

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87056 OF 2016

[Arising out of Order-in-Original No: 19/ST-VI/RK/2015-16 dated 30th March 2016 passed by the Commissioner of Service Tax – VI, Mumbai.]

ACG Associated Capsules Pvt Ltd

131 Kandivli Industrial Estate, Kandivli West
Mumbai - 400067

... Appellant

versus

Commissioner of Service Tax -VI

115 New Central Excise Building, MK Road
Churchgate, Mumbai - 400020

...Respondent

WITH

SERVICE TAX APPEAL NO: 85692 OF 2019

[Arising out of Order-in-Original No: 14/SKV-14/THCGST/2017-18 dated 27th October 2018 passed by the Commissioner of Central Tax & GST, Thane.]

ACG Associated Capsules Pvt Ltd

131 Kandivli Industrial Estate, Kandivli West
Mumbai - 400067

... Appellant

versus

Commissioner of CGST & Central Excise

Thane

4th Floor, Navprabhat Chambers, Ranade Road
Dadar (W), Mumbai - 400028

...Respondent

APPEARANCE:

Shri Jitendra Motwani, Advocate for the appellant

Shri CS Pavan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86243-86244/2025

DATE OF HEARING: 13/02/2025
DATE OF DECISION: 12/08/2025

PER: C J MATHEW

These appeals lie against order¹ of Commissioner of Service Tax – VI, Mumbai in which tax of ₹ 14,32,79,857 was held as recoverable under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, besides penalties of like amount under section 78 of Customs Act, 1962 and against order² of Commissioner of Central Tax & GST, Thane in which tax of ₹ 17,24,32,029 was held as recoverable under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, besides penalty of ₹ 1,72,43,203 under section 76 of Finance Act, 1994 for not having discharged liability on commission paid to three Directors of the company between 2012-13 and 2014-15. The recipients of commission were whole-time Directors of the company and the impugned amount was paid to them over and above the salaries and perquisite drawn by them.

2. The adjudicating authority placed reliance on one of the

¹ [order-in-original no. 19/ST-VI/RK/2015-16 dated 30th March 2016]

² [order-in-original no: 14/SKV-14/THCGST/2017-18 dated 27th October 2018]

exclusions in section 65B(44) of Finance Act, 1994 as the touchstone for determination of the taxability of this component of remuneration received by the three. On evaluation of the individual agreements based on the scrutiny of one as representative, the adjudicating authority held that the essential details in, as well as lack of registration of, the said agreement and the continued validity of 20 years were not in consonance with the law relating to agreements as well as provisions of Companies Act, 2013 pertaining to remuneration and, with particular reference to section 197 of Companies Act, 2013, concluded the purported agreements had traversed beyond the ceiling stipulated in the statutory provisions which could not, therefore, by any stretch be claimed to be employee compensation that alone was excluded from the ambit of service in section 65(44) of Finance Act, 1994.

3. Learned Counsel for the appellant drew attention to the provisions of Income-tax Act, 1961 and Companies Act, 2013 to suggest that the adjudicating authority had erred in considering the impugned ‘commission’ to be other than salaries arising in the course of employee-employer engagement. It is further submitted that the decision³ of the Tribunal in *Vectus Industries Ltd v. Commissioner of Service Tax, Noida* disposing off appeal⁴ against order⁵ of Commissioner (Appeals) Central Goods & Service Tax, Noida had

³ [final order no. 71942/2019 dated 26th November 2019]

⁴ [service tax appeal no. 70170 of 2018]

⁵ [order-in-appeal no.NOI-EXCUS-002-APP-1409-17-18 dated 13th November 2017]

settled the issue for once and all and that Commissioner of Customs and Central Excise (Appeals), Nagpur had, in the matter of *Parason Machinery (I) Pvt Ltd*, held the remuneration received by the Directors to be entirely in the nature of consideration for commercial employment. Learned Counsel also placed reliance on circular⁶ of Ministry of Corporate Affairs, Government of India pertaining to commission paid to whole time Directors.

4. Learned Authorized Representative submitted that the circular⁷ of Ministry of Corporate Affairs specified that commission in excess of the statutory limitation paid to whole time Directors was remuneration subject to discharge of service tax thereof by the company. He placed reliance on the decision of the Tribunal in *Allied Blenders and Distillers Pvt Ltd v. Commissioner of Central Excise & Service Tax, Aurangabad* [2019 (24) GSTL 207 (Tri.-Mumbai)].

5. There is no doubt that commission has been paid to whole time Directors. There is also no doubt that whole time Directors are full-time employees of company both in terms of contractual arrangement as well as by designation as such under the statutory provisions governing corporate entities under Companies Act, 2013. The issue of whether the remuneration paid to the Directors should be treated as compensation for services rendered by them has been examined by the

⁶ [no. 24/2012 dated 9th August 2012]

⁷ [no. 24/2012 dated 9th August 2012]

Tribunal in *re Allied Blenders and Distillers Pvt Ltd* to hold that

'15. We do not find merit in the argument of the Revenue inasmuch as during the course of investigation, the statement of Shri Atit Dalai, Vice President (Finance & Accounts) of the appellant company was recorded by the investigating officers on 4-6-2015. Answering the question No. 3. Mr. Dalal informed that there were four directors in the company and they were appointed in accordance with the provisions of Companies Act and Regulation of Article of Association of Company for managing day-to-day affairs of the company. Further answering to question No. 4, he has stated that the company are paying them remuneration which is nothing but salary. All the necessary deductions on account of Provident Fund, Professional Tax and TDS under Section 192 of the Income Tax Act are made as applicable; also they were issuing Form-16 like it is issued to all other employees. Even in the salary return filed by the appellant company before the Income Tax authorities, the director's names have been included. The company does not pay the director's sitting fee to any of the directors. To discredit the said statement, no contrary evidence was produced by the Revenue to establish that the directors are not involved in the day-to-day function of the Company, but participate only in Board Meetings and consequently paid remuneration.

16. Also, from the documents produced by the appellant it is crystal clear that the Directors who are concerned with the management of the company, were declared to all statutory authorities as employees of the company and complied with the provisions of the respective Acts, Rules and Regulations indicating the Director as an employee of the company. No contrary evidence has been brought on record by the Revenue to show that the Directors, who were employee of the appellant

received amount which cannot be said as ‘ salary’ but fees paid for being Director of the company. The Income Tax authorities also assessed the remuneration paid to the said directors as salary, a fact cannot be ignored. The judgments cited by the revenue cannot be applied to the present case as the facts are different and the finding of Income tax authorities accordingly also different in the said case.’

and in *re Vectus Industries Ltd* to hold that

4. On the said issue itself, we consider that if the entire remuneration stands considered by Income Tax Authorities as salary, the same cannot be considered as service, so as pay the service tax. The Income Tax Authorities are the prime authority to adjudge the said issue. If according to the learned Advocate the Income Tax Authorities have considered the entire remuneration as salary and have taxed the same accordingly, the said fact would have a bearing on the disputed issue before us. Inasmuch as, the adjudicating authority has not dealt with the said aspect and has not verified the fact of assessment by Income Tax Authorities under the head ‘salary’, we deem it fit to set aside the impugned order and remand the matter to the Original Adjudicating Authority for fresh consideration. Needless to say that the appellant would be given an opportunity to put forth their case and they would be at liberty to contest the demand by inviting the attention of the Original Adjudicating Authorities to the provisions of the Companies Act. All other issues are kept open including the plea of limitation.’

6. It is seen from the records that the adjudicating authority did not have the benefit of the decisions rendered by the Tribunal in these two disputes. Furthermore, with the principle laid down in the clarification

issued under the Income-tax Act, 1961, to the effect that remuneration as salary would suffice to take that out of the ambit of Finance Act, 1994, was also not adopted by the adjudicating authority. The adjudicating authority has proceeded solely on the grounds of purported non-acceptability of agreements as well as of commission exceeding statutory limits stipulated in Companies Act, 2013.

7. Exclusion of taxability of remuneration received by the whole-time Directors of a company now stands settled by the decisions of the Tribunal *supra* subject to fulfillment of liability to personal income tax on the disputed amount. As that test remains to be undertaken, we set aside the impugned order and remand the matter back to the original authority for decision afresh in accordance with law as judicially settled.

8. The appeal is thus allowed by way of remand.

(Order pronounced in the open court on 12/08/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)