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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76409 of 2017

(Arising out of Order-in-Original No. 07/PR.COMMR/ST-I/KOL/2017-18 dated 28.04.2017 passed by the Principal Commissioner of Service Tax-I, KendriyaUtpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Mjunction Services Limited : Appellant
Godrej Waterside, 3rd& 9th Floor,
Tower 1, Plot V, Block-DP, Sector V, Salt Lake,
Kolkata – 700 091

VERSUS

Principal Commissioner of Service Tax-I : Respondent
Kendriya Utpad Shulk Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

AND

Service Tax Appeal No. 76597 of 2017

(Arising out of Order-in-Original No. 07/PR.COMMR/ST-I/KOL/2017-18 dated 28.04.2017 passed by the Principal Commissioner of Service Tax-I, KendriyaUtpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Commissioner of C.G.S.T. and Central Excise : Appellant
Kolkata North Commissionerate,
G.S.T. Bhavan, 2nd Floor, 180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

VERSUS

M/s. Mjunction Services Limited : Respondent
Godrej Waterside, 3rd& 9th Floor,
Tower 1, Plot V, Block-DP, Sector V, Salt Lake,
Kolkata – 700 091

APPEARANCE:

Shri Pulak Saha, Chartered Accountant,
Along with Shri Bikash Gupta, Chartered Accountant,
For the Assessee / Company

Shri S. Dutta, Authorized Representative,
For the Revenue

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77939-77940 / 2025

DATE OF HEARING / DECISION: 16.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Service Tax Appeal No. 76409 of 2017 has been filed by M/s. Mjunction Services Limited**,** Godrej Waterside, 3rd& 9th Floor, Tower 1, Plot V, Block-DP, Sector V, Salt Lake, Kolkata – 700 091 (hereinafter referred to as the appellant/assessee), against the Order-in-Original No. 07/PR.COMMR/ST-I/KOL/2017-18 dated 28.04.2017 passed by the Ld. Principal Commissioner of Service Tax-I, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107, wherein the ld. adjudicating authority has inter alia confirmed the demand of Service Tax of Rs.17,54,035/-, along with interest and imposed a penalty of Rs.25,83,786/- under Section 78 of the Finance Act, 1994 read with Rule 15 of the CENVAT Credit Rules, 2004.

1.1. Service Tax Appeal No. 76597 of 2017, has been filed by the Revenue against the same Order-in-Original bearing No. 07/PR.COMMR/ST-I/KOL/2017-18, dated 28.04.2017, to the extent wherein the Ld. Principal Commissioner, Service Tax-I Commissionerate, has dropped the demand of Service Tax of Rs. 90,47,708/-, along with interest and penalty thereon.

1.2. As both these appeals emanate from the same Order-in-Original, both are taken up together for decision by a common order.

2. The issue in brief is that in course of the Service Tax Audit of the accounts of the assessee-appellant, the reconciliation of the income as per Balance Sheet and taxable value of service shown in the ST-3 returns pertaining to the period 2009-10 to 2013-14 was carried out by the audit officers. On reconciliation, it was found that the assessee/company had short paid

Service Tax amounting to Rs.1,76,81,726/- (including cess) [Rs.1,65,80,950/-+Rs.9,26,876/-+ Rs.1,73,900/-) during the period from 2009-10 to 2013-14.

2.1. Accordingly, a SCN bearing C.No. V(15)33/ST-II/Adjn/Commr/15/3642 dated 23.06.2015 was issued to the assessee-appellant inter alia demanding Service Tax to the tune of Rs.1,76,81,726/- (inclusive of cess). The said Notice was adjudicated by the Ld. Principal Commissioner, wherein the Ld. adjudicating authority has confirmed the demand of service tax of Rs.36,84,562/- [Rs.2,13,581/- + Rs.6,20,575/- + Rs.7,45,979/- + Rs.9,26,876/- + Rs.1,73,900/- + Rs.10,03,651/-], along with interest and penalty, and dropped the rest of the demand of Service Tax of Rs. 1,77,62,970/-.

2.2. Aggrieved by the confirmation of the demands against them, the assessee-appellant has filed Service Tax Appeal No. 76409 of 2017. Revenue has filed Service Tax Appeal No. 76597 of 2017 against dropping of the demand to the extent of Rs.90,47,708/-, along with interest and penalty thereon.

3. During the course of hearing, the Ld. Counsel appearing on behalf of the assessee-appellant submitted that as regards confirmation of the demand of Service Tax amounting to Rs.15,80,135/- (For FY 2010-11 : Rs.6,20,575/-, For FY 2012-13 : Rs.2,13,581/- , For FY 2013-14: Rs.7,45,979/) the the demand has been raised and by comparing the audited profit & loss account and the corresponding year’s service tax return(ST-3) without analysing the nature of service to determine that it was a taxable service liable to Service Tax or not.

3.1. The counsel for the assessee-appellant has explained that the said appellant/company are primarily engaged in the business of purchase and sale of various goods through e-commerce route; the income generated from their business operations are reported in the Profit and Loss Account. He states that apart from the aforesaid incomes, some 'other incomes' are also reported in the Profit and Loss Account; these incomes were not generated from any sale of goods or provision of services, but are basically requirements of accounting standards which the appellant is liable to follow.

3.2. It is also pointed out on this score that while raising the demand in the instant case, it has been alleged in the impugned Show Cause Notice that on reconciliation of income as per Balance Sheet and taxable value of service shown in ST 3 returns, a differential amount of Service Tax of Rs. 1,58,34,971/- is payable on the differential value of taxable service of Rs.5,77,97,151/-, Rs.9,19,41,022/- and Rs.33,32,837/- during the financial years 2009-10, 2010-11, & 2012-13 respectively; that further on scrutiny of Balance Sheet and ST-3 Returns for the period 2013-14, it was also observed that the differential amount of Service Tax to the tune of Rs.7,45,979/- is payable on value of taxable services of Rs.60,35,426/- only. The assessee-appellant submits that from the allegation it is apparent that the impugned SCN has attempted to levy Service Tax on income whereas the law imposes tax on provision of service; that the impugned SCN has simply taken the difference between ST-3 Return and balance sheet and prepared a table without offering any explanation or basis as to how the demand had arisen for different periods and services. They contend that the demand

of service tax has been calculated in the impugned order without doing any investigation or analysis of relevant documents. The assessee states that it is a settled position of law that no demand of Service Tax can be made simply based on the difference between the Balance Sheet and the ST 3 returns without providing any explanation. In support of this contention, the assessee-appellant placed their reliance upon the following decisions :-

(i) *R.K. Singh & co. Versus Commissioner Customs & Central Excise, Bilaspur, Raipur [2023 (5) TMI 721 – CESTAT New Delhi];*

(ii) *Commissioner, Service Tax, Delhi VERSUS Convergys India Service Pvt. Ltd. [2018 (1) TMI 1174 – CESTAT Chandigarh];*

(iii) *Sarvatra Integrated Management Service Pvt. Ltd. VERSUS Commissioner of C.G.S.T. &C.Ex., Gurgaon [2024 (9) TMI 1028 – CESTAT Chandigarh].*

3.3. Thus, in view of the above submissions, it is the contention of the appellant-assessee that the demand of Service Tax of Rs.15,80,135/- confirmed in the impugned order is legally untenable.

4. Regarding the demand of Service tax amounting to Rs.9,26,876/- under Section 66A on account of consultancy services received from foreign companies, the assessee-appellant admits that they have agreed to the said liability and have paid the said Service Tax along with applicable interest much before the issue of the impugned Show Cause Notice. Hence, they plead that there was no need to issue the Notice to confirm this demand. Also, in view of this, they submit that no penalty is imposable on the said amount of Service Tax, which stood paid before issue of the Notice.

5. Regarding the demand of Service tax amounting to Rs.1,73,900/- as 'declared service' on account of penalty received for breach of contracts, the assessee-appellant submits that they have agreed to the said liability as well and paid the said Service Tax along with applicable interest much before the issue of the impugned show cause notice and thus, there was no need for issuance of the Notice for confirmation of this demand. Accordingly, even for this demand, the assessee prayed for waiver of the penalty imposed on this count.

6. Regarding the recovery of CENVAT Credit amounting to Rs.10,03,651/-in respect of various input services allegedly used not for providing out services, the argument of the appellant-assessee is that the term 'input service' has been defined in Rule 2(l) of the CENVAT Credit Rules, 2004; that as per the definition *"any service used by a provider of taxable service for providing an output service"* is an *'input service'.* It is their submission that the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. Thus, the said appellant contends that even after deletion of expression "activities relating to business" in the definition of input service in Notification No 3/2011 – CE (NT), dated 01.03.2011 (w.e.f. 01.04.2011), the 'means' portion available in the definition covers all such services used for providing output services of the appellant; they further state that in the present case, they have availed CENVAT Credit of input tax paid on various services which inter alia includes convention service, general insurance services, insurance service and business support services, which were all used in relation to proving output services and hence they

are eligible for the CENVAT Credit availed on all such input services.

7. Regarding the penalty of Rs.25,83,786/- (Rs.15,80,135 +Rs.10,03,651) imposed under Section 78 of the Finance Act, 1994 and under Rule 15 of the CENVAT Credit Rules, 2004, the assessee-appellant has submitted that considering the fact that they had already agreed to the liability and paid the said Service Tax, amounting to Rs.9,26,876/- and Rs.1,73,900/-, along with applicable interest much before the issue of the impugned Show Cause Notice, for which there was no reason to issue Notice to confirm the said demands, no penalty ought to be imposed in respect of the said amounts of Service Tax, as the same had been paid before issue of the Notice. Accordingly, the appellant-assessee have prayed for setting aside the penalty of Rs.25,83,786/- imposed on them vide the impugned order.

8. Regarding the appeal filed by the Revenue against dropping the demand of Rs.90,47,708/-, along with non-imposition of penalty thereon, and reduction of penalty by an amount of Rs.11,00,776/- by the ld. adjudicating authority [Service Tax Appeal No. 76597 of 2017], the Ld. Counsel for the assessee/company submits that the ld. adjudicating authority has dropped the demand after carefully studying the explanation given by them and the Chartered Accountant's certificate given by them; that the Ld. adjudicating authority has recorded categorical findings for dropping the said demands. Therefore, it is the case of the assessee that the appeal filed by the Revenue merits rejection.

9. Regarding the demands confirmed in the impugned order against the assessee contested by the assessee in Service Tax Appeal No. 76409 of 2017, the Ld. Authorized Representative of the Revenue appearing before us has reiterated the findings of the ld. adjudicating authority and prayed for upholding the demands of Service Tax confirmed, along with interest and penalty. Regarding the demands dropped as challenged by the Revenue by way of Service Tax Appeal No. 76597 of 2017, the Ld. Departmental Representative reiterated the Grounds of Appeal raised by the Revenue in the appeal records.

10. Heard both sides and perused the records.

11. Regarding the demand of Service Tax amounting to Rs.15,80,135/- confirmed in the impugned order, we find that the said demand has been raised and confirmed by comparing the audited profit & loss account and the corresponding year's Service Tax Return (ST-3) filed by the appellant-assessee, but without analysing the nature of service to determine whether a taxable service liable to Service Tax has been rendered or not. Admittedly, the appellant-assessee herein is primarily engaged in the business of purchase and sale of various goods through e-commerce route. The income generated from its business operations are reported in the Profit and Loss Account. The various sources of income of the assessee includes sale of goods; sale of services (domestic and export); Interest on deposits with Banks and others; Dividend from Investment; Profit on sale of investments etc. We also note that apart from the aforesaid incomes, some 'other incomes' are also reported in the Profit and Loss Account like, Provision for doubtful debts no longer required written back, provision no longer required written back,

provision for diminution in value of investments no longer required, etc. We find that all these incomes are not generated from rendering of any taxable services. We find that the ld. adjudicating authority, in the impugned order, has construed the difference between the amount shown in the balance sheet and the ST-3 returns as a taxable amount without giving any reason for coming to such conclusion. If the Department wants to demand Service Tax on this amount, then the onus lies on the Department to establish that these amounts have been received towards rendering of taxable service, which has not been done in this case. It is a settled position of law that no demand of Service Tax can be made simply based on the basis of the difference between the Balance Sheet and the ST 3 returns without providing any explanation. In support of this view, we refer to the ratio laid down in the following citations: –

(i) *R.K. Singh & co. Versus Commissioner Customs & Central Excise, Bilaspur, Raipur [2023 (5) TMI 721 – CESTAT New Delhi];*

(ii) *Commissioner, Service Tax, Delhi VERSUS Convergys India Service Pvt. Ltd. [2018 (1) TMI 1174 – CESTAT Chandigarh];*

(iii) *Sarvatra Integrated Management Service Pvt. Ltd. VERSUS Commissioner of C.G.S.T. &C.Ex., Gurgaon [2024 (9) TMI 1028 – CESTAT Chandigarh].*

11.1. Thus, by applying the ratio of the decisions cited supra, we hold that the demand raised and confirmed simply on the basis of the difference between the Balance Sheet and the ST 3 returns in the present case, without providing any explanation, is not sustainable and hence, we set aside the same.

11.2. As the demand is not sustained, no interest or penalty can be demanded and hence we also set aside the interest and penalty confirmed on this amount.

12. Regarding the demand of Service Tax amounting to Rs.1,73,900/- as 'declared service' on account of penalty received for breach of contracts, we take note of the fact that the appellant-assessee has agreed to the said liability and paid the said amount along with applicable interest much before the issue of the impugned Show Cause Notice. Hence, we are of the view that imposition of penalty in respect of this amount is not warranted and accordingly, we set aside the same.

13. Even for the demand of Service Tax amounting to Rs.9,26,876/- under Section 66A of the Act on account of consultancy services received from foreign companies, it is observed that the assessee has already paid the said amount along with applicable interest much before the issue of the impugned Show Cause Notice. Therefore, we hold that that no penalty can be imposed in respect of this amount as well and accordingly, the same is set aside.

14. Regarding confirmation of the recovery of CENVAT Credit of Rs.10,03,651/- availed by the appellant-assessee during the relevant period, it is seen that the said demand is on services such as "Convention Services", "General Insurance Service", "Premium paid for Group Accidental Insurance policy taken for the employees" and various business support services in the form of fees paid for participating in the conference & seminar organised by various Chamber of Commerce and Industry Bodies like Indian Chamber of Commerce and NASSCOM, etc. We find that the CENVAT Credit has been denied on the

ground that the amendment brought in the definition of 'input service' w.e.f. 01.04.2011 vide Notification No. 3/2011-CE (NT), dated 01.03.2011 has deleted the words "activities relating to business" in the inclusive part of the said definition. Thus, the Ld. adjudicating authority took the view that the said services were not covered within the definition of "input service".

14.1. We find that the term 'input service' has been defined under Rule 2(l) of the CENVAT Credit Rules, 2004. The extract of the definition is given below: –

> *"input service" means **any service**, -*
>
> *(i) **used by a provider of taxable service for providing an output service**; or*
>
> *(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> ***and includes** services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, **~~activities relating to business, such as~~** accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services*
>
> *(A) …..*
>
> *(B) ……"*
>
> [Emphasis supplied]

14.2. It has been specifically submitted by the appellant that from the bare reading of the aforesaid definition, it is clear that the definition of input service is having three limbs –

> **First,** the first limb of the definition namely means is to cover every service which has been used for providing output services;
>
> **Second,** the second limb is inclusive.
>
> **Third,** the third limb is to specifically exclude services which are covered by either of the aforesaid two limbs.

14.3. We observe that the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. Any service cannot be considered to be outside the ambit of input services simply because it is not covered by the inclusive part. Hence, till any service is covered by the first limb, it is sufficient enough to consider as an input service only. In this regard, we refer to the decision in the case of*L and T Sargent and Lundy Limited Versus C.C.E. & S.T. – Vadodara-I, reported in 2024 (11) TMI 1135 – CESTAT Ahmedabad*, wherein it has been held that only services which are covered under inclusion clause of the definition are not alone eligible for CENVAT credit but these services are in addition to all such services which are used in or in relation to providing the output service. We find that there is no dispute in this case that those input services were used for provision of output services. As the utilisation of these services in providing output service is not in dispute, we hold that the appellant/assessee is eligible for availing CENVAT credit on all those input services.

Hence, we set aside the denial of CENVAT Credit confirmed in the impugned order. As the appellant is found to be eligible for the CENVAT Credit, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

15. Regarding the appeal filed by the Revenue, we find that the Department has appealed against dropping the demand of Rs.90,47,708/-, along with penalty, and non-imposition of penalty to the extent of Rs.11,00,776/- by the ld. adjudicating authority. We observe that the said demand had been raised in the impugned Show Cause Notice simply by comparing the audited profit & loss account and the corresponding years' service tax return (ST-3) without analysing the nature of service to determine whether a taxable service liable to service tax has been rendered or not. From a perusal of the impugned order, it can be observed that the ld. adjudicating authority has dropped the demand based on the explanation and Chartered Accountant's certificate provided by the Appellant. We find that the Ld. adjudicating authority has given a categorical finding for dropping the said demands.

15.1. Therefore, we fully agree with the findings and do not find any reason for differ with the same. Accordingly, we uphold the dropping of the demands in the impugned order and reject the appeal filed by the Revenue.

16. In view of the above findings, we pass the following order:

(I) We set aside the demand of Service Tax amounting to Rs.15,80,135/- confirmed in the impugned order on the basis of the difference between the Balance Sheet and the ST 3 returns. We set aside the interest and penalty confirmed on this amount.

(II) We uphold the demand of Service Tax amounting to Rs.1,73,900/- as 'declared service' on account of penalty received for breach of contracts. The penalty imposed on this demand is set aside.

(III) We uphold the demand of Service Tax amounting to Rs.9,26,876/- confirmed under Section 66A on account of consultancy services received from foreign companies. The penalty imposed on this demand is however set aside.

(IV) We set aside the denial of CENVAT credit to the tune of Rs.10,03,651/- confirmed in the impugned order. As the appellant-assessee is eligible for the CENVAT Credit, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

(V) We uphold the dropping of the demands by the ld. adjudicating authority in the impugned order and reject the appeal filed by the Revenue.

17. The appeals are disposed of on the above terms.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd