

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75208 of 2020

(Arising out of Order-in-Appeal No.171-174/BOL-ST/2019-20 dated 27.12.2019 passed by Commissioner(Appeals), Siliguri Appeal Commissionerate, Siliguri.)

**Shri Ananda Paul, Partner,
M/s. Radhashyam Tirthabasi Paul**
(Aurangabad, Murshidabad-742101.)

...Appellant

VERSUS

Commissioner, CGST & CX, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

WITH

(i) Service Tax Appeal No.75209 of 2020 (Shri Goutam Kumar Paul, Partner, M/s. Radhashyam Tirthabasi Paul v. Commissioner, CGST & CX, Bolpur); (ii) Service Tax Appeal No.75210 of 2020 (Shri Barun Kumar Paul, Partner, M/s. Radhashyam Tirthabasi Paul v. Commissioner, CGST & CX, Bolpur); (iii) Service Tax Appeal No.75211 of 2020 (Shri Ratan Kumar Paul, Partner, M/s. Radhashyam Tirthabasi Paul v. Commissioner, CGST & CX, Bolpur);

(Arising out of Order-in-Appeal No.171-174/BOL-ST/2019-20 dated 27.12.2019 passed by Commissioner(Appeals), Siliguri Appeal Commissionerate, Siliguri.)

APPEARANCE

S/Shri H.K.Panday, Goutam Basu & Tapan Kr. Mitra, Advocates for the Appellant (s)

Shri B. Sanfui, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 76453-76456/2026

DATE OF HEARING : 07.10.2026

DATE OF DECISION : 14.10.2026

R. MURALIDHAR :

The appellants are the 4 partners in the partnership firm M/s Radhashyam Tirthbasi Paul. They are engaged in manufacture of Biri and have been discharging duty liability as per law. The Partners are from the same family in as much as Ananda Paul is son of Late Radhashyam Paul and the other three are sons of Tirthabasi Paul. The firm is in the name and style of M/s. Radhashyam Tirthabasi Paul. Trade mark **Shankha Bidi** is registered in the name of Ananda Paul and Tirthbasi Paul. Thus the trade mark is owned by all the partners having been inherited in proportionate shares. The partnership deed clearly divides the profit share in that proportion mentioned as Royalty in the Balance Sheet/Profit & Loss Account.

2. The Show Cause Notice dated 16.03.2018 was issued to the appellants alleging that the profit sharing of Royalty amounts to proving Intellectual Property Service and accordingly they are liable to service. The service tax leviable on the amount for the period from 01.07.2012 to 2014-15 was demanded. The Adjudicating authority confirmed the demand vide OIO dated 03.10.2018 which has been upheld in appeal by the Ld. Commissioner (Appeals). Therefore, the appellants are before the Tribunal.

3. The Ld. Counsel, appearing for the appellants, submits as under:

4. As per Terms & conditions of the Deed of partnership executed on 16th March, 1994, the Partners [the present appellants] are entitled of profit share in the following ratio:

1. Ananada Paul - 50%
2. Barun Kumar Paul- 16.67 %
3. Ratan Kumar Paul - 16.67 %
4. Gautam Kumar Paul- 16.67 %

5. The partners are lawful owners of the Trade Mark which is being used in their common interest. Reliance is placed on the Hon'ble Supreme court's judgment in **V. Subramaniam Vs Rajesh Raghuvandra Rao [in 2009(5)SC 608]** which at para 14 holds:

"That a partnership firm, unlike a company registered under the companies act, is not a distinct legal entity, and is only a compendium of its partners. Even the registration of a firm does not mean that it becomes a distinct legal entity like a company. Hence the partners of a firm are co-owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company."

6. Similarly in the case of Malabar Fisheries Vs CIT, Kerala AIR 1980 SC 176, the Hon'ble Apex Court observed :

Para 10. The position as regards the nature of a firm and its property in Indian law under the Indian Partnership act, 1932 is almost the same in English law. Here also a partnership firm is not a distinct legal entity and the partnership property in law belongs to all the partners constituting the firm. The Indian Act, like the English act avoids making a firm a corporate body enjoying the right of perpetual succession.

Para 11. A partnership firm under the Indian partnership Act, 1932 is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate right of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property in which all partners have a joint or common interest."

7. In view of the settled position of law, the Royalty paid by the firm to its partners for use of Trade mark which is registered in the name of the partners, amounts to service to self and that service to self is not taxable.

8. The demand is also barred by limitation as it is based on the records and accounts produced by the assessee at the time of audit and no entry therein is disputed. It is also on record that he submitted periodical returns regularly. The levy of Service tax on IPR was introduced from 10.9.2004 and the appellant's firm was audited many times thereafter and thus the issue was well within the knowledge of the department. There being no intent to evade tax, extended period of limitation is not invocable. Reliance is placed on the following judgments:

**i) ARYA LOGISTICS versus COMMISSIONER OF C. EX. & S.T.,
RAJKOT [2024 (80) G.S.T.L. 108 (Tri. - Ahmd.)]**

**ii) PARUL ASSOCIATES INTERIORS PVT. LTD. Versus
COMMR. OF S.T., BANGALORE [2016 (46) S.T.R. 373
(Tri. - Bang.)]**

9. It is prayed that the appeals may be allowed.

10. The Ld.AR, appearing on behalf of the Revenue, reiterates the findings of the lower authorities. He submits that the appellants have collected the Royalty amount separately from the firm. The firm and the partners are two different entities. Hence, when the partner provides the royalty service, the same is liable to Service Tax. He justifies the confirmed demand.

11. Heard both the sides.

12. I have gone through the appeal papers and documents placed before me.

13. As per the directions of the Bench, the appellant provided their P& L accounts and Balance Sheet for the period under dispute. I have gone through the same. I find from the P & L account that the

appellant is charging the Royalty amount which is shown under the Expenditure account. After arriving at the Net Profit, the same is being shared in the proportion as stated by the Ld. Consultant. The factual details shows that the Royalty amount has been paid to the partners and the same has been accounted for as expenditure in the books of accounts.

14. When the asset of the partner is being given to the partnership for which a consideration is paid, as to whether Service Tax would be payable or not is the main issue here.

15. No doubt the Intellectual Property Right of Shank Brand is the Trade Mark for which the rights are held by the partners. This is an individual asset of each of the partners. They have deployed this asset to generate the profit for the business. Therefore, this is not a case where a third party holding the trade mark has lent the same and has charged Royalty for the same. Here the asset of the partner is being used for the furtherance of the business and the Royalty amount is also charged and shared in the proportionate basis. When the partner allows his assets to be used by the partnership firm, there arises no case of client – service provider relationship between the partnership firm and partner. Hence, this would amount to self-service by the partner for the partnership firm.

16. I have for reference the case law of **Mormugao Port Trust Vs CCEST Goa**, wherein the issue was whether the consideration received by the partner from the partnership firm would be liable for Service Tax or not. The Mumbai Bench deciding the **APPEAL NO. ST/86337, 86592/15 on 6.6.2016** has held as under:

2. The facts of the case as recorded in the Show Cause Notice are that the Appellant, M/s. Mormugao Port Trust is rendering Port Services and is duly registered for this purpose with the service tax authorities. The Notice contends that, the Assessee had entered

into an agreement with M/s South West Port Ltd, Mormugao, (SWPL) under which it had leased out/rented out pieces or parcels of land which were situated in the operational area of the harbour to SWPL on which the latter had constructed a jetty which was used for loading and unloading of cargo from ocean going vessels, in lieu of which it received license fee and royalty from SWPL. As per the Notice, while the Assessee had discharged service tax on the license fee, however no tax has been paid on the amount recovered towards royalty, on which according to the Notice, tax was leviable under the head of Renting of Immoveable Property services.

3. The Assessee replied to the Notice submitting that there was no liability to service tax inasmuch as there was no renting of immoveable property service rendered by it and that the royalty earned by it was infact its share of revenue from services which were jointly rendered by the Assessee and SWPL. It was submitted that the principal-client relationship which is the basic tenet for applicability of service tax was not existing between the Assessee and SWPL. Besides resisting the demand on merits, it was also submitted that the entire demand was barred by limitation as the revenue was in the knowledge of the agreement and that another show cause notice F.No.CX-ST/Mormugao Port/57/08-09 dated 4.9.2009 had been earlier issued with reference to the very same agreement which was the subject matter of the present proceedings.

8. We have carefully considered the submissions made by both sides and perused the records. Since we are deciding this appeal by accepting the first contention of the Assessee on merit, do not consider it necessary to deal with point of limitation

From the facts and circumstances of the case and the arguments put forth by the rivals, we find that the issue to be decided by us is whether the amount received by the Assessee from SWPL, under

the nomenclature of royalty, was a consideration for the renting/leasing of the land and the waterfront and accordingly liable to tax under the head of Renting of Immoveable Property services.

The Appellant's contention that the Royalty in question was not a consideration received for any particular service rendered by the Assessee to SWPL but was its share in the revenue earned from a joint business activity carried out by the Assessee and SWPL, but was rejected by the Commissioner.

17. The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

18. In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless it can be established that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it

cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service.

19. We are accordingly of the view that activities undertaken by a partner /co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed.

23. We are accordingly of the view that there is no service that has been rendered by the Appellant, much less the taxable service of renting of immoveable property. The money flow to the Assessee from SWPL, under the nomenclature of Royalty, is not a consideration for rendition of any services but infact represents the Appellant's share of revenue arising out of the Joint Venture being carried on by the Assessee and SWPL.

17. I find that the ratio and spirit of the Apex Court's decision cited supra about the partner and partnership firm finds echo in the above order.

18. It is not disputed that the partners are the co-owners of the Royalty rights, which happens to be their asset. They have deployed the same and are receiving Royalty as part of the consideration for deploying this asset. As has been held in the cited case, there is complete absence of service provider vis-à-vis service receiver relationship in this case. I find that the cited case law is squarely applicable to the facts of the present case. Hence applying the ratio of this case law, I set aside the impugned order and allow the appeal.

19. I also find force in the appellant's arguments about the time bar aspect. First of all, the payments towards Royalty are properly reflected in the Profit and Loss account. The appellants would have carried a bonafide belief that since they are recovering Royalty charges from the Partnership firm, there is absence of service provider – client

relationship. There is nothing to suggest that they have charged the Service Tax on such Royalty received. Hence, the Revenue has failed to make out any case of suppression on the part of the appellants.

20. I also take a view that if at the Service Tax was payable by the appellants individually, the same would be accruing to the partnership firm itself as Cenvat Credit for payment of Excise Duty on their finished goods, Biris. Hence, there cannot be any intent to evade Service Tax payment.

21. Therefore, I hold that the confirmed demand for the extended period is legally not sustainable. I set aside the same on account of time bar also.

22. The appeals stand allowed. The appellants would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on 14.10.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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