

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11773 of 2017 – DB

(Arising out of OIA-CCESA-VAD-APP-II-VK-82-2017-18 dated 19.06.2017 passed by the Commissioner (Appeals) Central Excise and Service Tax-VADODARA-II)

Akshita Exports

Prop M/s Shree Ram Synthetics Pvt Ltd
701, 7th Floor Metro Tower Near Kinnery Cinema Ring Road
SURAT, GUJARAT

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-Surat-i

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

.....Respondent

APPEARANCE:

Shri Shri S Suriyanarayanan, Advocate for the appellant
Shri M P Solanki, Assistant Commissioner (AR) for the department

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10459/2025

DATE OF HEARING: 17.04.2025
DATE OF DECISION: 09.06.2025

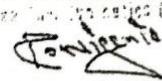
SATENDRA VIKRAM SINGH

1.1 M/s. Akshita Exports (the appellant) were engaged in export of goods. It has been alleged by the department that the appellant was paying commission to foreign agents during the period from 2008-2009 to 2011-2012 and also claiming export incentives on such commission amount under Duty Entitlement Passbook Scheme (DEPB) and Duty Drawback Scheme. The department intended to tax the said commission amount on reverse charge basis under "Business Auxiliary Service" as defined under Section 65(105)(zzb) of the Finance Act, 1994. On the other hand, the appellant contended that the said commission amount is not liable to service tax.

1.2 It is on record that the invoices issued by the appellant to their foreign buyers indicated the commission amount separately which was deducted from the gross value of the export goods to arrive at the net invoice value. Likewise, in the shipping bills also, FOB value is inclusive of the commission amount.

The appellant received foreign remittances in respect of exports done by reducing the amount to the extent of commission indicated in the invoices. Scanned copy of Export Invoice No. AE/M/10/09-10 dt.20.05.2009, Shipping Bill No. 7352130 dt. 21.05.2009 & Bank Certificate of export and realisation is appended below:-

(1) Scanned copy of Export Invoice No. AE/M/10/09-10 dated 20.05.2009

PROFORMA INVOICE			
Exporter M/s. AKSHITA EXPORTS 616, EMPIRE STATE BUILDING, NEAR UDHNA DARWAJA, RING ROAD, SURAT - 395 002, INDIA.		Invoice No. & Date AE/M/10/09-10 Date :- 20.05.09 Buyer's reference (s) Other reference (s) Buyer other than consignee:	
Consignee M/s.SANJIL TRADING LLC BEHIND RIVOLI BUILDING, AL FAHIDI ROAD, BUR DUBAI, P.O. BOX NO. 46578, U.A.E.		Country of origin of goods INDIA	Country of final destination U.A.E.
Notify: M/s.ADVANTEC INTERNATIONAL TRADING LLC P.O. BOX NO. 12637, DEIRA, DUBAI U.A.E. (PH. 009714 - 2269019)		Terms of Delivery & Payment D.A 90 DAYS	
Vessel No. BY SEA		Place of receipt by Pre carrier Port of Loading JNPT (INDIA)	Final Destination DUBAI - U.A.E
Port of Discharge JEBEL ALI - DUBAI		Place of receipt by Pre carrier Port of Loading JNPT (INDIA)	
Marks & No/ Container No. (TOTAL 72 CARTONS ONLY) STL DUBAI IN TRANSIT CTN NOS. 613 TO 663 592 TO 612		No & Kind of Pkgs. Description of Goods POLY X VISCOSE PTD LADIES SCARF (WITH EMBROIDERY)	Quantity in yards 48622.00
			RATE in USD/yards 1.49
			C N F Amount in USD 72446.78
EPCG LICENCE DETAILS :- LICENCE NO. 5230003146 DTD. 22.05.2008 ISSUED BY JT. DGFT, SURAT IN FAVOUR OF M/S. RYAN IMPEX - SURAT.			 7969.15
Less : Foreign Agent Commission @11%			
TOTAL PCS. : 43200 TOTAL L. MTRS : 44460.00 TOTAL SQ.MTRS : 40014.00 TOTAL NET WT. : 2995.900 KGS. TOTAL GR. WT. : 3247.900 KGS.			
(US DOLLARS SIXTY FOUR THOUSAND FOUR HUNDRED SEVENTY SEVEN AND CENTS SIXTY THREE ONLY)		Total	64477.63
SUPPORTING MANUFACTURER :- M/s. RYAN IMPEX, 110, ASHOKA TOWER, RING ROAD, SURAT - GUJARAT.			
1. WE ARE EXPORTING THESE GOODS UNDER DRAWBACK SCHEME CHAPTER 62 SR. NO. 82140203A			
Declaration : We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct		For ASHITA EXPORTS Prop. Shree. San. Exports (P) Ltd 	

FORM NO. 1 ORIGINAL APPENDIX - 22A

BANK CERTIFICATE OF EXPORT AND REALISATION
 Note: Please see chapter 4 and 5 of the policy and chapter 4 and 5 of HSP 2002-2007.

10, THE JT. DIRECTOR GENERAL OF FOREIGN TRADE, 6TH FLOOR, RESHAM BILAVAN, LAL DARWAJA, SURAT.
(Name & address of the issuing authority)

We M/s. AKSHITA EXPORTS, 701, 7TH FLOOR, METRO TOWER, NR. KINNARY CINEMA, RING ROAD, SURAT.
(Name & Address of the Exporter)

hereby declare that we have forwarded a documentary export bill to
 ABN-AMRO Bank, N.V.K.G. House, UPPER GROUND FLOOR, GHOD DOD ROAD, SURAT.
(Name & address of the bank in words and City)

for Collection / ~~negotiation~~ / ~~advance~~ / ~~advance payment~~ as per particulars given hereunder:

1. Invoice No. : AE/M/10/09-10 2. Date : 20.05.09
 3. Export Promotion copy of S/Bill duly authenticated by Customs No. : 7352138 4. Date : 21.05.09
 5. Description of goods as given in the Customs authenticated Shipping Bill :
POLY x VISCOSE PRINTED LADIES SCARF (WITH EMBROIDERY)

6. Bill of Lading / Post-Paid Receipt / Airway Bill No. SS/MUM/09/JEB/M00644 7. Date: 23.05.09

8. Destination of goods :Country Name: U.A.E 14

9 Bill amount (L.I./c/d/l.a.b.) (In foreign Exchange)	10 Freight amount as per bill of lading/ freight	11 Insurance Amount as per insurance company's Bill / receipt	12 Commission paid to foreign buyers agent	13 Whether the export is in freely convertible currency or Indian Ru.	14 F.O.B Value actually realized in free foreign exchange/Rupees Rs.	
USD 72446.75	USD 72.00	USD 0.00	USD 7969.15	FREELY CON- VERTIBLE CURRENCY IN US DOLLARS.	USD 64405.63	RS. 48.263 2979598.00

15. Date of realisation of Export proceeds : 05.02.2010 16. GR / PP/SDF. Form No. SDF FORM

17. No. date & Category of Duty Free Licence, if any applicable EXPORT UNDER DRAWBACK SCHEME

We further declare that the aforesaid particulars are correct (Copies of Invoice's relevant to these Exports and Customs attested E.P. copy of relevant shipping Bill is attached for verification by the bank.

ABN-AMRO BANK
 K. G. HOUSE,
 NR. KAKADIA COMPLEX,
 GHOD-DOD ROAD, SURAT-395007.
 Place: SURAT
 Date: 11.02.2010

Signature of the Exporter
 Name in Block letters: SHRI RAJESH NIGANIA
 Designation: PROPRIETOR
 Full Official Address: 701, 7TH FLOOR, METRO TOWER, NR. KINNARY CINEMA, RING ROAD, SURAT
 Full Residential Address: 703, OPERA HOUSE, CITY LIGHT AREA, SURAT.

Official Seal / Stamp

Authorised Foreign Exchange Dealer
 Code No. allotted to the bank by RBI - 0510007-5700009 Place: SURAT Date: 

Ref.No. C601024/2009

1. This is to certify that we have verified the relevant Export Invoice, Custom attested E.P. Copy of the shipping bill and other relevant documents of M/s. AKSHITA EXPORTS, 701, 7TH FLOOR, METRO TOWER, NR. KINNARY CINEMA, RING ROAD, SURAT.

We further certify that particulars given in col. 1 to 17 have been verified and found to be correct. We have also verified the L.o.B. value mentioned in col. 14 above with reference to the following documents -
 (i) Bill of Lading / PP receipt / Airway Bill
 (ii) Insurance Policy / cover / Insurance receipt.

2. F.O.B. value actually realized and date of realization of export proceeds are to be given in all cases except where consignment has been sent against confirmed irrevocable letter of credit or exports made against the Government of India/EXIM Bank line of credit or exports made under Deferred Payment/Suppliers Line of Credit Contract backed by ECOC Cover. An endorsement to that effect needs to be endorsed in BRC.

3. We also verified that the date of export is N.A. (Applicable only in the respect of export by Air)

4. This is to certify that we have verified the amount of commission paid to foreign buyer's agent as declared above by the Exporter.
\$ 7969.15 (US DOLLARS SEVEN THOUSAND NINE HUNDRED SIXTY NINE AND CENTS FIFTEEN ONLY)
 (In figures and words) with GR/PP/SDF-Forms and found to be correct.

Note : 1. Bank Can issue a consolidated certificate (consignment wise) for more than one consignment.
 2. F.O.B. value actually realized and date of realization of export proceeds are to be given in all cases except where consignment has been sent against confirmed irrevocable Letter of Credit.
 3. This shall be required wherever specifically prescribed in the Policy / Procedure.

For ABN AMRO BANK N.V.
 SURAT BRANCH
 Name : Surosh Chauhan
 Emp. No. : 10640
 Authorised Signatory Designation : Officer Operations

For ABN AMRO BANK N.V.
 SURAT BRANCH
 Baiju N. Ajinkya
 Employee Code: 8678
 Head of Operation, Sur.

(Signature of the Bankers) official Stamp
 Full address of the Bankers (Branch & City)

The commission amount is calculated as a percentage of export value, but it is generally less than 12.5%. The department also recorded statements of Shri Rajesh Nigania, Director of the appellant on 07.05.2014 who admitted to have paid the commission amount to their foreign buyers who in turn paid the same to their commission agent. In reply to question no.8, he admitted that they have not appointed any foreign commission agent; that for export business, it was a normal trade practice to extend commission; that in his case, the foreign commission agents have never provided any service in

relation to export of goods and those were the agents of their buyers; that the price of goods is inclusive of commission to be paid to foreign buyer's agents; that by paying them, he was able to secure export orders. He also revealed that there was no written contract/ agreement between him and the buyer or the foreign buyer's agent and it was only verbal agreement.

1.3 A show cause notice dated 15.05.2014 was issued to the appellant demanding service tax of Rs.32,73,031/- under proviso to Section 73 (1) of the Finance Act, 1994 by invoking the extended period of limitation along with interest under Section 75 and penalty under Sections 76, 77 (1) (a), 77 (1) (b), 77(2), 70 and 78 of the Finance Act, 1994.

1.4 The said show cause notice was decided by order-in-original dated 30.10.2015 wherein, proposals made in the show cause notice were confirmed except the penalty proposed under Section 76 which was dropped. Aggrieved with the said order, the appellant filed appeal before the Commissioner (Appeal) who vide impugned order dated 19.06.2017 upheld the order of the lower authority and rejected the appeal. Hence, the present appeal.

2.1 The appellant filed appeal on 13.10.2017 wherein, they contended the following:-

- Shri Rajesh Nigania, Director of the appellant firm has categorically stated in his statement dated 07.05.2014 that they have not appointed any foreign commission agent outside India and payment of commission to the foreign buyer for paying it to the foreign buyer's commission agent is a normal trade practice.
- These foreign commission agents have not provided any service to them in relation to their export of goods. The impugned OIA is vague as there was no taxable event at all. For taxable event, there should be a service provider and a service recipient and then the consideration amount. In their case, they have not appointed any foreign agent and therefore, there is no question of receiving any service from them. As there is no

taxable event, there is no liability on the exporter of goods from India to pay any service tax.

- There are no suppression of facts on their part as the export invoices as well as shipping bills clearly indicate the commission amount paid by them to the buyer. The foreign remittance received by them is net of invoice value after deducting the commission amount from the gross invoice value. Therefore, they have disclosed everything at all points of time and allegation against them for suppression of fact is not sustainable.
- The exchange control manual and the DGFT Circulars point out that the foreign buyer may deduct the commission amount and pay the balance amount to the exporter. The commission agent has not been appointed by the appellant and is never known to them. They requested for setting aside the impugned order dated 19.06.2017 and set aside the demand pressed against them.

2.2 During argument, learned Advocate of the appellant pleaded the ground of revenue neutrality and limitation. He mentioned that if they were required to pay service tax on reverse charge basis, they would have been entitled to either Cenvat Credit or refund of the same as taxes are not exported outside the country. On limitation issue, he mentioned that payment of commission was fully reflected in the export invoices and shipping bills and therefore, extended period is not invocable. He mentioned that payment of commission deducted from the export invoice is nothing but discount extended by Indian exporter to the foreign buyer. He cited the following case laws which fully cover the instant issue.

- Texyard International, Shree Angalamman Exports and others Versus Commissioner-2015 (8) TMI 794-CESTAT Chennai
- Laxmi Exports and others Versus CCE- Surat-2020 (9) TMI 838-CESTAT-Ahmedabad

- Aquamarine Exports Versus CCE & ST-Surat-I -2022 (2) TMI 361-CESTAT Ahmedabad
- CCE- New Delhi Versus Sidh Designers Private Ltd And Others-2023 (7) TMI 200-CESTAT New Delhi
- Suryanarayanan Synthetics Private Limited Versus CCE & ST -Surat-I-2024 (8) TMI 908-CESTAT Ahmedabad.

3. The learned AR appearing to defend impugned OIA reiterated the findings of the lower authorities. He mentioned that the appellant had received service from the foreign commission agents in relation to promotion or marketing of goods exported by them to their foreign buyers during the period from 2008-2009 to 2009-2010. The said service received by the appellant is liable to service tax under "Business Auxiliary Service". He justified the conclusion drawn by the adjudicating authority and highlighted that the Director of the appellant in his statement has clearly admitted that if they had not paid commission to their foreign buyers for further payment to foreign commission agents, he would not have got the export orders. This clearly shows that the commission amount was paid for sales promotion services. He justified invocation of extended period on the ground that non payment of service tax by the appellant came to light only after search and investigation carried out against the appellant who never disclosed the facts to the department nor paid the applicable service tax on receipt of services from foreign commission agents.

4.1 We have heard the rival submissions. We find that the short point in the matter is whether the appellants are liable to pay service tax on the commission amount paid to foreign commission agents under "Business Auxiliary Service" as defined under Section 65 (105) (zzb) of the Finance Act, 1994. The payment of commission amount by the appellant is clearly established from the export invoices, shipping bills and bank certificate of export and realisation (Form 1). On the other hand, the appellant mentions

that payment of commission to foreign buyers is a normal trade practice and unless they paid, they won't get any export orders. During investigation, the Director of the appellant in his statement dated 07.05.2014 clearly accepts that there was no written or verbal agreement and they have neither appointed any foreign commission agent nor paid any commission directly to them; that whatever commission is reflected in the export invoices, shipping bills etc. is paid to the foreign buyer which cannot be equated to commission paid to the foreign commission agent. (Reply to question no.13) He goes on to say that since they have not received any service in relation to export goods, they are not liable to any service tax.

4.2 We find that the issue is no more res-integra as it has been held in series of cases that service tax on commission amount paid to foreign buyer is not leviable to service tax. In a recent decision by this Tribunal in the case of Suryanarayanan Synthetics Private Limited Versus CCE & ST -Surat-I-2024 (8) TMI 908-CESTAT Ahmedabad, it has been held that when there is no contract/agreement between Indian exporter and foreign based service provider then the demand of service tax on the commission shown in the export invoices raised on the foreign buyers cannot be held sustainable even if there any arrangement of payment between the foreign buyer of the goods and so called commission agent in the foreign country. For this reason, the relevant para-4 of the said judgment is cited below:-

"4. On careful consideration of the submissions made by both the sides and perusal of record, we find that the case of the department is that appellant have made the payment of commission to foreign buyer against service of Commission Agent of foreign based service provider. As per the documentary evidence such as invoice, it is clear that appellant has not made any payment directly to any commission agent whereas deduction was provided from the total value of the bill raised to foreign buyer of the goods. In these facts, it is nothing but discount extended by the appellant to the buyer of the goods. Even though some service provider is involved there is no relationship between the appellant and any foreign based service provider as there is no direct transaction made by the appellant with any of the commission agent. It is also a fact that there is no contract between the appellant and the foreign based service provider even if any arrangement of payment is there between the buyer of the goods and so called commission agent in the foreign country. For this reason, the demand of service tax on the commission shown in the invoice raised to the buyer cannot be made.

This issue was time and again considered by this Tribunal in various judgments. Some of the judgments are cited below:-

(a) Laxmi Exports vs. CCE&ST in Appeal No. ST/10666/2014-2020 (9)TMI 838- CESTAT (Ahmedabad)

7. From the invoice, Shipping Bill and Bank Certificate, it is seen that against the C&F value shown is sales value in the invoice, the amount equivalent to 11%-12.5% was shown as deduction under the head commission and therefore, the net invoice value is the value after deduction of said 11%-12.5%. As per the invoice, 11%-12.5% commission was extended to the foreign buyer of the goods. Since there is transaction of sale and purchase between the appellant and buyer of the goods, whatever value shown in the invoice is a sale value and the deduction shown is nothing but discount given by the exporter to the foreign buyer. As per the bank realization certificate of exporter, in appendix 22A (scanned above), the amount after deduction of 11%-12.5% which was shown in column 12. The heading of column is 'commission/ discount paid to foreign buyer, agent'. In the entire enquiry, the department has not brought any tip of evidence to show that there is a commission agent exists in this transaction and any amount of commission is paid to such person. Admittedly, in the entire transaction only two persons are involved, one the appellant as exporter of the goods and second the buyer of the goods. In the sale of goods, in case of service of commission agent, if involved, there has to be third person as service provider to facilitate and promote the sale of exporter to a different foreign buyer. In the present case, there is absolutely no evidence that this 11% is paid to some third person as commission. There is no contract of commission agent service with any of the commission agent, there is no person to whom payment of commission was made therefore, it is clear that no service provider i.e. foreign commission agent exists in the present case and no service was provided by any person to the appellant. In the absence of any provision of service, no service tax can be demanded. The trade discount even though in the name of commission agent was given by the appellant to the foreign buyer, by any stretch of imagination cannot be considered as commission paid towards commission agent service, hence cannot be taxable.

(b) Duflon Industries Pvt. Limited vs. CCE, Raigad- 2017 (47) STR 335 (Tri. Mumbai) Hon'ble Tribunal in para 6 held as under :

"6. The entire issue revolves around the fact whether clearances effected by appellant on goods which are exported by them to DEL is of actual sale or sale based on commission basis. If it is direct sale to DEL then appellant has case and if it is held that it is not direct sale, but the sale based on commission basis then appellant has no case. For this we have to examine the agreement dated 16-5-2001 entered between appellant and DEL. The agreement is enclosed to the appeal memorandum and on perusal of the same we find that the agreement sets out clauses about the sale of goods by appellant to DEL. The said agreement speaks of purchasing of various items from appellant by the said DEL and it also records that appellant shall allow flat deduction/commission of 8% on the invoice value to DEL. We perused the invoice raised by appellant to DEL and find that the invoice is for the sale of the goods and 8% commission is indicated as has been given on the total invoice value. It is also seen invoice value has been reduced by 8% shown as commission, is against the sale of the goods to DEL. We agree with the contentions raised by learned Counsel that the purchaser of the goods cannot be considered as a "commission agent" as the deduction/commission is for the goods sold. There is nothing on record to show that the said DEL was appointed as "commission agent" for the sale of the goods of the appellant to third parties. It may be that DEL might purchase the goods from the appellant and sells the same in Europe. The reliance placed by learned DR and adjudicating authority on the clause of agreement that "DEL shall increase the market share of appellant's products" to conclude that DEL was a commission agent, seems to be erratic reading of the clauses of agreement and this itself does not amount DEL has been appointed as "commission agent". The amount indicated on the invoice and recorded in the accounts as commission, in our view, will not attract tax under reverse charge mechanism. We also find strong force in the contentions raised by learned Counsel that in order to tax this account as a commission, there has to be necessarily three parties, seller, purchaser and a person who negotiates such transaction. From the records it is very clear that DEL had not negotiated purchase or sale on behalf of appellant or their customers; to our mind the deduction/commission is nothing but trade discount. In view of the factual position as ascertained from the records, we

hold that the impugned orders demanding service tax under reverse charge mechanism from appellant are unsustainable and liable to be set aside."

(c) Hindustan Petroleum Corporation Limited – 2019 (24) GSTL 569 (Tri. Del.), identical issue was decided wherein the HPCL, under an agreement for sale to retail customer purchased CNG from Indraprasth Gas Limited, the HPCL received consideration. The Tribunal held that the said consideration is in the nature of discount as agreement between HPCL and IGL is not on principal to agent basis but on principal to principal basis therefore, HPCL is not liable to service tax under the head of Business Auxiliary Service. In the case of *PrabhakarMarotraoThaokar& Sons vs. CCE, Nagpur – 2019 (20) GSTL 294 (Tri. Mumbai)*, the department raised demand on discount given by manufacturer to the appellant who is a wholesale dealer while supplying goods for further distribution. The department alleged that such discount is basically sales commission and liable to service tax under the category of Business Auxiliary Service under Section 65 (105) of Finance Act, 1994. The coordinate bench at Mumbai held that the transaction between appellant and wholesale dealer is sale on principal to principal basis. The discount passed on by the manufacturer cannot be construed as commission and same is not subject matter to levy of service tax.

(d) Aquamarine Exports in Appeal No. ST/12941/2014-2022 (2) TMI 368 (CESTAT-Ahmedabad). This Tribunal held as under:-

4. On careful consideration of the submissions made by both sides and perusal of the records, we find that the revenue has confirmed demand of service tax on the commission which was shown as deduction in the export invoice. The revenue has treated this commission as a commission against foreign commission agent service. We find that firstly, there is no commission agent exist who provided the service for export trading of the goods exported by the appellant. When no service provider is in existence it cannot be said that the appellant have received the commission agent service. Secondly, it is also fact that the appellant have not paid the commission to any person in the foreign country. Therefore, in absence of any consideration paid for the alleged commission agent services no service tax can be demanded. In the export invoice the appellant have deducted an amount in the nomenclature of commission from the gross sale price thus, the deduction was passed on to the buyer of export goods which is nothing but a discount given to the Foreign Buyers of the goods. In the above facts we are of the view that neither any service provider exist nor was any consideration paid to any service provider. Therefore, the department's contention is baseless and not sustainable.

5. As regards the limitation issue raised by the appellant, we agree with the appellant that firstly, on merit itself as no service exists and hence, no liability to pay tax. Secondly, the appellant have shown all the figures and data in the documents and 11%-12.5% commission in the invoice, shipping bills and bank realization certificate (scanned copy in para 1.2 above), therefore, there is absolutely no suppression of facts on their part. Since undisputedly, the amount of commission considered by the Revenue as against Business Auxiliary Service is related to export of goods, the same in any case will not be taxable. For this reason also no malafide can be attributed to the appellant. Hence, longer period of demand shall not be invoked. In this regard, the judgment relied upon by the appellant in the case of *Texyard International vs. CCE, Trichy (supra) 2015 (8) TMI-794 (CESTAT-Chennai)* support their case.

Therefore, the demand for the extended period is not sustainable on limitation also.

6. In view of above judgments, we find that the issue is no longer res-integra and settled in favour of the appellant. Accordingly, the demand of service tax on the commission deducted in the sale invoice of the appellant to their foreign buyer is not chargeable to service tax. Accordingly, the impugned order is set-aside with consequential relief to the appellant. The appeal is allowed.

(Pronounced in the open court on 09.06.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)