

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20993 of 2016

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-55-15-16
dated 14.03.2016 passed by the Commissioner of Central
Excise, Bengaluru III Commissionerate, Bengaluru.)

**M/s. Promac Engineering
Industries Limited,**
Kanakapura Road Alahalli,
Anjanapura Road,
Doddakallasandra
Bangalore – 560 062.

Appellant(s)

VERSUS

**Commissioner of Central
Excise, Bangalore III
Commissionerate**
6th Floor, Central Revenue Building Post
Box No. 5400, Queens Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Mr. M.S. Nagaraja, Advocate for the Appellant

Mr. P.S. Srinivas, Assistant Commissioner (AR) for the Respondent

CORAM:

**HON'BLE MR P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 21217 /2026

DATE OF HEARING: 10.06.2026

DATE OF DECISION: 08.10.2026

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding sustainability of demand with penalty against various service for the period from October, 2007 to March, 2012.

2. The Appellant is registered for providing various services and during audit of the records of the Appellant, certain short

payments were observed including availing of wrongful credit. Accordingly show cause notice was issued on 23.04.2013 and Adjudication authority as per the impugned order dated 14.03.2016 confirmed the demand under GTA services and Intellectual Property Right (IPR) Services. Also partially confirmed the demand against ineligible CENVAT credit and appropriated the amount paid by the appellant. Adjudication Authority also imposed penalty under various provisions of law. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, as regarding demand under the category of Intellectual Property service, Learned Counsel submits that the allegation is made on comparison of the assessee ST-3 Returns filed with their financial statements viz., data in their Tally software, it was observed that the taxable value considered for payment of Service Tax in respect of IPR Service shown in the ST-3 Returns is less than the actual value as found in their financial record. Accordingly, it is alleged that appellant is liable to pay Service Tax of Rs.13,49,445/- for the period from October 2007 to March 2012. In this regard, Learned Counsel submits that appellant had entered into agreements with M/s.Taiheiyo Engineering Industries Ltd, Japan for providing technical knowhow and assistance for Reinforced Suspension Pre-heater for Cement Plants, manufacture of DD Calciner and Asan Vertical Mill. The services were received under consulting engineer service. The terms of the Agreement specifies that the service charges will be paid to the service providers and that the TDS amount on the same will be to the account of the assessee. The service charges will thus be excluding TDS and is therefore, not a part of service charges payable to the service provider. Learned Counsel further submits that Section 67 of the Finance Act, 1994 stipulates that service tax is to be paid on the gross amount charged by the service provider. When the TDS amount is not part of the amount charged by the service provider, there is no merit in the finding that service tax is payable on the TDS amount. In this

regard, Learned Counsel drew our attention to the agreement where it is stated that:-

“19. As per Article 5.3 of the Agreement with TEC (Page 214) all payments due to TEC are net receivables under this agreement. Any and all kinds of taxes, duties, fees and other similar charges including for remittance whatsoever on this agreement payable in India shall be borne and paid by the Appellants”.

4. Accordingly, the TDS amount remitted by the Appellants under the provisions of Income Tax Act, 1961 was not part of the service charges paid or payable to the Service Provider and hence not liable to service tax. In this regard, Learned Counsel drew our attention to the Rule 7(1) of the Service Tax (Determination of Value) Rules, 2006 provides that the value of taxable service under Section 66A of the Finance Act, 1994 to be the actual consideration charged for the services provided and does not provide for increasing the net amount payable under the agreement by grossing up the applicable Income Tax as prescribed under Section 195A of the Income Tax Act, 1961. In this regard, Learned Counsel drew our attention to the decision of the Tribunal in the case of **VSL India Pvt. Ltd. Vs. CST, Chennai (2024) 22 Centax 445 (Tri - Che.)** where Tribunal analysed the nature of TDS remitted to the Government and has held as under:

"24.1 Now, we shall consider the issue of includability of TDS amount in the value of taxable services. Section 195 of the Income tax Act, 1961 deals with Tax to be deducted at source when payment is made to non-residents or foreign companies. This is basically to plug revenue loss that may occur if by any chance the non-resident doesn't file income tax return in India. Further, under said section, such sum alone is taxable which has the character of 'income'. Thus, the TDS is a tax obligation which can never partake the character of value or consideration for the

transaction or of the goods or of services. It is not uncommon that any business contract/agreement inter-se parties primarily focuses on the value/consideration and then spells out as to who would bear the TDS obligation. This cannot be construed as to mean that TDS is also a part of such value/consideration. This is also because, any value/consideration agreed upon is strictly the choice of the parties but the TDS depends on the rate in force at the relevant point of time.

24.2 Thus, when it is contended that the assessee 'grossed up' the TDS, it is understood to mean that the assessee has indeed received only the amount as agreed towards value/consideration and the expenditure towards TDS are met by the assessee. So, when such TDS is not received from the non-resident since it is not towards value/consideration, there is no merit in requiring such assessee to include even the TDS.

The Appellant further relies on the following judgments:

(i) FCI OEN Connectors Ltd Vs CCT, Cochin (2024) 22 Centax 497 (Tri. Bang)

(ii) Adani Bunkering Pvt. Ltd vs CCE Ahemadabad II (2024) 23 Centax 405 (Tri.-Ahmd)".

5. As regarding demand against GTA Service, Learned Counsel submits that it is on the expenses incurred by the appellant towards the freight for the period from April 2007 to March 2012, which is based on the ledger account of freight expenses as per Tally for the relevant months under dispute. In this regard, Learned Counsel drew our attention to the details of expenses incurred by the appellant towards the freight which is certified by their statutory Chartered Accountant. Learned Counsel submits that the appellant has paid an amount of Rs.1,65,839/- as service tax in advance and adjusted the amount paid against the service tax which they are liable to pay for the subsequent period. The details of such adjustment are illustrated below:-

Service tax paid in advance and adjusted in the month of	Servicetax adjusted (Rs.)	Challan No.	Date of payment
June 2010	5279	2707	06/05/2010
July 2010	14728	2707	06/05/2010
August 2010	445	2707	06/05/2010
September 2010	1023	2707	06/05/2010
October 2010	852	2707	06/05/2010
December 2010	176	2707	06/05/2010
January 2011	320	2707	06/05/2010
February 2011	31	2707	06/05/2010
May 2011	13507	2707	06/05/2010
July 2011	10318	2707	06/05/2010
October 2011	70711	161	20/06/2011
October 2011	5431	58	13/09/2011
October 2011	5972	192	22/06/2010
October 2011	2565	26	14/07/2010
March 2012	34481	68	17/05/2011
Total	165839		

6. Learned Counsel further submits that as per the impugned order, it is held that the service tax paid for the period from October 2007 to March 2012 is in order except for Rs.2,89,990/- comprising of Rs. 1,24,151/- being service tax liability for the month of March 2012 and Rs. 1,65,839/- being service tax paid in advance adjusted for the subsequent period in contravention of sub-rule(1A) of Rule 6 Service Tax Rules, 1994). Even as per the finding in the impugned order, Adjudication Authority confirmed that the amount of Rs. 1,24,151/- and Interest of Rs. 45,577/-was paid by the appellant. In this regard, Learned Counsel submits that the Adjudication Authority has however concluded in Para 11.6 of the Order that: -

"Overall I hold that the Noticee has not discharged the Service Tax Liability of Rs. 2,89,990 (Rs. 1,24,151 being Service Tax liability for the month of March 2012 and Rs. 1,65,839/- being Service Tax paid in advance adjusted for the subsequent period in contravention of Sub-Rule (1A) of Rule 6 of the Service Tax Rules, 1994)".

7. Thus the impugned order confirmed the demand of Rs. 1,65,839/- only on the ground of procedural omission in adjustment of service tax paid in advance by not following the procedure in terms of Rule 6 (1A) of the Service Tax Rules, 1994. Learned Counsel further submits that the issue regarding sustainability of such tax paid in advance and adjustment for subsequent period is squarely covered in the matter of **M/s. Plantech Consultants Pvt. Ltd. Vs. CCE, Pune - 2016 (41) STR 850 (Tri. – Mum.)** where it is held that:-

6.1 As regard adjustment of excess paid service tax during the period May, 2006-July, 2006 and the adjustment of the same in the month of August, 2006 is squarely in terms of sub-rule (4A) of Rule 6 of Service Tax Rules, which is reproduced below :

“(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has opted for registration under sub-rule (2) of rule 4 these rules and has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, for the reason of not receiving details of payments received towards the value of the taxable services at his other premises or offices, the assessee may adjust such excess amount so paid as service tax by his against his service tax liability for the subsequent period and the details of such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment”

From the above sub-rule, it is permitted that excess paid service tax for the month or quarter can be adjusted in the next month or quarter. In the present case the excess paid service tax during the period May, 2006 to July, 2006 was adjusted against service tax liability of August, 2006.

6.2 As regard intimation to the Jurisdictional Superintendent of Central Excise regarding the such adjustment, we find that even though appellant have not specifically intimated to the Superintendent in this regard but adjustment was declared in their ST3 returns, accordingly intimation of such adjustment stand made to the department. Even if it is considered that the said procedure was not strictly adhered to, at the most it is a procedural lapse, merely for this

procedure lapse the fact that the excess amount was paid could not be deviated. Moreover, amount which was paid in excess, is neither the service tax nor an amount which was payable by the appellant, therefore in any case the said amount cannot be permitted to be retained by the Government. The only option is either to refund that amount or allow adjustment. In our view, the adjustment is very appropriate and favourable to Revenue as compared to the refund. For this reason also the adjustment cannot be held as illegal. We have gone through judgments cited by the Id. Counsel on this issue and found that adjustment of excess paid Service Tax has been allowed in various cases. In view of above position, we are of the considered view that the adjustment made by the appellant of the excess paid amount in the subsequent service tax liability is absolutely in order.

7. In view of our above discussions on both the issues, we set aside the impugned order and allow appeal with consequential relief, if any, in accordance with law.

8. Learned Counsel also relied on the following decisions:-

i. BL Kashyap & Sons Ltd. Vs. CST New Delhi

[(2023) 8 Centax 257 (Tri. Del.)]

ii. Arun Excello Foundation Vs. CGST&CE, Chennai

[2020(43) GSTL 558 (Tri. Chennai)]

iii. Graima Associates Vs. CCE, Chandrapur

[2015(40) STR 247 (Tri. Mumbai)]

iv. General Manager (CMTS) Vs. CCE, Chandigarh

[2014(36) STR 1084 (Tri. Del.)]

9. As regarding Cenvat Credit of Rs.6,297/-, Learned Counsel submits that the Appellants have deposited CENVAT credit of Rs.6,297/- vide CENVAT credit entry dated 24.05.2016 and also deposited penalty of Rs. 1,575/- vide e-payment Challan no. 00602 dated 25.05.2016 being 25% of penalty amount within 30 days of the receipt of the impugned Order. Thus the penalty of Rs.6,297/-imposed by Adjudication Authority under Section 78 of the Act read with Rule 15 (3) of the Cenvat Credit Rule, 2004 is unsustainable.

10. As regarding the demand confirmed by invoking the extended period of limitation and penalty, Learned Counsel submits that the audit was conducted and the SCN dated 23.04.2013 was issued based on the observations made during audit by the Internal Audit Party and proposed to demand Service Tax for the period from October 2007 to March 2012. The allegations of fraud, wilful mis-statement or suppression of facts with an intention to evade tax in the SCN are evidently baseless and the larger period of limitation could not have been invoked and penalties imposed. In the facts of the case, there was reasonable cause for not paying service tax. Further submits that when Learned Adjudicating Authority in the impugned order has dropped 98% of the demand of the Service Tax proposed in the SCN, penalties imposed as per the impugned order is unsustainable. In this regard, Learned Counsel relied on the following decisions:-

- (i) Jindal Vijayanagar Steel Ltd vs CCE Belgaum 2005 (192) ELT 415 (Tri Bang) Affirmed by the Supreme Court 2015 (323) ELT A73 (SC)**
- (ii) Calderys India Refractories Ltd Vs CCE, Aurangabad 2014 (36) STR 102 (Tri-Mum)**
- (iii) Blackstone Polymers Vs CCE, Jaipur-II 2014 (301) ELT 657 (Tri Del)**
- (iv) Bajaj Hindustan Limited Vs CCE, Meerut-1 2014 (33) STR 305 (T)**

11. Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that the appellant, being a service receiver was liable to pay service tax as per Section 68 (2) of Finance Act,1994 read with Rule 2 (1)(d)(G) of Service Tax Rules,1994 and as per the said Rule, in relation to any taxable service provided or agreed to be provided by any person located in a non-taxable territory and received by person located in the taxable territory, the recipient of service is liable to pay service tax.

12. As regarding GTA service, Learned AR submits that through appellant had paid Rs.1,65,839/- as advance for the relevant period and adjusted said amount, since they have not complied with Sub-Rule (1A) of Rule 6 of the Service Tax Rules, 1994. As per sub-rule (1A) of Rule 6 of the Service Tax Rules, 1994, which reads as follows:-

"(1A) Without prejudice to the provisions contained in sub-rule(1), every person liable to pay service tax, may, on his own volition, pay an amount as service tax in advance, to the credit of the Central Government and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period".

Provided that the assessee shall intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act;"

13. Learned AR further submits that the TDS which was payable for the transaction is paid to the Government on behalf of the service provider by the appellant as the service provider was a foreign national. The Service Provider outside the country would be able to get credit of this TDS thus deducted and paid by appellant under DTAA (Double Taxation Avoidance Agreement). Therefore such TDS would be treated as part of the consideration for the taxable services. Learned AR also drew our attention to the decision of this Tribunal, Bangalore in **Service Tax Appeal No. 26955 of 2013 vide final order dated 17.10.2024** has at Para 21 observed the following:-

As regards the demand on the TDS deducted, we find that the Adjudicating authority rightly held that the Appellant is liable to pay service tax on the gross amount and not on the amount after deducting TDS, since TDS is deducted on behalf of the Appellant and same cannot be

deducted from the total consideration while assessing the service tax.

14. Learned AR further submits that the Hon'ble High court of Madras in **COMMR. OF C. EX. & S.T., LTU, CHENNAI Versus SIFY TECHNOLOGIES LTD. C.M.A. No. 3174 of 2017, decided on 10-8-2018 reported in 2018 (17) G.S.T.L. 24 (Mad.)** held that:-

16. As stated above, as per Section 67 of the Finance Act, 1994, service tax is payable on the gross amount of value service rendered and service tax is payable once the amount billed is realized. But for the investigation, the non-payment of service tax would have gone unnoticed. The amount received from the client would include the entire service tax which has been calculated from the customer and it should have been paid to the department. The TDS amount withheld cannot be said to include the service tax component. Viewed in this angle the respondent has received the service tax and has not passed on it to the department. The invoice that is raised would contain the amount payable towards service Tax. For example if service provided for Rs. 100 and service tax there on is Rs. 10 the total invoice will be for Rs. 110. If the client remits the Rs. 99 then the sum of Rs. 99 would include Rs. 10 to be paid towards service tax and Rs. 10 should be paid to the Government. The service tax cannot be calculated on Rs. 99.

17. The respondent therefore has clearly manipulated their accounts and paid lesser service tax even though they have recovered the entire portion of service tax from the client. The respondent cannot take shelter under a faulty programme when they themselves handled in the system. The service tax could not have been calculated on the basis of the amount received from the clients minus TDS. The order of the Tribunal therefore deserves to be set aside and the respondent is liable to pay penalty. Section 80 of the Finance Act, 1994, cannot be invoked.

15. Heard both sides. As regarding the service tax liability on GTA service, the appellant had paid Rs.1,65,839/- as advance for the relevant period and adjusted said amount towards said service tax liabilities. However, Adjudication Authority confirmed the demand only on the ground that appellant has not complied

with Sub-Rule (1A) of Rule 6 of the Service Tax Rules, 1994. In this regard, we find that issue was considered by Tribunal in the matter of **M/s. Plantech Consultant Pvt. Ltd. (supra)** and held that 'Even if it is considered that the said procedure was not strictly adhered to, at the most it is a procedural lapse, merely for this procedure lapse the fact that the excess amount was paid could not be deviated. Moreover, amount which was paid in excess, is neither the service tax nor an amount which was payable by the appellant, therefore in any case the said amount cannot be permitted to be retained by the Government. The only option is either to refund that amount or allow adjustment'. Accordingly, we find that the said demand on GTA service is unsustainable.

16. As regarding demand against TDS on IPR, though Learned AR relied decision of this Tribunal in Final Order dated 17.10.2024 and on the judgment of Hon'ble High Court of Madras in **M/s Sify Technology**, while considering the issue in the matter of **M/s VSL India Pvt Ltd**, the Tribunal distinguish the finding given by the Hon'ble High Court of Madras considering the relationship between the parties and held that:-

"Thus, when it is contended that the assessee 'grossed up' the TDS, it is understood to mean that the assessee has indeed received only the amount as agreed towards value/consideration and the expenditure towards TDS are met by the assessee. So, when such TDS is not received from the non-resident since it is not towards value/consideration, there is no merit in requiring such assessee to include even the TDS".

17. In appellant's case, Appellant had entered into agreements with M/s.Taiheiyo Engineering Industries Ltd, Japan for providing technical know-how and the services were received under consulting engineer service. The terms of the Agreement specifies that the service charges will be paid to the service

providers and that the TDS amount on the same will be to the account of the Appellant. In such situation, TDS cannot be considered as part of the taxable value and the demand against TDS under IPR is unsustainable. As regarding Cenvat credit, since the appellant had paid entire amount with 25% penalty as per the impugned order, demand against cenvat credit with interest, appropriation of said amount and penalty for the delay in payment of said amount is upheld.

18. Accordingly, appeal is partially allowed by setting aside the demand under GTA and IPR services with corresponding penalties and upheld demand of Rs.6,297/- against ineligible cenvat credit and penalty of Rs. 1,575/- being 25% of penalty paid by the appellant.

(Order pronounced in Open Court on 08.10.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...