

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 51023 of 2014**

[Arising out of Order-in-Original No. 56-57/ST/Commr/DM/RTK/2013-14 dated 31.10.2013 passed by the Commissioner of CE & ST, Rohtak]

**YKK India Private Limited**

Global Business Park, 3<sup>rd</sup> Floor,  
Tower A, Mehrauli-Gurgaon Road,  
Gurgaon, Haryana

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Rohtak**

SCO 6 to 8 & 10, Sector 1,  
Huda Market, Rohtak, Haryana

**.....Respondent**

**APPEARANCE:**

Mr. Kishore Kunal and Ms. Runjhun Pare, Advocates for the Appellant

Mr. Aniram Meena and Mr. Goverdhan Dass Bansal, Authorized

Representatives for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 61644/2025**

DATE OF HEARING: 11.07.2025

DATE OF DECISION: 07.11.2025

**S. S. GARG :**

The present appeal is directed against impugned order dated 31.10.2013 passed by the Commissioner of CE & ST, Rohtak, whereby the learned Commissioner has disposed of two SCNs

covering the period 2006-07 to 2010-11 and 2011-12 respectively and has confirmed the total demand of Rs.68,59,980/- (Rs.68,17,381/- + Rs.42,599/-) towards Service Tax and demand of Rs.13,08,503/- towards Cenvat Credit, along with interest and penalties.

2. Briefly stated facts of the present case are that the appellant M/s YKK India Private Limited is a company incorporated under the Companies Act, 1956 and is engaged in the manufacture and sale of Zippers and parts thereof in India and to neighboring countries. The appellant is registered with the Service Tax department and has obtained centralized registration under the Finance Act to meet compliance obligations.

2.1 An audit of the appellant was conducted by the department for the period April 2006-07 to 2010-11 under Rule 5A of the Service Tax Rules, 1994 during January, February and June, 2011.

2.2 Subsequently, based on the audit objections, the appellant was served two SCNs dated 17.10.2011 and 28.09.2012, covering the period 2006-07 to 2010-11 and 2011-12 respectively.

2.2.1 Vide first SCN, a demand of service tax of Rs.68,17,381/- along with interest and imposition of penalties under Sections 76, 77 & 78 of the Finance Act, was proposed; and a recovery of Cenvat Credit amounting to Rs.13,08,503/- along with interest and imposition of penalty under Rule 15 of Cenvat Credit Rules, was also proposed in the first SCN.

2.2.2 Vide the second SCN, a demand of service tax amounting to Rs.42,599/- along with interest and imposition of penalties under Sections 76 & 77 of the Act, was proposed.

2.3 After following the due process, the learned Commissioner vide the impugned order has confirmed the following demands:

2.3.1 In respect of first SCN, the learned Commissioner has confirmed the demand of Service Tax of Rs.68,17,381/- along with interest and also imposed a penalty of Rs.5000/- under Section 77 and an equal penalty of Rs.68,17,381/- under Section 78 of the Act. The learned Commissioner also confirmed the recovery of the Cenvat Credit of Rs.13,08,503/- along with interest and imposed an equal penalty of Rs.13,08,503/- under Rule 15 of the Cenvat Credit Rules in respect of first SCN.

2.3.2 In respect of second SCN, the learned Commissioner has confirmed the demand of Service Tax of Rs.42,599/- along with interest and also imposed a penalty of Rs.100/- per day for which failure to pay service tax or 1% of tax per month whichever is higher under Section 76 and a penalty of Rs.5000/- under Section 77 of the Act.

2.4 Being aggrieved by the said order passed by the learned Commissioner, the appellant has preferred the present appeal before us.

3. Heard both the parties and perused the material on record.

4. The 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 and the law, and binding judicial precedents. The learned Counsel further submits that in the present case, there are four issues under which demands have been raised, which are as follows:

**(i)** Whether "Business Auxiliary Services" provided by the appellant to foreign located company qualify as 'export of service' under Rule 3 of Export of Service Rules, 2005?

**(ii)** Whether "Business Support Services" provided to foreign located company qualify as 'export of service' under Rule 3 of Export of Service Rules, 2005?

**(iii)** Service Tax liability on reimbursement of expenses incurred on behalf of group companies.

**(iv)** Cenvat Credit eligibility on input services used in trading of goods.

4.1 As regards the **Issue No.(i)**, whether "Business Auxiliary Services" provided by the appellant to foreign based company qualify as 'export of service' under Rule 3 of Export of Service Rules, 2005, where a demand of Rs.20,70,705/- was confirmed along with equal penalty for the period 2006-07 to 2009-10, the learned Counsel submits that this demand has been confirmed by wrongly interpreting the Export of Service Rules, 2005. He further submits that for confirming the said demand, the Commissioner has relied

upon the Tribunal's Interim Orders passed in cases of Microsoft Corp India Pvt Ltd vs. CST, Delhi [2009 (15) STR 680 (Tri. Delhi)] and Life Care Medical Systems vs. CST, Mumbai [2013 (29) STR 129 (Tri. Mumbai)], wherein while deciding the application for stay and waiver of pre-deposit, the Tribunal *prima facie* observed that 'since, the services were not delivered and used outside India and thus, the activity is not covered under the scope of export of services'. He further submits that in terms of the various commission agreements signed by the appellant with the group companies, the appellant was obligated to act as an agent of such group companies and facilitate sale of their products in India. He further submits that the appellant only procures orders from Indian customers and submits these orders to the group companies for making supply directly to the Indian customers and in that process, the appellant receives sales commission in foreign currency, which falls under Category-III, i.e., Rule 3(1)(iii) and qualifies as 'export of services' under Rule 3 of the Export of Service Rules. He further submits that this issue is no longer *res integra* and has been settled in favour of the assessee by the Larger Bench of the Tribunal in the cases of **Microsoft Corporation India Pvt Ltd vs. CST, New Delhi [2014 (36) STR 766 (Tri. Delhi)]** and **Paul Merchants Ltd vs. CCE, Chandigarh [2013 (29) STR 257 (Tri. Delhi)]**. He further submits that Larger Bench's decision in the case of **Microsoft Corporation India Pvt Ltd** (supra) has been affirmed by the Hon'ble Supreme Court in **Civil Appeal No. 5307 of 2015** vide **Order dated 06.05.2025** vide which the appeal of the department has been dismissed. He

also submits that the Larger Bench of the Tribunal has held that service of identifying the Indian customers, for procurement of various goods at the behest of foreign entity, is the service provided by a foreign entity and such service provided by a person in India is consumed and used by a person abroad and it has to be treated as export of service. He also relies on the following decisions of the Tribunal having identical facts:

- **Price Water House Coopers Pvt Ltd vs. CCE – (2024) 24 Centax 134 (Tri. Chan.)**
- **Baxter India Pvt Ltd vs. CST – 2024 (5) TMI 847 CESTAT Chandigarh**
- **CCE & ST, Delhi vs. Glaxo SmithKline Asia Pvt Ltd - (2024) 15 Centax 307 (Tri. Chan.)**

He further submits that the issue also stands clarified by **Circular No. 111/05/2009-ST dated 24.02.2009** wherein it was clarified that –

- (a) For the services falling under Rule 3(1)(iii), the relevant factor is the location of the service receiver and not the place of performance.
- (b) The phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India.
- (c) Even when all the relevant activities take place in India, however, if the benefits of such services accrue outside India, the services qualify as export of services.

Further, he submits that in the present case, the group companies are being benefitted from such services including increase in sales turnover, thus, such services qualify as 'export of services'.

4.2 As regards the **Issue No.(ii)**, whether "Business Support Services" provided by the appellant to foreign based company qualify as 'export of service' under Rule 3 of Export of Service Rules, 2005, where a demand of Rs.33,07,136/- was confirmed along with equal penalty for the period 2009-10, the learned Counsel submits that this demand has been confirmed on the same line as relates to Business Auxiliary Services under Issue No.(i). He further submits that as per the agreement dated 01.04.2009 entered into by the appellant with YKK Singapore whereby the appellant was supposed to provide support services by way of advice, consultancy and technical assistance to manage its business in South Asia Region comprising of Pakistan, Bangladesh and Sri Lanka. He further submits that the beneficiary of such services is YKK Singapore located in Singapore and therefore the services were actually used outside India and thus such services qualify as 'export of service'.

4.3 As regards the **Issue No.(iii)**, where on the value of expenses reimbursed, the Commissioner has confirmed the demand of Rs.14,39,540/- for the period 2006-07 to 2010-11 in respect of first SCN and the demand of Rs.42,599/- for the period 2011-12 in respect of second SCN. In this regard, the learned Counsel submits that the said demands have been confirmed on the allegation which is based on incorrect and misconceived sets of fact. He further

submits that the expenses were not incurred by the company/appellant on behalf of the visiting personnel of the group companies but were incurred on the employees of the appellant itself. He further submits that as per Section 68 of the Act, the service tax cannot be demanded when the assessee is incurring costs for its own employees. For this, he relies on the following decisions:

- **Precot Mills Ltd vs. CCE – 2006 (2) STR 495 (Tri. Bang.)**
- **CCE vs. Nahar Industrial Enterprises Ltd – 2010 (19) STR 166 (P&H)**
- **Sports Club of Gujrat Ltd vs. UOI – 2010 (20) STR 17 (Guj.)**

Further, he submits that this issue is also no more *res integra* and has been settled by the Hon'ble Delhi High Court in the case of **Intercontinental Consultants & Technocrats Pvt Ltd v.s UOI [2013 (29) STR 9 (Del.)]** which has been approved by the Hon'ble Apex Court as reported in **UOI vs. Intercontinental Consultants & Technocrats Pvt Ltd [2018 (10) GSTL 401 (SC)]**. He further submits that the said judgment of Hon'ble Delhi High Court has been followed by the Tribunal in the case of **Hewlett Packard India Sales Pvt Ltd vs. CCE [2024 (159) taxmann.com 693 (CESTAT Bangalore)]**.

4.4 As regards the **Issue No.(iv)** relating to eligibility to avail Cenvat Credit on trading activity, where the Commissioner has confirmed the demand of Rs.13,08,503/- along with equal penalty for the period 2008-09 to 2009-10, the learned Counsel submits

that prior to 2011, trading of goods cannot be called as service because all essential characteristics of service are missing; since the trading of goods was not a service then question of it being exempt does not arise. For this, he relies on the judgment of Hon'ble Apex Court in the case of **UOI vs. Martin Lottery Agency Ltd [2009 (14) STR 593 (SC)]** wherein it was held that if a substantive law is introduced, it will not have retrospective application. In this regard, he also relies on the following decisions of Tribunal:

- **Ingersoll-Rand Technologies & Services Pvt Ltd vs CCE - (2023) 8 Centax 41 (Tri. All.)**
- **Trent Hypermarket Ltd vs. CCE – 2019 (6) TMI 1327 CESTAT Mumbai**
- **VGL Solutions Ltd vs. CCE – 2013 (31) STR 123 (Tri. Del.)**

4.5 As regards invocation of extended period of limitation, the learned Counsel submits that extended period of limitation cannot be invoked in the facts and circumstances of the present case because the department has not been able to bring on record any evidence to prove willful suppression, fraud etc on the part of the appellant. He further submits that when the service tax itself was not chargeable then how can suppression be alleged in the present case. For this, he relies on the following decisions:

- **Collector of C.E. vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)**
- **Vasper Concepts P. Ltd vs. CCE, Bangalore – 2006 (199) ELT 711 (Tri. Bang.)**
- **Ericsson India Pvt Ltd vs. CST, New Delhi – (2024) 24 Centax 144 (Tri. Chan.)**

4.6 As regards imposition of penalty, the learned Counsel submits that penalty is not imposable when there is neither any contravention of any provision nor the extended period of limitation is invokable.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record as well as the decisions relied upon by the appellant.

6.1 As regards **Issue No.(i)** relating service tax demand on Business Auxiliary Service, we find that as per the agreement entered into by the appellant with its associated group companies, the appellant acts as an agent to facilitate sale of their product in India; the appellant only procures the orders and forwards the same to its group companies abroad which makes the supply to the customers; for this act, the appellant is getting some commission in foreign currency. We further note that in order to qualify the Business Auxiliary Service as 'export of service' under Rule 3(1)(iii) read with Rule 3(2) of the Export of Service Rules, 2005, following two conditions are required:

(a) the services were provided by the appellant from India and used outside India; and

(b) payment of such services was received in convertible foreign exchange.

Further, we note that the learned Commissioner in the impugned order has only relied on the Interim Orders passed by the Tribunal in the cases of Microsoft Corp India Pvt Ltd vs. CST, Delhi [2009 (15) STR 680 (Tri. Delhi)] and Life Care Medical Systems vs. CST, Mumbai [2013 (29) STR 129 (Tri. Mumbai)]. We find that now this issue is no more *res integra* as the Larger Bench of the Tribunal has settled the issue in favour of the assesseees in the cases of **Microsoft Corporation India Pvt Ltd vs. CST, New Delhi [2014 (36) STR 766 (Tri. Delhi)]** and **Paul Merchants Ltd vs. CCE, Chandigarh [2013 (29) STR 257 (Tri. Delhi)]**. We also find that the decision of Larger Bench in **Microsoft Corporation India Pvt Ltd** (supra)'s case has been affirmed by the Hon'ble Apex Court vide its **Order dated 06.05.2025 in Civil Appeal No. 5307 of 2015** whereby the Hon'ble Apex Court has dismissed the Revenue's appeal. We also note that as per the decision of Larger Bench, the service of identifying the Indian customers, for procurement of various goods at the behest of foreign entity, is the service provided by a foreign entity and such service provided by a person in India is consumed and used by a person abroad and therefore, it has to be treated as 'export of service'. We further find that the said decision of the Larger Bench of the Tribunal has been followed in various cases. Therefore, by following the said decision of the Larger Bench, we hold that the demand of service tax under Business Auxiliary Service is not sustainable.

6.2 As regards **Issue No.(ii)** relating service tax demand on Business Support Service, on the same analogy as discussed above and by going through the terms of the agreement dated 01.04.2009 entered into by the appellant with YKK Singapore to provide support services by way of advice, consultancy and technical assistance to manage its business entities in South Asia Region, we hold that the beneficiary of such services is YKK Singapore located in Singapore and therefore, the services were actually used outside India and thus the same qualify as 'export of service' under Rule 3(2) of the Export of Service Rules, 2005.

6.3 As regards **Issue No.(iii)** relating service tax liability on the value of expenses reimbursed, we find that this issue is also no more *res integra* as has been settled by the Hon'ble Delhi High Court in the case of **Intercontinental Consultants & Technocrats Pvt Ltd** (supra) which has further been approved by the Hon'ble Supreme Court (supra) and the said judgment of Hon'ble Delhi High Court has been followed by the Tribunal in the case of **Hewlett Packard India Sales Pvt Ltd** (supra). Therefore, by following the judgment of Hon'ble Delhi High, we hold that the demand of service tax on the value of expenses reimbursed is not sustainable.

6.4 As regards **Issue No.(iv)** relating to eligibility to avail Cenvat Credit on trading activity, we find that the demand is for the period 2008-09 to 2009-10 whereas amendment in Cenvat Credit Rules was made with effect from 01.04.2011 by inserting Explanation under Rule 2(e) of Cenvat Credit Rules and prior to 2011, trading of

goods cannot be called as service. Therefore, service tax cannot be demanded on these premises also. Further, we find that in the cases of **Ingersoll-Rand Technologies & Services Pvt Ltd** (supra) and **Trent Hydermarket Ltd** (supra), the Tribunal has held that under Rule 2(e) of Cenvat Credit Rules, trading cannot be treated as an 'exempted service' for the period prior to 01.04.2011 and the Explanation added on 01.04.2011 was prospective and not retrospective. Therefore, by following the said decisions, we hold that demand on this account is not sustainable.

6.5 Regarding invocation of extended period of limitation, we find that the department has failed to bring on record any evidence to show that the appellant had suppressed the material facts with intent to evade payment of service tax. We also find that the show cause notice was issued on the basis of audit. Therefore, extended period of limitation cannot be invoked in the facts and circumstances of the present case as held in the case of **Collector of CE vs. Chempher Drugs & Liniments** (supra).

6.6 Further, regarding interest and penalty, we hold that when the demand itself is not sustainable then the question of interest and penalty does not arise.

7. In view of our discussion above and by following the ratios of the various decisions cited above, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set

aside the same and allow 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)**

RA\_Saifi