

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85323 of 2023

(Arising out of Order-in-Original No. MUM/CGST/MW/COMMR/AK/47/2022-23 dated 14.12.2022 passed by Commissioner of Central Goods and Services Tax (CGST) & Central Excise, Mumbai West)

Yashraj Films Private Limited

5, Shah Industrial Estate, Veera Desai Road
Andheri (West),
Mumbai – 400 053.

...Appellants

VERSUS

**Commissioner of CGST & Central Excise
Mumbai West Commissionerate**

6th Floor, 'D' Wing, BSNL Administrative Building,
Juhu Tara Road, Santacruz (West)
Mumbai – 400 054.

...Respondent

Appearance:

Shri Gopal Mundra along with Shri Gourav Sogani, Shri Yash Prakash, Advocates for the Appellants

Shri S.K. Yadav, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86345/2026

Date of Hearing: 24.06.2026

Date of Decision: 15.10.2026

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Yash Raj Films Private Limited, Mumbai (herein after referred to, for short, as "the appellants") assailing the Order-in-Original No. MUM/CGST/MW/COMMR/AK/47/2022-23 dated 14.12.2022 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Central Goods and Services Tax (CGST) & Central Excise, Mumbai West, Mumbai.

2.1 The brief facts of the case are that the appellants herein *inter alia*, is engaged in the business of film production and distribution, primarily of 'Hindi' cinemas. In this business, their main activity consists of production of films, either directly by them or through their line producers on 'work made for hire' basis; such films are shot, either fully or partly, in India and/or in foreign countries. Besides production of films, they also undertake certain services viz., providing copyright right service, by temporary transfer/temporarily permitting use or enjoyment; selling of space or time slots for advertisement, advertising agency service; supply of tangible goods; business auxiliary services etc. For the purpose of payment of service tax on taxable services and for compliance with the service tax statute, the appellants are registered with jurisdictional Service Tax authorities holding Service Tax registration No. AAACY1176EST001. The appellants are also currently registered with jurisdictional authorities under Goods and Services Tax vide Registration No. 27AAACY1176E1ZF.

2.2 During the course of EA-2000 audit conducted by the department, upon scrutiny of balance sheets along with ledger accounts maintained by the appellants for the period 2013-2014 to June, 2017, the audit officers have noticed that the appellants have incurred expenditure in foreign currency for production, distribution, marketing and other expenditure for various movies produced and released by them. Some of such movies produced and released by the appellants during the relevant period, which are partly or wholly shot in foreign countries are "*Dhoom3; Gunday; Befikre*" etc. On further verification of ledgers and invoices, the audit officers had observed that the appellants have made payments in foreign currency, towards production of their films or part of their films, to many companies for the services of 'Line production' and/or for various other technical services. Through such analysis of accounting records, it was interpreted by the department that although the appellants had received services from various service providers located in foreign countries for the purpose of producing, post production of films and for other technical services, but they had not discharged appropriate service tax liability in terms of 66B, 68 (2) of the Finance Act, 1994 read with Rule 2 (1)(d)(G) of Service Tax Rules, 1994 and Notification No. 30/2012-S.T. dated 20.06.2012.

2.3 Further enquiry was made on the above issue by the department, in calling for agreements, contracts, purchase orders etc., entered by the appellants with service providers for their detailed examination. Based on

'Production Assistance Agreement' and other details submitted by the appellants, the department had interpreted that the overseas Line Producers or Local Area Representatives (LARs) are providing services of film production to the appellants on principal-to-principal basis, and therefore the appellants are liable to pay service tax on RCM basis. Further, the department noted that such overseas entities had received certain incentives from some of the foreign Governments like France, United Kingdom, Switzerland etc., which are given to the producers of films for having incurred expenses by foreign film makers in that country for production of international films, and the same has been passed on to the appellants. Therefore, the department had interpreted that such fact also supports that the services have been rendered by the overseas entities to the appellants, which are taxable under RCM basis. After providing opportunity for pre-notice consultation, the department had issued Show Cause Notice (SCN) dated 17.04.2019 for recovery of service tax payable on RCM basis under Section 73(1) of the Finance Act, 1994 along with applicable interest and for imposition of penalty under Sections 77 & 78 of the Act of 1994. The said SCN dated 17.04.2019, was adjudicated upon by the original authority in passing an Order-in-Original dated 14.12.2022, wherein he had confirmed the service demand of Rs.46,40,92,070/- for the disputed period 2013-2014 to 2017-2018 (upto June, 2017) and ordered for its recovery along with interest under Section 73(2) of the Finance Act, 1994. The original authority also imposed penalty equivalent to the service tax under Section 78 of the Act of 1994 and also imposed penalty of Rs.10,000/- under Section 77(2) *ibid*. Feeling aggrieved with impugned order dated 14.12.2022, the appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate for the appellants contends that the appellants as a film producing company in India, had entered into agreements with Local Area Representatives (LARs) situated abroad for undertaking certain activities depending upon creative requirements of scripts, cinematographic films. These included assistance to the appellants in hiring of junior artists, camera crew, arranging transportation, obtaining permission from local agencies, arranging lights, shooting related equipment, generator and studios from third parties and arranging support team from various agencies etc. He further submitted that LARs did not undertake film production on principal-to-principal basis. All creative control, production decisions, employment of lead actors, directors, technicians, post-production activities

and exploitation of films vested exclusively with the appellants in India. He further stated that the true nature of the transaction between the appellants and LARs can be determined in light of the tenor of agreements and intention of the parties. Therefore, by citing various clauses of the agreement entered into between the appellants and LARs, he submitted that (i) the appellants alone are the producer of the films and retained exclusive control over all creative, budgetary, and business matters; (ii) the role of LAR was strictly limited to rendering assistance in procuring various services as required by the appellants; (iii) the engagement of LARs does not create any obligation on the appellants to produce the films or utilize the assistance. The LARs' role was purely ancillary and subordinate, confined solely to facilitating the procurement of services, and had no connection whatsoever with the production of the film; (iv) the LARs acted purely as intermediaries, merely facilitating procurement of services from third parties on behalf of the appellants, without providing any independent service themselves; and (v) accordingly, the very foundation of the SCN and the Impugned Order, which presumes that the LARs provided production services of films, is factually incorrect and untenable.

3.2 Learned Advocate further stated that upon perusal several clauses agreement it would be evidential that LARs merely arranged and facilitated provision of services by third parties to the appellants, and LARs by themselves did not provide any service to the appellants. Therefore, he claimed that LARs squarely fall within the definition of "intermediary" under Rule 2(f) of the Place of Provision of Services Rules, 2012 (POPS Rules). Thus, he claimed that once the services rendered by the LARs are held to be intermediary services, the place of provision of such intermediary services in terms of Rule 9(c) of the POPS Rules, shall be the location of the LARs. Accordingly, the place of provision of the intermediary services, in terms of Rule 9(c) of the POPS Rules, is the location of the LARs, which is admittedly outside the taxable territory. Therefore, he submitted that the said services do not qualify as services provided in the taxable territory as contemplated under Section 66B of the Finance Act, 1994 in the impugned order. Accordingly, he claimed that no Service Tax is leviable on the appellants under the RCM.

3.3 He further stated that in terms of the agreements entered into by the appellants with the LARs, they are liable to pay only on a limited, fixed and pre-agreed facilitation fee as expressly provided; all other amounts paid to

the LARs were strictly towards reimbursement of the costs, which were advanced by the appellants solely towards payment of third-party vendors. Therefore, in terms of Section 67 of the Finance Act, 1994, for the period prior to 14.05.2015, he claimed that expenses incurred by a service provider on behalf of the service recipient did not form part of the taxable value as the payments were made by appellants for reimbursement of amounts paid to the LARs. Further, he submitted that even after the amendment to Section 67 *ibid* with effect from 14.05.2015, though reimbursable expenditure is included within the scope of "consideration", the expenses incurred by a person acting as a *pure agent* of the service recipient are specifically excluded from the taxable value in terms of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. Therefore, he claimed that there is no legal requirement for payment of service tax by the appellants in this case.

3.4 In support of their stand, the learned Advocate has relied upon the following decisions of the Tribunal and the judgements of the Hon'ble Supreme Court, in the respective cases mentioned below:

(i) *Ramesh Sippy Vs. Shaan Ranjeet Uttam singh & Ors.* - 2013 SCC Online Bom 523

(ii) *Amazon Development Centre India Pvt. Ltd., Vs. Additional Commissioner of Central Tax & Another* - 2025 (5) TMI 150 - Karnataka High Court

(iii) *Columbia Sportswear India Sourcing Pvt. Ltd., Vs. Union of India* 2025 (5) TMI 2139 - Karnataka High Court

(iv) *Rolex Logistics Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore* - 2008 (9) TMI 123 - CESTAT Bangalore

(v) *CCE. & C. Rajkot Vs. Reliance Industries Ltd.* - 2009 (3) TMI 859 - SC

(vi) *Scott Wilson Kirkpatrick (I) Pvt. Ltd. Vs. C.S.T.* - 2007 (5) S.T.R. 118 (T)

(vii) *B.S. Refrigeration Ltd. Vs. C.S.T.* - 2006 (4) S.T.R. 103 (T)

(viii) *Dinesh M. Kotian Vs. Commissioner of Central Excise & S.T.-1, Mumbai* - 2016 (42) STR 772 (Tri.- Mumbai)

(ix) *Sarovar Hotels Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai* - 2018 (10) G.S.T.L. 72 (Tri.- Mumbai)

(x) *Anand Nishikawa Co. Ltd. Vs. CCE,* - 2005 (188) ELT 149 (SC)

(xi) *Jaiprakash Industries Ltd. Vs. CCE, Chandigarh* - 2002 (146) ELT 481 (S.C.)

5. We have heard both sides and perused the case records and the written paper books submitted in this regard.

(i) whether the services received by appellants from overseas entities can be considered as 'taxable service' in terms of the definition provided under 65(B)(51) of the Finance Act, 1994;

(iii) whether penalty under Section 77, 78 of the Finance Act, 1994 can be imposed on the appellants in this case.

***"Finance Act, 1994
Chapter V
Service Tax***

In this Chapter, unless the context otherwise requires,--

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(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.

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(51) "taxable service" means any service on which service tax is leviable under section 66B;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.

Section 66B. Charge of service tax on and after Finance Act, 2012.

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Section 66C. Determination of place of provision of service.—

(1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

Section 68. Payment of service tax.

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service:

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider."

6.3 Notification No.30/2012-Service Tax dated 20.06.2012, issued under Section 68 *ibid* is extracted and provided herein for reference purpose:

"Notification N.30/2012-Service Tax dated 20.06.2012)

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number

G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—

(A)(i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

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(B) 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;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1.	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
XX	XX	XX	XX
10.	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	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.”

6.4 The following are the legal provisions of the Rules framed under the Finance Act, 1994, that are relevant to the present case and the specific provisions of these Rules are extracted and given below:

“Place of Provision of Services Rules, 2012

(Notification No. 28/2012 - Service Tax dated 20.06.2012 as amended)

2. **Definitions** - In these rules, unless the context otherwise requires,-

(a) “Act” means the Finance Act, 1994 (32 of 1994);

(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service on his account.;

3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service: Provided that in case "of services other than online information and database access or retrieval services" (Inserted vide Notification 46/2012- Service Tax) where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

9. Place of provision of specified services.- The place of provision of following services shall be the location of the service provider:-

- (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) "****," omitted vide Notification 46/2016-Service Tax
- (c) Intermediary services;
- (d) Service consisting of hiring of means of transport other than, - (i) aircrafts, and
(ii) vessels except yachts
upto a period of one months.

14. Order of application of rules.- Notwithstanding anything stated in any rule, where the provision of a service is, *prima facie*, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration."

7. From plain reading of the above legal provisions, it transpires that during the disputed period i.e., post-negative list regime, the category of services hitherto defined under the erstwhile regime by itemizing it under Section 65(105) *ibid* were merged under a common phrase i.e., 'service' as defined under Section 65B(44) *ibid*. Further, the levy of service tax was provided under Section 66B *ibid*. On harmonious reading of these legal provisions, it transpires that there shall be an activity which should be in the nature of 'service', provided or agreed to be provided in the taxable territory, carried out by one person i.e., service provider, for another person viz., service receiver, involving a consideration in order to attract the levy of service tax. Further, where there is a levy of service tax under Section 66B *ibid*, and in specified situations as provided under Section 68(2) *ibid* and as provided under Notification No.30/2012-Service Tax dated 20.06.2012, service tax shall also be paid by the service receiver.

8.1 In the present case, the disputed transactions have been undertaken during April, 2013 to June, 2017. Therefore, there is no need to examine the

specific nature of service, whether it is falling any specific entry itemized in the earlier Section 65(105) *ibid* and has to only examine, whether the activity amounts to taxable service. In order to understand the nature of services provided by the foreign entities to the appellants, it would be necessary to examine the agreements entered into between them, the activities undertaken by them. The relevant extract of the representative 'Production Assistance Agreement' dated 18.08.2016 entered into between the appellants and the 'Local Area Representative' (LAR) M/s Firststep, Paris, representing the disputed activities are given below:

"PRODUCTION ASSISTANCE AGREEMENT"

This Production Assistance Agreement ("Agreement") made and entered into at Mumbai on this 18th day of April 2016

By and Between

YASH RAJ FILMS PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 1956, as amended, having its registered office at 5, Shaw Industrial Estate, Veera Desai Road, Andheri (West), Mumbai-400 053 (herein after referred to as "***YRFPL***" / "***Company***", which expression shall unless repugnant to the context or meaning thereof be deemed mean and include its successors in title and permitted assigns) of the ***ONE PART***

And

FIRSTSTEP, having its office located at 26 Rue de Paris, 06000 Nice, France (herein after referred to as the "***Local Area Representative (LAR)***") which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include her representative heirs, executors and administrators) of the ***OTHER PART***

*YRFPL and Local Area Representative are hereinafter collectively referred to as "***Parties***" and individually as "***Party***".*

Whereas

A. *YRFPL is producing a cinematographic film, titled "Befikre", to be directed by Mr. Aditya Chopra ("Film").*

B. *The LAR has been approached by YRFPL for rendering the assistance and obligations (the "Assistance") as more particularly set forth in Annexure A.*

C. *The parties wish to record the terms and conditions upon which YRFPL has agreed to engage the LAR and the LAR has accepted the same.*

NOW THEREFORE it is hereby agreed by and between the Parties as follows:

1. Engagement and scope of assistance:

1.1 The Assistance shall include, but not be limited to, the requirements outlines in Annexure "A" attached hereto and by reference made part hereof:

1.2 The LAR shall assists in procuring on behalf of YRFPL the following services:

- (i) act as a location support services company;*
- (ii) assist the producer in finalizing final budget for all spend in France for the said Film;*
- (iii) assist the producer in creating a detailed plan of action for production;*
- (iv) maintain all accounting charts during the production;*
- (v) Shall ensure all the Incentives are duly paid back;*
- (vi) comply with all directions and Instructions of the Producer;*

(vii) comply with all applicable laws, statutes, ordinance, rules, regulations and requirement of all governmental Agencies and regulatory bodies in France and undertake all responsibilities

xxx xxx xxx xxx
1.5 The LAR shall be responsible to YRFPL at all times for the purpose of the above-mentioned Film

LAR shall engage all individuals necessary for production of the Film, all-of whom shall execute a copy (in such form and substance as YRFPL shall pre-approve) of a long form agreement, prior to rendering any assistance in connection with the Film. LAR shall pay all costs in connection with such individuals' engagement from and in accordance with the Budget.

YRFPL shall retain exclusive control over all creative matters related to the production of the Film and final control over all budgetary and other business matters related to the production of the Film.

2. Fee:

2.1 All approved costs of production of the Film which, for the avoidance of doubt, shall be advanced by YRFPL to LAR in accordance with the Budget and the cashflow and shall be applied by LAR solely to pay costs and expenses, in connection with the production of the Film pursuant to and in accordance with the Budget, the cashflow and the terms of this Agreement.

2.2 Subject to the full, complete and timely performance by the LAR of the Assistance, YRFPL shall pay to the LAR 100,000 € (Hundred Thousand Euros) during the Term ("Fee"), payable in mutually agreed installments. The LAR hereby acknowledges and confirms adequacy of the Fee towards the performance of all Assistance by the LAR.

2.3 LAR acknowledges and agrees that, other than as expressly set out in this Agreement, no further sums shall be payable by YRFPL in respect of entering into this Agreement, the performance of the production requirements and all of LAR's other obligations under this Agreement, the assignment of the licenses and LAR's supply and assignment of its own intangible rights and all other rights accruing from the Production of the Film or the exploitation of the Film whether by way of profits, residuals, use fees, repeat fees or otherwise and that the sums specified in this Agreement represent a complete so-called "buy-out" of all such rights throughout the universe in perpetuity.

xxx xxx xxx xxx
6. Audit
6.1 LAR will keep full true and accurate books of account which shall constitute all original vouchers, receipts and records of expenditure (Records") made in connection with the Assistance and YRFPL reserves the right to conduct audit or inspection of the Records prepared and maintained by the LAR (including its sub-contractor, if any) at any time during the term of this Agreement and/or within 6 (Six) months after the termination or expiry of this Agreement. Such audit may be conducted either through personnel of YRFPL and/or YRFPL and or through an independent auditor. For the purpose of such audit, the LAR shall be given at least 7 days" notice along with clear scope of work defined in it and the LAR shall provide access to the Records and extend all reasonable cooperation to the auditor and shall ensure the same from its sub-contractor.

xxx xxx xxx xxx
9. No Obligation: The LAR expressly acknowledges and agrees that the engagement of assistance under this Agreement shall not in any way constitute or be deemed to constitute an obligation of an undertaking by YRFPL to produce the Film or use the Assistance in the Film, or any other cinematographic film or use, adapt, change, revise, delete, exhibit, advertise or promote or in any way exploit the same.

xxx xxx xxx xxx
12. Remedies: The LAR hereby acknowledges and agrees that this Agreement is a contract for personal assistance and production of the Film is of a unique unusual and extraordinary character and any disruption in the performance of Assistance by the LAR shall cause loss to the production of the Film, which loss cannot be adequately compensated through damages at law. Therefore, YRFPL shall be entitled to seek specific performance by the LAR of all the Assistance set forth in this Agreement and

the Annexure A, without prejudice to any other remedies that may be available to YRFPL In law or in equity.

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ANNEXURE A

ASSISTANCE

The LAR shali:

1. Handle all accounting process for the shoot schedule in France.

2, Ensure all the contracts are properly executed.

3. Collect incentive for the work on behalf of YRFPL and shall pass back the same to YRFPL within 1 (one) week from receipt of the same in his bank account with the details:

Account Holder's Name:

Account Holder's Bank Account No.:"

8.2 On careful perusal of the Production Assistance Agreement dated 18.08.2016, it transpires that the appellants have exclusive control over all the creative matters related to production of films and also has the final control over all budgetary and other business matters related to the production of film. The role of LAR is limited to rendering assistance in procuring various services as required by the appellants, to enable production of part or whole of the film in foreign territory. Further, the engagement of the LARs does not create any obligation on the appellants to produce the films or utilize the assistance of independent service providers located at the foreign territory. The LARs' role is purely ancillary and subordinate, confined solely to facilitating the procurement of services, and had no connection whatsoever with the production of the film. Therefore, from the various clauses of the Agreement it is conclusively evident that the LARs have acted purely as intermediaries, merely facilitating procurement of services from third parties on behalf of the appellants, without providing any independent service by themselves.

8.3 In the impugned order, learned Commissioner in his findings recorded at para 49.3 & 50 of the impugned order, on the basis of above agreement has treated the LAR as 'Line Producer' of film on the basis of definition given in Wikipedia/online resource to categorize them as service provided on the basis of erstwhile Rule 3(iii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and under Rule 3 of the Place of Provision of Services Rules, 2012. As the period of dispute in the present case covers the period 01.04.2013 to 30.06.2017, the provisions of Rules of 2006 which superseded the Rule of 2012 by Notification No.28/2012-Service Tax dated 20.06.2012 brining into force the Place of Provision of Services Rules, 2012 (POPS) with effect from 01.07.2012 alone is relevant for determination of the place of provision of a service. In terms

of the agreement dated 18.08.2016, it clearly brings out the fact that the services provided by FIRSTEP, Paris to the appellants are governed by the specific clauses of the agreement. On overall reading of the agreement, it transpires that recognizing the requirements of production of film, and the consequent activities that are needed to be undertaken viz., location of film shooting i.e., indoor and outdoor places; facilities and materials required viz., decorative items, costumes, plants & flower arrangement, sound recording systems, lighting arrangements etc.; manpower and specialists required viz., food stylists, decorators, technicians and specialists for filming of the events, actions by artists etc., the appellants have engaged FIRSTEP to provide the facility for engaging with the respective individuals concerned, by entering into a long form agreement, prior to rendering any services to the appellants. For all such activities, the Local Area Representative/ Line Producer (LAR) FIRSTEP shall be required to pay all the costs in connection with the activities performed by such individuals, in accordance with the budgetary allocation made by the appellants to the LAR.

8.4 In further examining such aspect, the learned Advocate for the appellants have produced the copy of the agreement entered into by the appellants with M/s BAZAR Decon Rental, 31/33 Rue du Temple, 75004, Paris & LAR FIRSTEP, as joint parties, along with English translation copy dated 23.03.2026, for providing the premises at ground floor of the 'Aboudabi Bazar Boutique' located at 125, Rue Vieille du Temple, 75003, Paris including storefront and display windows for the purpose of filming the movie "Befikre" for a specified period and timings as provided therein. The invoice dated 22.04.2016 indicate payment of Euro 3420 made by LAR on behalf of the appellant through LAR. Such amount paid for the above facility also included Value Added Tax (VAT)/ *Taxe sur la Valeur Ajoutée* (TVA) in French, of Euro 570 (VAT @ 20% on Euro 2850). Similarly, there were a number of agreements have been entered into by the appellant with various persons viz., agreement dated 11.05.2016 with Father Annequin, in his capacity as Parish Priest of Saint-Germain L' Auxerrois Church situated as 2, Place du Louvre, 75001, Paris for use of parish hall, WC facilities, parking area for setting up canteen facility in the parking slot, installation of hair, makeup, costume in the parish hall; services provided by Mr. Jose' Correia, 2, Rue Azais, 75018, Paris for providing electrical lines supply power to the Hair, Makeup, Costume at the premises along with generator position at the venue, for a specified period. On perusal of the above documents placed on

record, we find that a number of persons operating from Paris, France have provided services or rendered certain activities as 'service provider' to the appellants for film shooting of 'Befikre' on principal-to-principal basis by specific agreements entered into between them and the LAR FIRSTSTEP had acted as an 'intermediary' between such persons and the appellants.

8.5 Therefore, the service provider in all such activities are the persons located abroad/in Paris and the service receiver is the appellants in India and such activity was for an agreed consideration paid through the LAR acting on behalf of the appellants. Thus, the services provided such persons placed in abroad in this case is covered under the scope of definition under Section 65(44) *ibid* as 'service' and is also covered under the definition of 'taxable service' in terms of Section 65(51) *ibid*, as the service in the present case is not covered under any specific exclusion in terms of negative list under 66D *ibid*. However, as the services are rendered from abroad i.e., Paris office of the service provider, we need to further examine the exigibility to service tax in terms of Section 66C *ibid* and the rules made thereunder. Thus, we need to look into the Rules framed in exercise of the powers vested with the Government in terms of Section 94(2)(hhh) *ibid*, i.e., Place of Provision of Services Rules, 2011 (POPS).

8.6 In terms of POPS, under Rule 3, generally the place of provision of service shall be taken as the location of the recipient of service. However, specific rules prescribe the place of provision of service in various circumstances such as performance-based services, services relating to immovable property, services relating to events, services provided from more than one location, service provider and service recipient located in taxable territory, provision of specified services, goods transport services, passenger transport services, services provided on board a conveyance etc. It is claimed by the appellants that the nature of services received from LARs situated at Paris is an intermediary service, for which the applicable rule under POPS is Rule 9; whereas the Department has claimed that the applicable rule under POPS is Rule 3. In order to determine the correct application of the Rule, we have also examined the definition of the phrase 'intermediary services' provided in Rule 2 *ibid*. Inasmuch as, the Paris office of FIRSTSTEP i.e., the service provider, had arranged for various activities related to shooting of film at Paris, France to the appellants, in order to completing the film production activity abroad, it is clearly proved that these services are covered under the definition 'intermediary services'.

8.7 At the time of introduction of negative list regime of service tax, the Ministry of Finance had issued an Education Guide on 'Taxation of Services'. The relevant paragraph dealing with 'intermediary services' the clarification providing on the scope of levy is extracted as follows:

"5.9.6 What are "Intermediary Services"?"

Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

- (i) the supply between the principal and the third party; and*
- (ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.*

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: *An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.*

Separation of value: *The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".*

Identity and title: *The service provided by the intermediary on behalf of the principal is clearly identifiable."*

8.8 Accordingly, by applying the aforesaid three criteria in the present case, we find that firstly, LAR FIRSTEP cannot alter the nature of service for which they are engaging the persons abroad to enable provide film shooting requirements/services; secondly, the consideration is received in terms of the contractual arrangements which cannot be altered by LAR FIRSTEP. Thus, the nature and value of the services provided are known to both parties i.e., the service provider and a service receiver, and further to the LAR FIRSTEP. We also find that the consideration charged by LAR FIRSTEP in the form of fixed fees at 100,000 Euro is independent of the consideration

involved in obtaining the services from various persons abroad by the appellants for shooting the film abroad. Thus, the principle of separation of value, is also fulfilled in the present case. The main transaction between the appellants and the persons situated abroad, is the services involved in obtaining various facilities viz., renting of location of film shooting i.e., indoor and outdoor places; facilities and materials required for decorative items, costumes, plants & flower arrangement, sound recording systems, lighting arrangements etc.; manpower and specialists required such as food stylists, decorators, technicians and specialists; for filming of the events, actions to be performed by artists for shooting the film. These services are distinct and is completely different from the services provided by LAR FIRSTSTEP. Thus, we find that all the three criteria laid down by the CBIC's clarification is fulfilled in the present case to categorize the disputed services provided by the LAR, as 'intermediary service'.

8.9 Thus, in terms of specific Rule of the POPS which would more appropriately applicable in this case, we find that Rule 9 of POPS is applicable to the 'intermediary service' as it is the more appropriate rule for determination of place of provision of the service. Further, in terms of Rule 14 of POPS in determining the order in which these rules shall be applied, even for argument sake, if we consider that both Rule 3 as claimed by the department and Rule 9 as claimed by the appellants are contending Rules in the present case, then notwithstanding the above various Rules, the place of provision of services shall be determined in terms of 'later Rule' among those merit equal consideration. Thus, even in such a situation, Rule 9 of POPS would be the appropriate rule to be applied in this case. Accordingly, the place of provision of service in the present case would be the location of the service provider i.e., Paris, France. Hence, in respect of 'intermediary services' provided by the LAR FIRSTSTEP from PARIS to the appellants who are located in India, would not be exigible to service tax under Section 66B *ibid*. Further, we are also of the view that for the above reasons, the levy of service tax on Reverse Charge Mechanism (RCM) basis under Section 68 *ibid* read with Notification No.30/2012-Service Tax dated 20.06.2012 is also not applicable in the present case.

9.1 In the impugned order, learned Commissioner has also considered the fact that the LAR FIRSTSTEP having received the refund of taxes provided by the Government of France, and thus have come to the conclusion that they should be treated as exporter of film to India, for charging service tax on the

appellants as a recipient of service. On perusal of the extract of ledger accounts of foreign remittances for the period 01.04.2016 to 31.03.2017 maintained by the appellants, it transpires that an amount of 2,50,000 Euro had been received from LAR FIRSTSTEP. Similar incentives were also received by the appellants from other LARs viz., 15,361.41 GBP from Bollywood Limited. On further examination of this aspect with the details submitted by the learned Advocate of the appellants on the scheme of 'Tax Rebate for International Production' (TRIP) it transpires that it is a selectively granted tax rebate/incentive by the Centre National du Cinema et de l'image animee/French National Centre of Cinema (CNC). This is granted by the CNC to the French production services company who is in charge in compliance with a contract entered into with a non-French production company, for both supplying the artistic and technical means for making the feature film and of managing the material operations for its making and monitoring its proper execution at France. Further, such tax rebate is provided only to certain eligible project which fulfill the conditions of minimum project amount to be incurred viz., 250,000 Euro and having at least 5 days of shooting in France; the approved works should include elements related to the French culture, heritage, and territory, accordingly to a cultural test specific to each genre (live action or animation). On examining the nature of tax rebate/incentive, it transpires that this is being given to certain specific film projects fulfilling certain conditions specified therein and to the film production company as well as to the intermediary persons like the LAR who manages the material, operations, personnel required for shooting the film abroad, by a non-French production company. Hence, such grant of rebate/incentive to the LAR FIRSTSTEP as intermediary for the appellants being non-French film production company, does not provide any sufficient ground to conclude that the LARs are the service providers as film production company to the appellants. Therefore, we do not find any merits in the conclusion arrived by the learned Commissioner in the impugned order on this aspect to treat LARs as service providers for charging service tax in respect of services provided by them as film producers.

9.2 Since, we have examined the disputed issues on merits and have come to the conclusion that the disputed activities are not liable to payment of service tax on RCM basis, we do not find it necessary to go into the aspects of limitation of time and other grounds raised by the appellants against the adjudged demands confirmed in the impugned order.

10. Based on the foregoing discussions and analysis, we find that there are no strong grounds to hold that the services received by the appellants from LARs having their base in Paris, France or other foreign entities based in abroad, are liable for payment of service tax in terms of the provisions of Finance Act, 1994. Consequently, the adjudged demand of service tax and imposition of penalties confirmed in the impugned order is not legally sustainable.

11. In view of the above, we are of the considered view that the adjudged demands confirmed on the appellants in the impugned order dated 14.12.2022 is liable to be set aside. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 15.10.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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