IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75530 of 2021

(Arising out of Order-in-Original No.23-24/Pr.Commr./Bol/20-21 dated 02.02.2021 passed by Commissioner of CGST & Central Excise, Bolpur)

M/s Graphite India Limited
(Sagarbhanga, Durgapur-713211, Burdwan, West Bengal)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur
(Nanoor Chandidas Road, SIAN, Bolpur,Dist.-Birbhum, Pin-731204)

Respondent

APPERANCE :

Shri Arvind Baheti, Chartered Accountant for the Appellant
Shri S.K.Dikshit, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75705/2026

DATE OF HEARING : 26 MAY 2026
DATE OF DECISION : 26 MAY 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of service tax of Rs.5,25,06,187/- has been confirmed against the appellant and an equivalent amount of penalty has been imposed on the appellant under Section 78(1) of the Finance Act, 1994.

2. The facts of the case are that the appellant is engaged in the manufacture of Graphite Electrodes and paid commission to foreign agents for facilitating/arranging export sales of its products.

2.1 For the period up to 30-09-2014, the Appellant availed exemption under Notification No.42/2012-ST dated 29-06-2012 and filed EXP-3/EXP-4 returns. Pursuant to the amendment in Rule 2(f) of the Place of Provision of Services Rules,2012 (POPS) with effect from 01-10-2014, whereby "intermediary" was expanded to include a person arranging or facilitating supply of goods, the Appellant stopped filing EXP-4 and informed the department vide letter dated 19-02-2015 that the services of foreign commission agents were no longer taxable as the place of provision was outside India.

2.2 Thereafter, two show cause notices dated 12-10-2018 and 03-04-2019 were issued proposing service tax demand of Rs.6,67,82,203/- and Rs.14,70,529/- respectively on commission paid to foreign agents for the period 2013-14 to June 2017. The first show cause notice also erroneously included commission paid to Indian agents, though service tax on such domestic commission had already been discharged by such agents under forward charge.

2.3 By the impugned Order-in-Original, the Ld.Adjudicating Authority confirmed the impugned demand along with interest and equivalent penalty under Section 78, while dropping only Rs.1,57,46,545/- relating to certain Indian agents. It was observed that the foreign commission agents do not qualify as "intermediary" since they were also responsible for promoting and marketing of Appellant's products which amounted to 'commission agent services' under Business Auxiliary Services.

2.4 Aggrieved from the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the said issue is no more res-integra and it is settled that the services rendered by foreign commission agents are in the nature of "intermediary services" and no service tax is payable post 01-10-2014. To support his contention, he relies on the decision of this Tribunal in the case of M/s. Lifelong India Private Limited v. Commissioner, CGST [2026 (2) TMI 400], wherein, on

a similar issue, this Tribunal held that service tax is not payable on commission paid to overseas commission agents as they qualify as "intermediary" in terms of Rule 9(c) of the POPS Rules, 2012 and, consequently, the place of provision of service would be the location of the service provider, i.e. outside India. Further, a similar view was taken by this Tribunal also in the cases of M/s. Bhaskar Industries Private Limited v. Commissioner of Service Tax, Bhopal [2025 (8) TMI 1224] and ADF Foods Ltd. v. CCE [2019 (7) TMI 1349].

3.1 It is further submitted that an "intermediary" by its very nature facilitates the supply of goods or services between two or more persons in terms of Rule 2(f) of the POPS. Therefore, for a transaction to qualify as intermediary service, there must necessarily be at least 3 parties and 2 supplies, namely: (i) the principal supply between the principal and the third party; and (ii) the ancillary supply of facilitation service rendered by the intermediary to the principal, for which a fee or commission is charged. He further submits that in the present case, the principal supply was the export sale of goods by the Appellant to overseas buyers, while the foreign commission agents merely facilitated such principal supply and received commission from the Appellant for such facilitation. Thus, the very existence of 3 parties, namely the Appellant, the foreign buyer and the foreign commission agent, clearly establishes that the services rendered by the foreign commission agents are in the nature of intermediary services.

3.2 He further submits that the foreign agents merely act as brokers/agents between the Appellant and overseas buyers. They obtain enquiries, pass on market information, canvass orders, facilitate negotiations and ensure order placement and realisation of sale proceeds. They do not supply goods on their own account. Such activities squarely satisfy Rule 2(f) of the POPS Rules, especially after the amendment with effect from 01-10-2014, whereby facilitation of supply of goods was specifically brought within the scope of "intermediary". Once the foreign agents qualify as "intermediaries", Rule 9(c) of the POPS Rules applies, and the place of provision becomes the location of the service provider, i.e. outside India. Consequently, the service is provided in a non-taxable territory and no service tax can be levied under Section 66B of the Finance Act, 1994.

3.3 It is further contended that the Ld.Adjudicating Authority incorrectly held that the foreign agents themselves provided the main service of promotion and marketing of the Appellant's products and collection of payments and, therefore, could not be regarded as intermediaries. This finding overlooks both the statutory definition and the true nature of the agency arrangements. He further submits that the foreign agents do not provide the main supply; the main supply is the export of goods by the Appellant to the overseas customer. The foreign agents merely arrange and facilitate such supply between the Appellant and the overseas customer. Their remuneration is by way of identifiable commission linked to the sales effected, which is a classic indicator of intermediary service.

3.4 Further, he submits that the demand is erroneous to the extent it includes commission paid to Indian agents. The Appellant had specifically demonstrated by Chartered Accountant certificate, ledgers and sample invoices that Rs.32,98,75,710/- has been paid to domestic agents on which service tax of Rs.2,79,68,813/- [Rs. 6,67,82,201 (as per SCN) – Rs. 3,88,13,388 (on actual payment made to foreign agents)] had already been discharged by the agents on forward charge basis. However, the impugned Order-in-Original dropped only Rs.1,57,46,545/- without disclosing any intelligible basis and without properly dealing with the Appellant’s evidence. To that extent, the order is non-speaking and unsustainable, accordingly, the same be set aside.

3.5 It is further contended that the extended period of limitation is not invokable, accordingly, the demand is barred by limitation for the period 2013-14 to September, 2015. He further submits that there was no suppression or intent to evade tax. The Appellant had disclosed its position to the department vide letter dated 19-02-2015, specifically stating that post amendment to Rule 2(f), no service tax was payable and EXP-4 returns were therefore discontinued. Further, the dispute is purely interpretational. In such circumstances, invocation of the extended period under the proviso to Section 73(1) is untenable. Reliance is placed on CCE vs Chemphar Drugs and Liniments [1989 (40) ELT 276] and CCE v. Sarup Tanneries Limited [2005 (184) ELT 217 (T)] further affirmed by the Hon’ble Supreme Court reported in [2015 (323) E.L.T. 671 (S.C.)]. Further, the entire exercise was revenue neutral as the tax was creditable in the hands of the Appellant, hence extended period could not have been invoked. Reliance is placed on Nirlon Ltd. Vs. CCE [2015 (320) ELT 22 (SC)].Therefore, the demand for the period 2013-14 to September, 2015 is barred by limitation. He, therefore, submits that on the ground of limitation also, the present appeal can be allowed by giving consequential benefits after setting aside the impugned Order-in-Original.

4. The ld.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the issue involved in this case is as follows :

(i) whether such foreign agents qualify as "intermediaries" under Rule 2(f) of the Place of Provision of Services Rules, 2012 and consequently the place of provision is outside India in terms of Rule 9(c) or not ?

and

(ii) whether the extended period of limitation is invokable in the facts and circumstances of the case or not ?

Issue No.(i)

Whether such foreign agents qualify as "intermediaries" under Rule 2(f) of the Place of Provision of Services Rules, 2012 and consequently the place of provision is outside India in terms of Rule 9(c) or not ?

7. The said issue has been examined by this Tribunal in the case of M/s Lifelong India Private Limited Vs. Commissioner,CGST, Dehradun reported in 2026 (2) TMI 400-CESTAT, New Delhi, wherein this Tribunal has observed as under :

> *"8.1 01.10.2014- 31.03.2016*
> *During the aforesaid period, we note that the definition of the term of "intermediary" was amended w.e.f. 01.10.2014. Consequently, the service of arranging or facilitating supply of goods between two or more persons, such as a commission agent would be covered within the definition of "intermediary". Consequently, the place of provision of services as per Rule 9 (c) of POPS Rules would be the*

location of service provider. In the instant case, it is a fact that the Commissioner Agent was abroad. Consequently, the liability of service tax does not arise."

8. Therefore, we hold that the appellant is not liable to pay service tax as demanded in the impugned order. Accordingly, the same is set aside.

Issue No.(ii)

Whether the extended period of limitation is invokable in the facts and circumstances of the case or not ?

9. We find that the activities undertaken by the appellant were well-known to the Department as the appellant has intimated to the Department vide their letter dated 19.02.2015 stating that post amendment to Rule 2(f) of the POPS Rules, 2012, no service tax was payable and EXP-4 Returns were not filed by the appellant. In that circumstances, the show-cause notices dated 12.10.2018 and 03.04.2019, are barred by limitation. Therefore, we hold that the extended period of limitation is also not invokable.

10. In view of the observations, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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