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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.79217 of 2018

(Arising out of Order-in-Appeal No.233/SKS/Bol/ST/2018-19 dated 08.06.2018 passed by Commissioner (Appeals) of CGST & Central Excise, Kolkata)

M/s Xpro India Ltd.
(Barjora-Mejja Road, PO-Ghutghoria, Dist.-Bankura, Pin-722202)

Appellant

VERSUS

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

Respondent

APPERANCE :

Shri Deepro Sen & Ms.Payal Bharwani,both Advocates for the Appellant
Shri D.Sue, Authorised Representative for the Respondent

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

FINAL ORDER NO.75742/2026

DATE OF HEARING : 18 JUNE 2026
DATE OF DECISION : 18 JUNE 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of service tax of Rs.26,60,004/- was confirmed under reverse charge mechanism along with interest and an equivalent amount of penalty was also imposed on the appellant.

2. The facts of the case are that the appellant is engaged in the manufacture of BOPP film flexible plain and metalized, reprocessed polypropylene granules, etc. Accordingly, the Appellant obtained Excise Registration number AAACX0120HEM013 in the erstwhile regime.

2.1 The Appellant entered into a contract with M/s. Bruckner Machinenbau, GmbH & Co. KG., Germany (“BM”) on 08.12.2007 for the following activities:

(i) Manufacturing and supplying8.2m BOPP Line equipment for the Appellant

(ii)Supervising the installation of the equipment and

(iii) Execute CHECK UP and START UP of such equipments.

(iv) Providing spare parts for such BOPP Line.

The total consideration payable under the contract was €11,070,000 [€10,440,000 for BOPP Line equipment,€300,000 towards spare parts, €300,000 towards supervision and € 30,000 towards training buyers’ personnel).

2.2 It is pertinent to note that as per one of the terms of the contract, 15% of the total consideration was payable within 8 weeks of signing of the contract.

2.3 On 29.01.2008 and 18.03.2008, the Appellant paid a total advance of € 350,000[Rs. 2,15,21,063/-] to BM towards supply of 8.2m BOPP line only. Separate consideration was payable for the services of erection, commissioning and installation of the equipment.

2.4 Given the aforementioned transaction, CERA Audit officers initiated audit of the records of the Appellant and vide letter dated 13.01.2009 directed the Appellant to pay an amount of service tax of Rs. 8,77,801/- [Rs.2,15,21,063*12.36%*33%] under reverse charge mechanism on the amount of advance paid to BM. In response to the above, the Appellant furnished a detailed reply dated 10.02.2009, stating that since such advance payment was made only towards equipment, service tax is not payable thereon.

2.5 However, after a lapse of 10 months there-from, the Appellant was issued the underlying SCN dated 24.11.2009 by invoking the extended period of limitation, proposing to demand service tax of Rs.26,60,004/-[Rs.2,15,21,063*12.36%] under reverse charge mechanism under the category 'erection, commissioning or installation' service, with interest and equivalent penalty.

2.6 In response thereto, the Appellant filed a detailed reply dated 07.04.2010 on merits praying to drop the proposed demand.

2.7 Despite the detailed reply, the underlying OIO dated 28.01.2011 confirmed the proposed demand of service tax of Rs.26,60,004/- under 'erection, commissioning and installation service' along with interest and penalty.

2.8 Meanwhile, due to the Appellant's failure to fulfill the contract conditions, the contract was cancelled on 29.03.2011 and the advance remitted by the Appellant was refunded by the overseas supplier.

2.9 Being aggrieved with the Order-in-Original, the Appellant filed an appeal, praying to set aside the Order-in-Original. In such appeal, the Appellant duly appended the agreement and also submitted that the contact has been cancelled and that the overseas supplier has refunded the advance of €350,000.

2.10 Without appreciating any of the Appellant's submissions, materials and evidences placed on record by the Appellant, the impugned Order upheld the demand confirmed under Section 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 *inter alia* holding that the contract was held to be valid as Appellant failed to produce any documentary evidence to establish the termination of contract.

2.11 Being aggrieved by the impugned order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the service tax is not payable in the instant case in the absence of any service or consideration. He submits that Section 66A of the Finance Act provides for taxability of services received from outside India. It states that where any taxable services are received by a person from outside India, such service shall be treated as if the recipient themselves provided the services in India, and it shall be taxable accordingly.

3.1 In the instant case, he submits that the Appellant paid an advance towards the 8.2m BOPP line and not towards the services. Therefore, the question of payment of service tax on such advance does not arise at all since such advance can never be apportioned towards the consideration for the services to be imported by the Appellant. Without prejudice, the contract entered into between the Appellant and BM was cancelled due to non-fulfillment of the conditions. Accordingly, the advance paid earlier was duly refunded as is evident from the letters dated 29.03.2011. Accordingly, neither any service was rendered by BM to the Appellant nor any advance consideration was retained by BM. Hence, no service tax can be said to have become payable by the Appellant. In the absence of provision of service due to cancellation of the contract and return of consideration, the demand of service tax has no legs to stand under Section 66A of the Finance Act,

1994. He submits that such fact was duly submitted before the Ld.Appellate Authority, who upheld the demand without paying heed to such submission. In this regard, he relies on the following decisions wherein it has been held that service tax is not imposable where no service was provided due to cancellation of the contract and the consideration has been duly returned, since such levy is not backed by authority of law:

(i) Guardian Landmarks LLP v. CCE & ST, Pune II, (2023) 8 Centax 271 (Tri.-Bom):

(ii)Credence Property Developers Pvt. Ltd. v. CCE &CGST, Mumbai East, 2023 (71) G.S.T.L. 294 (Tri. - Mumbai):

Therefore, he prays that the demand for service tax is liable to be set aside.

3.2 It is further submitted that the entire demand is not sustainable on the ground of revenue neutrality since the service tax if paid by the Appellant would be eligible as Cenvat Credit. In this case, service tax demand has been upheld on the amount paid to BM under reverse charge mechanism. Even if it is assumed without admitting that such service tax was payable, then the entire tax paid would be available as Cenvatcredit to the Appellant. Hence, the entire demand of service tax is clearly revenue neutral. In this regard, he relies on the following decisions, wherein it was held that demand of service tax on the import of service is a revenue neutral, in such cases, the demand cannot sustain:

(i) Jet Airways (I) Ltd. v. Commr. of ST, Mumbai, 2016 (44) S.T.R. 465 (Tri. - Mumbai) as affirmed in 2017 (7) GSTL J35 (Supreme Court)[Pg. 16-22 of the Compilation]

(ii)CCE &Cus., Vadodara v. Narmada Chematur Pharmaceuticals Ltd., 2005 (179) E.L.T. 276 (S.C.)

(iii)CCE &Cus. (Appeals), Ahmedabad v. Narayan Polyplast, 2005 (179) E.L.T. 20 (S.C.)

Therefore, he prays that the impugned Order be set aside on this ground alone.

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

5. Heard both the parties and considered the submissions.

6. We find that it is a fact on record that although the appellant gives advance for receipt of the services, but the said advance was paid by the appellant in receipt of the capital goods, which is evident from the documents placed on record by the appellant. For better appreciation of facts, the same are extracted below :

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BRÜCKNER

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Xpro India Limited
Barjora - Mejia Road
722 202 DIST BANKURA (WB)
INDIEN

Down payment request Page 1/1

Invoice No. 8605915	Date 28 01 2008 ✓
Order No. P.1528-0	
Contact Werner Hofherr	Telephone 08682-63686
e-mail Werner.Hofherr@brueckner.de	Fax 08682-63344
Our VAT-ID-No. DE250740283	Your VAT-ID-No.
Your Fax No.	Your Customer Code 277121
Your Ref. No.	

Payable Amount: EUR 175.000,00
Payment Conditions:
payable after receipt of invoice net

Terms of delivery: FOB German North Seaport / Shang
Country of Origin: Federal Republic of Germany (European Community)
Customs Tariff: 847790800

Pos.	Quantity	Unit	Part-No. Description	Price/Unit	Total Price EUR
10	1,00	PC	600010 BOPP line 8,2m		

Payable amount 175 000,00
175.000,00
EUR 175.000,00
Payable Amount EUR 175.000,00

Kind regards,

Brückner Maschinenbau GmbH & Co. KG

i.V. Johann Kreilinger

Werner Hofherr

i.V.

[illegible]

HypoVereinsbank AG; A/C [illegible]
Deutsche Bank AG; A/C [illegible]
Commerzbank AG; A/C [illegible]
[illegible]

BRUCKNER

Limited
Main Road
PANALRA (WB)

Down payment request Page 1/1

Invoice No. 8000041
Date 11.03.2008

Order No P.1528-0

Contact Bjoern Ornus
Telephone (08662)63112

e-mail Bjoern.Ornus@brueckner.de
Fax (08662)63344

Our VAT-ID No. DE250740283
Your VAT-ID-No.

Your Fax No.
Your Customer Code 277121

Your Ref. No.

EUR 175.000,00
After receipt on our invoice, net

FOB German North Seaport / Shang
Federal Republic of Germany (European Community)
847790800

Item	Quantity	Unit	Part-No. Description	Price/Unit	Total Price EUR
		PC	600010 BOPP line 8,2m		

Payable amount 175.000,00
175.000,00
EUR 175.000,00
Payable Amount EUR 175.000,00

Kind regards

Brückner Maschinenbau GmbH & Co. KG

7. Further, the said contract has been cancelled by the appellant and the evidence to that effect is also placed on record, which is extracted below :

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XPRO INDIA LIMITED

xproindia

Barjora Mejia Road, P.O. Ghutgoria, Tehsil Barjora
Dist. Bankura, West Bengal 722 202, India
Tel +91-3241-257250
Fax +91-3241-257266
e-mail [illegible]@xproindia.com

ANNEXURE-4

Dated March 29, 2011

Mr. Ludwig Eckart,
Chief Operating Officer,
Sales & Project Management,
Bruckner Machinenbau & GmbH & Co. KG,
Konigsberger Str. 5-7,
83313 Siegsdorf,
Germany.

Dear Mr Eckart,

Subject: Cancellation of Contract No. 4318-2-07/BOPP for our Project 1528 PRO

We refer to our various discussions we had with you regarding the above mentioned contract in respect of 8.2 m BOPP line.

We regret to inform you again that we are unable to carry the above contract forward due to reasons beyond our control and we are therefore compelled to cancel the above order and contract with you. We now request you to please refund the token advance amount of Euro 350,000.00 (Euro Three Hundred and fifty thousand only) paid to you towards this project and transfer the said amount to our following Bank account:

Account No. 00932320000808
Swift Code - HDFC INBB
HDFC Bank Limited A/c Xpro India Limited
5-R/2, B.K. Chowk Branch, N.I.T.,
Faridabad – 121001
India

We further request you to send a "no dues" letter to us in respect of the above project.

Thank you for your cooperation.

Best Regards

Yours faithfully,

For XPRO INDIA LIMITED

H. BAKSHI
President & Chief Operating Officer

BRÜCKNER 78

Brückner Maschinenbau GmbH & Co. KG
Postfach 1161 · 83300 Siegsdorf · Germany

M/s Xpro India Limited,
Barjora-Mejia Road,
P.O. Ghutgoria,
Tehsil: Barjora
Dist: Bankura
Pin : 722 202

India

Brückner Maschinenbau GmbH & Co. KG
Königsberger Str. 5-7
83313 Siegsdorf
Germany

BMS/GF/S. Neumann/dba
Tel. +49-8662-63 9338
Fax +49-8662-63 9220

stefan.neumann@brueckner.com
www.brueckner.com

Siegsdorf, April 7, 2011

Subject : Refund of Advance Payment for your Project No 1528 PRO
Ref : Our Contact No. 4318-2-07/ BOPP dtd. 8th Dec 2007
Your Letter dtd. 29th March, 2011

Dear Sirs,

We are in receipt of your above mentioned letter requesting a cancellation of the Contract No.4318-2-07/ BOPP dated Dec 2007 for your BOPP project 1528 PRO and refund of advanced money for the said project.

In view of our long standing business relationship we accept your above request and agree to refund you the entire advanced amount of Euro 350,000.00 (Euro Three Hundred & Fifty Thousand only) received by us towards this project. Accordingly, we are pleased to inform you that we have remitted the above amount to your Bank A/c No 00932320000808 with HDFC Bank as per above letter on April 7, 2011. Please confirm receipt of the same.

Further, we confirm that the above Contract is cancelled and stands null & void and we have no claims on you for the same.

Thank you very much.

Yours faithfully

Brückner Maschinenbau GmbH & Co. KG

S. Neumann
CFO

L. Eckart
COO

Sitz: Siegsdorf · AG Traunstein HR A 8257
Komplementär GmbH: Brückner Maschinenbau Verwaltungs GmbH · Sitz: Siegsdorf · AG Traunstein HR B 17281
Geschäftsführung: Michael Baumeister, Ludwig Eckart, Stefan Neumann

8. In view of the above, as the advance was given by the appellant towards procurement of capital goods and not for any service. Moreover, the said contract has also been cancelled and the advance paid by the appellant, have been refunded by the foreign suppliers.

9. In view of the above, no transaction has been taken by the appellant and the foreign suppliers. Therefore, no service tax is payable by the appellant.

10. In view of this, we hold that the appellant is not liable to pay any service tax under reverse charge mechanism. Consequently, no penalty is imposable on the appellant.

11. In view of this, 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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