

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 01

**Service Tax Appeal No. 11862 of 2018**

(Arising out of OIA-CCESA-SRT-APPEAL-PS-643-2017-18 dated 19/02/2018 passed by the Commissioner CGST & Central Excise, Surat Commissionerate)

**Champion Jointing Private Limited**

Plot No.1109 & 1110, iiiird Phase  
Gidc- Vapi, Gujarat-396191

**.....Appellant**

*VERSUS*

**CGST & Central Excise-Surat**

New Central Excise Building,  
Opp. Gandhi Baug,  
Chowk Bazaar, Surat-395001".

**.....Respondent**

**APPEARANCE:**

Shri. Dhaval K Shah, Advocate for the Appellant  
Smt. Sunita Menon, Superintendent (AR) for the Respondent

**CORAM: HON'BLE SH. S. S. GARG, MEMBER ( JUDICIAL )**

**Final Order No. 10334/2026**

DATE OF HEARING:08.05.2026  
DATE OF DECISION:11.05.2026

**S. S. GARG**

The present appeal is directed against the impugned order dated 19.02.2018 passed by the Commissioner (Appeals) CGST & Central Excise - Surat whereby the Learned Commissioner (Appeals) has upheld the Order-In-Original and rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacturing of excisable goods i.e compressed asbestos fiber jointing, asbestos free compressed jointing falling under Chapter heading 68 & 84 of the CETA, 1985. The records of the appellant was audited by the department and it was noticed by the department that appellant had paid the performance commission & perquisite fee other than salary but had not discharged the service tax liability on the said services. The department entertained the view that the appellant is liable to pay service tax on such fee and commission under reverse charge under Notification No. 30/2012 dated 20.06.2012 as amended vide notification No. 45/2012 dated 07.08.2012 i.e. the services provided or agreed to be provided by a Director of a company to the said company was notified as a taxable service.

2.1 On this allegation, a show cause notice dated 25.09.2014 was issued demanding the service tax amounting to Rs. 11,12,400/- under Section 73(1) of the Finance Act, 1994 along with applicable interest under Section

75 of the Finance Act, 1994 and penalties under Section 77(1)(a), 77(1)(b), 70 and 78 of the Finance Act, 1994.

2.2 After following the due process, the adjudicating authority confirmed the demand of service tax, interest and penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the same, hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. Learned Counsel appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial Precedents. He further submits that entire demand is raised on basic misconception of law, namely any remuneration paid by a company to its director beyond fixed monthly salary, must necessarily be regarded as consideration for an independent taxable service. He further submits that this premise is ex-facie contrary to Section 17(1) of the Income Tax Act, 1961 which expressly includes within the meaning of salary "fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages". He further submits that appellant has produced statutory and corporate records and the Board Resolutions which clearly provides that individuals were appointed as working/whole-time directors and the remuneration payable to them in such capacity is subject to deduction of TDS.

4.1 He further submits that Form-16 certificates issued to them and TDS deposited under the salary mechanism constitute statutory evidence that the payment were treated as salary under the Income Tax Act. He also submits that as per Section 65B(44)(b) of the Finance Act, 1994 excludes from the definition of "service" any provision of service by an employee to the employer in the course of or in relation to employment. The exclusion is absolute and once the relationship between the company and the concerned directors is found to be one of employer and employee, the charging provisions under the Finance Act, 1994 do not get attracted at all. He also submits that the reverse charge notification cannot expand the charging section or nullify the statutory exclusion. He further submits that this issue is no more res integra and has been settled by the various decisions by the Tribunal and the High Court and Supreme Court. In support of his submission, he has relied upon the following decisions.:-

- Ratnamani Metals and Tubes Vs CCE & ST. Ahmedabad- (2025) 34 Centax 34 (Tri-Ahmd)
- Sulphur Mills Ltd Vs. CCE & ST, Vadodara - II (2024) 25 Centax 385 (Tri. Ahmd)
- Maithan Alloys Ltd Vs. CCE & S.T., Bolpur 2020 (33) GSTL 228 (Tri. Kolkata)
- Rent Works India Pvt Ltd. Vs. CCE., Mumbai - V 2016 (43) S.T.R. 634 (Tri. Bom)
- Ram Pershad Vs The Comm. of Income Tax, New Del. (1972) 2 SCC 696

4.2 Learned Counsel also submits that the department has not disputed the status of the director being employee of the company to whom the salary has been paid by the appellant and no demand of service tax has been made on that salary amount paid to whole-time directors as commission/ perquisites/performance incentive.

5. On the other hand, Learned AR reiterated the finding of the impugned order. She further submitted that the performance commission and perquisite paid to the directors are subject to service tax and simply because the appellant has passed Board resolution and has deducted the TDS from the salary under the Income Tax Act, 1961 does not debar the department from the claiming the service tax on the commission/perquisite. In support of her submission, she has relied upon the following decision:-

- BRAHM ALLOY LIMITED VS. COMMISSIONER OF CGST & C.EX., DURGAPUR reported in 2019 (24) G.S.T.L 616 (Tri. Cal)
- M/s. Sanwaria Agro Oils Limited vs. Commissioner of Central Excise and Service Tax, Bhopal reported in 2024 (7) TMI 549 –CESTAT NEW DELHI.

6. I have considered the submissions of both the parties and perused the material on record. The only issue to be decided in the present case is whether performance commission paid by the appellant company to its directors constitute "service" or not and accordingly "attracts service tax or not"., the Learned Counsel argued that in order to prove that the directors are whole-time employees of the company, the appellant has produced the Board resolution specifically appointing the concerned individual as working/whole-time director and has also mentioned remuneration payable to them. Further, i find that appellant has also filed Form-16 issued by the appellant to the concerned directors reflecting remuneration under the head salary and evidencing deduction of tax at source in the salary framework.

Further, i find that the entire demand proceeds on a misconception of law, namely that any remuneration paid by a company to its directors beyond fixed monthly salary must be regarded as consideration for independent taxable service.

6.1 This is contrary to Section 17(1) of the Income Tax which expressly includes within of the meaning of salary, " fee, commissions, perquisites or profits in lieu of or in addition to any salary or wages. Further, I find that this issue is no more *res integra* and has been settled by various Benches of the Tribunal including the Division Bench of CESTAT, Ahmedabad. In the case of Ratnamani Metals and Tubes Vs CCE & ST. Ahmedabad- (2025) 34 Centax 34 (Tri-Ahmd). Wherein identical issue was examined by the Division Bench and has held as under:

*4. We have carefully considered the submissions made by both the parties and perused the records. We find that the issue involved in the present appeal is whether service tax should be levied on the remuneration paid by the Appellant to its directors under reverse charge mechanism or not. In the light of the records submitted by the Appellants, in terms of Board Resolution and Income tax returns submitted under Form – 16, we are of the considered view that the Directors have been appointed as employees of the Appellant's Company. We find that the matter is no longer res- integra as the same has already been deliberated upon and decided by this Tribunal. The issue has been squarely covered by this Tribunal under similar facts and circumstances. For the said purposes relevant portion of the judgements have been extracted below:-*

- In the case of Bengal Beverages Pvt. Ltd. v CGST & Excise, Howrah 2020 (11) TMI 633

*"8. In the instant case, the only dispute herein is for payment of remuneration in the nature and form of commission based on percentage of profit to whole time directors, which is a fact on record. Section 2(94) of Companies Act, 2013, duly defines 'whole-time director' to include a director in the whole-time employment of the company. A whole-time Director refers to a Director who has been in employment of the company on a full-time basis and is also entitled to receive remuneration. The certificate issued by the company secretary states that the remuneration is given in various form as allowed under the Companies act, 2013. We further find that the position of a whole-time director is a position of significance under the Companies Act. Moreover, a whole-time director is considered and recognized as 'key managerial personnel' under Section 2(51) of the Companies Act. Further, he is an officer in default [as defined in clause (60) of Section 2] for any violation or non-compliance of the provisions of Companies Act. Thus, in our view, the whole-time Director is essentially an employee of the Company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, is pursuant to employer-employee relationship and the mere fact that the whole-time Director is compensated by way of variable pay will not in any manner alter or dilute the position of employer-employee status between the company assessee and the whole-time Director. We are thoroughly convinced that when the very provisions of the Companies Act make whole-time director (as also in capacity of key managerial personnel) responsible for any default/offences, it leads to the conclusion that those directors are employees of the assessee company.*

*9. Further, the judgment of this Tribunal in the case of MAITHAN ALLOYS LTD Versus COMMISSIONER OF C. EX. & S.T., BOLPUR (supra)*

*is squarely applicable to the facts of the case. Further, the Ld. Adjudicating authority has also allowed part of the demand on the ground that there exists an employer-employee relationship between the whole time Directors and the appellant assessee, then the ground of confirming the balance demand that the directors have provided service to the company becomes infructuous and hence cannot survive before the eyes of the law. Since demand of service tax is set aside, penalty and interest are also not sustainable."*

- In the case of Allied Blenders and Distillers Pvt. Limited vs. CCE&ST, Aurangabad reported at 2019 (24) GSTL 207 (Tri. Mumbai), the Mumbai Bench of this Tribunal has made the following observations:-

*"5. The short issue involved in the present appeal for determination is whether remuneration paid to the Directors by the appellant is chargeable to Service Tax and the appellants are required to discharge Service Tax under reverse charge mechanism in accordance with Notifications No. 45/2012-S.T., dated 7-8-2012 and 46/2012-S.T., dated 7-8-2012. Revenue's allegation is that the Directors namely, Shri K.R. Chhabria, Shri U.K. Ganguli, Shri Deepak Roy and Shri Jitendra Hemdev, who were paid remuneration during the period July, 2012 to March, 2015 amounting to Rs. 1,01,02,55,057/- by the appellant, Service Tax of Rs. 12,48,67,525/- was required to be discharged by the appellant. Opposing the said contention of the Revenue, the appellant has argued that the amount paid to the said Directors are in the nature of the salary paid to them, since the said Directors are whole time directors and employees of the company, accordingly, it is not a 'service' within the definition of 'service' prescribed under Section 65B(44) of the Finance Act, 1994.*

*....16. Also, from the documents produced by the appellant it is crystal clear that the Directors who are concerned with the management of the company, were declared to all statutory authorities as employees of the company and complied with the provisions of the respective Acts, Rules and Regulations indicating the Director as an employee of the company. No contrary evidence has been brought on record by the Revenue to show that the Directors, who were employee of the appellant received amount which cannot be said as 'salary' but fees paid for being Director of the company. The Income Tax authorities also assessed the remuneration paid to the said directors as salary, a fact cannot be ignored. The judgments cited by the revenue cannot be applied to the present case as the facts are different and the finding of Income tax authorities accordingly also different in the said case."*

- In the case of Supreme Treon Pvt. Limited v Commissioner of Central Excise, CESTAT – Ahmedabad this Tribunal under identical facts and circumstances has passed the following order:-

*"Since the facts of the matter in hand are similar to the one as decided by the above-mentioned decision of this Tribunal. Following the judicial discipline, we follow the same and hold that impugned order-in-original is without any merit. The appeals are allowed"*

*We also consider the submissions made by the Learned Counsel with regards to clarification issued by the Central Board of Excise and Customs vide Circular No. 115/09/2009 – ST dated 31.07.2009 that states that the remunerations paid to such Directors would not be considered "commission" as envisaged under Service tax category. The relevant portion has been produced below:*

*"it is clarified that remunerations paid to Managing Director / Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.*

*05. In view of the aforesaid discussions and findings, we are of the considered view that the directors of the Appellant are employees of the Appellant Company and following the judicial discipline on the similar issue, we hold that the impugned order is not sustainable, hence the same is set aside as it is without any merit. The appeal is allowed.*

Similarly, in the case Sulphur Mills Ltd Vs. CCE & ST, Vadodara - II (2024) 25 Centax 385 (Tri. Ahmd) has again examined the same issue and after considering various earlier judgments on the issue has held in Para 6-8 as under:-

*"6. Heard both sides and perused the appeal records. In the instant case, it is not in dispute that service tax has been duly paid on remuneration paid to directors who are not whole time employee directors. The only dispute herein is for payment of remuneration to whole time directors, which is a fact on record. The provisions of Companies Act, 2013, contained in section 2(94), duly defines 'whole time director' to include a director in the whole-time employment of the company. A whole-time director refers to a director who has been in employment of the company on a fulltime basis and is also entitled to receive remuneration. We further find that the position of a whole-time director is a position of significance under the Companies Act. Moreover, a whole-time director is considered and recognized as a 'key managerial personnel' under Section 2(51) of the Companies Act. Further, he is an officer in default [as defined in clause (60) of section 2] for any violation or non compliance of the provisions of Companies Act. Thus, in our view, the whole time director is essentially an employee of the Company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, is pursuant to employer – employee relationship and the mere fact that the whole time director is compensated by way of variable pay will not in any manner alter or dilute the position of employer – employee status between the company assessee and the whole time director. We are thoroughly convinced that when the very provisions of the Companies Act makes whole time director (as also in capacity of key managerial personnel) responsible for any default / offences, it leads to the conclusion that those directors are employees of the assessee company.*

*7. Further, in the present case, the appellant has duly deducted tax under section 192 of the Income Tax which is the applicable provisions for TDS on payments to employees. This factual and legal position also fortifies the submission made by the appellant that the whole time directors who are entitled to variable pay in the form of commission are 'employees' and payments actually made to them are in the nature of salaries. This factual position cannot be faulted in absence of any evidence to the contrary. The submission of Ld. DR as well as the finding made by the Commissioner in the impugned order that since the whole time directors are compensated by way of variable pay and hence not employees, does not have any legal basis and is completely misplaced, and the same cannot be sustained. The decision of the Tribunal in Rent Works India (Supra) has clearly set the legal position that when the Income Tax Department considers payment in the nomenclature 'consultancy fee' as salaries, on which TDS is also made, the said payments cannot be said towards rendition of taxable service for levy of service tax. The decision in case of PCM Cement Concrete Pvt Ltd. (Supra) has set the legal proposition that consideration paid to whole time directors would be treated as payment of salaries inasmuch as there would be employer – employee relationships and in such case the levy of service tax cannot be sustained.*

*8. In view of the above discussions and the settled legal judicial precedence and provisions contained in statutes referred above, demand of service tax on remuneration paid to whole time directors cannot be sustained and hence set aside. Since demand of service tax is set aside, penalty and interest are also not sustainable."*

Further, I find that the CESTAT Kolkata Bench in the case of Maithan Alloys Ltd Vs. CCE & S.T., Bolpur 2020 (33) GSTL 228 (Tri. Kolkata) has examined the same issue and has held as under:

*6. In the instant case, it is not in dispute that service tax has been duly paid on remuneration paid to directors who are not whole time employee directors. The only dispute herein is for payment of remuneration to whole time directors, which is a fact on record. The provisions of Companies Act, 2013, contained in section 2(94), duly defines 'whole time director' to include a director in the whole-time employment of the company. A whole-time director refers to a director who has been in employment of the company on a fulltime basis and is also entitled to receive remuneration. We further find that the position of a whole-time director is a position of significance under the Companies Act. Moreover, a whole-time director is considered and recognized as a 'key managerial personnel' under Section 2(51) of the Companies Act. Further, he is an officer in default [as defined in clause (60) of section 2] for any violation or non-compliance of the provisions of Companies Act. Thus, in our view, the whole time director is essentially an employee of the Company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, is pursuant to employer – employee relationship and the mere fact that the whole time director is compensated by way of variable pay will not in any manner alter or dilute the position of employer – employee status between the company assessee and the whole time director. We are thoroughly convinced that when the very provisions of the Companies Act makes whole time director (as also in capacity of key managerial personnel) responsible for any default / offences, it leads to the conclusion that those directors are employees of the assessee company.*

*7. Further, in the present case, the appellant has duly deducted tax under section 192 of the Income Tax which is the applicable provisions for TDS on payments to employees. This factual and legal position also fortifies the submission made by the appellant that the whole time directors who are entitled to variable pay in the form of commission are 'employees' and payments actually made to them are in the nature of salaries. This factual position cannot be faulted in absence of any evidence to the contrary. The submission of Ld. DR as well as the finding made by the Commissioner in the impugned order that since the whole time directors are compensated by way of variable pay and hence not employees, does not have any legal basis and is completely misplaced, and the same cannot be sustained. The decision of the Tribunal in Rent Works India (Supra) has clearly set the legal position that when the Income Tax Department considers payment in the nomenclature 'consultancy fee' as salaries, on which TDS is also made, the said payments cannot be said towards rendition of taxable service for levy of service tax. The decision in case of PCM Cement Concrete Pvt Ltd. (Supra) has set the legal proposition that consideration paid to whole time directors would be treated as payment of salaries inasmuch as there would be employer – employee relationships and in such case the levy of service tax cannot be sustained.*

*8. In view of the above discussions and the settled legal judicial precedence and provisions contained in statutes referred above, demand of service tax on remuneration paid to whole time directors cannot be sustained and hence set aside. Since demand of service tax is set aside, penalty and interest are also not sustainable.*

6.2 Since, the issue is squarely covered by the decisions of the Tribunal (cited supra) therefore by following the ratio of the said decisions, I am of the considered view that the impugned order is not sustainable in law and the same is set aside.

7. Consequently, the impugned order is set aside and appeal is allowed with consequential relief if any as per law.

(Pronounced in the open court on 11.05.2026)

**(S. S. GARG)**  
**MEMBER ( JUDICIAL )**

Prachi