tax since the service is being provided within India. After due process, the lower authorities have confirmed the demand of Rs.10,63,601/-. Being aggrieved, the Appellant is before the Tribunal.

3. The Ld.Consultant appearing on behalf of the Appellant submits that the service has been rendered to the foreign entity and the consideration has been paid by them by way of foreign exchange. There is nothing on record to show that the service was rendered to Indian client and the consideration was paid by them.

4. He submits that the issue is no more *res integra.* The Bangalore Bench in their own case i.e. **Blue Star Ltd. v . CCE, Bangalore [2008 (11) S.T.R. 23(Tri.Bangalore)]** has held that the activity will amount to export of services and has granted consequent refund/rebate. A similar matter had also come up before the Mumbai Bench of the Tribunal which has held that the Appellant is providing export services. He further submits that all these matters had been taken up before the Hon'ble Supreme Court by the Revenue. The Hon'ble Supreme Court dealing with Civil Appeal Nos.12468-12471/2024 dated 06.05.2025 has held that the decision given by the Tribunal is correct and accordingly the Appeals filed by the Revenue have been dismissed. In view of these facts he prays that the Appeal may be allowed.

5. The Ld.AR appearing on behalf of the Revenue takes us through to Commissioner(Appeals)'s findings wherein he has given the finding that the Appellant has provided services within India and the services cannot be treated as export of services.

6. Heard both sides and perused the appeal papers and other documents placed before us.

7. On going through the cited case law of Blue Star Ltd. (supra), we find that the Tribunal has held as under :-

> ***"4.*** *The appellants filed a refund claim with the Department to the tune of Rs. 9,87,235/- on the ground that the services rendered by them amounts to Export of Services in terms of Rule 3(2) of the Export of Services Rules, 2005 and, therefore, they are entitled for the refund of the Service Tax already paid by them. <u>The learned Advocate stated that the appellants actually book orders for their Principal in</u>*

USA/UK/other countries. The orders are booked in India and after the orders are booked, the parties concerned directly get in touch with the foreign suppliers. Once the foreign suppliers export the goods to India and receive their payments, a commission is paid to the appellant. It was urged that the service which is rendered by the appellant amounts to Business Auxiliary Service. However, the service is provided from India and used outside India. Further, the payment for such service has been received in convertible foreign exchange. The learned advocate invited my attention to the documents which are available in the Paper Book to show the details of the transactions. He has also furnished the Chartered Accountant's Certificate.

5. *On the other hand, the learned SDR took me to the Agreement entered into between the appellant and the principal and stated that in terms of the Agreement, the appellants are distributors of the various products of the foreign principals. He also directed my attention to the findings of the Commissioner (Appeals) in the impugned order. According to the learned Departmental Representative, one cannot say that the services have been exported. He stated that the service is provided in India. Therefore, Rule 3(2) of the Export of Services Rules, 2005 is not satisfied. Moreover, he made a point that the appellants did not furnish all the details while claiming the refund. Therefore, he was of the opinion that the matter has to be remanded.*

6. *On a very careful consideration of the matter, I find that the appellants have produced documentary evidence to show that they had rendered the services to their foreign principals by booking orders in India for their goods. I have also perused the details of the refund application. They all relate to the goods supplied by the foreign principals based on the orders booked by the appellant. Moreover, in the Agreement relied on by the Revenue, para 9 relates to the services rendered by the appellant. This para has not been referred to by the Commissioner (Appeals) in his order at all. On the basis of the records, I am convinced that the services rendered have been exported in terms of Rule 3(2) of the Export of Services Rules, 2005. Hence, the appellants are entitled for the refund of the Service Tax already paid. Therefore, I allow the appeal with consequential relief, if any."*

8. The bunch of Appeals filed by the Revenue in respect of such cases have been taken up by the Hon'ble Supreme Courtin Civil Appeal Nos.12468-12471 of 2024 and the Hon'ble Supreme Court has passed the following order.:-

> *"12. We have analyzed the nature of the activity of the respondent-assessee in light of the parameters delineated in the proviso to sub-rule (3) of Rule 3 and as to, whether, the CESTAT was right in granting benefit of the exclusion from taxable services to the activities of the respondent assessee as being an activity of export of service. We find that the CESTAT in all these cases has rightly analyzed the activity and granted the relief.*
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> *13. We also note that in these cases, what has been determined by the CESTAT are purely findings of facts. We do not find any perversity in the determination of the findings of facts. In the circumstances, we find no reason to interfere with the impugned orders of the CESTAT and the High Court.*
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> *14. In the circumstances, we find that the factual determination made by the CESTAT would not call for any re-determination in these appeals. Hence, these appeals are dismissed."*

9. Following the ratio laid down in the above cases, we set aside the impugned order and allow the Appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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