CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 40807 of 2021

(Arising out of order in Original No.14-16/2021 – (ST – Commr.) passed by Commissioner of GST and Central Excise, GST Bhawan, No.1, Foulkes Compound, Anaimedu, Salem)

Thriveni Earth Movers Pvt. Ltd. **.... Appellant**
22/110, Greenways Road
Fairlands, Salem 636 016

VERSUS

Commissioner of GST and Central Excise **...Respondent**
No.1 Foulkes Compound,
Anaimedu, Salem 636 001

WITH

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AND

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Thriveni Earth Movers Pvt. Ltd. **.... Appellant**
22/110, Greenways Road
Fairlands, Salem 636 016

VERSUS

Commissioner of GST and Central Excise ...Respondent
No.1 Foulkes Compound,
Anaimedu, Salem 636 001

APPEARANCE:

Shri Prateek Marlecha, Chartered Accountant 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 No.40621-40623/2026

DATE OF HEARING:16.02.2026

DATE OF DECISION:27.05.2026

Per AJAYAN T.V.

Thriveni Earth Movers Pvt. Ltd., the Appellant herein, has preferred these three appeals against a common Order in Original and involving a common issue. Hence, these were heard together and are disposed of by this common order.

2. The relevant facts are that the Appellant is a company registered under the Companies Act, 1956 and is registered with the Service Tax Department as a provider of mining services. The Appellant was earlier issued a Show Cause Notice No.81/2014 (ST) (Commr.) dated 29.09.2014 demanding service tax on the remuneration paid to the Directors of the Company for the period 07.08.2012 to 31.03.2014. It was alleged therein that from 7th August 2012, the services provided or agreed to be provided by a Director of the Company or a Body Corporate, to the said company or the Body Corporate, are liable to be levied service tax under reverse charge mechanism vide Notification No.45/2012 – ST dated 07.08.2012, which amended the Notification No.30/2012-ST dated 20.06.2012. The said proceedings culminated in the Order in Original No.15/2015 dated 23.10.2015 confirming the demand along with

appropriate interest and imposing penalties. The present proceedings are in respect of statements of demand issued subsequently, namely, SOD No.2/2016 dated 24.02.2016 for the period 01.04.2014 to 31.03.2015, SOD No.03/2018 – ST (ADC) dated 11.04.2018 for the period 01.04.2015 to 31.03.2016 and SOD No.6/2019 dated 29.03.2019 for the period 01.04.2016 to 31.06.2017, with each SOD detailing the previous SCNs / SOD issued and stating that the grounds mentioned therein form part and parcel of the subject SOD. After due process of law, the Adjudicating Authority vide common Order in Original No.14-16 / 2021– (ST – Commr.) dated 31.08.2021 read with respective Corrigendum, confirmed the demand proposed in the respective SODs along with applicable interest and imposed penalties under section 76 of the Finance Act, as more particularly specified therein. Aggrieved, the Appellant has preferred this appeal.

3. Shri Prateek Marlecha, Ld. Chartered Accountant appearing on behalf of the Appellant, made elaborate submissions, which were also summarized in the common written submissions filed in support of the grounds of appeal, contending that service tax under reverse charge can be demanded only if the service in question is liable to tax. Ld. Consultant submits that as per the definition of service under Section 65B(44), 'Service' means any activity carried out by a person for another for consideration, and includes the declared service, but shall not include the services that were stipulated in the Clauses (a) to (c) thereunder. As per Clause (b) below the definition in Section 65 B (44) of the Act, provision of service by an employee to the employer in the course of or in relation to his employment, is not included in the definition of service. Ld. Consultant submits that in the instant case all the Directors have entered into individual employment agreement with the Appellant and Clause 3.4 of the respective agreement specifically states that the agreement constitutes an employer – employee relationship between the Appellant and the concerned Director. Ld. Consultant further submits that the Directors are employees of the Appellant and observe all the rules and

regulations which any other employee is required to follow and are therefore providing services to the Appellant in the course of their employment. It is submitted that while remitting the salary, the Appellant has deducted TDS under Section 192 of the Income Tax Act and issued Form 16 to the employee Directors. Drawing attention to the employment agreement of the respective Director and the related Form 16 enclosed in the Appeal Memorandums, it is contended that Form 16 is issued when there is an employer - employee relationship. It is submitted that the services provided by the Directors clearly fall under the exclusion clause (b) of the definition of service and is therefore outside the purview of service tax. It was also argued that the provisions of Companies Act, 1956 itself allows the Director's renumeration to be fixed based on the percentage of profit of the company. It was submitted that the Tribunal in the case of ***Alchemie Organics v CCE & ST, (2024) 25 Centax 381*** has held that renumeration including salary, allowance and commission based on profit of the company is not liable to service tax under reverse charge mechanism. Reliance was also placed on the decision in ***Lilanand Magnesites Pvt Ltd v CCE & ST, (2025) 26 Centax 172 (Tri-Ahmd)*** in this regard.

4. Ld. Consultant, drawing attention to the grounds of appeal with respect to SOD No.06/2019 dated 29.03.2019 for the period April 2016 to June 2017, made specific submissions with respect to the renumeration paid to non-whole-time directors contending that the order of the Ld. Commissioner of GST and Central Excise with respect to the confirmation of demand of service tax on the renumeration paid to Mr. Anshuman Patnaik and Mr. Anurag Patnaik is erroneous and perverse in as much as the Appellant had already discharged the applicable service tax from its Bhubaneswar office. It was submitted that with effect from July 2015 the appellant had set up a new office in Bhubaneswar, Orissa from where the two non-whole time Directors were working. Since the Director's are working from the said office, the consideration with respect to their services was being paid by the Bhubaneswar office and the applicable service tax under reverse charge had been

discharged by the Bhubaneswar office. Drawing attention to the relevant service tax returns in respect of their Bhubaneswar office filed for the period April 2016 to June 2017 evidencing the payment of service tax under reverse charge mechanism that was enclosed, it was pointed out that the details of the renumeration and the service tax amount have been disclosed in Serial No. "A-9- Other Taxable Services-Other than the 119 listed" of the ST-3 return. It was also contended that since the Appellant had not taken centralized registration, in any event, the service tax demand on the renumeration paid to non-whole time Directors cannot be levied and collected from the Salem office as the services of these non-whole time Directors have been received by the Bhubaneswar office, and as evidenced by the ST-3 return, the service tax has been discharged from the said Bhubaneswar Office.

5. It is further submitted that the Tribunal ***in the Appellant's own case in Appeal No.40102 of 2016 vide Final Order No.40776/2025 dated 30.07.2025*** as set aside the OIO No.15/2015 (ST – Commr.) dated 23.10.2015 passed by the Commissioner of Central Excise, Salem and had decided the matter in the Appellant's favour. He prays that the appeals may be allowed. Reliance was placed therein on the decisions in ***Maithan Alloys Limited v CCE & ST, 2020 (33) GSTL 228 (Tri-Kolkata), Allied Blenders and Distillers Pvt Ltd v CCE & ST, 2019 (24) GSTL 207, Alchemie Organics v CCE & ST, (2024) 25 Centax 381, Vectus Industries Ltd v. CST, Final Order No.71942/2019 dated 26.11.2019 of CESTAT, Allahabad and Bengal Beverages Pvt Ltd v. CGST & Excise, Howrah, Final Order No.75561/2020 DATED 09.10.2020 of CESTAT, Kolkata***.

6. Ms. G. Krupa, Ld. Authorised Representative appearing for the Respondent reiterated the findings of the Adjudicator in the impugned order.

7. We have heard both sides and perused the material available on the record.

8. The only issue that arises for determination in the present appeals is whether the remuneration paid to the Directors by the Appellant is exigible to service tax.

9. We find that the Co-ordinate Bench of this Tribunal, ***in the Appellant's own case vide Final Order No.40776/2025 dated 30.07.2025***, has decided very same issue in the Appellants favour. The relevant portions are as under:

> "6. The short issue involved for determination in the present appeal is whether the remuneration paid to the Directors by the Appellant is chargeable to Service Tax and whether the Appellants are required to discharge Service Tax under reverse charge mechanism in terms of Rule 2(1)(d)(i)EE read with Section 67 & 68 of the Finance Act, and Rule 6 of the Service Tax Rules, 1994?
>
> 7. Facts in this appeal indicate that the Appellant Company had paid remuneration to the Directors for the services rendered by them. As the Appellant has failed to pay appropriate service tax under Reverse Charge Mechanism on the remuneration paid to the Directors of the Company for the period from 07.08.2012 to 31.03.2014 amounting the Rs.2,11,78,118/-, proceedings were initiated against them. The Adjudicating Authority in his impugned order has held that there is no employer-employee relationship between the Directors and the Appellant, and on analyzing the functions/activities carried out by the respective Directors to the Appellant, none of the functions/ activities carried out by the Directors of the company are covered under the Negative list of services as prescribed under Section 65B (44)(b) of Finance Act 1994 or covered under any exemption notification in force and as there was no specific exclusion and exemption available the "Directors renumeration" has to be subjected to tax.

8. The provision of Section 65B (44) of the Finance Act, 1994 reads as given below: -

> *"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service,* ***but shall not include****-*
>
> *(a) an activity which constitutes merely, --*
>
> *(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
>
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or*
>
> *(iii) a transaction in money or actionable claim;*
>
> ***(b) a provision of service by an employee to the employer in the course of or in relation to his employment;***
>
> *(c) fees taken in any Court or tribunal established under any law for the time being in force.*
>
> *Explanation 1.- For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to, --*
>
> *(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or*
>
> *(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or*
>
> *(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.*
>
> *[Explanation 2.-For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include—*
>
> *(i) any activity relating to use of money or its conversion by cash or by any other mode, from one*

form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

[(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998.);]

(b) by a foreman of chit fund for conducting or organising a chit in any manner.]

Explanation 3.- For the purposes of this Chapter, -

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;"

9. It is not disputed in this case that the remuneration paid to the Directors was subjected to TDS under Section 192 of the Income Tax Act and Form 16 were issued. There are written employment agreements entered into with the Appellant which have been perused. We find an exclusive clause at 3.4 of the employment agreement that this constitutes an employee-employer relationship between the company and the Director. In this connection, we refer to the Board's Circular No. 115/09/2009- ST dated 31.07.2009 which is binding on the Authorities, and which reads as given below: -

"….

Para 3. In view of the above, 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.

…..

….”

10.1 We find that the Appellant has all along argued that the whole-time Directors have been paid salary and other remuneration which was subjected to Tax Deducted at Source (TDS) under the Income Tax Act and as such there is an employer-employee relationship which is excluded from the payment of service tax. All the seven Directors of the Company were appointed as whole time Directors of the Company by employment agreements. It appears that these Executive Directors were delegated with the work of managing the day-to-day affairs of the Company and they were not giving any advice to the Company in order to term them as service providers to levy service tax. Further we have perused the employment agreements (Pages 144 to 210 of the Appeal paper Book) signed by the Directors with the Appellant, and in Para 5.2 of the same, **it is stated that "the Directors shall work on full time basis for the Company. The Director shall not be permitted to engage in any other employment, business or activity, whether or not for compensation or other pecuniary advantage, without the prior consent from the Board of Directors. Further in all the agreements, the Directors are also entitled to a percentage of the profits in addition to their fixed Pay. Further the Form 16 attached to the Appeal paper Book makes a mention that it is TDS deducted on Salary.**

10.2 We also find that 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 /Appellant and the whole-time Directors. 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 Appellant company.

10.3 In view of the above discussion, it becomes clear that the activity of appointment of Directors and their services is covered under Negative List of services prescribed under Section 65B (44) (b) of the FA 1994 and so it follows that the impugned Order-in-Original No. 15/2015 (ST-Commr.) dated 23.10.2015 is not tenable.

11. The contention of the Ld. Chartered Accountant for the Appellant was that there is an employee-employer relationship and so, there could not be any service tax payment and any payment by way of commission, stock options, performance related bonus, etc. will not alter the nature of the service is acceptable. The issue of payment of service tax on the remuneration paid to the Directors is no more res-integra where it is termed as salary and subjected to TDS under Section 192 of the Income Tax Act, the employer and employee relationship gets established and the same is excluded from the purview of the service tax. We find that similar issue has been discussed in the case of *M/s. Dixcy Textiles Pvt. Ltd. Vs. The Commissioner of Central Excise & Service Tax, Salem [2025 (5) TMI 316-CESTAT CHENNAI],* wherein the Tribunal Chennai has held as follows: -

> *"6) The singular issue that arises for determination is whether the demand made on the Appellant on the remuneration paid to its directors is tenable.*
>
> *7) We note that the adjudicating authority has chosen to ignore the Appellant's contention that there is an employer employee relation on the grounds that no appointment order has been produced. It is also seen that the adjudicating*

authority has noted the definition of salary as defined under Section 17(1) of the Income Tax Act, 1961 yet has chosen to hold that the directors are not employees as in his view, the term salary does not include remuneration, sitting fee etc., paid to the directors and thereby the exclusive clause of Section 65B(44) is inapplicable. Strangely, he has chosen to do so, without controverting the evidence adduced by the Appellant along with its reply, by way of resolutions passed by the Board of Directors in accordance with the Companies Act which stated inter-alia that the directors concerned in the notice have been appointed as whole-time directors and will be entitled to a salary as may be fixed from time to time. He has also ignored the Form 16 issued as a Certificate under Section 203 of the Income Tax Act, 1961 for tax deducted at source on salary in respect of these directors that was adduced in evidence.

8) We also find that the Tribunal in Maithan Alloys Ltd v. Commissioner of C.Ex & ST, Bolpur, 2020 (33) GST 228 (Tri-Kolkata) 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 full-time 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 '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.

7. Further, in the present case, the Appellant has duly deducted tax under Section 192 of the Income Tax Act 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 to 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."*

12. Also, similar view has been taken by the Tribunal in the cases of *Amar Raja Batteries Vs. Commr. of Central Tax, Tirupathi GST, [(2024) 21 Centax 216 (Tri.-Hyd.)],* and *Allied Blenders & Distillers Pvt Ltd Vs. CCE & ST, Aurangabad, [2019 (24) GSTL 207 (Tri.- Mumbai)].*

13. In a recent decision of this Tribunal in the case *M/s. Vinayaka Electro Alloys Pvt. Ltd. vs Commissioner of GST & Central Excise, Salem, [2025 (6) TMI 13 - CESTAT CHENNAI],* it was held that no service tax is payable under RCM on remuneration paid to whole-time directors functioning as employees. This judgment reinforces the principle that remuneration to whole-time directors, when functioning as an employee, does not attract service tax under RCM.

14. Appreciating the ratio of the above decisions as applicable to the facts of the present appeal, the impugned Order-in-Original No. 15/2015-(ST-COMMR) dated 23.10.2015 passed by the Commissioner of Central Excise, Salem 101/2015-ST dated 26.06.2015 cannot be sustained and as such, is ordered to be set aside. As such, both the demand of service tax and penalties confirmed in the impugned order are set aside.

15. Therefore, the appeal is allowed with consequential relief, if any, as per the law."

10. The reported decisions in ***Maithan Alloys Limited v CCE & ST, 2020 (33) GSTL 228 (Tri-Kolkata), Allied Blenders and Distillers Pvt Ltd v CCE & ST, 2019 (24) GSTL 207, Alchemie Organics v CCE & ST, (2024) 25 Centax 381*** and ***Lilanand Magnesites Pvt Ltd v CCE & ST, (2025) 26 Centax 172 (Tri-Ahmd)*** relied upon by the Appellant also take a similar view. Therefore, we have not hesitation in holding that the demand of

service tax in respect of the remuneration paid to these whole time Directors who have been employed by the Appellant cannot be sustained and are liable to be set aside.

11. That apart, yet another reason is that the very basis of the present SODs that has resulted in the impugned Common Orders that are presently under challenge in these appeals are premised on the SCN No.81/2014-(ST) (Commr) dated 29.09.2014 and these SODs specifically state the reliance on the grounds mentioned therein. The said SCN has culminated in the Order in Original No.15/2015 which was challenged by the Appellant the Appeal ST/40102/2016 and was set aside by this Tribunal ***Final Order No.40776/2025 dated 30.07.2025.*** It is pertinent to note that the SODs do not place reliance on any separate facts or independent evidence save for the details furnished by the Appellant. Therefore, when the Appellant has not only stated that in respect of the non-whole time Director's it has discharged the service tax liability from the Bhubaneshwar Office, but also has furnished the ST-3 returns for the same as evidence in support of its claim, we find no reason for the Adjudicating Authority to have disbelieved the same. Had the Adjudicating Authority harboured any reason to doubt the ST-3 returns produced, he could very well have caused verification of the same from the Jurisdictional Officers. Pertinently, we notice that there is also nothing on record that the Jurisdictional Officers at Bhubaneshwar have either been contacted or that they have disputed such service tax payment by the Appellant as has been contended by the Appellant duly providing the ST 3 returns. Even otherwise, if the Adjudicating Authority had desired to cause any further verification, it could very well have called for the same from the Appellant prior to Adjudication as without doing so, the Appellant would be at a loss to know what exactly is the evidence that would be to the satisfaction of the Adjudicating Authority even after it has produced the ST-3 returns. We find a complete absence of the Adjudicating Authority itself having put the Appellant to notice as to what further evidence he would require to arrive at his satisfaction, after the Appellant has produced the ST-3 returns.

12. Further, we also notice from the Appeal records that for the period April 14 to March 15, the SCN Annexure itself, has deducted the service tax liability in respect of the said non whole time Directors, as has been discharged by the Appellant, while computing the service tax liability that stood demanded in respect of the Whole Time Directors. The bonafide of the Appellant, as a compliant assessee is thus evidenced and therefore, we also do not find any reason to disbelieve the Appellant when it has adduced the ST-3 returns indicating discharge of service tax in respect of the non-whole time Directors with respect to their services received by the Appellant's Bhubaneshwar Office.

13. Furthermore, we also find merits in the Appellant's contention that when it was the Appellant's Bhubaneshwar Office were the said non-Whole Time Directors were engaged and were discharging their duties, given that there was no centralized registration, the question of demanding service tax at the Salem Office of the Appellant does not arise. More so, when the service tax liability in respect of these non-Whole Time Directors has been discharged and reflected in the ST-3 returns filed by the Bhubaneshwar Office of the Appellant, and particularly in the absence of any evidence adduced by the Revenue that these Director's were also rendering service to the Appellant at Salem during April 2016 to June 2017. It is also pertinent that Revenue has not shown to us that the aforesaid decision in the Appellant's own case has not attained finality and given that the very genesis of these SODs are in the SCN dated 29.04.2014 and the OIO in which the proceedings culminated have been set aside, it is yet another reason to hold in favour of the Appellant in these appeals. Therefore, respectfully following the said decision as well as the other coordinate bench decisions that have been relied upon by the Appellant as noticed above, which in turn have relied on prior rulings of the Tribunal, we hold that the orders impugned in these Appeals cannot sustain and are liable to be set aside in its entirety. Ordered accordingly.

Resultantly, the appeals are allowed with consequential relief (s) if any.

(Order pronounced in the open court on 27.05.2026)

(AJAYAN T.V.)
Member (Judicial)

M. AJIT KUMAR)
Member (Technical)

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