

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 26550 of 2013

(Arising out of Order-in-Original No. 26/2013 ST (Commr) dated 22.02.2013 passed by the Commissioner of Central Excise & Service Tax, Bangalore.)

M/s. IBM India Private Limited

No. 12, Subramanya Arcade,
Bannerghatta Main Road,
Bangalore - 560 029.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise and Service Tax
Large Taxpayers Unit**

JSS Towers 100ft Ring Road,
Banashankari III Stage,
Bangalore - 560 027.

Respondent(s)

AND

Service Tax Appeal No. 20480 of 2020

(Arising out of Order-in-Original No. 11/ST/COMMR/2020 dated 05.10.2020 passed by the Commissioner of Central Tax, Bengaluru South Commissionerate, Bengaluru.)

M/s. IBM India Private Limited

No. 12, Subramanya Arcade,
Bannerghatta Main Road,
Bangalore - 560 029.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise and Service Tax**

5th Floor, C. R. building,
P.B. No.5400, Queens Road,
Bangalore - 560 001.

Respondent(s)

APPEARANCE:

Ms. Disha G, Advocate for the Appellant

Mr. M.A. Jithendra, Assistant Commissioner (AR) for the Respondent

CORAM:**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**Final Order No. 20124 - 20125 / 2026**

DATE OF HEARING: 20.08.2025

DATE OF DECISION: 06.02.2026

PER : R. BHAGYA DEVI

These two appeals are filed by the appellant M/s. IBM India Private Limited against Order-in-Original No.26/2013-ST (Commr.) dated 21.02.2013 for the period from 2006-07 to 2010-11 and Order-in-Original No. 11/ST/Commr./2020 dated 05.10.2020 for the period April 2013 to June 2017 both passed by the Commissioner of Central Excise and Service Tax, Bangalore.

2. Briefly the facts are the appellant is engaged in various services which are taxable under different categories. During the course of audit, the officers observed that certain reimbursements under the head 'earnings in foreign currency' as receipts at Schedule 18 of the balance sheet. Further, on detailed scrutiny, it was alleged that these amounts were received for carrying out maintenance/repair for the goods traded by the appellant during the warranty period, for which the consideration was received as reimbursement of cost of components used by the appellant. The Commissioner in the impugned order held that the appellant was providing taxable service under the category of 'Management, Maintenance or Repair Service' and hence, they were liable to pay service tax on the amounts received from IBM, Singapore. The Commissioner also held that the entire amount that was received by them was

liable to service tax since the benefit of Notification No.12/2003-S.T. dated 20.06.2003 was not applicable to them, accordingly confirmed the service tax amounts invoking suppression and imposed various penalties. Aggrieved by these orders, the appellant is in appeal before us.

3. The Learned Counsel submits that appellant is involved in the business of sale of its products and provides related services both in domestic and export market. They also import products from overseas IBM manufacturing plants or other IBM affiliated subsidiaries and these manufacturing entities also undertake to replace defective parts or repair the equipment during the warranty period. The warranty provided by the manufacturing plant is independent of the warranty period provided by the appellant to its customers in India. The appellant executed a distribution agreement with IBM Singapore under which IT products are purchased and are used either for reselling or used by themselves for providing services within India. When the appellant sells the products to the customers in India, they provide a warranty period, independent of any warranty provided by the overseas IBM entities which covers replacement of parts along with the services.

3.1 It is further submitted that the appellant incurs financial cost comprising of actual value of the parts and charges made by a third-party repair organization for carrying out repairs as part of the warranty obligation of the overseas IBM entities and these financial costs incurred by them are reimbursed by the overseas IBM entities as per the Distribution Agreement. For the goods sold by the appellant, they enter into a separate warranty obligation which also involves supply of parts and labor support which is made good by the appellant at its own cost. The Distribution Agreement clearly establishes the fact that the

reimbursements received by the appellant from the IBM entities pertains to cost incurred towards parts and service charges paid to third-party vendors. The third-party vendors have discharged service tax on the invoices raised by them on the appellant, hence, the question of levy of service tax once again does not arise. Therefore, reimbursements made by the foreign entities to the appellant has nothing to do with the sale of goods by the appellant to their customers. Relying on the decision of the Supreme Court in the case of **Intercontinental Consultant and Technocrats Pvt. Ltd.: 2018 (10 GSTL 401 (SC))**, it is submitted that the reimbursable expenses cannot be included in the value for determination of service tax.

3.2 Moreover, during the warranty period, no consideration is received by the appellant from their end-customer since the initial sale of the equipment already includes value towards such warranty. It is further submitted that the appellant has paid VAT on the entire value of the product which includes warranty charges. It is also submitted that if the allegations of the department were to be accepted, then the parts imported by the appellant would qualify as inputs and they will be eligible for cenvat credit as per the Cenvat Credit Rules, 2004.

3.3 With regard to limitation, it is submitted that since the facts were known to the department from the beginning, the question of suppression does not arise and moreover, when the first show-cause notice was issued on 30.09.2011 invoking suppression for the second show-cause notice dated 22.10.2018 for the second time for the same issue cannot be sustained. Hence, both the show-cause notices being issued beyond the normal period cannot be sustained. Relied on the decision of the Tribunal in the case of **Sham Spectra Pvt. Ltd vs. Commissioner of Service Tax, Delhi Final Order**

No.56196/2024 dated 31.07.2024 to impress on the fact that suppression cannot be invoked.

4. The learned Authorized Representative (AR) on behalf of the Revenue reiterating the findings of the Commissioner in the impugned orders submits that the appellant is liable to pay service tax on the amounts received by them since the same are towards the maintenance and repair of the products as seen from the Distribution Agreement entered into by the appellant. Since the issues have come to the notice of the department only after the detailed scrutiny by the audit officers, the Commissioner has rightly invoked suppression and demanded duty invoking extended period of limitation and justifies imposition of penalties also.

5. Heard both sides. The period of dispute is from 2006-07 to 2010-11 and April 2013 to June 2017. We find that the crux for demanding service tax is based on para 2 of the show-cause notice dated 30.09.2011 which is reproduced below:

"2. During the course of audit on the records of M/s IBM India, the internal audit team of LTU, Bangalore observed that, in the balance sheet for the year 2008-09, it was noticed that **M/s IBM India have received certain reimbursements under the head - "Earnings in Foreign Currency" - Schedule 18(10)**. On detailed scrutiny, it was observed that these amount received is for carrying out maintenance/ repair of goods traded by them during the warranty period for which the consideration, by way of reimbursement of cost of components used, flowed from their foreign manufacturer".

6. While the second show-cause notice dated 22.10.2018 reads as follows:

"2. During the verification of the records of M/s. IBM India, it is observed that M/s IBM India have in their 'Notes to the Financial Statements', reflected under the head "Earnings in Foreign Currency (Gross)" receipt of certain income (reimbursements) as "Reimbursement of Salaries, Travel, Warranty, advertisement, etc." during the period from April 2013 to June 2017. On detailed scrutiny, it was observed that this amount has been received for carrying out maintenance/repair/replacement of goods/ spares by them during the warranty period for which, the consideration, by way of reimbursement of warranty charges, flowed from foreign manufacturer."

7. From the above allegations, it is to be noted that the demands for service tax are only based on the reimbursements shown in their books of accounts. The impugned orders confirm the demand based on the following observations reproduced below:

"11.2.2In the process, M/s IBM India procured / imported IT products from outside India as these products were manufactured by the overseas IBM entities outside India, for reselling in India. Subsequent to import of finished goods / IT products for resale, M/s IBM India sold the products to the end customers in India and as the obligation of warranty was cast on IBM, these products were sold with inbuilt warranty obligation for a specified period. This warranty obligation covered not only replacement of parts but also labour support. **I find that since the warranty obligation covered replacement of defective parts and / or repair of the equipments during 'warranty period' for which no consideration was received from the end customers, no invoices or bills or challans or any other documents, evidencing provision of a taxable service was raised by M/s IBM India.** Therefore, the fact of provision of taxable service can only be ascertained from the terms and conditions of the agreements executed by the concerned parties or any other documents, if any.

11.2.3 Further I find that for the purpose of re-sale of information technology products manufactured by the overseas IBM entities in India, M/s IBM India entered into a Distribution Agreement with the overseas IBM entities under which M/s IBM India had procured/Imported IT products from outside India as these products were manufactured by overseas IBM entities outside India, for reselling in India. I have perused one such Distribution Agreement entered into between M/s IBM India and M/s IBM Singapore Pte Limited, an overseas IBM entity. As per the said Agreement, the term 'Machine' includes an IBM Machine and any non-IBM Machine (including other equipments). It is agreed upon that M/s IBM India would be responsible for customer satisfaction for all their activities. In case of any defect or malfunctioning of the equipments, the end customers used to call up IBM India's service centre for repair/replacement of the defective equipments. Though M/s IBM India Singapore Pte Ltd, the overseas IBM entities did not provide any warranty directly to the end customers of IBM India (Clause 11 of the Distribution Agreement refers). It is seen that under Clause 10 of the Distribution Agreement which deals with warranty, warranty is provided (by the overseas IBM entities) to the machines sold to M/s IBM India. The Machines sold to M/s IBM India conformed to the published specifications and the warranty did not cover defects arising from damages caused by IBM India or a third party or from used of the Machines for purposes for which they were not designed. Further, as per Clause 10 of the Distribution Agreement M/s IBM India were entitled to compensation from the overseas IBM entities for damages equal to the amount of IBM India's actual financial loss incurred in repairing defects to Machines identified during the terms of the warranty period. (Emphasis supplied). Therefore, as the obligation of warranty was cast on the manufacturers (ie. overseas IBM entities), the cost of the parts replaced/transferred by IBM India to the end customer as part of the warranty obligation and actual cost of labour charges were reimbursed to IBM India by the respective overseas IBM entities. In view of the above, it is evident that any defect

arising out of the use of such Machines/products, would be made good by IBM India, initially, at their own cost; in other words, the warranty obligation was agreed to be between M/s IBM India and the end customers of IBM India and; subsequently M/s IBM India calculated the actual cost incurred in replacing the defective parts and/or repairing the Machines and labour charges were being reimbursed by the overseas IBM entities to IBM India. It is pertinent to note that though no consideration was received from the end customers by IBM India towards the warranty provided to them (under warranty obligation), compensation was made by the overseas IBM entities to IBM India for damages equal to the amount of actual financial loss (which contained actual cost of parts and labour charges) incurred by IBM India. **Therefore, it is evident that the 'intention of parties in the present case was to provide the warranty service to the end customers who had purchased Machines/IT products from IBM India.**

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11.3.2 Therefore, from the terms and conditions of the Distribution Agreements entered into between M/s IBM India and the overseas IBM entities and also the nature of transactions, provision of a taxable service, i.e. warranty service is established. Hence, in light of the above Board's Circular dated 20.06.2003, irrespective of the facts that no consideration was received from the end customers of IBM India and no agreement to provide warranty service to the overseas IBM entities existed, I am of the considered view that M/s IBM India had provided the warranty service which is classifiable under the taxable category of 'management, maintenance or repair' service as defined in Section 65(64) read with Section 65(105)(zzg) of the Finance Act, 1994 during the period from years 2006 - 07 to 2010 - 11 and I hold accordingly."

8. From the above observations of the Commissioner, we find that there is no dispute that the amounts received by the

appellant are reimbursable expenses incurred by them. It is also an admitted fact that no invoices/bills were raised towards warranty service to their customers in India. The Commissioner's assumption that "**Therefore, it is evident that the 'intention of parties in the present case was to provide the warranty service to the end customers who had purchased Machines/IT products from IBM India'**", is totally misplaced since the service tax cannot be levied unless there is a consideration received for the service being rendered and not by deriving intention of the parties based on the Agreement. The relevant clauses of the Distribution Agreement are reproduced below:

IBM Distribution Agreement November 01, 2006

10. Warranty

Certain Machines are sold to you on an AS IS basis as defined by CHQ Tax-Intercompany from time to time without warranty of any kind. We will notify you from time to time of the types of Machines that are sold as is. You will be fully responsible financially and otherwise for any warranty you provide on these Machines. We also do not provide any warranty to your Customers and you agree not to represent to your Customers that we have any obligation towards them for defects in these Machines.

For all other Machines, or for any Machines sold prior to July 1, 2004, the following warranty terms and conditions shall apply.

We warrant that the Machines sold to you shall conform to our published specifications and shall be free and remain free from defects arising from their design or manufacture for the period of our warranty.

Our warranty does not cover defects arising from damage caused by you or a third party or from use of the Machines for purposes for which they were not designed.

You are entitled to compensation from us for damages equal to the amount of your actual financial loss incurred in repairing defects to Machines identified during the term of our warranty period.

The amount of your actual financial loss shall be equal to:

- a. The actual costs of labor and parts incurred directly by you less anything you receive from the disposal of the parts which were replaced, or
- b. The actual charges made to you by a third party repair organization working for you in carrying out repairs to defective Machines.

11. Warranty Service

We do not provide any warranty to your Customers and you agree not to represent to your Customers that we have any obligation towards them for defects in Machines which you sell.

From the above it is evident that the reimbursable expenses are towards the installation cost, transportation cost and for the replacement of parts, which has nothing to do with any services rendered by the appellant. The appellant had also entered into an agreement with their customers which is placed on record as **IBM India Pvt. Ltd. Customer Agreement dated 22.08.2007** as per which the appellant provides warranties to their customers which reads as follows:

Part 2: Warranties

2.1 The IBM India Private Limited Warranties

Warranty for IBM India Private Limited Machines

IBM India Private Limited warrants that each IBM India Private Limited Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM India Private Limited provides repair and exchange Service for the Machine, without charge, under the type of Service

IBM India Private Limited designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM India Private Limited is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM India Private Limited and your money will be refunded”.

9. During the relevant period of disputes, the definition of ‘Management, Maintenance or Repair Service’ is reproduced below:

9.1 For the period prior to 01.07.2012, the definition for the ‘Management, Maintenance or Repair service’ reads as:

65[(64) "management, maintenance or repair" means any service provided by-

(i) any person under a contract or an agreement; or
(ii) a manufacturer or any person authorised by him, in relation to, -

(a) management of properties, whether immovable or not; maintenance or repair of properties, whether immovable or not; or

(b) maintenance or repair including reconditioning or restoration, or servicing

(c) of any goods, excluding a motor vehicle.]

[Explanation. -For the removal of doubts, it is hereby declared that for the purposes of this clause, -

(a) "goods" includes computer software;

(b) "properties" includes information technology software;]

9.2 With effect from 01-07-2012, 'service' has been defined in new Section 65B (44) of the Finance Act, 1994.

Section 65B(44) of the Finance Act, 1994, 'service' means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,

- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner, or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force."

9.3 From the above, we find that whether it is prior to 01.07.2012 or after 01.07.2012, there has to be a service rendered by the appellant for which consideration has to be received. From the above discussions and perusal of the Distribution Agreement, we do not find any service being rendered by the appellant to IBM Singapore, for which the payments have been received instead we find that the show-cause notices itself admit that these are reimbursable expenses relating to salaries, transport, etc., and the reimbursable expenses cannot be levied to service tax is settled by the Hon'ble Supreme Court's decision in the case of **Intercontinental Consultant and Technocrats Pvt. Ltd. (supra)**.

10. In view of the above discussions, we do not find any reason to sustain the demands for both the periods.

11. With regard to limitation, we find that the second show-cause notice cannot invoke suppression as it is a settled principle of law as laid down in the case of **Nizam Sugar Factory vs. CCE, A.P.: 2006 (197) E.L.T 465 (S.C.)**. It is also to be noted that since no consideration was received from the customers during the warranty period, the question of reflecting any of these services in their ST-3 returns does not arise. Moreover,

whenever third-party services were rendered, service tax has been paid by such vendors and therefore, they cannot be the source of the ST-3 returns filed by the appellant. Accordingly, we do not find any suppression of facts, which can be justified. Therefore, we are not inclined to sustain the above impugned orders neither on merit nor on limitation, hence, the impugned orders are set aside.

Appeals are allowed with consequential relief.

(Order pronounced in Open Court on 06.02.2026)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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