CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85305 of 2017

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/45/16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-I, Mumbai)

Paramount Dyes and Chemicals Pvt. Ltd. .... Appellants
Elphinstone Building, 10, Veer Nariman Road,
Mumbai – 400 001

Versus

Commissioner of Service Tax-I, Mumbai .... Respondent
(Now Commissioner of CGST, Mumbai South Commissionerate)
9th Floor, Piramal Chamber,
Jijiboy Lane, Lalbaug, Parel,
Mumbai – 400 012

APPEARANCE:

Shri Neerav Mainkar, Advocate for the Appellant

Shri C.S. Pavan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86903/2025

Date of Hearing: 17.07.2025
Date of Decision: 08.12.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Paramount Dyes and Chemicals Private Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Appeal No. PK/ST-I/MUM/45/16-17 dated 30.11.2016 (herein after, referred together as "the impugned order") passed by the Commissioner of Service Tax (Appeals)-I, Mumbai.

2.1 The brief facts of the case are that the appellants herein are engaged *inter alia*, in the business of providing support services in respect of imports of certain goods from foreign suppliers and selling these locally to their customers directly, as well as selling such goods on 'high seassale' basis. For the purpose of payment of service tax on taxable output services and for compliance with the Service Tax statute, they are registered with the jurisdictional Commissionerate under service tax registration No. AAACP 2867MST001.

2.2 The appellants import impact modifier and processing aids from the foreign supplier M/s Rohm and Haas Singapore Pvt. Ltd., Singapore and sold these goods to M/s Collar Pack Pvt. Ltd. on high seas sale basis. Further, the appellants also import waxes, chemicals and allied products from foreign suppliers viz., M/s Honeywell International Inc., USA and M/s Marubenni Chemicals Asia Pacific Private Limited, Singapore and sold such products to Indian buyers, on direct sale or on high seas sale basis. They were receiving commissions on account of providing the above services to their foreign suppliers, on which they had not discharged any service tax.

2.3 During the course of statutory audit of the records maintained by the appellants, the department had observed that in respect of aforesaid services provided by the appellants no service tax was paid. Accordingly, the department claimed that the appellants were providing taxable services of 'Business Auxiliary Service' (BAS) in terms of Section 65(105)(zzb) of the Finance Act, 1994 and had failed to pay appropriate service tax to the government exchequer. On the above basis, the department had initiated show cause proceedings demanding service tax of Rs.10,89,916/- under the category of BAS provided by the appellants during the period April, 2004 to March, 2009 under Section 73(1) ibid along with interest and for imposition of penalty on the appellants under Sections 76, 77, 78 ibid. The matter arising out of the show cause notice dated 23.10.2009 was adjudicated vide Order-in-Original dated 31.03.2011 in confirming the proposed demands made therein. Being aggrieved with the original order, the appellants have filed an appeal before the Commissioner of Service Tax (Appeals), who in deciding the case has upheld the order of the original authority and rejected the appeal filed by the appellants by passing the impugned order dated 30.11.2016. Feeling aggrieved with the impugned order, appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that they had acted as a 'Indenting Agent' for the foreign supplier companies located outside India, in providing services in relation to import of the goods manufactured by such foreign suppliers and its sale in India. As such goods are directly sold upon payment of applicable VAT, Sales Tax etc., he claimed that there is no involvement of any service; hence no service tax is payable. In respect of sale on 'high seas sale' basis, he stated that they had received certain commission and the same had been duly accounted for in the books of accounts maintained by the appellants.

3.2 As regards the commission received from the foreign suppliers viz., such amounts have also been shown in the ledger accounts as indenting commission. The appellants had produced the Profit and Loss accounts, Balance Sheets for the year 2004-05 to 2008-09 before the learned Commissioner (Appeals); however, he stated that these have not been considered while confirming the demand of service tax in denial of benefit of exemption being under the threshold limit of Rs.4 lakhs during the relevant period. In respect of the service tax demand partly confirmed in the impugned order, in respect of BAS for the period 03.03.2005 to 21.05.2007 on the ground that condition of Export of Services Rules, 2005, was amended to in deleting the words 'provided outside India' vide Notification No.30/2007 dated 22.05.2007, and therefore prior to such issue of notification, the services are liable to service tax, learned Advocate submitted that the Central Board of Excise & Customs (CBEC) had vide Circular No. 141/10/2011-TRU dated 13.05.2011 had clarified that so long as the benefits of the services accrue outside India, there is no levy of service tax. Therefore, he claimed that the adjudged demands upheld by the learned Commissioner (Appeals) is contrary to the instructions issued by CBEC and therefore it is not correct.

3.3 Furthermore, learned Advocate submitted that the issue under dispute has been settled in a number of judicial pronouncements passed by this Tribunal and such orders affirmed by the Hon'ble High Court of Bombay. In this regard, he relied upon the following case laws:

(i) *Commissioner of Service Tax, New Delhi Vs. AVL India Private Limited* – 2017 (4) G.S.T.L. 59 (Tri. Del.)

(ii) *Commissioner of Service Tax-VII Vs. Life Care Medical Systems* – 2018 (18) G.S.T.L. 587 (Bom.)

(iii) *IBM India Private Limited Vs. Commissioner of Central Excise & Service Tax, Bangalore* - 2020 (34) G.S.T.L. 436 (Tri. Bang.)

(iv) *Commissioner of Service Tax, Mumbai -VII Vs. A.T.E. Enterprises Private Limited* – 2018 (8) G.S.T.L. 123 (Bom.)

Thus, it is contended by the learned Advocate that the impugned order upholding confirmation of the adjudged demands cannot be sustained.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The issue for decision before the Tribunal is to determine whether the services provided by the appellants and the receipt of commission earned by them for such services in the form of commission on 'high seas sales' and indenting commission charges, are liable for levy of service tax or otherwise, during the disputed period.

7. We have examined the documents placed on record and the appeal papers, wherein the appellants and the overseas entities viz., M/s Rohm and Haas Singapore Pvt. Ltd., Singapore; M/s Honeywell International Inc., USA and M/s Marubenni Chemicals Asia Pacific Private Limited, Singapore are engaged in a business relation, wherein the appellants act as indenting agent and provides the service of selling the goods directly to the customers of such foreign entities, including sale on high seas sales basis, for which they only get commission/indenting commission. There is no evidence of an arrangement between the appellants and the foreign entities wherein the appellants are empowered to make any obligation on behalf of the overseas entity or to bind overseas entity to any contractual obligation. Further, the appellants do not have any authority to negotiate or conclude pricing decisions, to sign any contracts, or to make any commitments on behalf of the overseas entity; that the relationship between the parties as per the agreement is that of the independent contractor-contractee. The content in the agreement clearly provide that no services were provided by the appellants to the end customers on behalf of the overseas entity. Thus, under such circumstances, it cannot be said that the appellant has acted as an intermediary in the dealings between the overseas entities and their customers in India. On careful examination of the nature of arrangement between the appellants and the foreign entities vis-à-vis the statutory provisions, it is abundantly clear that the services provided by the appellants to the overseas entities qualify as export in terms of Rule 3 of the Export of Service Rules, 2005 on the basis of the clarification issued by the Central Government.

8.1 We find that Ministry of Finance, Central Board of Excise & Customs (CBEC) in clarifying the expression 'used outside India' in Rule 3(2)(a) of Export of Service Rules, 2005 had stated that the accrual of benefit and their use outside India should be looked into for determining whether the services qualify as export even when they are performed from India. Further, it is not in doubt that the foreign inward remittances for such services have been received by the appellants and have also been duly

accounted in the books of accounts maintained by them. The relevant Circular of CBEC is extracted herein below:-

Circular No. 141/10/2011-TRU

F.No. 280/26/2011-CX8A (Pt)

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise & Customs)

*****

New Delhi, dated the 13 th May 2011.

To

The Chief Commissioners of Central Excise and Service Tax (All),

The Director General (All),

The Commissioners of Service Tax (All),

The Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

Subject: Applicability of the provisions of the Export of Services Rules, 2005 in certain situations

Circular No.111/05/2009-ST was issued on 24th February 2009 on the applicability of the provisions of the Export of Services Rules, 2005 in certain situations. It had clarified on the expression "used outside India" in Rule 3(2)(a) of the Export of Service Rules 2005 as prevalent at that time. The condition specified in Rule 3(2)(a) has since been omitted vide Notification 06/2010-ST dated 27 Feb 2010. In the context of the stated Circular an issue has been raised, whether for the period prior to 28.2.2010 the requirement that the service should be "used outside India" invariably means the location of the recipient?

2. In the stated Circular it was inter-alia, clarified that the words, "used outside India" should be interpreted to mean that "the benefit of the service should accrue outside India". It is well known that services, being largely intangibles, are capable of being paid from one place and actually used at another place. Such arrangements commonly exist where the services are procured centrally eg audit, advertisement, consultancy, Business Auxiliary Services. For example, it is possible to obtain a consultancy report from a service provider in India, which may be used either at the location of the customer or in any other place outside India or even in India. In a situation where the consultancy, though paid by a client located outside India, is actually used in respect of a project or an activity in India the service cannot be said to be used outside India.

3. It may be noted that the words "accrual of benefit" are not restricted to mere impact on the bottom-line of the person who pays for the service. If that were the intention it would render the requirement of services being used outside India during the period prior to 28.2.2010 infructuous. These words should be given a harmonious interpretation keeping in view that during the period upto 27.2.2010 the explicit condition was provided in the rule that the service should be used outside India. In other words these words may be interpreted in the context where the effective use and enjoyment of the service has been obtained. The effective use and enjoyment of the service will of course depend on the nature of the service. For example effective use of advertising services shall be the place where the advertising material is disseminated to the audience though actually the benefit may finally accrue to the buyer who is located at another place.

4. This, however should not apply to services which are merely performed from India and where the accrual of benefit and their use outside India are not in conflict with each other. The relation between the parties may also be relevant in certain circumstances, for example in case of passive holding/ subsidiary companies or associated enterprises. In order to establish that the services have not been used outside India the facts available should inter-alia, clearly indicate that only the payment has been received from abroad and the service has been used in India. It has already been clarified that in case of call centers and similar businesses which serve the customers located outside India for their clients who are also located outside India, the service is used outside India.

5. Besides above, to attain the status of export, a number of conditions need to be satisfied which are specified in Rule 3(1) and Rule 3(2) of Export of Services Rules 2005. The Circular No.111/05/2009-ST explained the expression "used outside India" only and the other conjunct conditions, as applicable from time to time, also need to be independently satisfied for availing the benefit of an export.

6. These instructions should be given wide publicity among trade and field officers. Please acknowledge receipt. Hindi version follows.

Plain reading of the CBIC circular, particularly the clarification at paragraph 4 establish that accrual of benefit from the services provided by the appellants and their use for the benefit of foreign entity would qualify for export, in the present case and there does not involve service of BAS.

8.2 Further, we also find, in a number of cases, this Tribunal has held that when the contractual arrangement do not provide for empowering the appellant to act as intermediary, the service liability cannot be fastened on the appellants as a service provider. The relevant paragraph of the said orders is extracted and given below:

(i) in the case of *Commissioner of Service Tax Vs. AVL India Private Limited* (supra), the Tribunal has held that in respect of BAS services provided, the actual person to whom the benefits were accruing should be considered and there is no liability of service tax on the person providing the service. The relevant paragraph of the said order is given below:

> *"8. On the first issue, we find that the services rendered by the respondent were in relation to procuring orders and promoting products, of foreign suppliers. Admittedly, the said services fall under the category of "BAS". However, it is a well settled legal position that the nature of service rendered by the respondent is consumed by the foreign supplier of goods. The benefit is directly accruing to such foreign entities. The Tribunal held that in respect of "Business Auxiliary Service" (Category III Services), the person to whom the benefits accrued, has to be considered. Based on the said person's locations, the question of export of service will be decided. As rightly pointed out by the Original Authority, the service tax is sought to be levied on the services provided by the respondent to the foreign suppliers and the consideration is received from such suppliers. The tax is not relating to the products sold in India. The decision of the Tribunal in Microsoft Corporation India Pvt. Ltd. - 2014 (36) S.T.R. 766 (Tri.-Del.) and followed in various other decisions - GAP International Sourcing (India) Pvt. Ltd. - 2015 (37) S.T.R. 757 (Tribunal); Bobst India Pvt. Ltd. - 2016 (44) S.T.R. 316 (Tri.-Mum.) are relevant in this case. In our opinion, there is no tax liability on the respondent in respect of services, which are rendered to the suppliers of the goods from foreign countries. The activities of export of service is not to be taxed."*

(ii) In the case of *Life Care Medical Systems (supra),* the Hon'ble High Court of Bombay have held that CBEC clarification is in favour of the appellants. The relevant paragraphs are as follows:

> *"6. We find that this Court in SGS India Pvt. Ltd. (supra) has held that where services were rendered in India to a foreign party, then such service is not liable to tax as it would be export of service. Further, in fact almost similar to this case, this Court has held that the Service Tax would not be payable in Commissioner of Service Tax v. A.T.E. Enterprises Pvt. Ltd., 2018 (8) G.S.T.L. 123 in respect of an Indian Agent, rendering the services of marketing the goods of a foreign party within India and receiving commission from the foreign party, as it is export service by following the decision of this Court in SGS India Pvt. Ltd. (supra). In fact, we find that the Central Board of Excise & Customs has issued a clarification by Circular No. 111/2009, dated 24th February, 2009 that in terms of Rule 3(1)(iii) of Export of Services Rules, 2005, it is not the place of performance but the location of the service receiver which will make it an export of services. It clarified that word 'outside India' to mean that the benefit should accrue outside India. The*

aforesaid Circular of [C.B.E. & C.] is completely in favour of the respondent.

7. In the above view, the question as proposed do not give rise to any substantial question of law. Thus, not entertained."

(iii) In the case of *IBM India Limited (supra),* the Co-ordinate Bench of the Tribunal, by relying on various decisions of the Hon'ble Supreme Court, have held that there is no liability to pay service tax in such a situation of export of services. The relevant paragraphs are as follows:

"6.4 Further we find that the Hon'ble High Court of Delhi in the case of Verizon Communication India Pvt. Ltd. cited supra has considered various circulars issued from time to time by the C.B.E. & C. and also considered various decisions of the Tribunal and the High Court and has come to the conclusion that the assessee is not liable to pay service tax as the service rendered by them fall under the definition of export of service. It is pertinent to reproduce paras 50 to 53 of the said decision, which is reproduced below :-

50. The decision of Larger Bench of CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) may be referred to at this stage. The period with which the dispute in that case related to was between 1st July, 2003 and 30th June, 2007. It involved, therefore, the interpretation of the ESR, 2005 as amended and applicable during the said period. There the assessees were intermediary agents providing money transfer services to foreign travellers who were the end user on behalf of their principals. The contention of the Department that this did not qualify as 'export of service' was rejected by the CESTAT. It noted that the C.B.E. & C. had to issue a clarification Letter No. 334/1/2010-TRU, dated 26th February, 2010 acknowledging the difficulties that were faced by the trade in complying with the condition that the services had to be 'used outside India'. It was clarified that "as long as the party abroad is deriving benefit from service in India, it is an export of service."

51. In the considered view of the Court, the judgment of the CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) is right in holding that "The service recipient is the person on whose instructions/orders the service is provided who is obliged to make the payment from the same and whose need is satisfied by the provision of the service." The Court further affirms the following passage in the said judgment in Paul Merchants Ltd. v. CCE, Chandigarh (supra) which correctly explains the legal position :
"It is the person who requested for the service is liable to make payment for the same and whose need is satisfied by the provision of service who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India, who is liable to make payment for these services and who used the service for his business, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the place of performance of Service."

52. In Vodafone Essar Cellular Ltd. v. CCE (supra), the CESTAT explained the arrangement lucidly in the following words :
"Your customer's customer is not your customer. When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party. For example, when

a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend."

53. The Department was also not justified in characterising the arrangement of provision of services as one between related persons viz., Verizon India and Verizon US. In doing so the Department was applying a criteria that was not stipulated either under the ESR or Rule 6A of the ST Rules.

7. In view of our discussion above, we are of the considered view that this issue is no more res integra in view of the ratios of the various decisions cited supra. Therefore by following the above said decisions, we set aside the impugned order by allowing both the appeals of the appellant, with consequential relief, if any."

(iv) In the case of *A.T.E. Enterprises Private Limited (supra),* the Hon'ble High Court of Bombay have held that since the services are rendered to the foreign clients amounted to export of services, there is no liability of service tax. The relevant paragraphs are as follows:

"8. *The learned counsel appearing for the respondent has relied upon the judgment in the Commissioner of Service Tax, Mumbai-II v. SGS India Pvt. Ltd. [2014 (34) S.T.R. 554 (Bom.)].*

"24. It is in that sense that the Tribunal holds that the benefit of the services accrued to the foreign clients outside India. This termed as 'export of service'. In these circumstances, the Tribunal takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'export of service'. Such an act does not invite a Service Tax liability. The Tribunal relied upon the circulars issued and prior thereto the view taken by it in the cases of KSH International Pvt. Ltd. v. Commissioner and B.A. Research India Ltd. The case of the present respondent was said to be covered by orders in these two cases. To our mind, once the Hon'ble Supreme Court has taken the view that Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country. It is this finding and conclusion of the Hon'ble Supreme Court which has been applied by the Tribunal in the facts and circumstances of the present case.

25. The view taken by the Tribunal therefore, cannot be said to be perverse or vitiated by an error of law apparent on the face of the record. If the emphasis is on consumption of service then, the order passed by the Tribunal does not raise any substantial question of law."

9. *The Division Bench of this Court in Commissioner of Service Tax, Mumbai v. Maersk India Pvt. Ltd. [2015 (38) S.T.R. 1121 (Bom.)] held that "the observations reported in 2014 (34) S.T.R. 554 (Bom.) (supra) aptly apply in the present case. The situation shows that the consideration by the Tribunal about service by the respondent-assessee to a foreign recipient being outside the purview of the collection of service tax, can seldom be flawed, the question sought to be raised in the appeal as such stand answered accordingly. The appeal fails and stands dismissed with no order as to costs."*

9. In view of the foregoing discussions and on the basis of the order passed by the Co-ordinate Benches of the Tribunal and judgements delivered by the Hon'ble High Court of Bombay as above, the impugned order dated 31.11.2016 passed by the Commissioner of Service Tax (Appeals)-I, Mumbai does not stand the legal scrutiny. Therefore, we are of the view that the adjudged demands along with interest and imposition of penalty on the appellants, partly confirmed in the impugned order is not legally sustainable and thus is liable to be set aside.

10. In the result, the impugned order dated 31.11.2016 is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in open court on 08.12.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha