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

Service Tax Appeal No.50432 of 2019

[Arising out of Order-in-Original No.25-26/PK/GST/DE/2018-19 dated 22.10.2018 passed by the Commissioner, CGST & Central Excise, Delhi East Commissionerate]

Principal Commissioner of CGST & Central Excise, Delhi East, — **Appellant**
Room No.134, Central Revenue Building,
I.P. Estate, East Delhi,
New Delhi-110 002.

Versus

M/s.Oriental Consultant Company Ltd., — **Respondent**
1007-1009, 10th Floor, Narain Manzil,
23, Barakhambha Road,
New Delhi- 110 001.

APPEARANCE:
Shri Shashank Yadav, Authorised Representative for the appellant.
Ms. Shagun Arora and Shri Kunal Agarwal, Advocates for the respondent.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.51524 /2025

DATE OF HEARING: 10.09.2025
DATE OF DECISION: 08.10.2025

BINU TAMTA:

1. The Revenue has filed the present appeal raising the issue whether the Adjudicating Authority has erred in dropping the demand pertaining to post-negative list period i.e. 1.7.2012 to 31.03.2015 in respect of "Manpower Supply Service" provided by Overseas Group Company to its group company in India or not?

2. Briefly stated, the respondent is a part of the Oriental Consultants Company Ltd., Japan, (OC, Japan) which is engaged in

providing engineering and consultancy services (OC), Japan, entered into an agreement with various Indian parties for provision of services/project in India through temporary project offices opened as per the guidelines issued by RBI. The respondent is one such Project Office of OC, Japan and is registered as a foreign company in India under the provisions of Section 592 of the Companies Act, 1956. The respondent being a Project Office incurs all expenditure for the purposes of execution of the Project and receives payment from the customers. Invoices are raised by the respondent on the customers as per the terms of the agreement. The respondent discharges appropriate service tax liability on the amounts received from the customers. The books of accounts in India are maintained for ROC filing and tax purposes only and the expenses incurred in Japan for the Project offices in India are debited and credit of the same is given to the Head Office i.e. OC, Japan.

3. On the basis of an audit, show cause notice dated 16.10.2015 was issued for the period 20.10.2011 to 2013-14 raising the demand of service tax of Rs.4,33,78,130/- on the allegation that the respondent incurred foreign currency expenditure related to EXPATs and other administration related expenses with respect to import of service of manpower, which is taxable under the Reverse Charge Mechanism[1] in the hands of the respondent. The case of the Revenue was that the Project Office /respondent and the Parent Office /OC, Japan are distinct persons as per Section 66A(2) of the Finance Act, 1994. The employees of OC, Japan are working for the respondent, which is a distinct person and hence there exist provision of service by one person to another.

[1] RCM

Further, payment towards salary is being made by the Project Office i.e. the respondent and hence consideration is present. Thus, respondent is liable to pay service tax under RCM in terms of Rule 3 (iii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (‘**Import Rules’)** on services provided by OC, Japan to the respondent in India which is classifiable as “Manpower Recruitment or Supply Agency Service “as specified under Section 65(105)(k) read with Section 65(68) of the Act. For the period post 01.07.2012, the services of manpower supply are chargeable to tax in terms of Rule 3 of the “Place of Provision of Services Rules, 2012[2]

4. Subsequently, show cause notice/statement of demand dated 31.03.2016 was issued for the period 2014-15 raising demand of service tax of Rs.68,06,684/- on the same allegations as above. On adjudication, the impugned order was passed relying on the decisions of the Tribunal in the case of **Lea International Ltd. Vs. CST, Delhi[3]** and **SNC Lavalin Inc Vs. CST, Delhi[4]** dropping the demand along with interest and penalty. The Revenue being aggrieved has challenged the said order in the present appeal limited to the dropping of demand of service tax of Rs.3,80,81,305/- for the period 1.7.2012 to 31.03.2015.

5. Shri Shashank Yadav, learned Authorised Representative for the Revenue submitted that the issue of applicability of service tax on “Manpower Supply Services” provided by Overseas Group Companies to its group company in India has been decided by the Apex Court in **CC, CE & ST, Bangalore (Adjudication) Vs. Northern Operating**

[2] POP Rules
[3] 2018(2)TMI 1407 –CESTAT-New Delhi
[4] 2018(2)TMI 1679-CESTAT

System Pvt. Ltd. [5] in favour of the department and the respondent is, therefore, liable to pay service tax.

6. Ms. Shagun Arora, learned Counsel for the appellant alongwith Shri Kunal Aggarwal, learned counsel contested the appeal, inter alia, submitting that OC, Japan is a company incorporated in Japan under the provisons of the Japanese laws and is engaged in execution of various turnkey project for which they have established Project Office in Indai which undertakes the execution of these contracts and receives considerations from the Indian customers. The profit remaining in the Project office at the year end are repatriated to OC, Japan. In nutshull, the submission is that the respondent being a Project Office cannot be treated a separate legal entity from OC, Japan and, therefore, no tax can be levied on services received by the respondent from OC, Japan as it amounts to 'service to self'. She emphasized that the respondent and OC, Japan are one and the same company as the respondent is merely a Project Office, which is registered as a foreign company in India. The agreement is entered between OC, Japan directly with Indian Customers under its own seal and also the invoices which are raised by the respondent on the Indian customers are for payment directly to the bank account of OC, Japan. Hence, OC, Japan cannot be treated as a separate person. The learned counsel has also relied on a series of decisions as under:-

(1) SNC Lavalin Inc. Vs. CST, Delhi[6]

(2) Dalhousie Institute Vs. Asstt. Commissioner[7]

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[5] 2022 (5) TMI 967 (SC)
[6] 2018 (2) TMI 1679-CESTAT-Delhi
[7] 2006 (3) STR 311 (Cal.)

(3) State of West Bengal Vs. Calcutta Club Ltd.[8]

(4) Precot Mills Ltd. Vs. CCE, Tirupati[9]

(5) CCCE & St, Hyderabad-I Vs. Parker Markwel Industries Pvt. Ltd.(Vice versa)[10]

(6) Tata Steel Ltd. (Growth Shop) Vs. CCE & ST, Jamshedpur[11]

(7) Indian Oil Corporation Vs. CCE[12]

(8) 3i Infotech Limited vs. CST, Mumbai[13]

(9) Infosys Limited vs. CST, Bangalore,[14]

(10) Prakash Road Lines Vs. Commissioner of Central Excise, Customs and Service Tax, Allahabad[15]

(11) Deltex Enterprises Vs. CCE, Delhi-1[16]

(12) Torrent Pharmaceuticals Limited Vs. Commissioner,[17]

(13) Aker Solutions India SDN. BHD. Vs. Principal Commissioner, Kakinada Commissionerate, Vishakhapatnam[18]

(14) Milind Kulkarni v. Commissioner,[19]

(15) KPIT Cummins Infosystems Limited v. Commissioner,[20]

(16) Kusum Healthcare Private Limited Vs. CCE,[21]

(17) Kusum Healthcare Private Limited Vs. CCE,[22]

(18) Kusum Healthcare Private Limited Vs. CCE, Alwar[23]

(19) Kusum Healthcare Private Limited Vs. CCE, Alwar [24]

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[8] 2019 (29) GSTL 545 (SC)
[9] 2006(2) STR 495 (Tri.-Bang.)
[10] 2019(1) TMI 826 –CESTAT Hyderabad
[11] 2014(5) TMI 464 CESTAT-Kolkata
[12] 2007(8) STR 527 (Tri.-Kol.)
[13] 2016 TIOL 3340-CESTAT Mumbai
[14] 2014 TIOL 409 - CESTAT Bangalore
[15] 2022-TIOL-928-CESTAT All
[16] 2017 (12) 966- CESTAT New Delhi
[17] 2015 (39) STR 97 (Tri.-Ahmd)
[18] 2022(64) GSTL 240 (Tri-Hyd)
[19] 2016 (44) STR 71 (Tri-Mum)
[20] 2014 (33) STR 105 (Tri-Mum)
[21] Alwar, 2018 (7) TMI 919-CESTAT New Delhi
[22] Jaipur-1 2018 (2) TMI 1408-CESTAT New Delhi
[23] 2021 (10) TMI 229- CESTAT New Delhi
[24] 2023 (3) TMI 173-CESTAT New, Delhi Also affirmed by C-9.7.24

(20) Tech Mahindra Ltd. Vs. CCE, Pune-1, [25]

(21) Aricent Technologies (Holding) Limited Vs. CCE, Panchkula,[26]

7. We find that the issue in the present case of service tax liability on the respondent is no longer *res integra* and has been decided earlier by the Tribunal in similar circumstances.

8. We may first refer to the decision of the Tribunal in the case of **Torrent Pharmaceuticals Ltd.,** where it has been concluded as under:-

> **5.5** Section 66A (1) above is talking of service provider and service recipient as 'persons' which has to mean as different business persons. Section 66A(2) and its Explanation I only make a clarification and to fix service tax liability on recipient of services under reverse charge mechanism that both the permanent establishments in India and abroad of a business person are to be treated as separate persons. The above clarification/distinction made in Section 66A in our opinion is only for making an identification to determine whether a service is provided and consumed in India or abroad. It is an accepted legal position that one can not provide service to one's own self. If the 'permanent establishment' of the appellant abroad is treated as a service provider to its own head office in India then it will amount to charging service tax for an activity provided to one's own self. Similarly placed branches of the appellant undertaking similar activities in India will not be held so. Therefore, a comprehensive reading of Section 66A of the Finance Act, 1994, a permanent establishment situated abroad as a 'separate person', will be understood to have been prescribed only to determine the provision of service whether in India or out of India. Theoretically it could be possible that a person carrying business through a permanent establishment abroad may like to pay lower rate of local VAT/GST abroad to avoid service tax payment in India by showing the services to have been availed abroad."

9. In the case of **SNC Lavalin Inc.,** where the appellant was a Project Office of M/s. **SNC Lavalin Inc, Canada** and the dispute related to service tax liability with refefence to certain debit entries made in their books of accounts, which related to deployment of certain offices by GNC, Canada. The debit entries related to such expenses of

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[25] **2016-VIL-625-CESTAT-MUM-ST**
[26] **2017 (5) TMI 521 (CESTAT-Chandigarh)**

salary, travelling etc of the officers deployed in India was sought to be charged towards service tax under the category of "Manpower Recruitment or Supply Agency Service". Referring to the decision of the Tribunal in the case of **Lea International Ltd. and Others** and line of decisions on the issue, it was held that the debit entries are for maintaining complete financial transactions on behalf of **SNC, Canada** and **SNC, Canada** cannot be categorized as a manpower recruitment or supply agency by deputing their own staff to execute their own contract in India. The Allahabad High Court in **Computer Science Corporation India Pvt. Ltd.**[27] ,where similar dispute was raised, held that in such arrangement the deputation of employee for executing the work cannot be considered as a "Manpower Supply" . It was held that the empower cannot be considered as a manpower supply agency.

10. We may consider the decision relied on by the revenue in the case of **M/s.Northern Operating Systems Pvt. Ltd.,** where the Apex Court was basically concerned, whether the secondment for the purpose of completion of the assesses's job amounts to manpower supply where the overseas group company entered into secondment agreement with its affiliates or local companies, such as the assessee for deploying the overseas companies employees for performing the task relating to the assesses activities. The Court considered the service agreement, secondment agreement between the overseas company and the assessee whereby the appellant was to request the overseas company to provide employees who have the expertise required by them and the overseas company agreed to

[27] **2014 (TIOL) 1896(HC. All.-ST)**

second the employees to the appellant for the time period. The relevant para from the decision of the Apex Court is as under:-

> **55.** The overall effect of the four agreements entered into by the assessee, at various periods, with NTS or other group companies, clearly points to the fact that the overseas company has a pool of highly skilled employees, who are entitled to a certain salary structure - as well as social security benefits. These employees, having regard to their expertise and specialization, are seconded (a term synonymous with the commonly used term in India, *deputation*) to the concerned local municipal entity (in this case, the assessee) for the use of their skills. Upon the cessation of the term of secondment, they return to their overseas employer, or *are deployed on some other secondment.*

11. The Apex Court, accordingly, concluded that the assessee was the service recipient of the overseas group company, which provided manpower supply service or a taxable service with regard to the employees it seconded to the assessee for the duration of the deputation or secondment. In view thereof, we hold that the decision of the Apex Court in **Northern Operating Systems** is factually distinguishable and hence no reliance can be placed thereon.

12. Consequently, we uphold the impugned order. The appeal filed by the revenue is, therefore, dismissed.

[Order pronounced on 8th October, 2025]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

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