CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

SERVICE TAX APPEAL NO: 87930 OF 2018
WITH
CROSS-OBJECTION NO: 86740 OF 2018
(on behalf of respondent)

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-369-17-18 dated 27.02.2018 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Commissioner of Central CGST … ***Appellant***
Pune – II
GST Bhavan, 41/A Sassoon Road,
Pune – 411 001

versus

Cummins India Ltd. **… Respondent**
Dahnukar Colony, Kothrud,
Ex-Servicemen Colony,
Pune – 411038.

APPEARANCE:

Shri Deepak Sharma, Deputy Commissioner (AR) for the appellant
Shri Gajendra Jain and Shri Aditya Jain, Advocates for the respondent

CORAM:

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

FINAL ORDER NO: 85920/2026

DATE OF HEARING: 16.07.2026
DATE OF DECISION: 16.07.2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the respondents are engaged *inter alia,* in the manufacture of IC Engines and

Generator Sets, falling under Chapter 84 and 85, respectively of the First Schedule to the Central Excise Tariff Act, 1985. Apart from manufacturing of excisable goods, the respondents are also engaged in providing taxable services, for which they got themselves registered with the jurisdictional service tax authorities. In the present case, during scrutiny of the records/ documents maintained by the respondents, the CERA audit team had observed that the respondents had procured the engines from their parent-company M/s Cummins Limited, United Kingdom and supplied the same to the Indian buyers viz., M/s Hindustan Shipyard Limited and M/s Mandovi Dry Docks Limited. On examination of the documents, the audit team had observed that the respondents had recovered commission amount in respect of high-sea-sale made to the said buyers in India. On the basis of such invoices, the department had observed that the amount reflected therein is nothing but commission on high-sea-sale and the respondents should be treated as the intermediary and on such commission amount, they were liable to pay service tax. On the basis on such understanding, show cause proceedings were initiated against the respondents, which culminated into the adjudication order dated 13.11.2017, wherein the original authority had confirmed the demand proposed therein for recovery. On appeal against the said adjudication order dated 13.11.2017, the learned Commissioner (Appeals), Pune-II, *vide* the impugned order dated 27.02.2018 has dropped the demands confirmed in the adjudication order dated 13.11.2017. Being dissatisfied with the impugned order dated 27.02.2018, Revenue has preferred this appeal before the Tribunal.

3. In the grounds of appeal, Revenue has mainly contended that no such agreements were entered into between the respondents and their parent-company located at England and thus, the commission amount charged to the Indian buyers by way of high-sea-sale should be liable for payment of service tax inasmuch as the respondents should be treated as the

intermediary.

4. The phrase ‘service’ has been defined in Section 65B(44) of the Finance Act, 1994 to mean ‘*any activity carried out by a person for another for consideration*’. On reading of such definition clause, it would transpire that in order to constitute a ‘service’ there must be involvement of two persons, one is the service provider and the other is the service receiver. To ascertain whether the respondent in this case can said to be considered as a service provider, we have examined the purchase order dated 05.05.2014 issued by the Hindustan Shipyard Limited, copy of invoice dated 23.06.2014 issued to such buyer by M/s Cummins Limited, United Kingdom, high-sea-sale agreement dated 14.07.2014 entered into between the respondents and the buyer M/s Hindustan Shipyard Limited etc. On perusal of the said documents, we find that the respondents had purchased the goods from their parent-company on principal-to-principal basis and as a high-sea-seller, had sold the same to the Indian buyers on issuance of the commercial invoices. The chain of documents available in the case file demonstrate that there is no element of service, nor can the respondent be considered as an intermediary. Since the entire transaction between the overseas supplier and the ultimate sale of goods to the buyers in India by the respondents are sale transactions, the same cannot be termed as a service, more particularly as a service, defined under the Finance Act, 1994 for levy of service tax thereon. Considering the factual matrix involved in the case, the learned Commissioner (Appeals) at paragraph 6.4 in the impugned order has discussed that the respondent cannot be termed as an ‘intermediary’ and accordingly at paragraph 6.7 has concluded that they cannot be termed as an intermediary under Rule 2(f) of the Place of Provision of Services Rules, 2012. The said relevant paragraphs recorded in the impugned order 27.02.2018, are reproduced herein below.

“6.4. Due to such arrangement of the transaction and

undisputed fact as mentioned at para 6.1. above, I find that the goods were sold directly to buyers by the Appellant on Principal to Principal basis, at arm's length, and no third party is involved. As per the documents mentioned at para 6.3. above, it is also noticed that no commission is involved. The title of the goods is transferred for a price paid by the buyer to the Appellant. The Appellant sold the goods in its own right and own risk. Therefore here the Appellant is not an arranger or facilitator between two or more persons, but have supplied the goods on his own account. Thus the Appellant is clearly covered under the exclusion clause of the definition of "intermediary".

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6.7. In view of above, the activities undertaken by the Appellant are of pure trading as understood in the commercial parlance. Accordingly, the said activity is also out of the purview of the term-'service' Section 65 (B) (44) of the Act & hence not taxable. Therefore, I hold that the Appellant are not acting as an "intermediary" in terms of Rule 2(f) of PPS Rule, 2012 & the hence their activities cannot be taxed in the terms of the provisions of Rule 9 of PPS Rules, 2012."

5. On reading of the case file and more particularly, the impugned order passed by the learned Commissioner (Appeals), we do not find any infirmity therein. Therefore, there is no merits in the appeal filed by Revenue and, accordingly, the same is dismissed. Cross-objection stands disposed off.

(Dictated and Pronounced in Open Court)

(S.K. MOHANTY)
Member (Judicial)

(M.M. PARTHIBAN)
Member (Technical)

**/as*