

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 87356 of 2019**

(Arising out of Order-in-Original No. 01/Pr. COM/CD-ME/19-20 dated 08.04.2019 passed by the Principal Commissioner of Central GST, Thane Rural, Mumbai.)

**Sojitz India Private Limited**

Atrium 2, Unit No. 401 to 406,  
4th Floor, Cross Road A,  
Chakala Industrial Area,  
Andheri (East), Mumbai – 400 093.

**.... Appellants**

Versus

**Pr. Commissioner of Central GST & Central Excise**

Thane Rural CGST & Central Excise Commissionerate,  
4th Floor, GST Bhawan,  
Plot No.24C, Sector-E, Bandra Kurla Complex  
Bandra (East), Mumbai – 400 051.

**.... Respondent**

APPEARANCE:

Shri Bharat Raichandani, Advocate for the Appellant

Shri S.K. Yadav, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86827/2025**

Date of Hearing: 30.07.2025

Date of Decision: 20.11.2025

**Per: M.M. PARTHIBAN**

This appeal has been filed by M/s Sojitz India Private Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. 01/Pr. COM/CD-ME/19-20 dated 08.04.2019 (herein after, referred to as "the impugned order") passed by the Principal Commissioner of Central GST, Thane Rural, Mumbai.

2.1 The brief facts of the case are that the appellants herein are engaged *inter alia*, in the business of providing facilitation/support services in connection with import of goods into India and export of certain goods outside India, to their group company/entities situated outside India, as well as to other customers. The appellants company was established in March, 2005 in India as a wholly owned subsidiary of M/s Sojitz Asia Pte. Ltd., Singapore which is ultimately held by M/s Sojitz Corporation, Japan

having head office in Tokyo, Japan. They are having various subsidiaries and group companies all over the world. The appellant also provides other taxable services viz., Management Consultants, Business Auxiliary Services, Erection Commissioning and installation, maintenance of repair service. For the purpose of payment of service tax on taxable output services and for compliance with the Service Tax statute, their Mumbai unit is registered with the jurisdictional Commissionerate under service tax registration No. AAICS8883NST003. Further, the appellants also have another office based in New Delhi situated at 2nd Floor, Mercantile House, 15, K.G. Marg, New Delhi-110 001, which is duly registered with Delhi service tax authorities under separate Service Tax Registration No. AAICS8883NST001.

2.2 The appellants were engaged in the indenting business in chemicals, machinery equipment and parts, plastics, food and iron ore etc. These included (i) trading of machinery, parts etc., for which applicable VAT was paid on sale of goods; (ii) erection of machinery, equipment and its parts for which applicable service tax was paid under the head 'erection, commissioning and installation service'; (iii) market research and development activities, logistics requirements for which applicable service tax was paid under the taxable category of 'management consultant service'. Further, they also paid applicable service tax on (iv) income/ Commission earned in providing support services to domestic companies situated in India. However, when such services are provided to foreign entities, the appellants treated the same as exports and did not discharge service tax thereon.

2.3 During the course of inquiry conducted on the records maintained by the appellants, the department had observed that in respect of aforesaid services provided by the appellants to their foreign group companies, no service tax was paid. Accordingly, the department claimed that the appellants were providing taxable services of 'Business Auxiliary Service' (BAS) in terms of Section 65(105)(zzb) of the Finance Act, 1994 and had failed to pay appropriate service tax to the government exchequer. On the above basis, the department had initiated show cause proceedings demanding service tax of Rs.2,84,11,707/- (Rs.2,82,79,278/- under BAS + Rs.1,32,429/- under BAS & Management consultancy) on the taxable services provided by the appellants during the period 01.10.2006 to 27.02.2010 under Section 73(1) *ibid* along with interest and for imposition of penalty on the appellants under Sections 76, 78 *ibid*. The matter arising

out of the show cause notice dated 20.04.2012 was adjudicated vide the impugned order dated 08.04.2019 in confirming the proposed demands to the extent of Rs. Rs.2,77,79,088/- (Rs.2,76,46,659/- + Rs.1,32,429/-) made therein and imposed penalties on the appellants. Feeling aggrieved with the impugned order, appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that they had acted as a 'Indenting Agent' for the foreign supplier companies/group entities located outside India, in providing services in relation to obtaining enquiry, assistance in soliciting orders technically and commercially; assistance in execution of contracts leading to import of the goods manufactured by such foreign suppliers and its sale in India. As such goods are directly sold upon payment of applicable VAT, Sales Tax etc., he claimed that there is no involvement of any service and thus no service tax is payable by the appellants. In respect of provision of services to domestic entities, they had received certain commission and the same had been duly accounted for in the books of accounts maintained by the appellants.

3.2 He further stated that as regards the commission received from the foreign suppliers, such amounts have also been shown in the appellant's financial records; but, as such services are being provided to recipients located outside India and the payment was received in foreign currency, these were covered under Export of Services Rules, 2005, there was no requirement for payment of service tax. However, these have not been considered while confirming the demand of service tax. In respect of the removal of the condition of 'provided outside India' in the Export of Services Rules, 2005, vide Notification No.30/2007 dated 22.05.2007, learned Advocate submitted that the Central Board of Excise & Customs (CBEC) had vide Circular No. 141/10/2011-TRU dated 13.05.2011 had clarified that so long as the benefits of the services accrue outside India, there is no levy of service tax. Therefore, he claimed that the adjudged demands upheld by the learned Commissioner (Appeals) is contrary to the instructions issued by CBECE and therefore it is not correct.

3.3 Furthermore, learned Advocate submitted that the issue under dispute has been settled by the decision taken by the Larger Bench of the Tribunal in the case of *Arcelor Mittal Stainless India Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai-II* – 2023-TIOL-469-CESTAT-MUM-LB. Further, in a similar dispute for the self-same appellants unit at New

Delhi, the show cause notice proceedings initiated for demand of service tax on BAS and its recovery was dropped by the Commissioner, Faridabad. Thus, he claimed that the department cannot take different stand for the same disputed issue in agitating the appeal before the Tribunal. Thus, it is contended by the learned Advocate that the impugned order upholding confirmation of the adjudged demands cannot be sustained.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The issue for decision before the Tribunal is to determine whether the services provided by the appellants and the receipt of commission earned by them for such services, are liable for levy of service tax or otherwise, during the disputed period.

7. We have examined the documents placed on record and the appeal papers, wherein the appellants and the overseas entities viz., M/s Sojitz Machinery Corporation, Japan; M/s Sojitz Taiwan Corporation, Taipei, Taiwan; and M/s Sojitz Corporation, Japan, are engaged in a contractual relationship wherein the appellants act as indenting agent and provides the service of (i) assisting the foreign entity to execute contracts; (ii) assisting in settlement of any commercial and technical issues with their customers in India; (iii) providing necessary support for foreign companies in their customers visit and (iv) providing information about buyer's demand, data concerning general economic trends, laws and regulations in India, Customer information, their requirements, shipment information etc., for which they only get commission/indenting commission of about 2% of invoice value. There is no arrangement between the appellants and the foreign entities, wherein the appellants are empowered to make any obligation on behalf of the overseas entity or to bind overseas entity to any contractual obligation. Further, the appellants do not have any authority to negotiate or conclude pricing decisions, to sign any contracts, or to make any commitments on behalf of the overseas entity; that the relationship between the parties as per the agreement is that of the independent contractor-contractee. The content in the agreements clearly provide that no services were provided by the appellants to the end customers on behalf of the overseas entity. Thus, under such circumstances, it cannot be said that the appellants have acted as an intermediary in the dealings between

the overseas entities and their customers in India. On careful examination of the nature of arrangement between the appellants and the foreign entities vis-à-vis the statutory provisions, it is abundantly clear that the services provided by the appellants to the overseas entities qualify as export in terms of Rule 3 of the Export of Service Rules, 2005 on the basis of the clarification issued by the Central Government.

8.1 We find that Ministry of Finance, Central Board of Excise & Customs (CBEC) in clarifying the expression 'used outside India' in Rule 3(2)(a) of Export of Service Rules, 2005 had stated that the accrual of benefit and their use outside India should be looked into for determining whether the services qualify as export even when they are performed from India. Further, it is not in doubt that the foreign inward remittances for such services have been received by the appellants and have also been duly accounted in the books of accounts maintained by them. The relevant Circular of CBEC is extracted herein below:-

Circular No. 141/10/2011-TRU

F.No. 280/26/2011-CX8A (Pt)

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise & Customs)

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New Delhi, dated the 13<sup>th</sup> May 2011.

To

The Chief Commissioners of Central Excise and Service Tax (All),

The Director General (All),

The Commissioners of Service Tax (All),

The Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Applicability of the provisions of the Export of Services Rules, 2005 in certain situations**

Circular No.111/05/2009-ST was issued on 24th February 2009 on the applicability of the provisions of the Export of Services Rules, 2005 in certain situations. It had clarified on the expression "used outside India" in Rule 3(2)(a) of the Export of Service Rules 2005 as prevalent at that time. The condition specified in Rule 3(2)(a) has since been omitted vide Notification 06/2010-ST dated 27 Feb 2010. In the context of the stated Circular an issue has been raised, whether for the period prior to 28.2.2010 the requirement that the service should be "used outside India" invariably means the location of the recipient?

2. In the stated Circular it was inter-alia, clarified that the words, "used outside India" should be interpreted to mean that "the benefit of the service should accrue outside India". It is well known that services, being largely intangibles, are capable of being paid from one place and actually used at another place. Such arrangements commonly exist where the services are procured centrally eg audit, advertisement, consultancy, Business Auxiliary Services. For example, it is possible to obtain a consultancy report from a service provider in India, which may be used either at the location of the customer or in any other place outside India or even in India. In a situation where the consultancy, though paid by a client located outside India, is actually used in respect of a project or an activity in India the service cannot be said to be used outside India.

3. It may be noted that the words "accrual of benefit" are not restricted to mere impact on the bottom-line of the person who pays for the service. If that were the intention it would render the requirement of services being used outside India during the period prior to 28.2.2010 infructuous. These words should be given a harmonious interpretation keeping in view that during the period upto 27.2.2010 the explicit condition was provided in the rule that the service should be used outside India. In other words these words may be interpreted in the context where the effective use and enjoyment of the service has been obtained. The effective use and enjoyment of the service will of course depend on the nature of the service. For example effective use of advertising services shall be the place where the advertising material is disseminated to the audience though actually the benefit may finally accrue to the buyer who is located at another place.

4. This, however should not apply to services which are merely performed from India and where the accrual of benefit and their use outside India are not in conflict with each other. The relation between the parties may also be relevant in certain circumstances, for example in case of passive holding/ subsidiary companies or associated enterprises. In order to establish that the services have not been used outside India the facts available should inter-alia, clearly indicate that only the payment has been received from abroad and the service has been used in India. It has already been clarified that in case of call centers and similar businesses which serve the customers located outside India for their clients who are also located outside India, the service is used outside India.

5. Besides above, to attain the status of export, a number of conditions need to be satisfied which are specified in Rule 3(1) and Rule 3(2) of Export of Services Rules 2005. The Circular No.111/05/2009-ST explained the expression "used outside India" only and the other conjunct conditions, as applicable from time to time, also need to be independently satisfied for availing the benefit of an export.

6. These instructions should be given wide publicity among trade and field officers. Please acknowledge receipt. Hindi version follows.

Plain reading of the CBIC circular, particularly the clarification at paragraph 4 establish that accrual of benefit from the services provided by the appellants and their use for the benefit of foreign entity would qualify for export.

8.2 Further, we also find, in a number of cases, this Tribunal has held that when the contractual arrangement do not provide for empowering the appellant to act as intermediary, the service liability cannot be fastened on the appellants service provider. The relevant paragraph of the said orders is extracted and given below:

(i) in the case of *Commissioner of Service Tax Vs. AVL India Private Limited* - 017 (4) G.S.T.L. 59 (Tri. - Del.) it was held that in respect of BAS services provided, the actual person to whom the benefits were accruing should be dealt.

*"8. On the first issue, we find that the services rendered by the respondent were in relation to procuring orders and promoting products, of foreign suppliers. Admittedly, the said services fall under the category of "BAS". However, it is a well settled legal position that the nature of service rendered by the respondent is consumed by the foreign supplier of goods. The benefit is directly accruing to such foreign entities. The Tribunal held that in respect of "Business Auxiliary Service" (Category III Services), the person to whom the benefits accrued, has to be considered. Based on the said person's locations, the question of export of service will be decided. As rightly pointed out by the Original Authority, the service tax is sought to be levied on the services provided by the respondent to the foreign suppliers and the consideration is received from such suppliers. The tax is not relating to the products sold in India. The decision of the Tribunal in Microsoft Corporation India Pvt. Ltd. - 2014 (36) S.T.R. 766 (Tri.-Del.) and followed in various other decisions - GAP International Sourcing (India) Pvt. Ltd. - 2015 (37) S.T.R. 757 (Tribunal); Bobst India Pvt. Ltd. - 2016 (44) S.T.R. 316 (Tri.-Mum.) are relevant in this case. In our opinion, there is no tax liability on the respondent in respect of services, which are rendered to the suppliers of the goods from foreign countries. The activities of export of service is not to be taxed."*

(ii) In the case of *Commissioner of Service Tax-VII Vs. Life Care Medical Systems* - 2018 (18) G.S.T.L. 587 (Bom.), the Hon'ble High Court of Bombay have held that CBEC clarification is in favour of the appellants. The relevant paragraphs are as follows:

*"6. We find that this Court in SGS India Pvt. Ltd. (supra) has held that where services were rendered in India to a foreign party, then such service is not liable to tax as it would be export of service. Further, in fact almost similar to this case, this Court has held that the Service Tax would not be payable in Commissioner of Service Tax v. A.T.E. Enterprises Pvt. Ltd., 2018 (8) G.S.T.L. 123 in respect of an Indian Agent, rendering the services of marketing the goods of a foreign party within India and receiving commission from the foreign party, as it is export service by following the decision of this Court in SGS India Pvt.*

*Ltd. (supra). In fact, we find that the Central Board of Excise & Customs has issued a clarification by Circular No. 111/2009, dated 24th February, 2009 that in terms of Rule 3(1)(iii) of Export of Services Rules, 2005, it is not the place of performance but the location of the service receiver which will make it an export of services. It clarified that word 'outside India' to mean that the benefit should accrue outside India. The aforesaid Circular of [C.B.E. & C.] is completely in favour of the respondent.*

*7. In the above view, the question as proposed do not give rise to any substantial question of law. Thus, not entertained."*

(iii) In the case of *IBM India Private Limited Vs. Commissioner of Central Excise & Service Tax, Bangalore - 2020* (34) G.S.T.L. 436 (Tri. Bang.), the Co-ordinate Bench of the Tribunal have by relying on various decisions of the Hon'ble Supreme Court have held that there is no liability to pay service tax in such a situation of export of services. The relevant paragraphs are as follows:

*"6.4 Further we find that the Hon'ble High Court of Delhi in the case of Verizon Communication India Pvt. Ltd. cited supra has considered various circulars issued from time to time by the C.B.E. & C. and also considered various decisions of the Tribunal and the High Court and has come to the conclusion that the assessee is not liable to pay service tax as the service rendered by them fall under the definition of export of service. It is pertinent to reproduce paras 50 to 53 of the said decision, which is reproduced below :-*

*50. The decision of Larger Bench of CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) may be referred to at this stage. The period with which the dispute in that case related to was between 1st July, 2003 and 30th June, 2007. It involved, therefore, the interpretation of the ESR, 2005 as amended and applicable during the said period. There the assesseees were intermediary agents providing money transfer services to foreign travellers who were the end user on behalf of their principals. The contention of the Department that this did not qualify as 'export of service' was rejected by the CESTAT. It noted that the C.B.E. & C. had to issue a clarification Letter No. 334/1/2010-TRU, dated 26th February, 2010 acknowledging the difficulties that were faced by the trade in complying with the condition that the services had to be 'used outside India'. It was clarified that "as long as the party abroad is deriving benefit from service in India, it is an export of service."*

*51. In the considered view of the Court, the judgment of the CESTAT in Paul Merchants Ltd. v. CCE, Chandigarh (supra) is right in holding that "The 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." The Court further affirms the following passage in the said judgment in Paul Merchants Ltd. v. CCE, Chandigarh (supra) which correctly explains the legal position :*

*"It is the person who requested for the service is liable to make payment for the same and whose need is satisfied by the provision of service who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India, who is liable to*

*make payment for these services and who used the service for his business, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the place of performance of Service."*

52. *In Vodafone Essar Cellular Ltd. v. CCE (supra), the CESTAT explained the arrangement lucidly in the following words :*

*"Your customer's customer is not your customer. When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party. For example, when a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend."*

53. *The Department was also not justified in characterising the arrangement of provision of services as one between related persons viz., Verizon India and Verizon US. In doing so the Department was applying a criteria that was not stipulated either under the ESR or Rule 6A of the ST Rules.*

7. *In view of our discussion above, we are of the considered view that this issue is no more res integra in view of the ratios of the various decisions cited supra. Therefore by following the above said decisions, we set aside the impugned order by allowing both the appeals of the appellants, with consequential relief, if any."*

(iv) In the case of *Commissioner of Service Tax, Mumbai -VII Vs. A.T.E. Enterprises Private Limited – 2018 (8) G.S.T.L. 123 (Bom.)*, the Hon'ble High Court of Bombay have held that since the services are rendered to the foreign clients amounted to export of services. The relevant paragraphs are as follows:

**"8.** *The learned counsel appearing for the respondent has relied upon the judgment in the Commissioner of Service Tax, Mumbai-II v. SGS India Pvt. Ltd. [[2014 \(34\) S.T.R. 554 \(Bom.\)](#)].*

*"24. It is in that sense that the Tribunal holds that the benefit of the services accrued to the foreign clients outside India. This termed as 'export of service'. In these circumstances, the Tribunal takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'export of service'. Such an act does not invite a Service Tax liability. The Tribunal relied upon the circulars issued and prior thereto the view taken by it in the cases of KSH International Pvt. Ltd. v. Commissioner and B.A. Research India Ltd. The case of the present respondent was said to be covered by orders in these two cases. To our mind, once the Hon'ble Supreme Court has taken the view that Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country. It is this finding and conclusion of the Hon'ble Supreme Court which has been applied by the Tribunal in the facts and circumstances of the present case.*

25. *The view taken by the Tribunal therefore, cannot be said to be perverse or vitiated by an error of law apparent on the face of the record. If the emphasis is on consumption of service then, the order passed by the Tribunal does not raise any substantial question of law."*

**9.** *The Division Bench of this Court in Commissioner of Service Tax, Mumbai v. Maersk India Pvt. Ltd. [2015 (38) S.T.R. 1121 (Bom.)] held that "the observations reported in 2014 (34) S.T.R. 554 (Bom.) (supra) aptly apply in the present case. The situation shows that the consideration by the Tribunal about service by the respondent-assessee to a foreign recipient being outside the purview of the collection of service tax, can seldom be flawed, the question sought to be raised in the appeal as such stand answered accordingly. The appeal fails and stands dismissed with no order as to costs."*

9. We further find that in the case of Arcelor Mittal Stainless (I) P. Ltd. (supra), the Larger Bench had examined the identical issues under dispute, in a greater detail and have answered all the questions raised on the doubt whether such services would qualify for 'export' or not, in the context of the liability for payment of service tax. The relevant paragraphs of the said decision of the Larger Bench of the Tribunal is extracted and given below:

*"M/s. Arcelor Mittal Stainless International India Pvt. Ltd. Arcelor India, the appellant, is a wholly-owned subsidiary of Arcelor Mittal Stainless International, Paris, France Arcelor France. It was appointed as a sub-agent by Arcelor France, a commission agent for steel mills situated outside India, for procuring sale orders for the products manufactured by these mills from customers across the world. Arcelor France does not have any office in India. A prospective customer in India is either approached by Arcelor India or a prospective customer contacts Arcelor India regarding stainless steel requirement, but in either case the request is forwarded by Arcelor India to the foreign steel mills with the technical requirements of the Indian customer. Once the foreign mills and the Indian customer come to an understanding on the terms and conditions of supply, a written contract is executed between the Indian customer and the foreign mills or a purchase order is placed on the foreign mills. The documents are prepared by the foreign mills in the name of the Indian customer and the Indian customer, in turn, pays the foreign mills. Thus, the goods directly pass from the foreign mills to the Indian customer.*

**2.** *A part of the commission received by Arcelor France, as the main agent, from the foreign mills is paid to Arcelor India based on the volume of sales in each quarter in convertible foreign currency. A dispute arose in relation to such commission received by Arcelor India from Arcelor France for the period from April 2005 to January 2009. According to Arcelor India, there is no privity of contract between it and the steel mills located outside India and it received the consideration only from Arcelor France. It, therefore, did not collect or pay service tax on the commission received from Arcelor France from April 2005 to January 2009. The department, however, believed that service tax was leviable on the commission received by Arcelor India from Arcelor France since the services were performed and consumed in India and they would not qualify as 'export of service' under the Export of Service Rules, 2005 the 2005 Export Rules. Arcelor India believed that it was not required to pay service tax on the commission received from Arcelor France as the service qualified as 'export of service'. However, Arcelor India paid service tax under protest during investigation for the period April, 2005*

to January, 2009 with interest, but subsequently filed refund claims. The refund claims were rejected, against which the present appeal was preferred before the Tribunal.

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**6.** The division bench, accordingly, referred the following questions of law to be determined by a larger bench of the Tribunal:

(i) What is extant and scope of phrase "such taxable services which are provided and used in or in relation to commerce or industry and the recipient of such services is located outside India" used in Rule 3(3)(i) of Export of Services Rules, 2005 upto 18-4-2006.

(ii) What is extant and scope of phrase "such service is delivered outside India and used outside India" used in Rule 3(2)(a) of Export of Service Rules, 2005 from 19-4-2006 to 28-2-2007.

(iii) What is extant and scope of phrase "services provided from India and used outside India" used in Rule 3(2)(a) of Export of Services Rules, 2005 from 1-3-2007 onwards.

(iv) Whether the services rendered to foreign entity located outside India for development of its business in India will qualify as Export of Service in terms of the above phrases used in the Export of Services Rules, 2005 from time to time and the decision of Apex Court in case of GVK Industries?

**7.** What has to be examined is whether the service provided by Arcelor India would be 'export of service' under the 2005 Export Rules, but before proceeding to analyse the various legal provisions and the decisions, it would be useful to briefly consider the history of 'export of services' under the service tax law.

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**50.** Arcelor France and Arcelor India act as main agent and sub-agent for foreign mills and not as an agent or service provider for the customers in India. There is no contractual relationship between Arcelor India and the customers in India. Therefore, even though the goods in the form of steel products are being supplied to customers in India, the actual recipient of BAS provided by Arcelor India is Arcelor France. Arcelor France has used the services of Arcelor India to provide services as main agents to the mills located outside India.

**51.** The reasoning adopted by the department is that the services of commission agent were used in India to cater to the Indian markets. It is not possible to accept this reasoning of the department. The Circular dated 24-2-2009 also categorically states that for the services to fall under rule 3(1)(iii) of the 2005 Export Rules, the relevant factor is the location of the service receiver. In other words, the place of performance of the service or the place where the customers of the service receiver are located is irrelevant.

**52.** As noticed above, it was the consistent view of the High Courts and the Tribunal that export of service would take place under rule 3(1)(iii) of the 2005 Export Rules if a person residing in India provides a service to a foreign entity to enable it to book orders for customers in India. This is for the reason that the foreign entity is located outside India and

*the payment is received by the person residing in India in convertible foreign exchange.*

**53.** *The division bench, while making the reference, intended to deviate from this settled position of law only because, in its considered view, the decision of the Supreme Court in GVK Industries. The division bench, after recording a finding that there was no dispute that Arcelor India was providing BAS to Arcelor France, noted that the dispute was only as to whether the service rendered by Arcelor India will qualify as export of service in terms of the 2005 Export Rules. The division bench concluded that since the services provided to Arcelor France was for developing its business in India, the services received by Arcelor France, even though it is located outside India, would be in relation to business activities in India in view of the decision of the Supreme Court in GVK Industries. Reliance placed by the division bench on GVK Industries, as noticed above, is misplaced. The decision of Supreme Court in GVK Industries is based on an interpretation of Explanation (2) to section 9(1)(vii)(b) of the Income-tax Act, under which the income is deemed to have accrued in India. The Finance Act and the 2005 Export Rules do not contain a provision providing a deeming fiction. The distinguishing features of the decision of the Supreme Court in GVK Industries have been pointed in the earlier paragraphs of this order. The decision of the Supreme Court in GVK Industries, therefore, cannot be applied to the facts of the present case.*

**54.** *The four issues raised in the reference order have been dealt with extensively and as they are intermingled, the reference is answered in the following manner:*

**(i)** *Arcelor India, a service provider, is providing BAS service to Arcelor France, which is a service recipient. Arcelor India is, therefore, providing service to Arcelor France which is situated outside India and Arcelor India receives consideration in convertible foreign exchange. The service provided by Arcelor India is, therefore, delivered outside India and used outside India as is the requirement under the 2005 Export Rules prior to 1-3-2007 and Arcelor India provides services from India which are used outside India as is the requirement after 1-3-2007. It cannot, therefore, be doubted that Arcelor India provides 'export of service' as contemplated under rule 3 of the 2005 Export Rules; and*

**(ii)** *Arcelor France is an agent of the foreign steel mills and Arcelor India is its sub-agent. Arcelor India provides the necessary details of the customers in India to the foreign steel mills and, thereafter, the foreign steel mills and the Indian customers execute a contract for supply of the goods. The goods are directly supplied by the foreign steel mills to the Indian customers. Arcelor India also satisfies condition (b) of rule 3(2) as payments for such service have been received in convertible foreign exchange."*

Accordingly, the Co-ordinate Bench of the Tribunal in the Final Order No. 86375/ 2023 dated 14.09.2023, on the basis of the decision of the Larger Bench as above, have held that the activity of the appellant is export of service; and have set aside the order confirming the adjudged demands on the appellant therein.

10. In view of the foregoing discussions and on the basis of the order passed by the Co-ordinate Benches of the Tribunal and judgements delivered by the Hon'ble High Court of Bombay as above, the impugned order dated 08.04.2019 passed by the Principal Commissioner of Central GST, Thane Rural, does not stand the legal scrutiny. Therefore, the adjudged demands along with interest and imposition of penalty on the appellants, in impugned order is not legally sustainable and thus is liable to be set aside.

11. In the result, the impugned order dated 08.04.2019 is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in open court on 20.11.2025)

**(S.K. MOHANTY)**  
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**