CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

SERVICE TAX APPEAL NO. 85614 OF 2025

(Arising out of Order-in-APPEAL No. DA/CGST/A-III/Commr/Mum/212/2024-25 dated 31.12.2024 passed by the Commissioner (Appeals-III), CGST & CX, Mumbai.)

SODEXO INDIA SERVICES PVT LTD
1ST FLOOR, GEMSTAR COMMERCIAL COMPLEX, **Appellant**
RAMCHANDRA LANE, MALAD WEST,
MUMBAI-400064.

Vs.

COMMISSSIONER OF CENTRAL EXCISE AND
SERVICE TAX - MUMBAI WEST
BHARAT SANCHAR NIGAM LTD., **Respondent**
ADMINISTRATIVE BUILDING,
6TH FLOOR, D WING, JUHU TARA ROAD,
SANTACRUZ WEST, MIMBAI-400054.

Appearance:

Shri Arun Jain, Advocate Present for the Appellant.
Shri Dhananjay Dahiwale, Dy. Commissioner, Authorised Representative, Present for the Respondent:

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86909/2025

Date of Hearing : 29.10.2025
Date of Decision: 10.12.2025

Confirmation of service tax demand of Rs. 11,75,531/- alongwith interest and equal penalty by the Adjudicating Authority in invoking extended period on the ground that tax on input services availed from overseas service providers were not appropriately deposited under the Reverse Charge Mechanism for the exact service availed, that received affirmation by the Commissioner (Appeals) in his above referred order, is assailed in the appeal.

2. Fact of the case would go to reveal that appellant SODEXO is holding a centralized registration number and it is engaged in providing taxable services like cleaning, Manpower supply, requirement finance, business auxiliary, business support services etc.

3. During course of CERA Audit conducted for the year 2013 to 2016 from the records of appellant and visit to the premises of it's appellant. It was found that expenditure booked under foreign currency towards bank guarantee commission, technical assistance, legal and professional fees, communication charges that attract service tax liability under Reverse Charge Mechanism, was being discharged by the appellant under the heading 'Business Auxiliary Services' (BAS) instead of 'Management and Business Consultation Services'(MBC) in its ST-3 return. It was also pointed out that during EA 2000 Audit also, Audit team also noticed a short payment of service tax of Rs. 5,95,383/- payable under the Reverse Charge Mechanism on expenses incurred in Foreign currency during the period 2014 to 2016. Appellant informed that payment of service tax of Rs. 6,83,599/- @ 12% of total value of Rs. 55,30,733/- under the category Business Auxiliary Services (BAS) was made instead of MBC and IPR service and also paid Rs., 5,95,383/- under the category BAS after which audit team closed the BAS proceedings without any show cause. Subsequently, on 15.04.2019, show-cause-cum-demand notice proposing recovery of the above noted amount with interest and penalty was issued to the appellant, it had suffered adjudicating process and its unsuccessful attempt before the Adjudicating Authority as well as Commissioner (Appeals) has brought the dispute to the present forum.

4. During the course of hearing, Ld. Counsel for the Appellant Mr. Arun Jain, Advocate argued that appellant had discharged the total service tax liability under the Reverse Charge Mechanism for an amount of Rs. 12,78,922/- (Rs. 6,83,599/- under BAS & Rs. 5,95,383/- under MBC and IPR services), which is much more than the differential duty demand of Rs. 11,75,531/- confirmed against the appellant much before the issue of show cause and also during hearing of the appeal, it has produced Chartered Accountant's certificate to clarify the same but its submissions were not considered by the Authorities below. He further argued that mere payment of service tax under a wrong heading does not mean that service tax has not been discharged since no loss has been incurred by Revenue for payment of such service tax under the wrong heading apart from the fact that that it is Revenue Neutral since Appellant is eligible for Cenvat credit of the said amount paid towards discharge of service tax under Reverse Charge Mechanism. In support of its stand, it relied upon the decisions of this Tribunal in the case of (i) Katrina R. Turcotte Vs. Commissioner of Service Tax reported in 2013 (31) S.T.R. 670(Tri. Ahmd.) (ii) Commissioner of Service Tax, New Delhi Vs. Air Charter Services P Ltd., reported in 2017(5) G.S.T.L. 107 (Tri.-Del.), (iii) State Bank of India Vs. Commissioner (Appeals) of CGST, Ludhiana reported in (2020(42), G.S.T.L. 219 (Tri.-Chan.)

4.1. He further argued against invocation of extended period since there was no suppression of facts as from the records of the appellant, entire data was taken by the audit team to prepare its report and therefore, the demand is hit by the period of limitation, apart from the fact that EA 2000 audit made an observation that no penalties were imposable in respect of amount paid for Rs. 5,95,383/-,which was appropriated by the Adjudicating Authority without reference to the other amount paid under a wrong heading i.e. BAS to the tune of Rs. 6,83,599/-.

5. In response to such submission Ld. Authorised Representative, Mr. Dhananjay Dahiwale, Dy. Commissioner, argued in support of reasoning and rationality of the order passed by the Commissioner (Appeals) and has drawn attention of this Bench to Para 29-31 of the Order-in-Original to justify that also mentioned as expenditure in ST-3 Return and reconciliation statement provided by the appellant were not matching with each other. He further argued that appellant was given repeated opportunity to reconcile the same but it failed to provide evidence of payment of tax, for which the ground taken that appellant was eligible to get credit on the tax paid, could not stand in view of the judgment passed by Supreme Court in the case of Nirlon Limited Vs. CCE Mumbai as reported in [2015 (320)E.L.T. 22(S.C.).

6. I have gone through the appeal paper book written submission made by the adversaries and the relied upon case laws. At the outset, it is to be stated that the entire amount was paid much before issue of show cause notice, as admitted by the both parties, after it was pointed out to the appellant by the Audit Team that would appropriately cover the appellant under Section 73(3) of the Finance Act, 1994, in not issuing any show cause notice to the appellant. Further description of service has become redundant with effect from 1.07.2012 after introduction of Negative list as Section 65A(3) of the Finance Act, 1994 says that those provisions shall not apply with effect from 1.07.2012 and therefore, merely because a column is available to put description of service in ST-3 Return, in which a wrong service description is entered by the Appellant, it would never mean that the entire payment made by the appellant would not get credited to the account of the Central Government and it would be required to pay the same tax once again. As has been observed by the Hon’ble Shri Ashok

Jindal, Member(J) in the case of State Bank of India Vs. CGST, Ludhiana cited supra, tax paid under a wrong heading under Reverse Charge Mechanism for services availed by appellant under another category, that was shown to be erroneously paid by the Chartered Accountant in his certificate, assessee would not be required to paid the tax again on the Reverse Charge Mechanism. Further it was held by this Tribunal in the case of Commissioner Service Tax, New Delhi Vs. AIR Charter Services P Ltd that the tax already paid under wrong category can always be considered towards discharge of liability under another category /new category. Hence in carrying forward the judicial precedent set by this Tribunal, the following order is passed.

The Order

7. The appeal is allowed and Order-in-Appeal No. DA/CGST/A-II/Commr/Mum/212/2024-25 dated 31.12.2024 passed by the Commissioner (Appeal) is hereby set aside with consequential relief, if any.

(Order dictated and pronounced on dated 10.12.2025)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

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