

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21527 of 2016

(Arising out of Order-in-Original No.BLR-EXCUS-004-COM-009-2016-17 dated 19.07.2016 passed by the Commissioner of Central Excise & Service Tax, Bangalore.)

**M/s. Emmvee Photovoltaics Power
(P) Ltd.**

No.13/1, International Airport Road,
Bettahalasur Post,
Bangalore - 562 157.

Appellant(s)

VERSUS

**The Commissioner of Central Excise
& Service Tax**

Bengaluru IV Commissionerate,
Ground Floor, H.M.T Bhavan,
Ganganagara,
Bangalore - 560 032.

Respondent(s)

APPEARANCE:

Shri B. G. Chidananda, Advocate for the Appellant.

Shri Vikalp Jain, Superintendent (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 20531 /2026

DATE OF HEARING: 06.01.2026

DATE OF DECISION: 21.04.2026

PER: R. BHAGYA DEVI

This appeal is filed by M/s. Emmvee Photovoltaics Power (P) Ltd. Bangalore against the impugned Order-in-Original No. BLR-EXCUS-004-COM-009-2016-17 dated 19.07.2016.

2. The appellant was rendering various services and availing cenvat credit on inputs and input services and utilised the same for payment of the output services. During investigation, it was noticed that the appellant had imported marketing services from the foreign company M/s. Emmvee Photovoltaics GmbH, Germany on mutually agreed value but failed to discharge service tax on the same. Accordingly, notice was issued demanding service tax on the marketing services received by the appellant and also on the bonus payments made to the foreign service providers under Reverse Charge Mechanism (RCM). The Commissioner in the impugned order confirmed both the demands and imposed penalties under section 77 and 78 of the Finance Act 1994. Aggrieved by this order, the appellant is now in appeal before us.

3. The Learned Counsel submits that the appellant is in the business of manufacture of photovoltaic modules and has been exporting these goods to European countries and they also undertake processing/ tempering of glass for the solar requirement and architecture requirement. It is submitted that the appellant had entered into a Share Purchase Agreement and the consideration identified in the agreement is primarily a consideration for purchase of shares from two individuals who were the shareholders of the foreign company namely M/s. EMMVEE Photovoltaic GmbH, Germany. The amount on which service tax is being demanded is actually the amount towards the 'Share Capital' and not against any services received by them. They have also placed on record a copy of the application filed to the AD Bank for transfer of funds which amount is represented as payment towards 'Share Capital'. Referring to the Agreement, it is submitted that the Agreement states that appellant reserves the right to render the bonus payments even when the aforementioned conditions are not

entirely fulfilled which is binding on both parties. It is stated that the bonus was not linked to sales turnover by the appellant alone but it had to be achieved by the foreign company and its subsidiaries also. Relying on the following decisions, it is submitted that these amounts cannot be liable to service tax.

- **Mirah Exports Pvt. Ltd. Vs. CC: 1998 (98) ELT 3 (S.C.)**
- **Union of India Vs. Mahindra and Mahindra Ltd.: 1995 (76) ELT 48 (S.C.)**
- **Essar Projects (India) Ltd. Vs. CCE & ST: 2014 (33) STR 696 (T)**

3.1 With regard to extended period of limitation, it is stated that the service tax payments demanded for the period April, 2012 to September, 2012 was paid on 14.03.2013 along with interest while the notice was issued only on 16.01.2015 and also since the demand was under RCM, the appellant was also eligible for the input credit; hence, suppression or invoking of extended period of limitation does not arise.

4. The learned Authorised Representative (AR) on behalf the Revenue submitted that the core issue is whether the bonus payments made by the appellant to the foreign shareholders under the Share Purchase Agreement constitute part of the consideration for purchase of shares as claimed by the appellant. Whether such payments are, in substance, consideration for continued marketing and business promotion services rendered by the foreign entity and its managerial personnel and the services are to be classified as Business Auxiliary Services and liable to service tax under RCM under the Finance Act, 1994. It is also submitted that the bonus payments were not automatic or assured payments but were contingent upon future events and liable to be forfeited entirely if the stipulated conditions were not fulfilled, in the event of failure to achieve the prescribed turnover no bonus was to be paid.

5. Heard both sides and perused the records. The period of dispute is from April 2011 to December 2012 and the issues involved are (i) non-payment of service tax on the commission paid to the service tax providers for the period from April 2011 to September 2012, for an amount of service tax demand of Rs. 15,18,159/-; and (ii) non-payment of service tax on certain payments made to the foreign service providers in the name of bonus payments and the service tax demand on this account is Rs.26,75,322/-.

5.1 With regard to the commission paid to the service providers, the appellant has submitted that the same is not being contested and the said amount has been paid with applicable interest of Rs.3,05,518/- on 14.03.2013. Therefore, we uphold the service tax demand of Rs.15,18,159/- along with interest of Rs.3,05,518/-.

6. With regard to the second issue the Commissioner in the impugned order observed as follows:

"6.4 As per the documents available, it is a fact that the Foreign Marketing Company viz M/s. Emmvee Photovoltaic GmbH, Germany were the marketing agents of the assessee and the assessee was making payment in Foreign Currency towards marketing commission and were paying Service Tax on such commission paid under the category 'Business Auxiliary Service', as import of service in terms of Section 66 A of the Act. It is also an admitted fact that the assessee acquired 51% of unlisted stock holding of the Foreign Company with effect from 01.01.2012 under an agreement supported by a valuation report by the shares valuer. Further, as per the business purchase agreement ('agreement) dated 05.12.2011, in addition to the value of the stock holdings, as valued by the valuator, the assessee is liable to pay certain amount, on achievement of sales turnover, as bonus payment to the stake holders of the Foreign company. The dispute in the instant case is that whether such bonus payment and also the overpriced value of the unlisted stock

holdings are for marketing of the products of the assessee abroad and the same is liable for payment of Service Tax. The assessee has not disputed the above facts and however, disputed the liability of Service Tax and contended that the payment made is for acquiring the shares of the Foreign Company and no service is provided on acquisition, as per the Share Purchase Agreement.

6.5 As per the Share Purchase Agreement, the basic value of the 51% of the unlisted shares was Euro-6375 from each of the two share holders which works out to a total price of Euro 12750. The Fair Value was arrived at EUR 11.42 Million and however, the same was valued at EUR 1.5 Million which was the prevailing Strike Price as certified by the Chartered Accountant. The said 51% share were purchased by the assessee from two of the shareholders of their Marketing Company abroad at a price of EUR 900 thousands (ie. EUR 450 thousands from each of the Share holder) which is more than 70 times of the basic value of 51% of the unlisted Stock Holdings purchased. Further, in the said purchase document, it is clearly mentioned that the sellers (i.e. two share holders of the Marketing Company) were also eligible for a bonus payment for two succeeding years after selling of the shares, subject to condition that they continue to be operative as managers of the Marketing Company abroad and shall achieve certain target of sales turnover failing which they are not eligible for such bonus payment. I find that, said transaction of acquiring of shares with specific valuation and additional payment in the name of bonus payments with a pre-requisite condition linked to productivity of performance is not a fair deal in as much as no sale transaction would be related to the future performance once the transaction is over. Further, Sri. D.V. Manjunatha, the Managing Director of the assessee company, in his statement given before the Superintendent under Section 14 of the Central Excise Act, 1944 could not substantiate the reason for additional payment of an amount of EUR 1,50,000 each to the two sellers which is over and above the agreed upon value of the unlisted shares sold. Further, the said bonus payment is also related to the performance for the future period of sale transaction. As alleged in the SCN, the said bonus payment made is nothing but the consideration payable for the future business of

marketing by the two share holders of the Marketing Company in as much as the bonus payment made is to the individuals and not to the Marketing Company. Once the transaction for sale of stock holdings is over, any payment made subject to any conditions will not become part of the sale value of the shares. Further, when the Stock holdings are valued at the time of actual transfer of shares, any payment made subsequent to the acquisition only on crossing certain level of turnover, to the individuals instead of the Marketing Company, would definitely related to the sales turnover and the same is nothing to do with the Fair Price of the stock holdings, as correctly alleged in the SCN. It is also a fact that the assessee has purchased the unlisted Shares of their Marketing Company at an overvalued price which is more than 70% of the base value of the stocks. Further, in the statement given before the Superintendent of Central Excise, the Managing Director of the assessee company has deposed that fixed commission is paid to the Marketing Company abroad before and after purchase of 51% of the shares of that company which implies that such payment is related to the business of Marketing done abroad for and on behalf of the assessee otherwise, there is no obligation on the assessee to make such payment when it is contended that no service is to be provided after 01.01.2012. It is also a fact that there are two parts in the Share Purchase agreement-one is for purchase of unlisted shares from two shareholders and the other is for bonus payment linked to enhanced performance for the subsequent period of acquiring the stock holding of the Marketing Company. It is very clearly brought out in the Share purchase agreement, that there is no claim to Bonus Payment if the agreed upon sales turnover is not achieved which aspect is strengthened in the statements of the assessee, recorded under Section 14 of the Central Excise Act, 1944. Hence, the contention of the assessee that bonus payments are also towards purchase of shares cannot be accepted to. In view of the above discussions, I hold that the bonus payment and other payments made in excess of the agreed upon share price is nothing but consideration towards Marketing services received by the assessee and accordingly liable for payment of Service Tax."

6.1 It is an admitted fact that appellant had entered into an Agreement on 05.12.2011 which they claimed as Share Purchase Agreement for the purchase of shares from two individuals who were the shareholders of the foreign company M/s. Emmvee Photovoltaics GmbH, Germany. The relevant clauses are reproduced below:

Art 2a Purchase of-and the Stockholding Spilt of Subject Matter of the Contract No. 1

1. Seller No. 1 hereby sells to the Acquirer a stockholding split in an amount of EUR 0.375.00 from his holding of EUR 12.500.00-hereinafter referred to as the Purchase Subject Matter No. 1'.
2. The purchase price of the Purchase Subject Matter No. 1 is EUR 450.000.00 (in words four hundred and fifty thousands of Euros)
3. The Seller No. 1 hereby transfers the stockholding split under Paragraph 1 hereof to Acquirer with effect from 01 January 2012 and the Acquirer hereby accepts the transfer.
 - a) The with purchase price is in 2 instalments (Purchase Price Instalment No. 1 and Purchase Price Instalment No.2) and is due for payment and is payable as follows:
 - a. The Purchase Price Instalment No. 1 in an amount of EUR 300.000.00 (in words: three hundred thousands of Euros) is due for payment and payable by 27 December 2011 at the latest to the credit of the wing bank account of Seller No. 1:
 - b. The Purchase price Instalment No. 2 in an amount of EUR 150,000.00 (in words one hundred and fifty thousand of Euros) is due for payment and payable by 31st December 2011.....
4. In addition to the foregoing, the Parties also agree to a bonus payment in an amount of EUR 300,000.00 (in words: three hundred thousands of Euros) in two instalments, which are to become payable and to be and according to the following conditions: as to Bonus Payment No. 1 in an amount of EUR 150,000.00 (in words: one hundred and fifty

thousands of Euros) and as to Bonus Payment No. 2 in an amount of EUR 5.000.00 (in words: one hundred and fifty thousands of Euros):

a) The Bonus Payment No. 1 in an amount of EUR 150,000.00 (in words: one hundred and fifty thousands of Euros) is to become payable on 15.12.2012, once the following conditions are fulfilled:

aa) that Seller No. 1 is still active as a manager of Emmvee Photovoltaics GmbH, at that point in time;

bb) that Emmvee Photovoltaics GmbH including its subsidiaries generates a sales turnover of more than EUR 20.000,000.00 (in words: twenty millions of Euros) in project business, during the time period from 21.01.2012 to 10.12.2012. The sales turnover is to be calculated from invoices posted to the accounts (sales turnover of Emmvee Photovoltaics GmbH plus the sales turnover of associated businesses (subsidiaries). Should the foregoing figure of sales turnover not be achieved, then there is no claim to Bonus Payment No. 1 hereunder.

b) Bonus Payment No. 2 in an amount of EUR 150,000.00 (in words: one hundred and fifty thousands of Euros) is to become payable on 15.12.2013, once the following conditions are fulfilled:

aa) that Seller No. 1 is still active as a manager of Emmvee Photovoltaics GmbH, at that point in time,

bb) that Emmvee Photovoltaics GmbH (Inc.) including its subsidiaries generates a sales turnover of more than EUR 100,000,000.00 (in words: one hundred millions of Euros) in project business, during the time Period from 01.01.2013 to 10.12.2012. The sales turnover is to be calculated from invoices posted to the accounts (sales turnover of Emmvee Photovoltaics GmbH plus the sales turnover of associated businesses (subsidiaries)). Should the foregoing figure of sales turnover not be achieved, then there is no claim to Bonus Payment No. 2 hereunder.

The foregoing regulation concerning the preconditions for the Bonus Payments Nos. 1 and 2 are Independent of each other.

5. The Acquirer hereby reserves the right to render the Bonus Payments Nos. 1 and 2 even when the aforementioned conditions are not entirely fulfilled.

Art. 2b Purchase of – and the stock holding split of subject matter of the Contract No.2

.....

4. In addition to the foregoing, the Parties also agree to a bonus payment in an amount of EUR 300.000.00 (words: three hundred thousands of Euros) in two instalments, which are to become payable and to be according to the following conditions: as to Bonus Payment No. 1 in an amount of EUR 150.000.00 (in words: one hundred and fifty thousands of Euros) and as to Bonus Payment No. 2 in an amount of EUR 40.000.00 (in words: one hundred and fifty thousands of Euros)

a) The Bonus payment No.1 in an amount of EUR 150, 000.00 -----is to become payable on 15.12.2012 once the following conditions are fulfilled.

aa) that Seller No.2 is still active as a manager of Emmvee Photovoltaics GmbH (Inc.) at that point in time.

bb) that Emmvee Photovoltaics GmbH (Inc.) including its subsidiaries generates a sales turnover of more than EUR 20,000,000.00 (in words: twenty millions of Euros) in project business, during the time period from 1.01.2012 to 10.12.2012. The sales turnover is to be calculated from invoices posted to the accounts (sales mover of Emmvee Photovoltaics GmbH (Inc.) plus the sales turnover of associated businesses (subsidiaries). Should the foregoing figure of sales turnover not be achieved, then there is no claim to Bonus Payment No 1 hereunder.

b) Bonus Payment No. 2 in an amount of EUR 150,000.00 (in words: one hundred and fifty thousands of Euros) is to become payable on 15.12.2013, once the following conditions are fulfilled.

aa) that Seller No. 2 is still active as a manager of Emmvee Photovoltaics GmbH (inc.), at that point in time;

bb) that Emmvee Photovoltaics GmbH (Inc.) including its subsidiaries generates a sales turnover of more EUR 100,000,000.00 (in words: one hundred millions of Euros) in project business, during the time period from 01.01.2013 to 10.12.2012. The sales turnover is to be calculated from Invoices posted to the accounts (sales turnover of Emmvee Photovoltaics GmbH (inc.) plus the sales turnover of associated businesses (subsidiaries). Should the foregoing figure of sales turnover not be achieved, then there is no sim to Bonus Payment No. 2 hereunder.

The foregoing regulation concerning the preconditions for the Bonus Payments Nos. 1 and 2 are independent of each other.

5. The Acquirer hereby reserves the right to render the Bonus Payments Nos. 1 and 2, even when the forementioned conditions are not entirely fulfilled.”

6.2 From the above Clauses of the Agreement, it is clear that in addition to the purchase of shares for an amount of 450,000.00 Euros, there is an additional payment of 300,000.00 Euros termed as 'bonus payment' for fulfilling the conditions as laid down in the Agreement. Thus, it clearly establishes the fact that this 'bonus payments' are nothing but payments towards marketing the products of the appellant. The Revenue has rightly classified the same under 'Business Auxiliary Services' since the same is towards promoting the business of the appellant and accordingly, the demand of service tax of Rs.26,75,322/- is upheld. The case laws relied upon by the appellant are in relation to the Customs Valuation, hence not applicable to the present set of facts.

7. Since, these facts came to the notice of the Revenue only after the Preventive Officers investigated into the transactions of the appellant and these documents were brought on record only during investigation, the element of suppression and intention to evade tax is obvious. Moreover, the appellant has accepted the

part of the liability on 'commission payments' and discharged the service tax as and when it was brought to their notice. Therefore, the demand invoking extended period of limitation is upheld. However, taking into consideration the fact that Rs.15,18,159/- along with interest of Rs.3,05,518/- was paid prior to the issue of show-cause notice, the penalty under Section 78 stands reduced to Rs.26,75,322/-. Penalty of Rs.10,000/- under Section 77 is set aside. The impugned order is modified to the above extent.

Appeal is partially allowed.

(Order was pronounced in Open Court on 21.04.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv