CCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

SERVICE TAX APPEAL No. 51841 of 2025

(Arising out of Order-in-Original No. 02-05/COMMR/DELHIEAST/PK/2025-26 dated 28.08.2025 passed by the Commissioner Central Tax, New Delhi)

DSS IMAGE TECH PVT LTD **....Appellant**
A-5 Mohan Cooperative Indl. Estate,
Mathura Road, New Delhi - 110044

Versus

Commissioner of CGST, Delhi East **....Respondent**
CR Building, I.P. Estate,
New Delhi - 110002

APPEARANCE:
Mr. R. Krishnan, advocate for the appellant
Mr. Mahboob ur Rahman, authorised representative of the department

CORAM :
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing : 28.09.2026
Date of Decision : 29.10.2026

FINAL ORDER NO. 51640/2026

DR. RACHNA GUPTA:

M/s DSS Image Tech Pvt. Ltd.[1] are registrered with the Service Tax Department for providing Management, Maintenance or Repair Services[2], Business Auxiliary Services[3] and Erection, Commissioning or Installation Service[4]. During the audit of the appellant's records for the period 2006-07 to 2010-11. The department observed that the appellant was engaged in promoting and marketing the equipments of a foreign client in India. The department alleged that the activities

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1. **appellant**
2. **MMR**
3. **BAS**
4. **ECIS**

are appropriately classifiable as BAS taxable under section 65(105)(zzb) of the Finance Act, 1994. But the service tax was not paid on the commission received for providing the said services as was apparent from the service tax returns. The appellant had claimed the activity to fall under the category of export of services and thus exempted. On the basis of objection and observations a show cause notice was served upon the appellants bearing no. 134/2011/660 dated 11.04.2012 proposing the service tax amounting to Rs. 3,09,74,273/- towards service tax on BAS and commission income on import of goods claimed as export of service. However, Rule 6A of Service Tax Rules, 1994 got inserted with effect from 01.07.2012 vide Notification No. 36/2012 dated 20.06.2012, according to which the services provided or agreed to be provided shall be treated as export of service only when the conditions laid down in the said Rule are fulfilled. Rule 3(2) of Export of Service Rules, 2005 is also denied applicable in the present case. However, after coming into effect of Rule 6A of Service Tax Rules that the place of provision of Service Rules, 2012 also came into effect on 01.07.2012 and the Export of Service Rules, 2005 got rescinded.

2. The department alleged that the services provided by the appellant are being consumed in the taxable territory, hence appellant was liable to pay service tax. In absence of the payment of the tax for rendering same services another show cause notice bearing no. 46/2012/2062-65 dated 22.10.2014 invoking the extended period of limitation was served upon the appellant proposing the demand of service tax of Rs. 98,18,596/- for the period from July 2012 to March 2013 to be paid along with the interest and

the appropriate penalties. The original adjudicating authority vide Order-in-Original no. 02-05/2025-26 dated 28.08.2025 has passed an order with respect to four show cause notices including the first one dated 11.04.2012 and the present one dated 22.10.2014 along with the other show cause notices dated 23.04.2015 and 12.05.2016 all having identical issue adjudicating those against the appellant. Being aggrieved of the said order that the appellant is before this Tribunal.

3. We have heard Mr. R. Krishnan, learned counsel for the appellant and Mr. Mahboob ur Rahman, learned authorised representative for the department.

4. Learned counsel for the appellant has mentioned that the appellant deals in the medical equipments and also acts as the distributor of such equipments of various foreign companies/suppliers. In addition, the appellant acts as commission agent for the said foreign suppliers for the direct sales made by them to the customers in India. As the part of the commission agent business, the appellant procures orders or enquiries from the customers in India for the goods sold by the foreign suppliers and passes on such orders/enquiries to the foreign suppliers. The foreign supplier, thereafter, directly used to export the goods to the parties in India, the appellant will just be getting commission paid in foreign exchange by the foreign party for the said procurement of customers. It is submitted that there is no tri-partite agreement at all and the appellant has no privity of contract with the Indian parties. Despite that, four show cause notices including the one in question have been

issued by the department demanding service tax on the commission income earned in foreign exchange.

5. Learned counsel has denied the activity to be the export of service, alleging that the receipt of commission from abroad do not satisfy the condition laid in Rule 6A(d) of Service Tax Rules. It is submitted that the said condition which requires the place of provision of service to be outside India has fully been met with in the appellant's case as the place of provision vis-à-vis appellant's service is place of its foreign client. The appellant does not even fall in the definition of 'intermediary' as given in rule 2(f) of Place of Provision Rules, as the appellant did not arrange or facilitate the provision of service. It was only after 01.10.2014 that the definition of 'intermediary' was amended to include 'goods' also. Thereafter the appellant started paying tax on such commission income.

6. Learned counsel also submitted that the show cause notice for the period 2006 to 2009-10, the demand therein has already been dropped by the departmental authority only. Finally it is submitted that the show cause notice is even barred by the period of limitation, as the appellant was regularly filing the ST-3 returns. The tax was not paid under the bonafide belief that the activity is exempted (export of service). While relying upon following decisions learned counsel has prayed for the order under challenge to be set aside and the appeal be allowed.

(i) **Medway Educational Consultant Pvt. Ltd. vs. Commissioner, CGST Commissionerate, Delhi West**[5]

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5. (2024) 24 Centax 166 (Tri. Del)

(ii) **Commissioner of Central Goods and Service Tax and Centrl Excise vs. Grant Thornton Advisory Pvt. Ltd**[6]

7. While rebutting these submissions, learned departmental representative has submitted that the services in question were actually provided by the appellant in India, the services being consumed in India. The findings in paras 115-119 of the impugned order have been reiterated. Impressing upon no infirmity therein, the appeal is prayed to be dismissed.

8. Having heard both the parties and perusing the entire record, we observe it to be an undisputed fact that the appellant is providing support to the foreign supplier for procurement of order in India and promotion of goods dealt by the foreign suppliers, the appellant also assist them for liaisoning, preparing documents, obtaining tenders and handling complaints against receiving commission, in foreign exchange, from the said foreing suppliers. Despite the said undisputed facts, violation of rule 6(A) of Service Tax Rules, 2012 has been alleged. We have perused the said rule which reads as follows:

> "**Rule 6A** - Export of Services (1) The provision of any service provided or agreed to be provided shall be treated as part of service when,-
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> (a) the provider of service is located in the taxable territory,
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> (b) the recipient of service is located outside India,
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> (c) the service is not a service specified in the section 66D of the Act,
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> (d) the place of provision of the service is outside India,

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6. (2025) 26 Centax 143 (Tri. Del)

> (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
>
> (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65Bof the Act."

The only condition alleged to be violated is the one under sub-clause (d) above.

9. To adjudicate further we have perused the Place of Provision Rules. Rule 3 thereof provided that the place of provision of service shall be the location of the recipient of the service. Service recipient is the person on whose instructions /orders the service is provided, who is obliged to make the payment from the same and whose need is satisfied by the provision of the service. Hon'ble Delhi High Court in **Verizon Communication India Pvt Ltd vs Assistant Commissioner, Service Tax, Delhi**[7] has affirmed the said meaning of the service recipient. The Larger Bench of this Tribunal in the case of **Paul Merchants Ltd. vs. C.C.E. Chandigarh**[8] has held that the person who requested for service is liable to make the payment for the same and whose need is satisfied by the provision of service has to be treated as recipient of service and it is not the person or persons affected by the performance of service. Thus when the person on whose instruction the services in question had been provided by the agents/sub-agents in India, who is liable to make the payment for these services and who used the services for his business is located abroad, the destination of service in question has to be treated abroad. The destination has to be decided on the basis

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7. 2018 (8) GSTL 32
8. 2012 (12) TMI 424 CESTAT Delhi

of place of consumption not the place of performance. The situation was further elaborated by this Tribunal in the case of **Study Overseas Global Pvt. Ltd. vs. Commissioner of Service Tax**[9] wherein it was held as follows:

> "mere fact that the appellant has been promoting and marketing foreign universities within India and then getting prospective students enrolled for various courses in those universities does not mean that services to foreign universities were consumed within India. There is no dispute that service recipients are foreign universities and they are located outside India and payment for such services has been received in foreign currency."

10. It becomes clear from the above discussion that when a service is rendered to a third party at the behest of the service recipient, the third party is not the consumer of the service vis-à-vis the service provider.

11. Reverting to the facts of the present case, undisputedly, as already observed above, the foreign clients entered into an agreement with the appellant requiring appellant to procure orders for foreigner's products to be sold in India. From the above discussion about the service recipient this fact is sufficient to hold that in the set of circumstances, the foreign client was the service recipient and the appellant is the service provider. The amount *quid pro quo* for the said arrangement, that is the consideration is the commission received by the appellant in foreign exchange. There is nothing on record brought by the department to show that after procuring orders from Indian customers and sending the information to its foreign client, the appellant had any other role to play vis-à-vis the Indian

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9. 2017 (3) GSTL 443

customers. There is no evidence to prove that the Indian customers also qualify to be called as the service recipients of the appellant. In absence thereof, we hold that violation of condition under sub-clause (d) of rule 6(A) of Service Tax Rules is wrongly been alleged against the appellant. The arrangement in question actually amounts to export of service being provided by the appellant to its foreign clients against the commission received in convertible foreign exchange, the said activity is not liable to tax. This activity was not taxable during the period in question. The confirmation of demand of service tax is, therefore, liable to be set aside.

12. Coming to the plea of invocation of extended period, we observe that the appellant was regularly filing the service tax returns, clearly declaring its activity as export of service. Suppression of facts cannot at all be alleged against the appellant. The appellant has also submitted that the activity was bonafidely believed as export of service. It is the settled position of law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the Noticee not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to section 11A of the Act as was held in **Anand Nishikawas Co. Ltd. vs. CCE Meerut[10].**

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7. **2005 (188) ELT 149 (S.C.)**

13. Finally observing that department has not produced any evidence for any positive act of the appellant of suppressing information from the department that too with an intent to evade payment of service tax, we hold that the extended period is wrongly been invoked by the department. The demand gets hit by the period of limitation. In totality of the entire above discussion, we hereby set aside the impugned order. Consequent thereto, the appeal stands allowed.

(Order pronounced in court on 29.10.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Apoorva