

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 42207 of 2015

(Arising out of Order-in-Appeal No.1 & 2 / 2015 (STA-II), dated 02.01.2015 passed by the Commissioner of Service Tax, (Appeals – II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s. Trade Line

No.8, L & M, Century Plaza
Teynampet
Chennai 600 018

...Appellant

Versus

Commissioner of GST & Central Excise

No.2054-I, II Avenue
Anna Nagar
Chennai 600 040

...Respondent

WITH

Service Tax Appeal No. 42208 of 2015

(Arising out of Order-in-Appeal No.1 & 2 / 2015 (STA-II), dated 02.01.2015 passed by the Commissioner of Service Tax, (Appeals – II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s. Trade Line

No.8, L & M, Century Plaza
Teynampet
Chennai 600 018

...Appellant

Versus

Commissioner of GST & Central Excise

No.2054-I, II Avenue
Anna Nagar
Chennai 600 040

...Respondent

WITH

Service Tax Appeal No. 40501 of 2016

(Arising out of Order-in-Appeal No.352 / 2015 (STA-II), dated 30.11.2015 passed by the Commissioner of Service Tax, (Appeals – II), Newry Towers, 3rd Floor, Plot No.2054, I Block, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Trade Line

No.8, L & M, Century Plaza
560-562, Mount Road
Teynampet
Chennai 600 018

...Appellant

Versus

Commissioner of GST & Central Excise

No.2054-I, II Avenue
Anna Nagar
Chennai 600 040

...Respondent**AND****Service Tax Appeal No. 42360 of 2015**

(Arising out of Order-in-Appeal No.220/ 2015 (STA-II), dated 25.08.2015 passed by the Commissioner of Service Tax, (Appeals – II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Trade Line

No.8, L & M, Century Plaza
560-562, Mount Road
Teynampet
Chennai 600 018

...Appellant**Versus****Commissioner of GST & Central Excise**

No.2054-I, II Avenue
Anna Nagar
Chennai 600 040

...Respondent**APPEARANCE:**

Ms. Radhika Chandrasekhar, Advocate for the Appellant
Ms. G. Krupa, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos.40373-40376/2026

DATE OF HEARING : 21.11.2025
DATE OF DECISION : 17.03.2026

Per Mr. AJAYAN T.V.

These four appeals, the details of which are tabulated below, preferred by Trade Line, the Appellant herein, involving common issues that are substantially identical, are being heard together and are being decided by this common order.

Appeal No.	Order in Appeal No.	Order in Original No.	Show Cause Notice No. & Date	Period
ST/42207-42208/2015	1 & 2 / 2015 (STA-II), dated 02.01.2015	113/2010, dated 29.10.2010	235/2009 dated 21.05.2009	September 2004 to March 2008

		26/2013, dated 31.01.2013	(Extended Period of limitation is invoked) 124/2012 dated 10.04.2012 (Extended Period of limitation is invoked)	October 2008 to September 2011
ST/40501/ 2016	352/2015 (STA-II), dated 30.11.2015	10/2014, dated 24.07.2014	30/2013 dated 18.09.2013	October 2011 to March 2013
ST/42360/ 2015	220/2015 (STA - IIO, dated 25.08.2015	145/2011, dated 14.12.2011	1/2010, dated 05.01.2010 (Extended Period of limitation is invoked)	October 2007 to September 2008

2. The brief facts are that the Appellant is a registered service provider of Business Auxiliary Services and is engaged in procuring orders from foreign buyers to Cotton Yarn Mills in India for which activity the Appellant received commission from these mills. The genesis of the present set of Appeals originates in an SCN issued in May 2009 pursuant to the audit of the Appellant during which it was noticed that there is a difference between the taxable income in the ST-3 returns and the income declared in the Balance Sheet. The department appears to have formed the view that the services rendered by the Appellant was leviable to service tax under the category of Business Auxiliary Services (BAS) and that the Appellant had not discharged its liability in its entirety Hence the said Show Cause Notice, which also had an allegation of availment of ineligible input services was issued invoking the extended period of limitation and demanding the service tax payable along with interest and penalties. This was followed by the other show cause notices as in the tabulation above. The Appellant replied to the Show Cause Notices contesting the demands on the grounds that demands are barred by limitation as well as on merits contending that the Appellants activity cannot be considered as providing Business Auxiliary Services (BAS). The appellant also contended that the Appellants was eligible for the credit taken as the input services were for activities related to business. It was also arguendo contended that if they were Business Auxiliary Services then they

are being provided in relation to sale or purchase of agricultural produce and are exempt from service tax under notification no.13/2003 – ST dated 20.06.2003 and notification no.14/2004 dated 10.09.2004 in relation to textile processing. As regards the provisions referred to Show Cause Notice No.30/2013, it was contended that these provisions are not applicable from 01.07.2012 onwards. After due process of law, the Adjudicating Authority confirmed the demands on the grounds that the activity of the Appellant in procuring orders from the foreign buyers for the export of Cotton / Cotton Yarn is nothing but an activity of “promotion or marketing or sale of goods belonging to the client which is a taxable activity under the category of ‘Business Auxiliary Services’. The Cenvat Credit was also denied on the ground that they do not relate to the output services provided by the Appellant. The Appellant was also found to be ineligible for the benefits of the notifications as was claimed. Aggrieved by the orders of the Adjudicating Authority the Appellant preferred an appeal before the Commissioner of Service Tax appeals. However, the appeals were rejected vide the impugned orders. Hence, these appeals.

3. Ms. Radhika Chandrasekhar, Ld. Counsel appearing for the Appellant contended that the Appellant is not acting on behalf of exporters for sale of goods. The Appellant merely gives references to the exporters and it is the marketing team of the exporters who thereafter contacts the parties referred and materialize the transactions. Therefore, the Appellant cannot be called a commission agent in terms of explanation (a) to Section 65 (19). Reliance is placed on the decisions in ***Inter Ocean Shipping Co. Vs. CST, 2012 (12) TMI 477 – CESTAT, New Delhi***. It was contended, without prejudice that the BAS services provided by the Commission agent in relation to sale or purchase of agricultural produce is exempt from service tax under notification no.13/2003 ST dated 20.06.2003. Reliance was also placed on Notification no.14 of 2004 Service Tax dated 10.09.2004 which exempts taxable service in the nature of Business Auxiliary Services in relation to agriculture, printing, textile processing or education. Reliance is placed on the decisions in ***Madras Security Printers Pvt. Ltd. (2024) 24 Centax 100 (Tri.-Mad), Kishore Apparels Pvt Ltd. Vs. Commissioner of GST & CE Final Order No.41385 /2024 dated 29.10.2024 (Tri.-Mad), Texyard International Vs. CCE (2015) 40 STR***

322Arvind A. Traders Vs. CCE (2016) 44 STR 264 (Tri.- Chennai) and Palar Home Textiles (P) Ltd. Vs. CST (2024) 17 Centax 32 (Tri.- Mad.).

4. Ld. Counsel further submits that the denial of Cenvat credit is untenable as these are input services relating to activities of business referred in Rule 2 (I) of the Cenvat Credit Rules 2004. Reliance is placed on the decisions in **CCE Vs. Ultra Tech Cement (2010) 260 ELT 369, Indian Bank Vs. CST (2024) 22 Centax 60 (Tri.-Cal)** and **NESS Technologies (I) Pvt. Ltd. Vs. CST (2016) 41 STR 984 (Tri.-Mum)**.
5. It is also pointed out that the Show Cause Notice 30/2013 dated 18.09.2013 for the period October 2011 to March 2013 does not specify the provisions applicable post 01/07/2012. Further in the said Show Cause Notice as well as in Show Cause Notice No.124/2012 dated 10.04.2012 the demand was under BAS for services of promotion of marketing or sale of goods. However, the Order in Appeal confirms the demand under the category of BAS for services of 'Commission Agent'. The Ld. Counsel argues that the Order in Appeal is unsustainable for trading beyond the Show Cause Notice. Reliance is placed on the decisions in **SACI Allied Product Ltd. Vs. CCE, 2005 (183) ELT 225 (SC)**.
6. The Ld. Counsel also contented that extended period is not invocable as none of the ingredients stated in *proviso* to Section 73 (1) required for invoking the extended period are present. It was also argued further that since the department had issued the first Show Cause Notice no. 235/2009 dated 21/05/2009 invoking the extended period of limitation, the department could not have invoked the extended period again in the subsequent notices, as the department is aware of the activity of the Appellant. Reliance is placed on the decisions in **Nissan Sugar Factory Vs. CCE, 2006 (197) ELT 465 (SC), ECE Industries Ltd. Vs. CCE, 2004 (164) ELT 236 (SC)**. The Ld. Counsel therefore submits that the appeal may be allowed.
7. Smt. G. Krupa, Ld. Authorised Representative appearing for the Respondent reiterated the findings of the Appellate Authority. She placed reliance on the decisions in **Uniworth International Ltd. Vs. CCE, Nagpur, 2023**

(385) ELT 332 (SC) and Board circular 1053/02/2017- CX dated 10.03.2017.

8. We have heard the rival submissions, perused the Appeal records and the citations and circular submitted.
9. When we examine the Appeal records of ST/42207-42208/2015, we find that the Show Cause Notice No. 235/2009 dated 21.05.2009 in which the genesis of the present originate, has been issued for the period September 2004 to March 2008, pursuant to an audit conducted and the demand has been proposed on the allegation that the Appellant is liable to service tax as a commission agent under "Business Auxiliary Services". The demand on the alleged activities of Business Auxiliary Services has been raised on computing the difference in the taxable income shown in ST-3 returns and the income shown in the Balance Sheet. The Show Cause Notice also has a proposal to deny the cenvat credit availed on input services stating that they are ineligible input services.
10. It is indisputable that Services by their very nature are intangible. Therefore, what exactly is the service rendered and received are best known to the service provider and the service receiver. The Show Cause Notice as well as the Order in Original concedes that the Appellant were filing periodical returns discharging their service tax liability and the Show Cause Notice has proposed the extended period of limitation solely on the allegation that the appellant has realized income as a commission agent which was not brought to the notice of the Department and that the availment of Cenvat credit on ineligible input service was not brought to the notice of the Department. The Order in Original also has been confirmed on the same grounds. We find that the Show Cause Notice has merely noticed the difference between the taxable income in the ST-3 returns and the income declared in the Balance Sheet. It is well settled law that no demand can be confirmed by comparing the ST-3 return figures with balance sheet figures, in the absence of any evidence to the contrary that income in the balance sheet, which is in excess reflects the consideration earned on account of providing taxable services. It is the Revenue who is making the allegations and as such, the burden to prove said allegation lies very heavily upon the Revenue who has to bring home the charges with sufficient

evidence. We find that the Show Cause Notice is bereft of any evidence by way of any agreement or any other document substantiating the relationship alleged between the Appellant and the purported service recipients or to show that services indeed had been rendered that has resulted in the said difference in income shown in the Balance sheet and the taxable income shown in the ST 3 returns. That apart, while extended period has been invoked, there is no evidence let in of any positive act of suppression or wilful misstatement with intent to evade payment of service tax by the Appellant so as to satisfy the ingredients required to invoke the extended period of limitation. It is a settled position in law that the burden to show that the Appellant is exigible to tax as alleged and that the Appellant has willfully suppressed facts or made any misstatement with intent to evade payment of duty lies heavily on the Revenue and we find that the said burden has not been discharged in this instance rendering the invoking of extended period untenable. Decisions abound, and a reference to the Judgements of the Apex Court in **CCE v. H.M.M. Ltd, 1995 (76) ELT 497, Pushpam Pharmaceuticals Company v CCE, Bombay, 1995 (78) ELT 401 (SC)** and **Uniworth Textiles v CCE, Raipur, 2013 (288) ELT 161 (SC)** would amply suffice. Therefore, the demand of service tax confirmed in the proceedings consequent to the said Show Cause Notice No. 235/2009 dated 21.05.2009, being wholly barred by limitation, is unsustainable on this ground alone.

11. At this juncture, it would also be apposite to note the relevant statutory provisions pertaining to Business Auxiliary Services prevailing during the relevant period. We notice that the Finance Act, 1994 under Section 65(19), during the relevant period upto 01-07-2012, defined "business auxiliary service" as under:

"(19) "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 service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods

or services intended for use by the client;

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; 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 activity that amounts to "manufacture" of excisable goods.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944)"

12. Further, Section 65(105) (zzb) provided that the taxable service means any service provided or to be provided to a client by any person in relation to business auxiliary service.

13. We also find that the Show Cause Notice 124/2012 dated 10.04.2012 is seen to have been issued on the scrutiny of the records of the Appellant and upon noticing that the appellant had received commission from M/s. SJLT Textiles, Saravana Spinning Mills etc. relying on the details of such amounts received by the Appellant. The Show Cause Notice seeks to tax the appellant for its alleged activity of "promoting or marketing or sale of goods produced or provided by or belonging to the client." It is also pertinent that while the Show Cause Notice states that the Appellant procures orders of cotton yarn from the overseas buyers on behalf of the exporters in India and receives commission in this regard, it also states that the Appellant is registered with the Department under the category of Business Auxiliary Service. The Appellant also states in its reply that it is engaged in the said activity and has discharged service tax on the taxable value. Further, the said Show Cause Notice also, despite noting the fact that on a similar issue earlier Show Cause Notice has been issued, has invoked the extended period of limitation.

14. Furthermore, the said Show Cause Notice too does not rely on any evidence that would substantiate the allegation that the Appellant has acted on behalf the said M/s. SJLT Textiles, Saravana Spinning Mills. The Appellant had contested the demand stating that they have only given reference of the various textile mills with whom they deal and thereafter it is the marketing personnel of the concerned textile mills who approach the prospective parties and materialize the transaction. In fact, the Appellant's reply to Show Cause Notice and grounds of appeal before the Appellate Authority show that the Appellant has categorically denied that they are acting on behalf of the aforesaid parties and had specifically contended that hence they were outside the ambit of the definition of commission agent. They had emphasized that there was no service provider-client relationship between them and the aforesaid textile mills. We find the reliance placed by the Appellant in this context on the decision in ***M/s. Interocean Shipping Company v CST, Delhi, 2012 (12) TMI 477-Cestat New Delhi***, for its exposition as to the definition of "Commission Agent", to be appropriate. It was only without prejudice to the said arguments that the Appellant had raised the contentions on entitlement to the benefit of the notifications 13/2003-ST and 14/2994-ST. The Appellant had also pointed out to the earlier show cause notices issued by the Revenue to contend that the activities of the Appellant were known to the Department and therefore invoking the extended period of limitation was incorrect. Before the Appellate Authority also the Appellant had emphasized that while the appellant had made available the references to the textile mills, it is the marketing executives of these textile mills who take it forward and they do not canvass any orders for these textile mills and hence is not promoting their business.
15. Again, while the Adjudicating Authority in the Order in Original No.26/2013 dated 31.01.2013 has held that the Appellant's activity is nothing but an activity in relation to promotion or marketing or sale of goods it is pertinent that the said finding is not premised on any evidence relied upon. Furthermore, the Appellate Authority in the impugned Order in Appeal No.1 &2/2015 dated 02.01.2015 has gone on to hold that the Appellant are acting as a commission agent for procuring export orders for the manufactured goods, i.e. cotton yarn. Thus, in addition to the fact that there is no evidence

let in to satisfy the fundamental ingredient to consider the Appellant as a commission agent namely that the Appellant is acting on behalf of the principal, the said finding by the Appellate Authority in the impugned order has traversed beyond the Show Cause Notice allegation and contradicts the finding of the Adjudicating Authority in this regard that it seeks to uphold, thereby rendering the impugned order unsustainable on these counts. In any event, given that the Department had issued earlier Show Cause Notices on similar issues, we find that invoking of the extended period in the present proceedings initiated under the said Show Cause Notice was also unsustainable. We find the reliance placed by the Appellant on the decisions in ***Nizam Sugar Factory v. CCE, 2006 (197) ELT 465 (SC) and ECE Industries Ltd v. CCE, 2004 (164) ELT 236***, to be appropriate. For these reasons, we are of the opinion that the impugned Order in Appeal No. 1 & 2 / 2015 (STA-II), dated 02.01.2015 is therefore unsustainable and liable to be set aside.

16. We see from the Appeal records of the Appeal ST/40501/2016, that the impugned Order in Appeal No.352/2015 (STA-II) dated 30.11.2015 too has rendered a finding holding that the Appellant are acting as a commission agent for procuring export orders for the manufactured goods, i.e. cotton yarn on many assumptions that do not find a place either in the Show Cause Notice No.30/2013 dated 18.09.2013 or in the connected Order in Original of the Adjudicating Authority. Thus, in addition to the fact that there is no evidence let in to satisfy the fundamental ingredient to consider the Appellant as a commission agent namely that the Appellant is acting on behalf of the principal, the said finding by the Appellate Authority in the impugned order has traversed beyond the Show Cause Notice allegation and contradicts the finding of the Adjudicating Authority in this regard that it seeks to uphold, thereby rendering the impugned order unsustainable on these counts. We also find that the Appellant has rightly contended that the Show Cause Notice No.30/2013 dated 18.09.2013 has not put the appellant to notice of the relevant statutory provisions post 01-07-2012 in order to sustain the demand for the period from 01-07-2012. We are of the considered view that not putting the Appellant to notice of the relevant provisions prevailing for the period for which the demand is proposed is not the same as merely citing a wrong provision. It is entirely different in that the demand is sought to be

sustained without intimating the Appellant of the statutory provisions that are attracted, and in violation of which, and as a consequence thereof, the demand of service tax has become payable. Such a demand is decidedly untenable. Hence the impugned order confirming the demand for the period post 01-07-2012 is in any event vitiated on this count too.

17. As regards the Appeal ST/42360/2015, we find from the connected Show Cause Notice No.1/2010 dated 05.01.2010 that the period involved is from October 2007 to September 2008 invoking the extended period of limitation. The Appellant has contended that the Department had already issued an SCN No.235/2009 dated 21.05.2009 and there is an overlap for the period October 2007 to March 2008 and has placed reliance on the decisions of the Apex Court in Nizam Sugar Factory case and ECE Industries. We observe that the very same jurisdictional authority had issued the Show Cause Notice dated 21.05.2009 and that too on the basis of audit of the Appellant conducted. In such circumstances we find that the reliance placed on the decisions in Nizam Sugar Factory case and ECE Industries case, is apposite. It is also seen that the Tribunal ***in Paro Food Products v CCE, Hyderabad, 2005 (184) ELT 50 (Tri-Bang)***, has been held that all grounds possible should be taken by Department when initiating the proceeding. We find that in the said decision in Paro Food Products, a coordinate bench has held thus, "Another important point should be borne-in-mind by the Revenue. It is possible that show cause notice for demand can be issued on several grounds say A, B, C, etc. When proceedings are initiated, the Revenue should take into account all the grounds. They cannot issue show cause notice on one ground, A. conclude the proceedings and latter cannot issue another show cause notice on another ground, B. for the same period and so on. If this is allowed, then there would not be an end to the number of proceedings against a party. This is definitely against the public policy. In this connection we would like to recall maxim - ***"Res judicata pro ventate accipitar*** - *A matter adjudged is taken for truth. A matter decided or passed upon by a court of competent jurisdiction is received as evidence of truth*". - (Black's law Dictionary)." In any event, there is no evidence of any positive act of wilful suppression or misstatement of facts with intent to evade payment of duty let in in the show cause notice. In light of the ratio of the decisions in ***CCE v. H.M.M. Ltd, 1995 (76) ELT 497, Pushpam Pharmaceuticals***

Company v CCE, Bombay, 1995 (78) ELT 401 (SC) and ***Uniworth Textiles v CCE, Raipur, 2013 (288) ELT 161 (SC)***, we hold that the Department has erred in invoking the extended period of limitation and the demand is in any event wholly barred by limitation. Given our aforesaid findings in favour of the appellant on limitation, even though *ex facie*, the contentions on merits urged in the alternate too appear to be in favour of the appellant, we are not addressing the same. Resultantly, the impugned Order in Appeal No. 220/2015 (STA – II0, dated 25.08.2015 is unsustainable and liable to be set aside.

18. In as much as we have found the impugned orders in all these Appeals are unsustainable and liable to be set aside, the demands of service tax are unsustainable, resultantly the demand of consequential interest as well as the imposition of penalties are also held to be untenable. We have examined the decision and Circular relied upon by the Ld. A.R. and find that the decision pertains to a case where the Appellant had committed fraud which had been established by the Department leading evidence to that effect. Thus the case laws is distinguishable as the facts and circumstances as well as the allegations therein are materially different from that of the present case. The Circular relied upon too on perusal does not advance the case of the Revenue as it too mandates that the second Show Cause Notice needs to establish the ingredients required to invoke extended period independently. We are of the considered view that the reliance placed on the said decision and circular are inapplicable in the facts and circumstances of this case.
19. In view of our discussions and analysis above, we are of the considered view that the impugned orders are unsustainable and liable to be set aside. Ordered accordingly.

The Appeals are allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 17.03.2026)

AJAYAN T.V.)
MEMBER (JUDICIAL)

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(M. AJIT KUMAR)
MEMBER (TECHNICAL)