CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 53954 OF 2023

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-064-22-23 dated 01.12.2022 Commissioner(Appeal), CGST, Central Excise Custom and, GST Raipur, Chhattisgarh,492001(CG)]

Sarda Energy And Minerals Ltd **Appellant**
Industrial Growth Center, Sitara,Raipur,(CG)-493111

Vs.

Commissioner (Appeal), CGST, Central Excise and Customs **Respondent**
Central GST Buildings, Tikarpara, Dhamtari Road, Raipur, (C.G.)-492001

Appearance:
Present for the Appellant : Ms. Pooja, Chartered Accountant and Mr. J.M. Sharma, Consultant.
Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing : **22/09/2026**

Date of Decision : **25/09/2026**

PER: MR. SANJIV SRIVASTAVA

FINAL ORDER NO. 51526/2026

This appeal is directed against order in appeal No RPR-EXCUS-000-APP-064-22-23 DATED 01.12.2022 OF Commissioner (Appeals) CGST, Customs & Central Excise, Raipur. By the impugned order following has been held.

> *17. "Accordingly, I hold that the demand of service tax amounting to Rs.1,88,022/-is recoverable from the Appellant under proviso to Section 73(1) of the Act. Regarding recovery of interest under Section 75 of the Act, I find that once demand is upheld the recovery of interest follows suit automatically and that there is no scope of discretion to waive the interest liability under the statute. Thus, I hold that they are liable to pay interest. Further, as there has been suppression of material facts and contravention of various provision of the Act and the Rules made thereunder with intent to evade payment of service tax, I hold that penalty is imposable on the Appellant under Section 78 of the Act.*
>
> 18. *In view of the above, I do not find any reason to interfere with the impugned order-in-original No.15/ST/AC/RPR-1/2021 dated 23.07.2021 and uphold the same."*

2.1 Appellant holding Central Excise registration No AAACR6149LXM001 are engaged in manufacture of Sponge Iron, Billets, Wire rods, Ferro Alloys, Fly Ash Bricks, etc., falling under the Chapter Heading 72, 27 etc., of the CETA 1985 (5 of 1986). The Noticee were availing Cenvat Credit on inputs/ input Services/Capital Goods under the Cenvat Credit Rules 2004.

2.2 During the course of audit of the books and accounts of the appellant, it was noted that they have recorded expenses in favour of overseas entities against services received like "Bank commission" and had also paid charges like "international bank charges", "stamping charges", "correspondence charges", "bank charges against receipt of dividend", etc. Further, they have also made payments of commission to overseas entities against sale of goods/import of Services.

2.3 The said expenses have been billed by service providers located in Non-Taxable Territories upon the Noticee against the services received by the Noticee. As per Rule 2(1)(d)(i)(G) of the Service Tax Rules, 1994 read with the Section 68(2) of the Finance Act, 1994 and Notification No. 30/2012-ST dated 20.06.2012 (as amended), the appellant were the "person liable for paying service tax" on the services received against which they have paid Bank Commission charges international etc.". The details of expenses made by the Noticee for overseas entities and levy of service tax thereupon at applicable rates is as under-

Period	Expenses	Service Tax inclusive of Cess	
		@ %	Payable
01/04/2015 to 31/05/2015	133391	12.36	16486
01/06/2015 to 14/11/2015	339989	14	47598
15/11/2015 to 31/05/2016	496156	14.5	71942
15/11/2015 to 31/05/2016	116061	14.5	16828
01/06/2016 to 31/03/2017	234457	15	35168
TOTAL	1320054		188022

2.4 Appellant were requested the pay the Service Tax of Rs. 1,82,137/- + Ed. Cess of Rs.320/- + SHE Cess Rs. 160/- + S.B. Cess Rs. 4,233/- and K.K.

Cess Rs. 1,172/- cumulatively amounting to Rs. 1,88,022/-along with Interest and Penalty.

2.4 A show cause Notice, dated 03/09/2019 was issued to the appellant calling upon to show cause as to why -

i. *The Service Tax amounting to Rs. 1,88,022/- (including Cesses) [Service Tax Rs. 1,82,137/- + Edu Cess Rs. 320/- + SHE Cess Rs. 160/- + S.B. Cess Rs. 4,233/- and K.K. Cess Rs. 1,172/-] should not be assessed, demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 by invoking the extended period of limitation of 5 years read with Section 668, Section 68(2) of the Finance Act, 1994 & also read with Section 174(2) of the CGST, Act, 2017,*

ii. *Interest on the above amount of service tax not paid should not be recovered from them from the relevant dates till the date of actual payment of service tax by the Noticee at the prescribed rate under Section 75 of the Finance Act , 1994 read with Section 174(2) of the CGST Act, 2017,*

iii. *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with the Section 174(2) of the CGST Act, 2017 for contravention of Section and rules cited above and for suppression of facts with intent to evade payment of service tax.*

2.5 The show cause notice was adjudicated as per the order in original No 15/ST/AC/RPR-I/2021-22 dated 23.07.2021 holding as follows:

ORDER

i. *I determine and order for recovery of service tax amounting to Rs. 1,88,022/- (including Cesses) under Section 73(1) of the Finance Act, 1944 read with Section 174 of the Central Goods & Services Tax Act, 2017. The same should be paid forthwith by the Noticee.*

ii. *I order for recovery of Interest on the amount disallowed, under Section 75 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.*

iii. *I impose a penalty of Rs. 1,88,022/- equal to the service tax confirmed upon the Noticee, under Section 78 of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017.*

2.5 Aggrieved appellant filed appeal before the Commissioner (Appeals) which has been disposed of as per the impugned order.

2.6 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri J M Sharma, Advocate & Ms Pooja Agarwal, Chartered Accountant for the appellant and Ms Jaya Kumari, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Issued raised in these proceedings is no longer res-integra and has been decided in the favour of the appellant in the following decisions:
  - Raymond Ltd. [2018 (19) GSTL 270 (T-Mum)]
  - Dileep Industries Pvt. Ltd. [2017-TIOL-3755-CESTAT-Del]
  - Theme Exports Pvt Ltd. 2019 (26) GSTL 104 (T-Del)]
  - Kalapatru Power Transmission Ltd. [2022 (1) CENTAX 56 (T-Ahmd)]
  - Mumbai Trade Notice No 20/2013-14-ST-1 dated 10.02.2014
- Contrary toe the above decisions impugned order relies upon the decision of Single Judge of Hon'ble Madras High Court in the case of BGR Energy Systems Ltd. [2020 (32) GSTL 186 (Mad)]. His decision has been distinguished by the Chennai Bench in the case of Lingeswara Creation [Final Order No 40564/2026 dated 05.05.2026 in Service Tax Appeal No 400556 of 2017] and issue has been decided in the favour of the appellant.
- The demand is barred by limitation. Reliance is placed on the following decsions in the appellant own case:
  - Sarda Energy & Minerals Ltd V/s CCE & GST Raipur final order No. 50808/2022 dated 24.08.2022
  - Sarda Energy & Minerals Ltd V/s CCE & GST Raipur final order No. 51037/2026 dated 02.06.2026

3.3 Arguing for the revenue authorized representative submits that,-

- Rule 2(1) (d) (g) of Service Tax Rules, 1994 lays down that the recipient of the service is the person liable for paying service tax in respect of the service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory.
- Notification No.30/2012-ST dated 20.2012 as amended stipulates that 100% service tax is payable by any person liable for paying service tax other than the service provider in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory.
- Rule 3 of Place of Provisions of Service Rules, 2012 provides that the place of provision of service shall be the location of the recipient of service.
- Here, the place of provision of service provided by foreign bank is the location of service recipient. In the instant case the recipient of service is the appellant who is located in India; hence they are liable to pay service tax even though the Indian Bank made the payment on behalf of the Appellant which is subsequently debited to the Appellant. Even though the Appellant had not made any remittance to the Foreign Bank directly, but there could be no dispute that the expenses met out for rendering of such service to the Indian Bank were bone by the Appellant. The Indian Bank only plays a role of a mediator between the Indian exporter and the foreign banker representing the foreign importer. This is a general practice that the exporters are required to follow by routing the export document through a banking channel. Thus, it cannot be said that Indian bank received any service from the foreign bank.
- In the case of State Bank of Bikaner & Jaipur Versus CCE Alwar (2021 (45) GSTL 293 (Tri.Del.), the Hon'ble CSTAT, New Delhi has ruled that the Indian Bank was not liable for service tax under reverse charge mechanism - it was more so as Indian Bank had not paid any consideration to foreign bank as required by Section 67(1). Therefore, the contention of the Appellant that foreign bank while remitting the money to the Indian Bank deduct their charges for collection of bills which in turn are charged by the Indian Bank from the appellant, therefore, it is that banks located in India are liable to pay the service tax on the amount of Bank charges, commission etc. paid to foreign

banks against services received from foreign bank and not the Appellant is not sustainable and correct.

- Respectfully following the decision of the Hon'ble Madras High Court in BGR Energy Systems Limited [2020 (32) G.S.T.L. 186 (Mad.)] supra and the relevant provisions of law, its found that the Indian Bank of the exporter had only facilitated the service to be rendered by the Foreign Bank and, therefore, the Indian exporter could not shirk from its liability of paying service tax relatable to the commission and realization charges etc. involved in the case.
- The value of taxable service escaped assessment of Service Tax on account of the failure of the appellant to disclose the relevant information to the Central Excise Department. It was the responsibility of the appellant to make appropriate and timely payment of the service tax, which they have not done. It was only after the detection at the time of audit of the records of the appellant, the evasion of service tax by the appellant could be detected. Therefore recovery of Service Tax by invoking extended period under proviso to Section 73(1) of the Finance Act, 1994 is justified in the instant case.
- The appellant was under statutory obligation to arrive at the correct and appropriate value and pay Service Tax accordingly. Whereas, the appellant have failed to pay appropriate Service Tax within stipulated time to avail wrongful gain. There is clear suppression of facts with intent to evade on the part of the appellant in the instant case and, therefore, extended period is correctly invokable & the appellant is liable for penal action under Section 78 of the Finance Act, 1994.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

> *"11. The contention of the appellant is that the foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the Appellants, therefore, it is the Banks located in taxable territory who are receiving the service from the foreign banks and as a recipient of service the bank in India is required to pay service tax on bank charges, commission etc, paid to foreign banks against services received from the foreign bank and not the Appellant. They have placed reliance on the Trade Notice No.20/2013-14 dated 10.2.2014 and relied on*

various decisions of Hon'ble Tribunal on the issue to substantiate their contention that any bank charges paid by Indian Bank to the Foreign Banks even though in connection with import and export of goods and the same was debited to the appellant, the service tax liability does not lie on the Appellant and they are not liable to pay tax thereon under reverse charges mechanism.

12. In the above context, let me examine the relevant provisions of law. I have observed that Rules 2(1)(d)(G) provides as under:-

Rule 2 Definitions

(1) In these rules, unless the context otherwise requires,-

(d) "person liable for paying service tax"-

(i) in respect of the taxable services (other than online information and access or retrieval services) notified under sub-section (2) of Section 68 of the Act, means,-

(G) in relation to any taxable services provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such services;

12.1. From the above, I find that Rule 2(1)(d)(G) of the Service Tax Rules, 1994 lays down that the recipient of the service is the person liable for paying service tax in respect of the service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory.

12.2. Further, Notification No.30/2012-ST dated 20.2012 as amended stipulates that 100% service tax is payable by any person liable for paying service tax other than the service provider in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory.

12.3. Further, Rule 3 of Place of Provisions of Service Rules, 2012 provides that the place of provision of service shall be the location of the recipient of service.

13. Section 68(2) of the Finance Act, 1994 provides for levy of service tax on such person and in such manner as may be *prescribed at the rate specified in Section 66 and all the provisions of the Finance Act, 1994 shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*

14. From the above provisions of law, it is apparent that the place of provision of service provided by foreign bank is the location of service recipient. In the instant 2022case the recipient of service is the appellant who is located in India; hence they are liable to pay service tax even though the Indian Bank made the payment on behalf of the Appellant which is subsequently debited to the Appellant. Even though the Appellant had not made any remittance to the Foreign Bank directly, but there could be no dispute that the expenses met out for rendering of such service to the Indian Bank were bone by the Appellant. The Indian Bank only plays a role of a mediator between the Indian exporter and the foreign banker representing the foreign importer. This is a general practice that the exporters are required to follow by routing the export document through a banking channel. Thus, it cannot be said that Indian bank received any service from the foreign bank.

15. Further, I observed that in the case of State Bank of Bikaner & Jaipur Versus CCE Alwar (2021 (45) GSTL 293 (Tri.Del.), the Hon'ble CSTAT, New Delhi has ruled that the Indian Bank was not liable for service tax under reverse charge mechanism it was more so as Indian Bank had not paid any consideration to foreign bank as required by Section 67(1). Therefore, the contention of the Appellant that foreign bank while remitting the money to the Indian Bank deduct their charges for collection of bills which in turn are charged by the Indian Bank from the appellant, therefore, it is that banks located in India are liable to pay the service tax on the amount of Bank charges, commission etc. paid to foreign banks against services received from foreign bank and not the Appellant is not sustainable and correct. Further, I observed that the Hon'ble Tribunal observed as under:-

> *44. The aforesaid Trade Notice dated February 10, 2014 places reliance upon two interim orders passed by the Principal Bench at Delhi in Gracure Pharmaceuticals Ltd. v. Commissioner of Central Excise, Jaipur-I [2013 (32) S.T.R.*

249 (Tri. Del.)] and by the Ahmedabad Bench of the Tribunal in Gujarat Ambuja Exports Ltd. v. Commissioner of Central Excise, Ahmedabad [2013 (30) S.T.R. 667 (Tri. Ahmd.)]. Thus, it is based on prima facie views expressed by the Benches in the interim orders. It is also not clear whether the Appeals have been decided or not.

45. The aforesaid Trade Notice dated February 10, 2014 was examined by the Madras High Court in BGR Energy Systems Limited [2020 (32) G.S.T.L. 186 (Mad.)] wherein the Writ Petitioner was an exporter who had entered into an agreement to export certain goods to an oil company situated in Iraq. For due performance of the contract, the Indian exporter was required to issue Advance Bank Guarantee as well as Performance Bank Guarantee. Both these guarantees had to be issued by a Bank in Iraq in favour of overseas customer of the Indian exporter. It was sought to be contended by the Writ Petitioner that in view of the Trade Notice dated February 10, 2014, only the Indian Bank was liable to pay service tax and not the exporter. On the other hand, it was sought to be contended by the Respondent that the Trade Notice relied upon by the Writ Petitioner was issued by the Mumbai Commissionerate in view of a stay order passed by the Tribunal and the Appeal was still pending before the Tribunal. The Madras High Court referred to the decision of the Supreme Court in Commissioner of Central Excise, Bhopal v Minwool Rock Fibres Ltd. [2012 (278) E.LT. 581 (S.C.)] and held that Departmental Circulars were not binding on the assessee or quasi judicial authority or courts. The High Court then examined whether the exporter or its Indian banker was liable to pay service tax for the service rendered by the Foreign Bank or the Foreign Intermediary Bank and in this connection observed that though the Indian exporter had not made any remittance to the Foreign Intermediary banks directly, but there could be no dispute that the expenses met out for rendering of such service to the Indian Bank were borne by the Indian exporter. Thus, it cannot be said that the bank of the exporter in India was the recipient of service *provided by the Intermediary Bank or the Foreign Bank situated in Iraq. In fact, the Indian Bank of the exporter had only facilitated the service to be rendered by Foreign Bank for the purpose of providing Bank Guarantee on behalf of the exporter. Thus, the Indian exporter could not shirk from its liability of paying service tax relatable to the bank guarantee, commission and realization charges involved in the case. The relevant portion of the judgment of the Madras High Court is reproduced below:*

"18. In this case, there is no dispute to the fact that the petitioner's bank in this country namely Indian Bank, Adyar has not furnished the bank guarantee to the foreign supplier of the petitioner. On the other hand, the Indian Bank approached the intermediary banks which are admittedly located outside this country, which in turn approached the bank situated in Iraq only for the purpose of furnishing bank guarantee on behalf of the petitioner to its foreign supplier at Iraq. Therefore, there is no doubt that though the event of furnishing the bank guarantee had taken place in three parts, the chain of events connecting those three parts will undoubtedly lead to an irrebuttable conclusion that all those three events were aimed only to provide the service to the petitioner, namely furnishing of bank guarantee to its foreign supplier. As rightly pointed out by the authorities who passed the impugned order, the petitioner had incurred expenditure in foreign currency towards bank guarantee commission and export proceeds realisation charges paid to the intermediary banks situated outside India. Certainly, a taxable service has been provided to the petitioner namely, banking or other financial services. It is the categorical finding of the authorities who passed the impugned orders that taxable service by way of issuing bank guarantee to the petitioner's customer at Iraq and by way of remitting the exports proceeds to the petitioner, had been performed by the intermediary banks for the petitioner. Therefore, the petitioner cannot claim that they are not the recipient of the service. Though the petitioner had not made any remittance to the foreign intermediary

> *banks directly, there cannot be any dispute that the expenses met out towards rendering of such service by the Indian Bank were borne by the petitioner. In other words, at no stretch of imagination, it can be said that the petitioner's Bank at Chennai, namely, Indian Bank, Adyar, is recipient of the service provided by the intermediary bank or the foreign bank situated in Iraq. Needless to say that the Indian Bank, Adyar, namely, the banker of the petitioner has facilitated the service to be rendered by the intermediary banks and the foreign bank in Iraq only for the purpose of providing bank guarantee on behalf of the petitioner. Therefore, the petitioner is not justified in shirking its liability to pay Service Tax relatable to the bank guarantee commission and realisation charges involved in this case.*
>
> *19.Further, as rightly pointed out by the Appellate Authority in his order made in Appeal Nos. 489-492/2018, dated 17-9-2018, the recipient of service involved in this case namely, furnishing of bank guarantee, is only the petitioner and not the banker. Since the service receiver is the petitioner and the place of provision of such service is also the location of the petitioner, which is within India, the Service Tax liability is rightly fastened on the petitioner, with which, I find no reason to interfere. Since the only point raised in this writ petition is based on the trade circular issued by the Mumbai Commissionerate and that the said issue is answered against the petitioner as discussed supra, I find that both the writ petitions are devoid of any merit. Accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed" 5/2022*

16. In view of the above judgement of Hon'ble Madras High Court relied by the Hon'ble Tribunal in the case of State Bank of Bikaner & Jaipur Versus CCE Alwar (2021 (45) GSTL 293 (Tri.Del.), the Hon'ble CSTAT, New Delhi, the Trade Notice dated 10.2.2014 and other judicial pronouncements relied by the appellant in support of their defence can not come to the aid of the Appellant.

17. Respectfully following the decision of the Hon'ble Madras High Court in BGR Energy Systems Limited [2020 (32) G.S.T.L. 186 (Mad.)] supra and the relevant provisions of law, I hold that the Indian Bank of the exporter had only facilitated the service to be rendered by the Foreign Bank and, therefore, the Indian exporter could not shirk from its liability of paying service tax relatable to the commission and realization charges etc. involved in the case. Therefore, I hold that the impugned order is legally correct and sustainable. Held accordingly.

4.4 Issue involved in the present case is with regards to the demand of service tax from an Indian Exporter on reverse charge basis in respect of certain services received by him for overseas, through his bank. It was noticed by the audit officers that appellant has booked certain expenses in favour of overseas entities against services received like "Bank commission" and had also paid charges like "international bank charges", "stamping charges", "correspondence charges", "bank charges against receipt of dividend", etc. Further, they have also made payments of commission to overseas entities against sale of goods/import of Services. These services would fall under the category of taxable services during the period of dispute and would be subjected to service tax on the reverse charge basis if all the criteria for levy of service on reverse charge basis are fulfilled.

4.5 The expenses incurred by the appellant can be put under two categories namely,-

- Expenses incurred towards banking and financial services which were incurred by the appellant towards banking charges etc, but were not paid to the service providers through in exporter’s banker in India.
- Commission paid by the appellant to overseas entity against sale of goods/ import of services.

Orders of the lower authorities or the show cause notice do not bifurcate the expenses in the two category. But proceed to decide as if all the expenses were to payments to banking and financial services of overseas suppliers.

4.6 We find that the issue is squarely covered in the favour of the appellant by the following decisions.

i. RAYMOND LTD. [2018 (19) G.S.T.L 270 (Tri-Mumbai)]

"3. We find that the issue is no more disputed and stands resolved by the order of the Tribunal in case of Dileep Industries Pvt. Ltd. - 2017-

TIOL-3755-CESTAT- DEL. The relevant portion of the Tribunal's order is as under:

> *4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up [before] the Tribunal in the case of Greenply Industries Ltd. v. CCE, Jaipur (Final Order No. 50149/2014, dated 3-1-2014) where it was observed that -*
>
> *"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged vide Section 66A read with Rule 2(1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order-in-appeal dated 12-11-2008 has set aside that order and as per the appellants' counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed.*
>
> *5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."*

4. In view of above order passed by the Tribunal and following the ratio of same we hold that the demand and penalties imposed against the appellant in present case is not sustainable. We therefore set aside *the impugned order and allow the appeal with consequential reliefs, if any."*

ii. Theme Exports Pvt. Ltd. [2019 (26) G.S.T.L. 104 (Tri. - Del.)]

iii. GREENPLY INDUSTRIES LTD. [2015 (38) S.T.R. 605 (Tri. - Del.)]

"5. We have considered the submissions from both sides and perused the records. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no Service Tax can be charged from them under Section 66A read with Rule 2(1)(2) (iv) of the Service Tax Rules, 1994. Moreover, we also find that in Appellant's own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide order-in-appeal dated 12-11-2008 has set aside that order and as per the appellant's counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable. The same is set aside and the appeal is allowed."

iv. Kalpataru Power Transmission Ltd [(2022) 1 Centax 56 (Tri.-Ahmd)]

4.7 That Mumbai Trade Notice No. 20/2013-14- ST-1 dated 10.02.2014 also confirmed the above position of law: Para 5 and 6 of the said circular are reproduced below-

"5. The views of the banks that services provided by the foreign bank are received by the importer or exporter in India is not factually and legally correct because, for a person to be treated as recipient of service, it is necessary that he should know who the service provider is and there should be an agreement to provide service, which may be oral or written. In the present case, the importer and exporter does not even know who the service provider is, as they are not aware of the identity of the foreign banks which would be providing services. Exporter or importer in India does not have any formal or informal agreement with the foreign bank. Importer or exporter in India does not even know the quantum of charges which the foreign bank would be recovering. Therefore, in view of the above mentioned factual position and also in view of the various articles of URC 522/UCP 600, it is clear that services are provided by the foreign bank to the bank in

India. Further, Tribunals have also prima facie held that in such cases, services are provided by the foreign bank to the Indian bank and not to the Indian Exporter. [M/s. Gracure Pharmaceuticals Ltd. v. Commissioner of Central Excise, Jaipur-1-2013 (32) S.T.R. 249 (Tri.-Del.), M/s. Gujarat Ambuja Exports Ltd. v. Commissioner of Service Tax, Ahmedabad-2013 (30) S.T.R: 667 (Tri.-Ahmd.)].

6. It is therefore clarified that, in cases where the foreign banks are recovering certain charges for processing of import/export documents regarding remittance of foreign currency, the banks in India would be treated as recipient of service and therefore required to pay Service Tax."

4.8 Impugned order heavily relied upon the decision of Hon'ble Madras High Court in the case of BGR Energy Systems Ltd 2020 (32) G.S.T.L 186 (Mad) wherein the Hon'ble Madras High Court has held that Advance Bank.Guarantee as well as Performance Bank Guarantee to be issued in favor of overseas customers of Indian Exporter is not covered is not covered by the Mumbai Commissionerate Trade Notice. However we find the said order of Single Judge was challenged by BGR by filing an Letter Patent Appeal before division bench and in the Writ Appeal No 990 & 991 of 2020 the Hon'ble DB observed in para 8 that the Appellate Authority should decide the appeal in accordance with law, uninfluenced by the observations made in the order of Ld. Single Judge (para 8 of the judgement).Therefore, the finding recorded in para 16 of impugned order heavily relying on the decision of Hon'ble HC (single judge) in the case of BGR is contrary to observation made by the Hon’ble Division Bench. It has not been ascertained what was the final outcome of the proceedings that were undertaken in department adjudication and appeal in case of BGR energy. The decisions in the case of State Bank of Bikaner and Jaipur etc., of the tribunal which follow the above decision of single judge in case of BGR, can for the same reason without referring to the decision of Division Bench cannot be said to binding precedent.

4.9 We observe that in the case of Lingeswara Creation [Final Order No 40564/2026 dated 05.05.2026 in Service Tax Appeal No 400556 of 2017] Chennai Bench has decided the issue after considering the said position observing as follows:

15. We find from the records that the SCN issued merely alleges “It appears that various banks stationed abroad deduct their specified charges from the sale proceeds of the exports effected by M/s.

Lingeswara for transferring the foreign exchange to the account of M/s. Lingeswara, maintained in India. Such amount deducted appear to be the consideration paid by them for the services rendered by the foreign banks while transferring the export proceeds. Therefore, it appears that the foreign banks have been providing taxable service to M/s. Lingeswara, located in India the taxable territory, for which M/s. Lingeswara as service recipient is liable to discharge service tax liabilities under reverse charge mechanism…". Thus, it is evident that the SCN is premised on a mere assumption without any evidence that there did exist a service provider and a service receiver relationship between the appellant and the foreign banks, either by way of an agreement between the appellant or the said banks or any invoice/bill raised by the said banks on the appellant. This bench of the Tribunal, inits decision in M/s. Adayar Gate Hotel Ltd v. Commissioner of GST& Central Excise, 2026 (4) TMI 1081- CESTAT CHENNAI, had held that "It is settled that in order to render a transaction liable to service tax, the nexus between the activity of service undertaken and the consideration therefore agreed to, has to be identified. It has to be established that a specified consideration has been agreed upon which has to be paid by the service recipient as quid pro quo for the service provider providing any service, and such payment of consideration cannot be assumed. It therefore becomes necessary not only to identify the taxable service as such in accordance with the definitions under the Act, but also to identify as to what was the mutually agreed upon consideration, its nature and quantum, and to also evidence its payment and receipt." A similar view is seen taken by a coordinate bench of this Tribunal in the decision in the case of Ms/. Intellect Design Arena Ltd v. Commissioner of GST and Central Excise, by Final Order No.41468/2025 dated 15.12.2025 wherein it has been held as under:

> *"7.4 Further Section 65B (44) requires:(a) an Activity; (b) by one person for another;(c) for consideration. In the present case, none of the Agreements create an activity performed "for" the Appellant. The Department has not produced a single document evidencing any service obligation owed by the Licensee to the Appellant. Thus, the first and foundational requirement of a taxable service is absent."*

16. It is equally settled that demand cannot be based on assumptions and presumptions. The decisions in CCE & ST Pune III v. Intermedia

Cable Communication Pvt Ltd, 2016 (41) STR 187 (Tri-Mumbai),A.G. Engineers v CCE, Ghaziabad, 2012 (25) STR 52 (Tri-Del) and Indus Motor Company v. CCE, Cochin, 2008 (9) STR 18 (Tri. Bang) refer for the said principle. Thus, in the absence of the foundational requirement of establishing the rendering of a taxable service to the appellant by the foreign banks, the demand is unsustainable on this count alone.

17. We also find merits in the contention of the Appellant that there is no privity of contract between the Appellant and the foreign remitting bank. Nothing has been brought on record to evidence that the foreign bank has acted on the Appellant's instructions so as to treat the Appellant as the recipient of service in India and consequently to attract the provisions of Section 66A read with read with the provisions of the erstwhile Taxation of Services (Provided from Outside and Received in India) Rules, 2006, so as to make the appellant liable to pay service tax under reverse charge mechanism. Further, we find that a coordinate bench of this Tribunal, on the same issue, has in its decision in M/s.SKM Egg Products export (India) Ltd v. Commissioner of GST &Central Excise, 2025 (6)TMI 184-CESTAT CHENNAI, has held asunder:

> *5. Heard both sides and perused the records of the case. We find that this Tribunal has decided the very same issue in favour of the appellants in their own case vide Final Order No. 40223/2023 dated 31.3.2023 on a Show Cause Notice issued to the appellants covering the period 2006 –2007 and vide Final Order No. 40113/2025 dated 21.1.2025 on a Show Cause Notice issued to the appellants covering the period July 2012 to March 2013. We find that the present proceedings are for the period from1.4.2013 to 30.9.2013. We find that this Bench vide Final Order No.40223/2023 dated 31.3.2023 has held as under:-*
>
> *"5.1 The main issue involved in this case is whether the amount which was deducted by the Foreign bank towards the bank charges are taxable under the service "Banking and other Financial Service" for the period2006-2007 to 2010-2011? The other issues involved are whether reinvocation of extended period and imposition of penalties are sustainable in the facts of the case?*

5.2 We find that the appellants have submitted the documents for realization of export sale proceeds to their bank namely SBI, which in turn has used the services of the foreign bank for collection of export sale proceeds. Obviously, the foreign banks who have rendered their services, have deducted their charges while remitting the export sale proceeds to SBI. The appellant has never dealt with the foreign bank on his own and the Banking and Other Financial Service if at all was rendered only to SBI. Amount charged by the foreign bank while remitting export sale proceeds, whether can be subjected to service tax or not has been decided by the CESTAT Principal Bench, New Delhi in the case of Theme Exports Pvt. Ltd. v. CST, Delhi (supra), by relying on the ratio laid down by the Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. v. CCE, Jaipur (supra), where the Tribunal held as under:-

4. We find that the issue arising out of present dispute is no more resintegra, in view of the decision of this Tribunal in the case of M/s. Dileep Industries Pvt. Ltd. v. CCE, Jaipur -2017 (10) TMI 1231-CESTAT, New Delhi. The relevant paragraph in the said decision is extracted here in below:-

> *"4. After hearing both the parties and on perusal of record, it appears that the first issue is pertaining to the collection charges of the Indian bankers who in turn send the same to the appellant for collection to the foreign bankers. The department has demanded Rs. 2,37,087/- from the appellant. From the record, it appears that while exporting their goods, they lodged their bills for collection to the Indian Bankers who in turn send the same to the foreign banks. The foreign banks while remitting the money to the Indian Bank, deduct their charges for collection of bills which in turn are charged by the Indian Banks from the appellants. When it is so, then the appellant are not entitled to pay the service tax. The identical issue has come up before the Tribunal in the case of Greenply Industries Ltd. v. CCE, Jaipur (Final Order No. 50149/2014dated 3-1-2014) where it was observed that-*
>
> > *"4. We find that no documents have been produced showing that foreign bank has charged any amount from the appellant directly. The facts as narrated in*

the impugned order clearly indicate that it is the ING Vyasa Bank who had paid the charges to the foreign bank. In view of this, the appellant cannot be treated as service recipient and no service tax can be charged under Section 66A read with Rule 2(1)(2)(iv) of the Service Tax Rules, 1994. Moreover, we also find that in appellants own case for the previous period similar order had been passed by the original adjudicating authority and on appeal being filed against the same, the Commissioner (Appeals), vide his order in appeal dated 12.11.08 has set aside that order and as per the appellant's counsel, no appeal has been filed against that order. In view of this, the impugned order is not sustainable, the same is set aside and appeal is allowed"."

5. By following our earlier decision (supra), we allow the claim of the appellant in this regard."

6. In view of the above, we find that the impugned order cannot be sustained. Hence, we set aside the same and allow the appeal with consequential benefits, if any, as per law."

18. We find no reason to differ from the view taken as noticed above. Therefore, we hold that there arises no liability to service tax on the Appellant on this front. The decision in State Bank of Bikaner & Jaipur v CCE & ST, Alwar, relied upon by the Ld. A.R. was a case wherein the Appellant bank was disputing the levy of service tax on it. The said case would not come to the aid of the Department in support of its contention that the Appellant is exigible to tax, as it is thus clearly distinguishable from the facts of the Appellant's case herein, the facts pertaining to which have been elaborated supra. Likewise, the reliance placed on the Judgement in BGR Energy Systems Ltd. v Addl. Commr of GST & C.Ex, 2020 (32) GSTL 186 (Mad) by the Ld. A.R.is inapposite, in light of the order rendered in Writ Appeal reported in2020 (12) TMI 151-Madras High Court, and has been rightly distinguished by the Ld. Advocate as elaborated above, as has been noticed by us supra.

> *19. In light of our aforesaid reasons, respectfully following the decision of the coordinate bench noticed above, we set aside the impugned order.*

4.8 Thus we do not find any merits in the impugned order as far as the merits of the demand on this issue is concerned.

4.9 In the present case no evidence whatsoever has been placed on record to suggest that the Appellant did not pay tax with malafide intentions. The basis of issue of SCN is audit of Appellant's own records. Appellant has no privity of contract with foreign bank- therefore the Indian bank is the recipient of service liable to pay tax under RCM and not the exporter. In any event the whole exercise was revenue neutral as the Appellant was eligible for the ITC of such tax, if paid. The demand of tax is revenue neutral hence the allegation of fraud suppression etc are not sustainable as held in Appellant's own cases [Final order No. 50808/2022 dated 24.08.2022 and Final order No. 51037/2026 dated 02.06.2026]

4.10 Thus we do find any merits in the invocation of extended period of limitation for making this demand. As we are setting aside the demand of service tax itself and find no merits in the respect of the demand made both on the merits of issue and also limitation we set aside the penalties imposed.

5.1 Appeal Allowed.

(Order Pronounced on 25/09/2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

DJ