

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD  
REGIONAL BENCH - COURT NO. 3**

**SERVICE TAX Appeal No. 10521 of 2015-DB**

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-001-COM-068-14-15 dated 27.01.2015 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

**Suryanarayan Synthetics P Limited**

5101 B-wing, 3rd Floor,Raghukul Textile  
Market, Ring Road,SURAT, GUJARAT

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST,Surat-I**

New Building, Opp. Gandhi Baug,  
Chowk Bazar, Surat, Gujarat -395001

**.... Respondent**

**APPEARANCE :**

Shri Rasesh Shah, Chartered Accountant for the Appellant  
Shri Rajesh R. Kurup, Superintendent (AR)for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING: 01.08.2024  
DATE OF DECISION: 14.08.2024

**FINAL ORDER NO. 11765/2024**

**RAMESH NAIR:**

The appellant is a merchant exporter and engaged in export of textiles goods such as fabrics, scarves, sarees, dress material etc. to various overseas countries and the said exporter is paying commission to their foreign commission agents in relation to export of their said goods. They are also claiming export incentive on such commission amount under DEPB/ duty drawback scheme as envisaged in Foreign Trade Policy 2009-14.The case of the department is that since the commission shown in invoices is payment made to the foreign commission agent, the same is liable to payment of service tax under reverse charge mechanism in terms of Section 66A of the Finance Act, 1994.

2. Shri Rasesh Shah, learned Chartered Accountant appearing on behalf of the appellant at the outset submits that the appellant have not made any payment to the Commissionagent and no commission agent has provided service to the appellant under the nomenclature of commission which is deducted in the invoices raised to the buyer. Therefore this amount cannot

be treated as service charge paid to any individual commission agent in foreign country therefore no service tax can be demanded. He submits that this issue is settled in various judgments. He placed reliance on the following judgments:-

(a) All India Federation of Tax Practitioners vs. UOI -[2007] 10 STT 166 (SC)

(b) Laxmi Exports vs. CCE&ST - In Service Tax Appeal No. 10666/2014 vide Final Order No. A/11247-11251/2020 dated 22.09.2020.

(c) Aquamarine Exports vs. CCE &ST in Appeal No. ST/12941/2014 vide order dated 07.02.2022.

(d) Intas Pharmaceuticals Limited vs. CST - [2009] 22 STT 230 (CESTAT Ahmd.)

(e) Orbit Research Associates Pvt. Limited vs. CST - CESTAT Ahmedabad.

3. Shri Rajesh R. Kurup, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

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

“6. We have heard both sides and perused the record. The issue involved is that whether there is any commission paid by the appellant to Commission Agent in relation to export of their goods exists and whether that commission is liable to service tax under the head Business Auxiliary Service. In this regard, we carefully gone through the export documents such as shipping bills, export invoice of appellant, bank realization certificate. The sample copies of all the three documents are scanned below:-

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Indian Customs EDI System (ICES) LEO Date: 22/03/2011 BP COPY  
LEO No: 3/157

JNCR, NHAVA SHEVA, TAL:URAN, DIST:RAIGAD-400707  
Shipping Bill for Export

IS No: 9481723 / 17/03/2011 BRC Realisation Date:  
OA: AAAPR2472DCH001 RAJESHVAR FRIEIGHT FORWARDERS  
Print Date: 28/04/2011 14:33  
This consignment was not opened for physical examination by Customs  
Port Of Ldg-Code: INNSA3 State of Origin: GUJARAT

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**EXPORTER DETAILS**

2050140591  
LAXMI EXPORTS  
Branch # 0 142, 1ST FLOOR, ASHIRWAD IND. CODESRA FISH R/A AL QAIZI  
SOCIETY LTD., BHASTAN BUILDING OFFICE # 304,  
NHAVAT/GUJARAT DUBAI, U.A.E.  
395023 PH: 2711728  
UNITED ARAB EMIRATES

**CONSIGNEE**

PAN No.: AFMP80156MPT001  
M/S. ALDEYAA SPARE PARTS  
CODESRA FISH R/A AL QAIZI  
BUILDING OFFICE # 304,  
DUBAI, U.A.E.  
PH: 2711728  
UNITED ARAB EMIRATES

Port of Loading: ONPT, Nhava Sheva Total Pkgs.: 95  
Port of Discharge: Jabel Ali Loose pkgs.: 0  
Gross Wt(KGS): 4834.500 Net Wt(KGS): 4379.500  
Country of Dest: UNITED ARAB EMIRATES No. of Ctrs.: 1  
Location No.: 29338 Rotation Date: 28/02/2011  
Nature of Cargo: C  
Marks and Nos.: AHEAD CTN NOS. 7510 TO 7604  
FOREX BANK ACC: 25950400000033  
BRI Waiver No/Date: /  
FOB VALUE (INR): 22163886.25 F DEK (INR): 20.00 F  
AD. Code: 0202995 Bank a/c No:  
I.P.S. Code:

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**INVOICE DETAILS** Invoice 1/1

Inv. Val	: 2168137.50	INR	48450.00	USD
FOB Val	: 2163886.25	INR		
Inv. no.	: LR/EKP/129/2010-1	Inv Dt	: 18/03/2011	
Nat. of con	: RCF	PCurr (inv):	USD	

Exp Contract No:  
Exchange rate : 1.00 (USD) = 44.750 (INR)

	Rate	Currency	Amount
Insurance	0.00		0.00
Freight:		USD	95.00
Discount:	0.00		0.00
Commission:	11.00	USD	5329.10
Other Deductions:	0.00		0.00
Packing Charges:		USD	0.00

Nature of payment: DA  
Buyer Name & Address  
M/S. SIMIAN STAR GENERAL TRADING LL  
C.  
MAIP ROAD, DHIRA  
P.O. BOX : 42659

## INVOICE

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<b>XMI EXPORTS</b> 42, 1ST FLOOR, ASHIRWAD IND.CO-OP. SOC. LTD. BHESTAN, SURAT/GUJARAT. TEL NO:0091 (261) (O) 9601651156 FAX: 2914226		Invoice No & Date. LE/EXP/129/2010-11 Dt.16.03.2011	RBI Code No. IE Code No. 5205014059		
Consignee: M/S. ALDEYAA SPARE PARTS DEERA FISH RYA AL QAIZI BUILDING OFFICE # 304, DUBAI U.A.E. PH: 2711728		Buyer (If Other Than Consignee) <b>Notify Party:-</b> M/S. SIMNAN STAR GENERAL TRADING LLC, NAIF ROAD, DEIRA P.O. BOX: 42659, DUBAI, U.A.E.			
Pre-Carriage by	Place of Receipt by Pre Carri	Country of origin of Goods INDIA	Country of Final Destination. DUBAI		
Vessel/Flight No. BY SEA	Port of Loading JNPT	Terms of Delivery and Payment. C & F DUBAI			
Port of Discharge DUBAI	Final Destination DUBAI				
Marks & Nos. Container No.	No & Kind of Pkgs	Description of Goods	Quantity	Rate	Amount
ASSAD CARTON NOS: 7510 TO 7604	(95 -CARTONS ) QUALITY	DYED AND/OR PRINTED FABRICS MADE FROM 100% POLEYSTER FILAMENT YARN/TEXTURISED YARN, WITH OR WITHOUT EMBROIDERY AND/OR WITH OR WITHOUT METALISED YARN.	YARDS 57000.00	US\$/YD. 0.85	C & F/US\$ 48450.00
TOTAL PCS: 2280 TOT. YDS 57000.00 TOTAL MTS: 52121.00 SQR.MTS: 59418.000			57000.00		48450.00
GROSS WT: 4854.500 KGS NET 4379.500 KGS			Less: 7 Commission: 11%		5329.50 43,120.50
We are exporting these goods under DEPB scheme in terms of para 4.37 of extm policy 2009-2014. We shall not claim any duty drawback or benefit of duty free licence under the duty exemption scheme in respect of Export made against this shipping bill. The goods are covered by Sr.No 43(A) of DEPB rate list under the product code the present market value of the goods being exported under this shipping bill and benefit under DEPB SCHEME against this exports We shall also avail benefits under Chapter-3 of FTP, if applicable.			TOTAL: -		43,120.50
Amount Chargeable: (In Words) <b>US Dollars: Forty Three Thousand One Hundred Twenty and Cents Fifty Only</b>					
Declaration: (Goods are of Indian Origin) We declare that this Invoice shows the actual price of the goods. Described and that all the particulars are true and correct.					

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**APPENDIX - 22 A**  
**BANK CERTIFICATE OF EXPORT AND REALISATION**  
FORM NO. 1

**ORIGINAL**

To, The Joint Director General of Foreign Trade, 6TH Floor, Resham Bhavan, Lal Drawala, SURAT./ We M/s. Laxmi Exports, 142, 1st Floor, Ashirwad Ind. Co-Op Soc. Ltd, Bhestan, Surat-395 023. (Name and Address of the Exporters) hereby declare that we have forwarded a documentary Export bill to Bank of Baroda, International Business Branch, Surat. (Name and Address of the Bank i.e., Branch and City) for Collection/Negotiation/Purchase as per particulars given hereunder.

[ 1 ] Invoice No. : **LE/EXP/129/2010-11**

[ 3 ] Export Promotion Copy of S/Bill duly authenticated by the Customs No. : \_\_\_\_\_ [ 2 ] Invoice Date : **16-03-11**

[ 5 ] Description of goods as given in the Customs authenticated Shipping Bill : **100% POLYESTER FILAMENT YARN/TEXTURISED YARN, WITH OR WITHOUT EMBROIDERY AND/OR WITH OR WITHOUT METALISED YARN.** [ 4 ] S/Bill Date : **17-03-11**

[ 6 ] Bill of Lading/Post Parcel Receipt/Airway Bill No. : \_\_\_\_\_ **DYED AND/OR PRINTED FABRICS MADE FROM**

[ 8 ] Destination of goods Country Name : **DUBAI** [ 7 ] B/L. Date : **23-03-11**

[ 9 ]	[ 10 ]	[ 11 ]	[ 12 ]	[ 13 ]	[ 14 ]
Bill Amount CIF/C&F/FOB in Foreign Exchange	Freight Amount as per Bill of Lading/ Freight Memo	Insurance Amount as per Insurance Company's Bill/receipt	Commission/ Discount paid to Foreign Buyer Agent	Whether the Export is in freely convertible or in Indian Rupees	FOB Value Actually Realized in free foreign exchange Rupees
US\$. 48450.00 FBC. 0.00 US\$. 48450.00 ( C & F )	US\$. 95.00 @ 44.75 Rs. 4251.00	US\$. 0.00 @ 0.00 Rs. 0.00	11% US\$. 5329.50 @ 44.75 Rs. 238495.00	Freely Convertible Currency	US\$. 43025.50 @ 45.49 Rs. 1957230.00

[ 15 ] Date of Export Realisation of Export Proceeds : **ADVANCE PAYMENT 09.02.2011** [ 16 ] G.R.N/PP/SDF Form No : **SDF FORM**

[ 17 ] No. Date & Category of Duty Free Licence/Imprast Licence if any applicable : **DEPS SCHEME**

We further declare that the aforesaid particulars are correct. (copy of invoice relevant to these exports and customs attested E.P. Copy of relevant shipping bill is attached for verification by the Bank).

**FOR LAXMI EXPORTS**  
*Simmi Batra*  
**PROPRIETOR**  
(Simmi Batra)

Signature of the Exporter : \_\_\_\_\_  
Name in Block Letter : **SIMMI BATRA**  
Designation : **PROPRIETOR**  
Full Official address : **LAXMI EXPORTS, 142, 1st Floor, Ashirwad Ind. Co Op Soc. Ltd, Bhestan, Surat-395 023**  
Full Residential address : **13-A, Swarg Sapan Society, Bhattar Road, SURAT.**

**BANK'S CERTIFICATE**

Authorised Foreign Exchange Dealer Code No. Allotted to the Bank by RBI : **0202595/5600009** Date : **01.04.2011**  
Place : **SURAT** Ref.No. : **2595FBM 00044711**

1. This is to certify that we have verified the relevant export invoices, customs attested E.P Copy of the shipping bill and other relevant documents of M/s. Laxmi Exports, 142, 1st Floor, Ashirwad Ind. Co-op Soc. Ltd, Bhestan, Surat. We further certify that the particulars given in Col.1 to 17 have been verified and found to be correct. We have also verified the FOB value mentioned on Col.14 above with reference to following documents :-  
( i. ) Bill of Lading / PP receipt / Airway Bill.  
( ii. ) Insurance Policy/Cover/Insurance Receipt. \*

2. FOB actually realised 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 **Export Credit Line of India/EXIM Bank Line of Credit of India** or exports made under Deferred Payment/Suppliers Line of Credit Contract backed by **ECUC Cover**. An endorsement to that effect needs to be endorsed in BRC.

3. We have also verified the date of Export is \_\_\_\_\_ (Applicable only in respect of Exports made against confirmed irrevocable letter of credit)

4. We have certified the amount of the commission paid as declared above by the exporter to the foreign buyer as **5329.50** (in figure and words) with G.R. Forms and found to be correct.

**FOR BANK OF BARODA**  
*[Signature]*  
**SENIOR MANAGER**  
INTERNATIONAL BUSINESS BRANCH, SURAT

(Signature of the Bankers)  
Full Address of the Bankers  
**BANK OF BARODA**  
International Business Branch, Opp. Gandhimurdi Bhavan Kanaknidi Complex, Nanpura, Surat-395001 Gujarat, India

**जे. पी. राठी**  
**J. P. RATHI**  
**R - 1183**

**Bank of Baroda**  
International Business Branch  
Opp. Gandhi Smruti Bhavan,  
Kanaknidi Complex, Nanpura,  
SURAT - 395 001. INDIA

7. From the above 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. This issue has been considered time and again by this Tribunal. In the case of Duflon Industries Pvt. Limited vs. CCE, Raigad (supra) and the Tribunal held as under :

*“6. The entire issue revolves around the fact whether clearances effected by appellant on goods which 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.”*

In the matter of *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.

In the present case also, identical nature of transaction involved therefore, applying the ratio of the above judgment, the commission deducted by the appellant in the present case in the invoice is nothing but a trade discount and same is not subjected to service tax.

**8.** The appellant made alternative submission that if at all the commission shown in the invoice is considered as service charges and the service tax payable/paid thereon is refundable to them as per Notification Nos. 41/2007-ST dated 06.10.2007 and 18/2009-ST dated 07.07.2009 even though some procedural lapse, if any, has occurred in the present case. Since we have already decided that the amount of 11%-12.5% shown as deduction in the invoice is not towards any service charges but it is in the nature of trade discount, there is no question of involving exemption of notifications 41/2007-ST dated 06.10.2007 and 18/2009-ST dated 07.07.2009. Therefore, we are not discussing this issue.

**9.** As regards the limitation raised by the appellant, we agree with the appellant that firstly, on merit itself as no service exists, and 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, 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 *J.P.P. Mills Pvt. Limited vs. CCE, Salem (supra)* and *Texyard International vs. CCE, Trichy (supra)* support their case. Therefore, the demand for the extended period is not sustainable on limitation also.

**10.** As per our above discussion and findings, we are of the clear view that since no service exists, the entire demand would not stand. Accordingly, the impugned orders are set-aside and the appeals are allowed with consequential relief, if any, in accordance with law.”

(b) In the case of *Aquamarine Exports* in Appeal No. ST/12941/2014 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. This issue has come up time and again and the same was decided in the following judgments:

**LAXMI EXPORTS – 2021 (44) GSTL 284 (T)**

“7. From the above 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. This issue has been considered time and again by this Tribunal. In the case of Duflon Industries Pvt. Limited v. CCE, Raigad (supra) and the Tribunal held as under :

6. The entire issue revolves around the fact whether clearances effected by appellant on goods which 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.”

In the matter of Hindustan Petroleum Corporation Limited - 2019 (24) G.S.T.L. 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 v. CCE, Nagpur - 2019 (20) G.S.T.L. 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. In the present case also, identical nature of transaction involved therefore, applying the ratio of the above judgment, the commission deducted by the appellant in the present case in the invoice is nothing but a trade discount and same is not subjected to service tax.”

#### **Hindustan Petroleum Corporation- 2019 (24) GSTL 569(T)**

“6. We have also examined the terms of the agreement between the IGL and the appellant. At the outset, we note that similar set of facts in respect of appellant’s own case in Mumbai and for IOCL with IGL has been a subject matter of decisions of this Tribunal. The said decisions relied upon by the appellant are relevant to decide the present case also. In the case of IOCL (supra), the Tribunal observed as under :-

“7. On careful consideration of the submissions made by both the sides, we find that on identical set of facts and on the basis of the identical agreement, a case was booked against M/s. Bharat Petroleum Corpn. Ltd. (supra), wherein this Tribunal observed as under :-

“11. As per the said provisions, the service provider provides service to his client for marketing or promotion of the goods to third party. In these cases, appellants

themselves are buying goods from M/s. MGL. Therefore, the question of rendering the service to the client for marketing of the goods does not arise. We further find that MGL is discharging VAT/ST liability while selling the CNG to appellants. Although the RSP is fixed but it does not mean that the profit margin shall be constituted as commission for rendering the service. On examination, it is found that all the transactions shown by the appellants are done on principal to principal basis. Moreover, the appellants are selling these CNG on payment of VAT/ST to the buyers. There is no commission component that have been received by the appellants from M/s. MGL. FOR e.g., if the appellant is receiving goods from MGL at 100/- per kg. including VAT but these goods are sold by the appellant to customers on RSP fixed at ` 102/- per kg., that does not mean that the appellants are receiving commission of ` 2/- from MGL. In fact the appellants are also paying VAT on ` 2/- also. It is also a fact that the appellants are not receiving any commission from M/s. MGL. Therefore, it cannot be presumed that appellants are rendering any service to MGL. Moreover, the case law relied upon by the counsel in the case of Bhagyanagar Gas Ltd. (supra) also supports the cases in hand, wherein this Tribunal held that mere mention in the agreement the trade margin as commission on which VAT/ST has been paid would not evidence the fact of rendering service. The contention of the Ld. AR that the private parties are paying Service Tax under the category of Business Auxiliary Service on the same activity, therefore, the appellants are required to pay Service Tax is not acceptable as in the case of private parties, the invoices on the customers were raised by M/s. MGL directly and the private parties are receiving commission and there is no transaction on principal to principal basis.”

8. We further find that as per the agreement, relationship between the parties had been defined in Clause 14.2 of the agreement, which is reproduced as under :-

“14.2 During the term of this agreement, IOCL shall not hold itself out as an agent of IGL. It is clearly understood that this agreement is on principal to principal basis and IGL shall not be liable for the acts of commission or omission of IOCL or its employees, personnel or representatives.”

9. As per the agreement, the transaction done between the parties is on principal to principal basis. Therefore, relying on the decision of this Tribunal in the case of Bharat Petroleum Corpn. Ltd. (supra), we hold that the demands against the appellants are not sustainable under the category of “Business Auxiliary Service” for the amount received by the appellant as commission as all the transactions have been done between the appellant and IGL on principal to principal basis.”

7. In the present case, the facts are almost identical. The transaction between IGL and the appellant are on principal to principal basis. The appellant has been prohibited from holding himself as an agent of IGL. The agreement categorically states that the same is on principal to principal basis.

8. Considering the ratio of the decisions of the Tribunal referred to above, we find that service tax liability under BAS cannot be sustained against the appellant. Accordingly, the impugned orders are set aside. The appeals are allowed.

**PrabhakarMarotraoThaokar& Sons- 2019 (20) GSTL 294 (T)**

4. On careful consideration of the submissions made by both the sides and on perusal of records. We find that as per the agreement particularly the following clause :

“5. The Wholesale Distributor shall sale the goods at the price as determined by the Manufacturer. It shall not charge anything extra over and above the said price. The Manufacturers shall not be responsible for any loss of goods after it leaves the factory

premises. Wholesale Distributor would be the owner of the goods once same are supplied to them by the manufacturer from the factory gate and the Wholesale Distributor shall take possession of the goods from the factory gate and shall transport the same to its godowns at its own expenses."

It is observed from the above para that after supply of goods by the manufacturer the ownership of goods is transferred to the wholesale distributor who is the appellant here. The sales invoice raised by the manufacturer is scanned below :

**GUNAJI MAROTRAO THAKKAR & COMPANY** 53-  
 JARDA MANUFACTURER 303 C, SMALL FACTORY AREA, BHANADARA ROAD, NAGPUR - 440008. -28-

Date of Removal: 4.9.2010 Invoice No.: 61	P.L.A./E.C.C. No.: AABFG 5605 LXM 001	Authenticated For G.M. Thakkar & Co.
Time of Removal: 12:35/2010	Name of Excisable Goods: BRANDED CHEWING TOBACCO	PARTNER
M/s. P.M. Thakkar & Sons 9/2/2010	Chapter sub-head: 2403 9910	

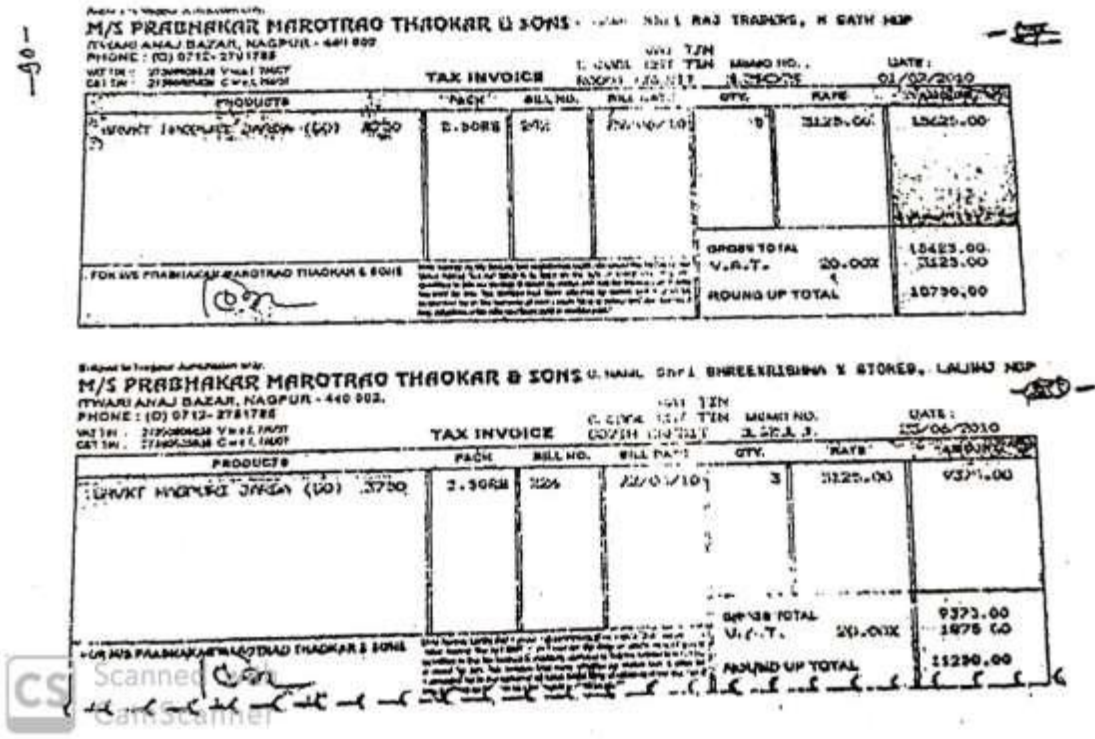
PARTICULARS	AMOUNT	Rs.	Ps.
Description and Specification of Goods : Rs. 5.50 SARVOTKRUST NAGPURI JARDA 5 gr. in each Pudi 50 Pudis one Poda 50 Pudis one Bag = 14.0 Kgs.			
2. Number & Description of Packages : Total Bags 155 Pudis 17000 No. To 5400			
3. Total Quantity of goods : Kgs. 1490.0			
4. Total Wholesale Value : (Under Sec. 3A of C. Ex. Act. 1944) Pudis = 6.0 Kgs. Rs. 1564.50 Per Thousand	51880		50
5. A) Value as per M.F.P. Rs. @ _____ B) Abetment @ 55% (Under Sec. 4A of C. Ex. Act. 1944) Pudis = _____ Kgs.			
6. Trade Discount Rs. 47.50			14053 00
7. A. Value			509055 50
8. Rate of Duty @ 76% = b. E. Duty 60% = N.C.C.D. 10% = Ad. Duty Surcharge 6% = Total =	Central Excise Duty Paid under compounded levy scheme under section 3A of C. Ex. Act read with Notification No. 11/2010-Central Excise (N.T. New Del) dt. 27th February 2010 as per Order No. 11/16/30-16/ST/AR/08A/11 dt. 11-3-10, issued by A.C.C. Ex. Div. Nagpur.		
In Words : _____			C. Ex. Duty (+)
9. Education Cess 2% On Duty		2%	—
10. Secondary & Higher Education Cess 1%		1%	—
Note: Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow additional consideration, direct or indirect, from the buyer.		Total Amount	509055 50
VAT @ 20%		VAT @ 20%	81811 00
P.S. Five lacs, fifty thousand, eight hundred, fifty six only		Roundup Amount	590866 00

For Gunaji Marottrao Thakkar & Company  
 Thakkar

Date and time of preparation of Invoice  
 4.9.2010 12:35/2010

From the agreement coupled with the above invoice it can be seen that the transaction between the manufacturer M/s. Gunaji and the appellant is clearly of sale. In the invoice the manufacturer has charged 20% VAT the transaction is clearly at arms length hence sale transaction on principal to principal basis. From the invoice, it is also observed that a trade discount was passed on by the manufacturer to the appellant. As per this undisputed fact once, the transaction is of sale there is no relationship of service provider and service recipient between the manufacturer and the buyer (the present appellant). Accordingly, the discount passed on by the manufacturer to the appellant cannot be construed as a commission and the same is not the subject matter of levy of

service tax. It is further seen that the appellant also, after purchase of goods from the manufacturer further sold to various traders. A copy of the sale invoice issued by the appellant is scanned below :



From the above invoice it can be seen that it is clearly a sale invoice under which the appellant also paid the VAT. This shows that the transaction from the manufacturer to the appellant and subsequent from appellant to the individual traders are clearly sale transactions. Hence no service is involved. As per the above facts, we are of the clear view that a trading margin cannot be subject matter of levy of service tax. Accordingly, the impugned order is set aside and the appeal is allowed.”

4.1 As per our above discussion and finding supported by the above judgments the appellant is not liable to service tax on the so called commission mentioned in the invoice of the export.

4.2 We find that the appellant without prejudice also argued that if at all it is considered as the service of commission agent since the same was used for export of goods then also it is not chargeable for service tax as per notification no.14/2004-ST 10.09.2004 and in support of the submission they relied upon the judgment in the case of Textyard International – 2015 (44) GSTL 284 (T) and Arvind A. Traders – 2016 (44) STR 264 (T). Though we find force in this submission also made by the appellant but since on the first issue itself we had decided the matter, we are not inclined to give finding on alternate submission discussed above.

5. In view of our above discussion and findings, the impugned order is set aside and appeal is allowed with consequential relief.”

5. In view of above judgments, the issue is no longer res-integra and settled in favour of the assessee. 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 and the appeal is allowed.

*(Pronounced in the open court on 14.08.2024)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**

KL