# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

**Service Tax Appeal No. 26117 of 2013**

(Arising out of Order-in-Original No.79/2012 (BVSNK) dt.20.12.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-II)

**M/s Universal Biofuels Pvt Ltd**
Plot No.36, Industrial Park, Vakalapudi,
APSP Camp, Kakinada, AP – 533 005 **……Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Visakhapatnam - II**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **……Respondent**

**Appearance**
Shri Ashwani Pahwa, Advocate for the Appellant.
Shri K. Raji Reddy, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
**HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30178/2026**

Date of Hearing: 03.12.2025
Date of Decision: 02.04.2026

**[Order per: A.K. JYOTISHI]**

M/s Universal Biofuels Pvt Ltd (hereinafter referred to as the appellant) are in appeal against the Order-in-Original dt.20.12.2012, whereby, certain amount of service tax has been confirmed and appropriated and penalties under section 78 & 77 have also been imposed.

2. The issue, in brief, is that the appellants are manufacturer of Bio-diesel and Refined Glycerine and were having an agreement with AE Biofuels Inc., a company situated outside India to take expertise of senior technical personnel for commissioning of Glycerine Refining plant located at Kakinada, East Godavari Dist., Andhra Pradesh. The appellants used to reimburse the salary and travelling expenses incurred on deputation by of such experts AE Biofuels Inc., on cost to cost basis and the same facts were also disclosed in their audited financial statement for the year ended 2008-09. The department, based on audit, felt that the appellant has not paid service tax

on import of under 'Man Power Recruitment Supply Service' (MRSS) nor under 'Erection, Commissioning and Installation Service' (ECIS) under 'Reverse Charge Mechanism' (RCM) in terms of Section 66A of the Finance Act. After explaining their view point, the appellants paid an amount of Rs.78,56,090/- towards service tax along with interest in respect of payments made to AE Biofuels Inc., during the financial year 2008-09 and also requested the authorities to drop further proceeding according to the provisions of section 73(3) read with Board Circular F.No. 137/167/2006-CX-4 dt.13.10.2007. However, the department proceeded with issuance of SCN dt.03.10.2012 demanding service tax and interest and appropriation thereof under the category of 'Manpower Recruitment or Supply Agency Services' (MRSAS) and also proposed penalties under section 76, 78, 77(1) and 77(2) and the same was confirmed vide impugned order. They are in appeal only to the extent of imposition of penalties under section 78, 77(1) and 77(2).

3. Learned Advocate for the appellant, at the very outset, has submitted that they are not contesting the payment of service tax on merit, as such. They are only contesting the issuance of SCN once the entire duty as well as interest thereon has already been discharged before the issuance of SCN itself. Additionally, he has also argued that in the facts of the case, there being no suppression or mis-statement with an intent to evade payment of service tax, penalty under section 78 is not imposable. He has taken us through the history of this demand where he has explained to the Excise authority, who has conducted the audit in September, 2009, about their having reimbursed certain expenses incurred on deputation of experts by AE Biofuels Inc., on cost to cost basis. The audit alleged that the appellant had not paid service tax on import of ECIS and subsequently, they furnished certain details to the department but the department raised certain objection. After further correspondence including submission of various records, ledger extracts, copy of agreement, etc., they finally informed the department that they have paid applicable service tax as well as interest thereon vide GAR-7 Challan No.30015 dt.10.05.2012 and also requested the tax authorities to drop further proceeding in accordance with the provisions of section 73(3) read with Board Circular F.No.137/167/2006-CX-4 dt.13.10.2007. However, they received the SCN demanding duty and proposing for imposition of penalty under the category of MRSS.

4. Learned Advocate has mainly contested that the appellants had bonafide belief that service tax was not payable on the said transaction as the said reimbursement of salary and travelling expenses was on cost to cost basis. However, after several rounds of discussion with the department and understanding the issue, they voluntarily paid the entire amount of tax and also requested for closure of proceeding. It is also pointed out that the entire service tax was deposited under the category of ECIS as was indicated by the audit team. He has also highlighted that there is no willful suppression on their part and it was not paid due to bonafide belief that the amount paid to AE Biofuels Inc., was not liable to service tax. He has relied on several case laws including the judgment in the case of Tamil Nadu Housing Board Vs Collector [1994 (74) ELT 9 (SC)], wherein, the Hon'ble Supreme Court has interpreted the expression 'intent to evade payment of duty' as follows:

> *"... When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word `intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law ..."*

5. Learned AR, on the other hand, has reiterated the findings of the adjudicating authority.

6. Heard both sides and perused the records.

7. We find that the appellants are not contesting the payment of service tax on Reverse Charge Mechanism, as such, which has also been appropriated by the adjudicating authority in the impugned order along with interest towards confirmation of demand of Service Tax under the category of MRSS. They are contesting imposition of penalty under section 78 & 77.

8. Insofar as merit of the case is concerned, we find that the demand was raised under the category of MRSAS and also confirmed thereunder. However, it was also observed that the amount already paid by them in terms of demand of Rs.52,69,757/-, as also interest of Rs.25,86,332/-, have been appropriated towards said confirmed demand. In other words, though the payments were made by the appellant under the category of ECIS, in view of the audit objection it was considered as payment towards service tax

on MRSS and the same was also adjusted against demand made under the category of MRSS. Therefore, no further demand exists. We find that as per the provisions of section 73(3), as it existed during the material time, it provided that a tax payer can approach the department after paying service tax and interest thereon for closure of proceeding. However, in this case, the adjudicating authority did not consider this case fit under section 73(3) on the grounds that in terms of section 73(4), the said provision is not applicable in the case of suppression, fraud, willful misstatement, etc. We find that in this case, the entire demand was based on audit observations and also certain bonafide belief that since it was in the form of reimbursement on cost to cost basis, no service tax was liable to be paid. We also note that the entire amount has been paid much before the issuance of SCN itself and has also been duly appropriated by the adjudicating authority vide the impugned order. We also note that these payments were duly recorded in their books of accounts and they had voluntarily disclosed all these facts and records to the department and the department had gone through all these disclosures over a long period of time starting from time of audit in 2009 up to time of issuance of SCN in 2012. We also find that the issue of taxability on seconded employee, whose salaries and the expenses were being reimbursed by Indian entity was a matter of prolonged litigation and only after the judgment of Hon'ble Supreme Court in the case of CCE & ST Vs Northern Operating Systems Pvt Ltd [2022-VIL-31-SC-ST], clarity emerged on this issue. In fact, there was catena of judgments during the relevant time, wherein, it was held that such transaction would fall outside the ambit of MRSAS. Further, even the judgment of Hon'ble Supreme Court in the case of Northern Operating Systems Pvt Ltd (supra) was in a particular factual matrix and later the Board had clarified vide circular dt.13.12.2023 that it cannot be applied without careful consideration of distinct factual matrix including the terms of contract between the overseas company and the Indian entity in each case.

9. In view of the factual matrix of this appeal, we find that in this case, in the first place, the SCN itself should not have been issued as the appellant had already paid the entire service tax along with applicable interest. Further, we find that the issue of payment of service tax under the category of MRSAS itself was under litigation and differing judgments were passed. There is nothing on record to substantiate that there was deliberate attempt

on the part of the appellant for non-payment of service tax with an intent to evade payment of service tax. Therefore, in the facts of the case, we find that the appellants were eligible under section 73(3) and the reliance placed by the adjudicating authority on section 73(4) is not correct. We also find that the penalty in the given factual matrix can be waived in terms of section 80 of the Finance Act, 1994, as was in existence during the material time, as there was clearly reasonable cause for failure to pay service tax by the appellant during material time though later on voluntarily made good on them over keeping in view of certain audit observations.

10. In view of the same, penalties imposed under section 78 and 77 are not sustainable and to that extent, the impugned order is set aside and the remaining part of the OIO is upheld.

11. Appeal allowed partly.

(Pronounced in the Open Court on 02.04.2026)

**(A.K. JYOTISHI)**
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**
**MEMBER (JUDICIAL)**

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