CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60109 of 2022

[Arising out of Order-in-Original No. GST-GGM/COM./MK/04/2021-22 dated 20.01.2022 passed by the Commissioner of CGST, Gurugram]

Tower Vision India Private Limited **……Appellant**
Plot No. 356, Udyog Vihar, Phase IV,
Sector 8, Gurugram, Haryana 122015

VERSUS

Commissioner of Central Excise, Goods & Service Tax - Gurugram **……Respondent**
GST Bhawan, Plot No. 36-37, Sector 32,
Gurugram, Haryana 122001

APPEARANCE:

Shri Gajendra Maheshwari and Ms. Drishty Sakhuja, Advocates
for the Appellant
Shri Yashpal Singh, Authorized Representative for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINA ORDER NO. 61642/2025

DATE OF HEARING: 21.07.2025
DATE OF DECISION: 07.11.2025

S. S. GARG:

The present appeal is directed against the impugned order dated 20.01.2022 passed by the Commissioner of CGST, Gurugram whereby the learned Commissioner has confirmed the demand of service tax along with interest and penalties.

2. Briefly the facts of the present case are that the appellant is a company registered under the Finance Act, 1994 for providing various taxable services at their registered premises at Gurugram and Branch Office in various states across India, including the State of Jammu & Kashmir. They are engaged in providing Passive Infrastructure Support Services to various telecom operators by way of setting up and running telecommunication tower sites. In the present case, the appellant provides these services in the State of J&K from its J&K Branch office to the clients located within the State. Revenue entertained a view that the appellants are liable to pay service tax under the category of Business Support Services, Management and Consultancy Services and Manpower Security Services. On these allegations, a show cause notice dated 16.04.2021 was issued to the appellant and after following the due process, the matter was adjudicated vide OIO dated 20.01.2022 and confirmed the demand of service tax, Swachh Bharat Cess and Krishi Kalyan Cess along with interest and penalty on the following grounds:

- The Appellant as well as the service recipients in the instant matter have obtained centralized registration. The provision of centralized registration was provided under Rule 4(2)(iii) of the Service Tax Rules, 1994 for the purpose of centralized accounting of a business entity providing services from multiple locations,

- As per Rule 2(i)(a) of the Place of Provision of Services Rules, 2012 ('POPS Rules'), the location of the clients of the Appellant is

in taxable territory since the clients hold a single, centralized registration in taxable territory,

- As per Rule 2(h) of the POPS Rules, the location of the Appellant is also in taxable territory, as it holds a centralized registration in Gurugram, Haryana;

- When the place of provision of service is determined in accordance with Rule 5 of the POPS Rules, it would fall in the state of J&K When determined in accordance with Rule 8 of the POPS Rules, it would fall in taxable territory. In terms of Rule 14 of the POPS Rules, the service will be determined in accordance with Rule 8 of the POPS Rules, because it occurs later,

- As per Rule 2(i)(a), Rule 5. Rule 8 and Rule 14 of the POPS Rules, the place of impugned service provided by the Appellant is not in J&K, but within taxable territory,

- The reliance placed by the Appellant on Section 65B (52) and Section 64 of the Finance Act is of no help as the provisions of Chapter V are not applicable in cases where the place of provision of service is in J&K, which is not the case here;

- The services were neither provided in J&K nor consumed in J&K as per the POPS Rules since the place of provision of service, location of the service provider and the location of the service recipient as per the POPS Rules is not in the state of J&K, and

- The Appellant is liable to pay Service tax under reverse charge mechanism as per Notification No. 30/2012-ST dated 20 June

2012, on the services received by them for their J&K operations since the location of the receipt of services by the Appellant is in taxable territory.

Aggrieved by the said order, the appellant has filed the present appeal.

3. Heard both sides and perused the records of the case.

4. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts, the law and the binding judicial precedents on identical issue. He further submits that both, the show cause notice and the Order-in-Original, do not dispute the fact that the services were provided by the appellant in J&K. He further submits that this fact remains undisputed that the input services in respect of Passive Infrastructure Support Service rendered by the appellant were also received in the State of J&K. He further submits that Section 64 of the Finance Act clearly provides that the provision of Chapter V of the Finance Act do not extend to the State of J&K that is reproduced below:

> *"64. Extent, commencement and application - (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir."*
>
> *(Emphasis Supplied)*

5. Learned Counsel further referred to Section 65B (52) of the Finance Act which defines a taxable territory as the territory to which the provision of Chapter V of the Finance Act applies:

> *(35) "non-taxable territory" means the territory which is outside the taxable territory:*

…..

(52) "taxable territory" means the territory to which the provisions of this. Chapter apply"

(Emphasis Supplied)

6. Learned Counsel further submits that the plain reading of the above provision establishes that J&K is outside the scope of Finance Act for the purpose of levy of service tax and thus, the services provided by the appellant in the State of J&K and consumed within the State cannot be subject to service tax under the Finance Act. He further submits that the OIO has erroneously relied on the POPs Rules to impose tax on services provided by the appellant in J&K. He further submits that it is well settled principle that when the services are rendered in J&K which falls outside the purview of Finance Act, the application of Rule is inapplicable. For this submission, he relied upon the following judicial precedents:

- **M/s Alstom India Limited – R/Tax Appeal No.7902 of 2023 (Guj. HC).**
- **Enardio-Rite Electronics Pvt. Ltd. – MANU/CN/0224/2019 (CESTAT Allahabad).**
- **Bharat Petroleum Corporation Limited – Final Order No.ST/A/70379/2018-CU[DB] dated 25.01.2018 (CESTAT Allahabad).**
- **Shri Ajay Mishra, Director of M/s Segmental Consulting & Support Services Pvt. Ltd. – ST/51616/2017 (Principal Bench, CESTAT, New Delhi)**

7. Learned Counsel further submits that the entire demand confirmed by the impugned order is barred by limitation. He further submits that the Department has invoked the extended period on the

basis of mere observation that the facts regarding short-payment of service tax came to the knowledge of the Department only after the audit and not declared by the appellant on their own. Learned Counsel further submits that the Department was very well aware of the transactions entered into by the appellant since proceedings have been initiated on the basis of disclosure made by the appellant in their financial statements and service tax returns and the same were provided by the appellant during the course of audit. He further relied upon the following decisions wherein it has been held that when the Department had the knowledge of the relevant facts, allegation of suppression cannot be imposed:

- **CCE v. Dabur India Limited, 2005 (182) ELT 328 (SC)**
- **OK Play (India) Ltd. v. CCE, 2005 (180) ELT 300 (SC)**
- **Anand Nishikawa v. CCE, 2205 (188) ELT 149 (SC)**
- **Shriram Chits Private Limited v. CCE, Cus. & Service tax, Hyderabad-Ill Commissionerate, 2020 (1) TMI 187-CESTAT Hyderabad**

8. Learned Counsel further submits that once the appellant is not liable to service tax then the question of interest and penalty does not arise.

9. On the other hand, learned AR reiterates the findings of the impugned order and submits that the learned Commissioner, after considering the POPS Rules, has held that the appellant is liable to pay service tax and further he has justified the invocation by extended period of limitation.

10. We have considered the submissions made by both the parties and perused the material on record as well as the decisions relied upon by both the parties. We find that in the present case it is an admitted fact that the services were provided by the appellant in J&K and the input services in respect of Passive Infrastructure Support Services rendered by the appellant were also received in the State of J&K. Further, we find that the provision of Chapter V of the Finance Act do not extend to J&K once the provisions of Finance Act are not applicable in the State of J&K then service tax cannot be demanded by resorting to POPS Rules which cannot override the statutory provisions. We find that this issue was considered by various Benches of the Tribunal and the High Courts and in this regard, we may refer to the following judicial precedents:

- **The Principal Commissioner v. M/s Alstom India Limited, R/Tax Appeal No. 790 of 2023 (Guj. HC)**

> *"4. Having heard the learned advocate for the appellant and in view of the reasoning given by the Commissioner of Central Excise as well as the Tribunal,* ***it appears that when the services rendered by the respondent is out of the purview of the taxability of the service tax, then the reliance either on the provisions of the service tax as well as the Rules would be out of place. Neither the provisions of the Finance Act, 1994 nor the Cenvat Credit Rules, 2004 will be applicable to the services rendered by the respondent in the state of Jammu and Kashmir.***
>
> *5. Therefore, the reliance places on Rule 2(e) whereby 'exempted service' is defined as well as Rule 2(p) where 'output service' is defined and Rule 2(l) whereby 'input service' is defined under the Rules would not be made applicable in the facts of the case and the Tribunal has,* ***therefore rightly come to the conclusion that the respondent was not required to maintain separate books of accounts for the services rendered by it in the State of Jammu and Kashmir, as no service tax is chargeable upon such services rendered by the respondent in the State of Jammu and Kashmir****."*

(Emphasis Supplied)

- **Encardio-Rite Electronics Pvt. Ltd. v. Commr. of Appeals, C. Ex. & S.T., Lucknow, MANU/CN/0224/2019 (CESAT, Allahabad)**

> *"2. After hearing both the sides,* ***we note that provisions of Rule cannot override provisions of Section provided in the Act. There is no dispute that services were provided and consumed in the State of Jammu & Kashmir. We also note that Section 64 of Finance Act, 1994 clearly lays down that provisions of Chapter V of Finance Act, 1994 which deals with service tax are not applicable in the State of Jammu & Kashmir. We, therefore, hold that the stand taken by Revenue is not sustainable.*** *We, therefore, set aside all the impugned orders and allow all the three appeals."*
>
> *(Emphasis Supplied)*

- **Bharat Petroleum Corporation Limited v. C.C. & C.E. & S.T.-Noida, Final Order No. ST/A/70379/2018-CU[DB] dated 25/01/2018 (CESTAT, Allahabad)**

> *"5. Having considered the rival contentions and on perusal of provisions of the Act and facts on records, we find that provisions of service within the state of Jammu and Kashmir is beyond the scope of Chapter No. V of the Finance Act, 1994. Therefore, no provision related to Service Tax Law is presently applicable to services rendered in the state of Jammu and Kashmir."*
>
> *(Emphasis Supplied)*

- **Shri Ajay Mishra, Director Shri Ajay Mishra, Director M/s Segmental Consulting & Support Services Pvt. v. Commissioner of Service Tax, Respondent, Delhi – III, Commissionerate, Service Tax Appeal No. 51616 of 2017 (Principal Bench, CESTAT, New Delhi)**

> *"15. In the light of this discussion,* ***we hold that the appellant as well as service recipient, though both have their Head Offices in taxable territory but the provision of service was outside the taxable territory i.e. in the State of J&K. Hence the Department herein was not liable to charge the service tax qua the said provision of service. The adjudicating authority below is, therefore, held to have committed an error while rejecting the appeals****.*
>
> *16. We further observe that a service Circular bearing Notice No. 14/2004 dated 28.04.2004 has clarified about the applicability of service tax where service provider are located*

> *at the outside State of J&K but have rendered services in the State of J&K. We observe that it has been clarified that the service tax is not applicable to the services provided in the State of J&K irrespective of the service provider being from the said State or otherwise…"*
>
> *(Emphasis Supplied)*

> In light of the above, it is submitted that the POPS Rules are inapplicable in the present case since the services are rendered and consumed in J&K which is outside the purview of the Finance Act. Accordingly, the demand proposed and confirmed by the Respondent in the Impugned Order based on the POPS Rules is unsustainable and should be quashed.

11. As regards the invocation of extended period of limitation is concerned, we find that in the present facts and circumstances, the invocation of extended period is not justified as the appellant has been filing its ST-3 Returns regularly and disclosed the said transaction in the service tax Returns filed for the period under dispute as "exempted service". We also find that the Department was well aware of the transaction entered into by the appellant since the proceedings have been initiated based on that disclosures made by the appellant in their financial statements and service tax Returns of the same were also provided by the appellant during the course of audit. Further, we find that extended period of cannot be invoked when the matter pertains to interpretation of legal provision as held in the following cases:

- **International Merchandising Company, LLC v. Commissioner, Service Tax, New Delhi, (2023) 3 SCC 641**
- **CST v. Vijay Television Pvt. Ltd., 2015 (40) STR 671 (Mad.)**

12. Further, we hold that when the demand itself is not sustainable, the question of payment of interest and penalty does not arise. In view

of our discussion above and by following the ratios of the decisions cited supra, we are of the considered view that the impugned order is not sustainable in law and therefore we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 07/11/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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