CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 51005 OF 2021

[Arising out of Order-in-Appeal No.DDN/EXCUS/000/APP/08/2021-22 dated 29.04.2021 passed by the Commissioner, CGST (Appeals), Dehradun]

M/s. Lifelong India Private Limited **...APPELLANT**
Plot No.7, Sector-1,
Industrial Park-2, Phase I,
Village Saleempur Mehdood,
Bahardurbad, Haridwar-249402, Uttarakhand

Vs.

Commissioner, Central Goods and Services Tax, Dehradun **...RESPONDENT**

Appearance:
Present for the Appellant : Ms. Charanya Lakshmi Kumaran, Shri Dhruv Tiwari and Shri Shivam Batra, Advocates

Present for the Respondent: Shri Mehboob Ur Rehman, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing :12.01.2026
Date of Decision: 06.02.2026

Final Order No.50257/2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s. Lifelong India Private Limited[1] against the Order-in-Appeal No. DDN/EXCUS/000/ APP/08/2021-22 dated 29.04.2021 passed by the Commissioner, CGST

1. **the Appellant**

(Appeals), Dehradun, which confirmed the demand of Rs.14,81,790/- and imposed equivalent penalty.

2. The brief facts are that the appellant is engaged in the manufacture of parts and accessories of motor vehicles which are sold in the domestic market as well as exported. In relation to the export of the goods, the appellant had engaged commission agents to act as the appellant non-exclusive sales representative in the territory of Northern America. The scope of work included market research, procuring RFQs from potential customers, making presentation, establishing price and other commercial negotiations for finalization of orders, and providing sales and after sales services to the customers on behalf of the appellant. However, the appellant was not satisfied with the services provided by the overseas commission agent. Hence the app and stop the services and stopped making payments of commission to the overseas commission agent and merely made provision for such amount as payable in its books of account during the relevant period. The overseas commission agent had raised two invoices dated 7.5.2012. An audit was conducted by the revenue department and several objections were raised, one of which related to non-payment of service tax on the commission paid to the overseas agent. Vide order in original dated 3.11.2017, the demand was confirmed along with penalty. The Commissioner Appeals vide an order dated 24.7.2019 remanded the matter to the lower authority. Thereafter, the Additional Commissioner vide order dated 05.10.2020 confirmed the demand of service tax on overseas commission agent was. Vide the impugned order in appeal dated 29.4.2021, the said

demand along with interest and penalty was confirmed. Hence, this present appeal is before the Tribunal.

3. Learned counsel submitted that demand of service tax is not sustainable as the services from overseas commission agents are consumed in the non-taxable territory. Learned counsel also submitted that under the positive list regime, the services received from overseas commission agents are classifiable under BAS as defined in Section 65(19) of the Act and which is taxable in terms of Section 65(105)(zzb) ibid. The liability to pay tax arises on the person providing BAS, however, if such services are provided by a person located in non-taxable territory to a person located in the taxable territory defined under Section 64(1) ibid, the liability to pay tax is on the person located in the taxable territory as provided in Section 66A ibid and Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 (for short "ST Rules"). Therefore, for a service to be taxed under Section 66A of the Act, the service must qualify as an import of service, conditions for which are provided in Taxation of Services (Provided from outside India and received in India) Rules, 2006[2].

3.1 Learned counsel also submitted that in the present case, the overseas commission agents had rendered the services of promotion of sales and marketing the Appellant's final products with respect to prospective customers located in North America. Thus, the overseas commission agents had performed the services outside India and accordingly, the Appellant had also consumed the services outside

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2. Import Rules

India, as evident from the relevant clauses of the Agreement dated 31.08.2004. As the services provided by the overseas commission agent were used by the Appellant outside India for selling of its final products in the region of North America, hence, in the absence of receipt of services in India, conditions of Rule 3 of the Import Rules are not satisfied. Accordingly, Service Tax cannot be charged under Section 66A of the Act. In this regard, he placed reliance on the following judgments:

(i) **All India Federation of Tax Practitioners** v. **Union of India**[3], and **Board's Circular F. No. B1/4/2006-TRU dated 19.04.2006;**

(ii) **Genom Biotech Pvt Ltd**. vs. **CCE, Nashik**[4];

(iii) **Goodyear India Limited** v. **Commissioner of Central Excise and Service Tax, Delhi**[5];

(iv) **Eastman Impex** v. **Commissioner of Central Excise and Service Tax, Ludhiana, Punjab**[6].

3.2 Learned counsel also contended that post July 2012, the definition of 'services' was inserted under Section 65B(44) of the Act, which covered the services provided by overseas commission agents within its ambit. However, the provisions of Section 64(1), providing that Service Tax is applicable on services provided in India,

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3. 2007(7) S.T.R. 625 (S.C.)

4. 2016(42) S.T.R. 918 (Tri.Mumbai)

5. Final Order No. 60614-60617/2025 in Service Tax Appeal No. 382 of 2012, CESTAT Chandigarh

6. Final Order No. 61686 of 2025 in Service Tax Appeal No.50378 of 2015, CESTAT Chandigarh

except for Jammu and Kashmir remain unchanged. Section 65B(52) provided the definition of "taxable territory" to mean the territory to which the provisions of the Chapter shall apply. Further, Section 66A of the Act was omitted with effect from 01.07.2012, however, the essence of the same was incorporated in the Reverse Charge Mechanism[7] Notification issued in terms of Section 68(2) to deal with the liability to pay Service Tax under reverse charge in respect of services rendered by a person located outside India to the person located within India. He further submitted that the overseas commission agent rendered no services in India as the said services were rendered outside India, which were used by the Appellant for selling its final products outside India. Therefore, the services were consumed outside India, for which, no tax liability can be fastened on the Appellant. Thus the demand for the period July 2012 to September 2014 is liable to be set aside on this ground alone.

3.3 Learned counsel contended that the definition of "intermediary" under Rule 2(f) of the POPS Rules, 2012[8] were amended with effect from 01.10.2014. Thus, the definition of intermediary included the services of arranging or facilitating Supply of goods between two or more persons such as commission agents. In the present case, the services provided by the overseas commission agents amounted to intermediary services in terms of Rule 2(f) of the POPS Rules. Hence, the services provided by the overseas commission agents outside India cannot be taxed under the provisions of Section 66B of the Act. In this

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7. RCM
8. Place of Provision of Services Rules, 2012

regard, he placed reliance on the decision of **Bhaskar Industries Private Limited** v. **Commissioner of Service Tax-Bhopal**[9]**.**

3.4 Learned counsel further submitted that the demand has been proposed and confirmed without making any reference to the charging provisions, i.e., Section 66 of the Act, for the period prior to 01.07.2012 and Section 66B ibid for the period from 01.07.2012. He further stated that the Show Cause Notice was issued alleging that the Appellant is liable to pay Service Tax as recipient in respect of commission paid to overseas agents for export of goods, but he pointed out that the Order-in-Original and the impugned order had gone beyond the scope of the Show Cause notice by confirming the demand of Service Tax in respect of provisionally booked amounts inasmuch despite contended by the Appellant that no payment has been made to the overseas commission agents. In this context, the learned counsel placed reliance on the following cases wherein it was held that demand cannot sustain on an allegation which was never part of the show cause notice:

(i) **CCE, Nagpur** v. **Ballarpur Industries Ltd.**[10].

(ii) **CCE, Bhubaneswar-I** v. **Champdany Industries Ltd**.[11]

3.5 Learned counsel further contended the levy of Service Tax arises only when the provision of service is against a consideration and in the absence of consideration, there is no provision of taxable, service. In this regard, he submitted that Section 67 of the Act provides for

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9. Final Order No. 51204/2025, CESTAT New Delhi
10. 2007(215) E.L.T. 489 (S.C.)
11. 2009 (241) E.L.T. 481 (S.C.)

valuation of services for the purposes of levying Service tax. As per Section 67(1), the value of any taxable service shall be the gross amount charged by the service provider for such service provided. Explanation (a)(i) provides that consideration includes any amount that is payable for the taxable service provided. Thus, only that amount which pertains to provision of the service and charged by the service provider, is liable to be included as consideration in the value of taxable service. In this regard, he relied on the decision in **Bhayana Builders (P) Limited** v. **Commissioner of Service Tax, Delhi**[12], wherein the following was held:

> "12. The word „use" therefore has multiple connotation and bears different meanings depending upon the context. The word used is therefore per se ambiguous or obscure. Since in its preambular context, the expression gross amount charged (as our analysis has concluded means an amount charged on the service recipient, received by the provider and accruing to the benefit of the later in relation. to the taxable service provided and the Explanation seeks to define gross amount charged, an expression occruing in the preamble, by employing three words to contextualise the definition - supplied, provided, used, we are satisfied that application of the noscitur principle could be gainfully employed to identify the legal meaning of the word used from several grammatical/literal meanings of the said word, by employing the associational context. It is true, as contended by Revenue, that even if one of the literal meanings of the expression used, namely free supplies used is considered as the legal meaning as well, construction service providers may not be handicapped as they may seek benefits under Notification No. 12/2003-S.T. In our view however the fact that the assessee have an alternative recourse to avoiding the rigour cannot be the criterion for interpreting the Explanation. This contention by Revenue proceeds on a fallacious comprehension of Notification No. 12/2003-S.T. The benefits under this Notification are only in respect of the value of goods and materials sold by a service provider to the recipient of a taxable service. In the case of free supplies by the recipient there is no sale or transfer of title in the goods and materials in favour of the service provider, at any point of time. Therefore when free supplied goods and materials are incorporated into the construction would be no sale by the

12. 2013 (32) S.T.R. 49 (Tri. - LB)

provider to the recipient either. Notification No. 12/2003-S.T. would therefore be inapplicable."

3.7 As regards the two invoices dated 07.05.2012, raised by the overseas commission agent, learned counsel submitted that the Appellant was not liable to pay Service Tax, as due to non-payment of consideration, the point of taxation had not been triggered. In support he placed reliance on **Sistema Smart Technologies Limited** v. **Commissioner of Central Goods and Services Tax, Gurugram[13].**

3.8. Learned counsel contended that the extended period was not invokable as the appellant had not suppressed any facts. This is evident from the fact that the appellant has supplied all the information at the time of audit, and no suppression has been established by the Department.

4. Learned Authorized Representative reiterated the findings given in the Order-in-Original and Order-in-Appeal. He submitted that services rendered by the foreign agents for promoting their sales is covered under the ambit of service tax net in terms of provisions of section 65(19) of the Finance Act, 1994 prior to 01.07.2012. As the service provider fell in the non taxable territory, having no office in India, the liability to pay service is on the appellant in terms of Rule 2(d) (iv) of the Service Tax Rules, 1994 read with section 66A of the Act. Learned authorized representative contended that even if the payment had not been made, the service had either been provided or agreed to be provided, hence the tax liability arose.

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13. Final Order No. 60619/2025 in Service Tax Appeal No. 60295 of 2023

5. We have heard the learned Counsel for the appellant and the learned authorized representative for the department and perused the records. The issue before us is whether the demand of tax on the provision made in the book of accounts on commission payable to overseas agents but not paid is correct.

6. Before we address this issue, we need to understand what is the taxable event. Service means any activity carried out by a person for another for a consideration. Section 66B clearly provides that the taxable event i.e. the „service" must happen in the „taxable territory". The term „taxable territory" has been defined in section 65B(52) as „the territory to which the provisions of this Chapter apply". By section 64(1) Chapter V of the Finance Act, 1994 (i.e. the law governing service tax) extends to the whole of „India" except the State of Jammu & Kashmir. In this context, we note that it is a settled legal position that taxable event for service tax is the provision or rendering of taxable services. We draw support from the decision of the Gujarat High Court in **Commissioner of Central Excise** vs. **Schott Glass India Pvt. Ltd.**[14] wherein the High Court held the liability to pay service tax arises on the date on which the taxable service is provided and not on the date on which the bill is raised. Similar view was taken in **Commissioner of Central Excise** vs. **Reliance Industries Ltd.**[15] by the Hon"ble High Court.

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14. 2009 (1) TMI 45 - Gujarat High Court
15. 2009 (7) TMI 717- Gujarat High Court

7. We now consider the issue at hand:

7.1 **1.4.2011-30.6.2012**-

Learned counsel has submitted before us that as the overseas commission agent had rendered the services of promotion of sales to customers located in North America, hence the service was provided outside the taxable territory. We note that the Board's Circular F. No. B1/4/2006-TRU dated 19.4.2006 categorically clarifies that the services have to be received in India for the same to be taxable under Section 66A read with Taxation of Services Rules, 2006. In this context, we note that in **Genom Biotech Pvt. Ltd** (supra), the Tribunal held as follows:-

> "18. From the context in which the appellant has entered into agreements with the three providers who were held to be rendering 'advertising agency service' it would appear that these are intended to relate to the activities of the appellant in relation to export goods after their arrival in Ukraine. At no stage are they required for any activity of the appellant in India. The service itself is not warranted except in relation to export by the appellant and hence tax, even if leviable, is not to burdened onto the export goods.
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> 19. The original authority has failed to take note of the destination of the goods manufactured by the appellant and has deemed the services rendered in Ukraine to have been imported into India for business and commerce. From our examination of the scheme of 'deeming of import of services' for taxation supra, it can be reasonably inferred that the 'business or commerce in Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 is not intended tax services that are rendered in connection with business or commerce outside the territory of India. Since the appellant has no requirement of advertising agency service 'for manufacture and export of goods, the tax demanded in the impugned order is not on the consideration for a service received in India but a tax on the funds transferred in a cross-border transaction. Such a tax is not contemplated in Finance Act, 1994. The demand of tax on the appellant is not in accordance with law.
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> 20. The impugned order is, therefore, set aside."

7.2. In the instant case, we note that the services were clearly received in North America, and hence is not liable to service tax.

8. **1.7.2012-30.9.2014**-

In this context, it has been contended by the Ld Counsel that owing to some differences with the commission agent, services were not rendered by the agent. However, the appellant had made provision in the Books of Account as an abundant precaution against any future litigation. No payment was made by the appellant to the commission agent. Infact, it has also been submitted that the provision that was being made was reversed subsequently in the Books of Account in March 2021. We note that service tax is liable to be paid only when service has been received and consideration has been paid. In the instant case, it is on record that no service was rendered and no consideration has been paid. Hence the liability of service tax does not arise. However, this fact of reversal of such provision in the subsequent year also requires to be verified.

8.1 **01.10.2014- 31.03.2016**

During the aforesaid period, we note that the definition of the term of „intermediary“ was amended w.e.f. 01.10.2014. Consequently, the service of arranging or facilitating supply of goods between two or more persons, such as a commission agent would be covered within the definition of „intermediary“. Consequently, the place of provision of services as per Rule 9 (c) of POPS Rules would be the location of service provider. In the instant case, it is a fact that the Commissioner

Agent was abroad. Consequently, the liability of service tax would not arise.

8.2 As regards the liability on the two invoices, it has been submitted that no payment was made even though the invoices had been raised. This fact would also have to be verified. As discussed earlier, it is settled legal provision that the liability to pay service tax arises only when the service is provided. In the instant case, it has been categorically submitted that the service was not provided by the overseas Commissioner Agent. Consequently, the liability of service tax does not arise.

9. In view of the above, and in the interest of justice, we are of the opinion that this matter requires to be reconsidered by the original adjudicating authority. Accordingly, we remand the matter to the original authority to hear the appellant giving them opportunity to submit all relevant documents to substantiate their contentions.

10. The impugned order is set aside and the appeal is allowed by way of remand.

(Order pronounced on **06.02.2026**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana