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

Service Tax Appeal No. 40141 to 40143/2016

(Arising out of Order in Appeal No. 235/2015 dated 27.10.2015 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

Panasonic Home Appliances India Co. Ltd. **Appellant**
No. 193, National Highway, No. 5
Sholavaram, Chennai – 600 067.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Smt. Radhika Chandrasekar, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram,
Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40339-40341/2026

Date of Hearing: 17.10.2025
Date of Decision: 10.03.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 235/2015 dated 27.10.2015 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

2. The appellant (**PHAI**), is engaged in the manufacture and trading of household appliances, health and beauty care products etc, some of which are imported from their foreign collaborator namely M/s Panasonic Corporation and its group companies, for sale in the domestic market. During audit, it was noticed that the appellant had

entered into an agreement with M/s. Panasonic Electric Works Asia Pacific Pvt. Ltd. (**PEWAP**), for advertising and sales of traded goods of foreign collaborators. Under the agreement, the appellant incurred expenditure in India towards business promotion, raised debit notes, and received reimbursement of an agreed portion in convertible foreign currency. The activity appeared to be promotion or marketing of goods, allegedly classifiable as taxable service under 'Business Auxiliary Service' (**BAS**), as defined in section 65(105)(zzb) of the Finance Act, 1994 (**F.A. 1994**). As the appellant failed to discharge service tax, three Show Cause Notices were issued for levy of Service Tax under "Business Auxiliary Services". It was alleged that the Appellant was promoting the goods of its client and that such activity did not qualify as export of services, since the service was performed from India and used in India. After following the due process the Adjudicating Authority confirmed the demands and imposed penalties under sections 76, 77, and 78 as applicable. The appeals before the Commissioner (Appeals) were rejected, leading to the present appeals.

3. The learned Advocate Smt. Radhika Chandrasekar appeared for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative appeared for the respondent.

3.1 Smt. Radhika Chandrasekar the Ld. Counsel for the appellant at the outset submitted details of the Show Cause Notices in the form of a table as reproduced below:

S. No.	SCN No.	Date	Amount of tax demanded	Period
1.	615/2009	23.12.2009	24,23,609/-	April 2006 to Nov. 2008
2.	66/2010	26.03.2010	6,24,355/-	Dec. 2008 to Sept. 2009

3.	761/2010	09.12.2010	19,27,260/-	Oct. 2009 to Sept. 2010

She further submitted as under:

A. Under Section 65(105)(zzb) of the F.A. 1994, only services provided to a "client" in relation to Business Auxiliary Services are taxable. The group company was not a client of the Appellant.

B. The arrangement was one of pure reimbursement of advertisement expenses, without any mark-up. There was no service provider–service recipient relationship, and the reimbursed amount cannot be regarded as consideration for any taxable service.

C. The advertising agencies engaged by the Appellant had already discharged service tax on the advertising services rendered. Subjecting the reimbursed portion to service tax would result in impermissible double taxation.

E. As per Section 67 of the F.A. 1994, service tax is leviable only on the gross amount charged as consideration for the service provided. Reimbursement of expenses, without any margin, does not form part of the taxable value.

F. The Hon'ble Supreme Court, in ***C.C.G.S.T. v. Hindustan Construction Company Ltd***. [(2025) 27 Centax 300 (S.C.)] and in ***Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd***. [2018 (10) G.S.T.L. 401 (S.C.)], affirmed that reimbursement of expenses under a cost-sharing arrangement is not exigible to service tax in the absence of a taxable service.

G. The advertising activity was undertaken for the benefit of **PEWAP** a foreign group companies situated outside India, resulting in increased demand and sales by such foreign entities. Consideration

was received in convertible foreign exchange, thereby satisfying Rule 3(2) of the Export of Services Rules.

J. CBEC **Circular No. 111/05/2009-ST dated 24.02.2009** clarifies that services falling under Rule 3(1)(iii), including Business Auxiliary Services, qualify as export if the benefit accrues outside India.

K. The extended period under Section 73(1) is not invocable for April 2006 to November 2008. The Show Cause Notice dated 23.12.2009 is beyond the permissible period. All material facts were available in the Appellant's books of accounts; there was no suppression or misstatement. The issue involves interpretation of law, and the Appellant acted under a bona fide belief of non-taxability.

L. In the absence of any service tax liability, penalties under Sections 76, 77 and 78 are unsustainable. Further, Section 80 of the F.A. 1994 bars imposition of penalty where reasonable cause is shown, which is clearly established in the present case.

3.2 Smt. Anandalakshmi Ganeshram, Ld. A.R., reiterated the findings of the impugned order and submitted that payments made for services rendered to group companies are liable to service tax. Each company is a distinct legal entity recognized under law, and therefore the principle of mutuality is inapplicable. She further submitted that Section 67 of the F.A. 1994, effective from 01.05.2006, defines "consideration" to include any amount payable for taxable services provided or to be provided. Merely describing a payment as reimbursement does not alter its true character. In the present case, the actual nature of the expenditure incurred in India was towards promotion and marketing of goods, which constitutes a

taxable service. Further, in terms of Rule 3(2) of the **Export of Service Rules, 2005**, (herein after also referred to as '**Export Rules'**), a service qualifies as export only if it is delivered outside India, used outside India, and payment is received in convertible foreign exchange. Since the services in question were performed and utilized in India, they do not satisfy the conditions for treatment as 'export of service.' Accordingly, she prayed for rejection of the appeal and relied upon the decision of the coordinate Bench in **Commissioner of GST & Central Excise Vs Chemplast Sanmar Ltd.** [2023 (13) Centax 35 (Tri. – Mad.)], particularly on the issue that reimbursements cannot escape tax liability when they form part of consideration for taxable services.

4. After hearing both sides and perusing the records, the following key issues arise for consideration in the appeal:

1. Whether PEWAP, can be regarded as the appellant's client, and whether the appellant renders any taxable service to it.
2. Whether reimbursement of shared advertisement expenses by the PEWAP constitutes a taxable service under section 65(105)(zzb) of the Finance Act, 1994, particularly when service tax has already been discharged by the advertising agency and no element of margin/ profit is involved.
3. Whether the advertisement costs recovered from PEWAP qualify as export of service and are therefore not liable to service tax.

5. Before going forward we must state that the Appeal Memorandum cites an unusually large number of judgments, copies of which have not been annexed. Only nine judgments were produced

during oral hearing, and merely four or five were cited at the bar. Parties are expected to rely on a few leading judgments on an issue and supply copies to the Bench. In **Rashmi Metaliks Ltd. Vs Kolkata Metropolitan Development Authority**, [(2013) 10 SCC 95], the Hon'ble Supreme Court, expressing similar concern, held that:

> "6. . . The sheer plethora of precedents makes it essential that this Court should abjure from discussing each and every decision which has dealt with a similar question of law. **Failure to follow this discipline and regimen inexorably leads to prolixity in judgments which invariably is a consequence of lengthy arguments.**
>
> 7. It is a capital exhaustion of Court time, lack of which has become critical. . ."
>
> (emphasis added)

The Hon'ble Court had earlier in **Kanwar Natwar Singh Vs Directorate Of Enforcement & Anr** [2010 (13) SCC 255 / AIR 2010 SC (SUPP) 9 / (2010) 10 SCALE 401], held:

> "38.Before parting with the judgment, we are constrained to observe with some reluctance about **the recent practice and procedure of including list of authorities in the compilation without the leave of the Court.** In many a case, even the senior counsel may not be aware of inclusion of such authorities in the compilation. **In our considered opinion, this Court is not required to consider such decisions which are included in the compilation which were not cited at the Bar.** In the present case, number of judgments are included in the compilation which were not cited at the Bar by any of the counsel. **We have not dealt with them as we are not required to do so**."
>
> (emphasis added)

Further certain guidelines with respect to the submission of written arguments/ synopsis were formulated by the Hon'ble Delhi High Court in **Mst. Kiran Chhabra And Anr. Vs Mr. Pawan Kumar Jain And Ors.** [CS(OS)No.1671/2009, Dated:14.02.2011], and is reproduced for guidance:

"2. **When the Court calls for written arguments to be submitted, it is expected to be something as would assist the Court in its endeavour to do justice and decide the case**. Simply filing a list of judgments and attaching photocopies does not assist the Court nor does filing long-winded arguments which are not structured and properly arranged.

3. Written arguments, which Order XVIII Rule 2(3A) of the Code of Civil Procedure also recognizes, ought to be such that would assist the Court. **The pattern would vary from case to case but generally Written Arguments should comprise a very brief list of dates, the admitted facts and the disputed facts.** The points to be decided should be duly formulated as questions or propositions. In case issues have been framed, separate arguments on each issue are necessary unless two or more issues are such which can be more conveniently addressed together. The factual premises on which a particular argument is given has to be stated on each issue so that the proposition can be appreciated in that light.

4. For each proposition, after stating the factual premises on which a particular argument is given, there should be first the applicable statute which can even be excerpted. Only then, case- law may be cited not just as the legal database on a computer shows up on a query; **but each judgment has to be examined and only the more relevant ones for each topic be cited**. **The Court expects the lawyers to place all case laws, both for and against his case, so long as it is relevant to the proposition in question.** Those from the Supreme Court be placed first; those from our High Court be placed next; and those from other High Courts be placed thereafter. In each grouping, the judgments are to be arranged in a reverse chronological order. This is in line with the law relating to precedents. Thereafter, for each decided case which appears to be important, a brief resume of the factual scenario in which the judgment was rendered, is necessary whereafter the relevant portion can be excerpted or described.

5. If there are older judgments which have been noticed in a later judgment, then the older judgment need not be cited. But if the later judgment merely follows and says nothing new, then the older judgment, which contains the reasoning and also lays down the law, should be cited and against the first (later judgment) it ought to be noted that it simply follows or approves a particular earlier judgment. In that event, the earlier judgment may be excerpted or discussed together with a brief resume of the factual scenario in that case.

> 6. **After the judgments have been cited or portions excerpted, the ratio-decidendi of the judgment needs to be stated, for, it is the ratio-decidendi and not the conclusion, that is binding as a precedent.**
>
> 7. **If there is a contention of the opposite side, it must be answered and not ignored or left for the court to look for an answer.** When all the points or proposition on which the arguments are addressed have been stated, there has to be a summing up so that the Court can get a fair idea of what the arguments are leading to.
>
> 8. **Throughout these written arguments, page numbers and placitums of the documents or other material on the court record, and the reported judgment, must be given so that the Court can readily reach it in order to verify.**
>
> 9. Lastly, keeping them brief is more helpful than giving a long mass of something which could even be incoherent. Structuring is most important. **If an approach as this followed, the Court gets full assistance, much lesser time of the Court is consumed, and there is less likelihood of the Court falling into error.**
>
> 10. The parties are directed to file the written submissions **not exceeding five pages** on the above terms along with the copies of the judgments with relevant portions highlighted for the convenience of the court at least one week before the next date of hearing. The photocopies of the relevant pages of the documents already on record with relevant portions highlighted be also attached to the written submissions for ready reference and convenience of the Court."
>
> (emphasis added)

This would also help to cross verify the actual judgments at a time when the Hon'ble Supreme Court has frowned upon pleadings using Artificial Intelligence (A.I.), that cite non-existing judgments.

6. Reverting to the issue on merits. A service is an intangible commodity in the form of human effort, skill or labour. As per the legal frame work in India, Service Tax is a destination-based and value added tax levied on the taxable event of rendering a service. The levy gets attracted each time such service is provided. Services have

broadly been categorised by Constitutional Courts as 'property-based services' or 'performance-based services'. [See: **All India Federation of Tax Practitioners Vs Union of India** - 2007 (7) STR 625 (SC)]. For levy of service tax under Chapter V of the F.A. 1994, the existence of two distinct persons, namely a service provider and a service recipient, is a sine qua non**,** and there must be rendition of a 'taxable service' for a consideration. In the absence of a provider–recipient relationship, the levy fails, as no service tax can be levied where the activity is undertaken for oneself (self-service), as such transactions do not satisfy the charging provisions of the Act. [See: **State of West Bengal Vs Calcutta Club Ltd.** - 2019 (10) TMI 160 - Supreme Court].

7. The relevant portion of the 'Advertising and Sales Promotion Agreement' (**Agreement**) which is at the centre of the dispute, is reproduced below:

> **ADVERTISING AND SALES PROMOTION AGREEMENT**
>
> It is hereby agreed between Panasonic Home Appliances India Co. Ltd ((hereinafter referred as PHAI) 'SPIC HOUSE' Annexe, 6th Floor, 88 Mount Road, Guindy, Chennai-600 032) and Panasonic Electric Works Asia Pacific Pte. Ltd ((hereinafter referred to PEWAP) 101 Thomson Road, #25-03/05, United Square, Singapore 307591) that this project shall be carried out for the purpose of promoting the sales of the product(s) specified hereinafter according to the following terms and conditions.
>
> **Article 1 Outline of the Project**
>
> Project : Increasing Sales for PEW Wellness Products
> Country : India
> Period : April 2007 to March 2008
> Objective(s) : Awareness Creation, Sales Enhancement
> Action program(s): Advertising, Sales Promotion, Marketing P.O.P.
> Budget & Cost Sharing : Total Budget US$ 362,848.00-
> **PEWAP Sharing** US$ 141,963.00-
> **PHAI Sharing** US$ 220,850.00-

PEWAP Sharing will be made in United States Dollars US$ 141,983.00-

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Article 3 Payment

3-1 PHAI and PEWAP are to observe the following payment plan. All claim documents have to reach PEWAP before the 25th of each month.

PHAI shall send PEWAP by the way of mailing the complete set of claim documents for the purpose **of remitting the payments of PEWAP sharing portion by the above mentioned date**. If the claim documents are not received on the stipulated date and no valid reason(s) given to PEWAP, PHAI shall be deemed to have waived the claim for payment.

3-2 **In the claim for payment, PHAI shall submit to PEWAP all documents pertinent to each advertisement and/or promotion in the form of trashiest of newspapers, and/or magazines with issuing dates, photographs, certificates of broadcast, invoices. and/or receipts issued by advertising agents and the like.** Any invoices from advertising agents or vendors shall be deemed void if there are no dates, authorized signatures, and descriptions of the project they can be identified with the product(s) agreed upon in this Agreement. If the proof of performance is inaccurate or insufficient PEWAP reserves the right to withhold any payments until the receipt of proper proof of performance whereby PEWAP deem satisfactory.

3-3 PHAI shall be fully responsible for sending all evidence pertinent to the project specified on this Agreement

3-4 When PHAI prepares the bill (invoice), the accounts receivable and miscellaneous receipts must be accurately entered into the accounts book.

3-5 Unless otherwise agreed and indicated, during the period of the project the budget amount in US $ specified in Article 1 Outline of the Project hereof shall not be affected by depreciation or appreciation of any currencies.
(emphasis added)

8. We find that the appellant and the group company are distinct legal entities capable of a provider–recipient relationship. Therefore, the concept of self-service does not apply. The issues to be considered are whether a taxable service was rendered, whether the amounts described as "reimbursements" constitute consideration for such service, and, if so, whether the service qualifies as an export and is thus not liable to service tax.

9. Service tax was introduced under Chapter V of the Finance Act, 1994 with effect from 01.07.1994. A valid levy is a prerequisite for collection. Therefore, tax could be collected only on services expressly covered by the statute. Under Section 65(105), only activities specifically defined as "taxable services" were liable to tax, as a result, only 'taxable service' and not 'any service' were subjected to levy under F.A. 1994 at the relevant time. This position continued until the Finance Act, 2012, which, with effect from 01.07.2012, introduced the negative list regime and defined "services" more broadly. However, the period under dispute precedes 2012.

10. Revenue has sought to classify the service allegedly rendered by the appellant under BAS as defined in section 65(105)(zzb) of F.A. 1994. Paras 3.1 to 3.3 of the OIO set out the legal provisions relied on by revenue and is reproduced below:

> "3.1. "Business Auxiliary Services was brought under the service tax net with effect from 01.07.2003 Sec. 65(19) of the Act defines "business auxiliary service' (BAS) as follows:-
>
> **'business auxiliary service' means** any service in relation to.-

(i) **promotion or marketing or sale of goods produced or provided by or belonging to the client**, or

(ii) **promotion or marketing of services provided by the client**, or

(iii) …….

(iv) …….

(v) …….

(vi) ……. or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision and includes services as a commission agent but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944.

Section 65(105) (zzb) of the Finance Act, defines taxable service, as any service provided to a client by (any person) in relation to business auxiliary service.

3.2 From the above provisions of "Business Auxiliary Services', it appears that the activity of the assessee in promotion of goods belonging to their foreign collaborators by way of advertising is nothing but promotion or marketing of goods, is a taxable service under "Business Auxiliary Services".

3.3 As per **Rule 3(2) of the Export of Services Rules, 2005**, as amended by Notification No.02/2007 ST dated 01.03.2007, the service is considered as export if only the following conditions are fulfilled:

(a) Such service is delivered outside India and used in business or for any other purpose outside India; and

(b) Payment for such service provided is received by the service provider in convertible foreign exchange."

(emphasis added)

11. We find that the Agreement, extracted above, was entered into to promote specified PEW Wellness Products through advertising, sales promotion, and POP activities. Of the total budget of USD 362,848.00, the appellant was to contribute USD 141,963.00 and PEWAP the foreign group company USD 220,850.00. The Agreement does not require the appellant to provide any services to PEWAP in return for payment. Hence PEWAP is not their 'client'. Further the appellant does not render any service of promotion or marketing or sale of goods produced or provided by or belonging to the client. Instead, the shared budget was to be used for advertising and promotional expenses of both the parties. Accordingly, PEWAP was to remit its share of funds commensurate with the activity, to the appellant under the cost-sharing arrangement as specified in the Agreement. This payments were based on claim documents such as newspaper or magazine clippings with publication dates, photographs, broadcast certificates, and invoices or receipts from advertising agencies, which were to be submitted periodically by the appellant to PEWAP.

12. In these circumstances, the appellant does not render any service, let alone a taxable Business Auxiliary Service, and receives no consideration from its foreign group company. The amounts received merely represent reimbursement of the PEWAP's share of expenses for services jointly availed from third-party vendors. For administrative convenience, the appellant paid the vendors directly for advertising and related services, and PEWAP's portion was recovered through a cost-sharing arrangement. Accordingly, in the absence of both a taxable service and consideration, no tax liability arises. Our views find

support from the decision of a Coordinate Bench of this Tribunal at Mumbai in **Hindustan Construction Company Ltd. Vs. Commissioner of Central Goods and Service Tax** (2025) 27 Centax 299 (Tri.-Bom), which was affirmed by the Hon'ble Supreme Court [(2025) 27 Centax 300 (S.C.)]. In the circumstances the impugned order merits to be set aside.

13. We find that the judgment of **Chemplast Sanmar Ltd**. (supra) cited by revenue is not relevant since it has been found that this issue does not involve the rendering of any service.

14. We accordingly set aside the impugned order. The appellant is eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 10.03.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex