IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75896 of 2017

(Arising out of Order-in-Original No. 18/Commr/STA/KOL/16/15412 dated 03.03.2017 passed by the Commissioner of Service Tax Audit Commissionerate Kolkata 3rd Floor 180, Shanti Pally, Rajdanga Main Road, Kolkata 700107)

M/s. Nippon Steel & Sumikin Engineering India Pvt. Ltd. : **Appellant**
Salcon Ras Vilas, unit No. 211-215,
2nd Floor, Saket District Centre, Saket, New Delhi-110017

VERSUS

Commissioner of Service Tax Audit, Kolkata : **Respondent**
3rd Floor 180, Shanti Pally,
Rajdanga Main Road, Kolkata 700107

APPEARANCE:

Shri Rahul Tangri, Advocate
Shri Vasudev A., Advocate for the Appellant
Shri P. Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75773/ 2026

DATE OF HEARING: 22.06.2026
DATE OF PRONOUNCEMENT: 30.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 18/Commr/STA/KOL/16/15412 dated 03.03.2017 passed by the Commissioner of Service Tax Audit Commissionerate Kolkata 3rd Floor 180, Shanti Pally, Rajdanga Main Road, Kolkata 700107, wherein the Ld. Commissioner has ordered confirmation of the demands as under:

"Demand of service tax (including EC and SHEC) of Rs. 4,55,59,710/- for October 2010 to March 2025 under Section 73(2) of the Finance Act, 1994 along with applicable interest and equivalent penalty. Disallowance of CENVAT Credit of Rs. 6,96,493/- for FY 2011-12 under Rule 14 of the CENVAT Credit Rules, 2004, along with applicable interest and equivalent penalty. Penalty of Rs. 38,600/- imposed under Section 77(1)(a) of the Finance Act, 1994."

2. The facts of the case are that M/s.Nippon Steel & Sumikin Engineering India Pvt. Ltd. ('herein after referred as the Appellant') is a wholly owned subsidiary of M/s. Nippon Steel & Sumikin Engineering Co. Limited ('NSEC Japan'), a corporation duly incorporated in Japan.

2.1. During the relevant period, the Appellant entered into various agreements with NSEC Japan on a yearly basis, which are dated 05.04.2011, 01.04.2012, 15.03.2013, 28.02.2014 and 15.12.2014, along with addendums dated 28.02.2014, for rendering Marketing and Administrative Support Services on a principal-to-principal basis. Vide the said agreements, the Appellant was required to gather information of customers, competitions, constructors, suppliers and relevant companies related to NSEC Japan and its subsidiary and other relevant companies. Such service was agreed to be delivered by the Appellant to NSEC Japan, or its subsidiary companies, outside India, for use by such companies, outside India, for their business operations. The remuneration for such services provided by the Appellant to NSEC is on cost plus model, i.e., operating cost plus 14% mark-up, which was received by the Appellant in convertible foreign exchange. Further, as per the terms of the

agreement, the final deciding authority of acting upon all the information so provided by the Appellant will be NSEC Japan and/or subsidiary companies, and the Appellant has no role in the same.

2.2. Since the recipient of services rendered by the Appellant is located in Japan, i.e., outside India, the Appellant was of the view that the said services constituted "Export of Services" in terms of Rule 3(1)(iii) read with Rule 3(2) of the Export of Service Rules, 2005 (during the positive list regime) and Rule 6A of the Service Tax Rules, 1994 read with Rule 3 of the Place of Provision of Service Rules, 2012 (during the negative list regime). Accordingly, the Appellant did not discharge any service tax for rendering the above services to the NSEC Japan. However, the Appellant was duly disclosing the said details in the ST-3 returns filed periodically as exporting of 'Business Auxiliary Service'.

2.3. An audit was conducted by the Department on 07.09.2015, 29.02.2016 and 01.03.2016 for the period from F.Y. 2010-11 to F.Y. 2014-15, which culminated into issuance of the underlying SCN dated 19.04.2016 by invoking the extended period of limitation. On adjudication, the Ld. Commissioner has passed the impugned Order-in-Original dated 03.03.2017. Aggrieved against the confirmation of the demands of service tax along with disallowance of CENVAT Credit, along with interest and penalty, the appellant has filed this appeal.

3. The grounds raised by the Appellant in the present appeal are summarized below:

THE INSTANT ISSUE IS NO LONGER RES-INTEGRA – THE RECIPIENT OF SERVICES IS THE

PERSON WHO IS RESPONSIBLE FOR MAKING THE PAYMENT.

3.1. It is submitted that the entire proceedings have been initiated solely basis the allegation that the Business Auxiliary Services have not been provided by the Appellant to a recipient outside India, and accordingly, such services provided to NSEC Japan would not constitute "export of service". In this regard, the Appellant submits that the underlying SCN is contradictory since at one place, it is categorically mentioned that "*2.1.0 On scrutiny of the records it was found that the assessee have not paid service tax for providing 'Business Auxiliary Service' to their counterpart in a foreign country, i.e., M/s Nippon Steel & Sumikin Engineering Co. Ltd., Japan…*" whereas it is alleged that the Appellant has not provided services to a recipient located outside India. The Appellant submitted that on a perusal of the agreements executed by them with NSEC Japan, it would clearly show that the Marketing and Administrative Support services are provided by the Appellant to NSEC Japan, which is a company located outside India. The Department has also not disputed the same, as evident from para 2.1.0 of the underlying SCN. The Appellant submits that the entire proceedings have been initiated, for the reason that as per the scope of the agreements, the Appellant carries out the gathering of information of customers, competitors, suppliers, and providing administrative support etc., to NSEC Japan, in India. In this regard, the Appellant submitted that the place of performance of contract has no relation whatsoever in determining the recipient of services. It is a settled position of law that the **recipient is**

determined basis the person who is responsible for making the payment.

3.2. In this regard, the Appellant placed their reliance on Para 5.3.3. Of the Service Tax Education Guide, which is reproduced below –

> "***5.3.3 Who is the service receiver?***
>
> *Normally,* ***the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service****, whether or not he actually makes the payment or someone else makes the payment on his behalf."*

Reliance is also placed on the decision of the Larger Bench of the Hon'ble Tribunal in the case of ***Arcelor Mittal Stainless (I) Pvt. Ltd. v. Commissioner of Service Tax, Mumbai – II – (2023) 11 Centax 269 (Tri. – LB)****,* wherein also, in similar set of facts relating to export of service, the Department attempted to levy service tax by alleging that the services were not provided to a recipient outside India, and were performed within India. In this regard, the Tribunal held that the service recipient is a person who makes a request for a service, in exchange of a consideration, and is therefore, the person liable to pay for the services received. It was also held that the relevant factor for determining if a service is exported, is the location of service receiver. Accordingly, since the person who was responsible for making the payment was outside India, the service tax demand was set aside. Further reliance is also placed on the decision in ***Kingfisher***

Airlines Pvt. Ltd. v. Commissioner of Service Tax, Mumbai – I – 2015 (37) S.T.R. 358 (Tri. – Mumbai) wherein also similar proposition was held.

3.3. Placing reliance on the above, the Appellant submits that in the instant case NSEC Japan is receiving the Administrative and Marketing service, and is therefore, obliged to make the payment. Therefore, NSEC Japan is the service recipient, which is an entity outside India. Accordingly, the Appellant submits that they have duly exported such service to an entity located outside India, and therefore, the entire demand is liable to be set aside.

. THE INSTANT ISSUE IS NO LONGER RES-INTEGRA – SERVICES PROVIDED TO A FOREIGN RECIPIENT USED OUTSIDE INDIA CONSTITUTES "EXPORT OF SERVICE".

4. The Appellant submits that they have entered into the agreements with the overseas entity, for providing Marketing and Administrative support service to NSEC Japan. As per such agreements, the Appellant has to provide the service of gathering information of customers, competitors, constructors, suppliers, relevant companies related to NSEC Japan and its subsidiary companies or other related organizations. Further, the Appellant also has to provide administrative support and communication coordination between the NSEC Japan and its Indian customers.

4.1. Since the demand covers both the positive list and negative list regime, it is pertinent to refer to the provisions of both the positive list and negative list regime. During the positive list regime, the

provisions concerning export of service were contained in Export of Service Rules 2005. As per Rule 3(1)(iii) of the Export of Service Rules, which was applicable to the Business Auxiliary Services and Business Support services being rendered by the Appellant, export of taxable services provided in relation to business or commerce, shall mean the provision of such services to a recipient located outside India. Further, in Rule 3(2) of the Export of Service Rules, 2005, it is provided that the provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the payment for such service is received by the service provider in convertible foreign currency.

4.2. In the negative list regime, Rule 6A of the Service Tax Rules, 1994 provides that the provision of any service provided or agreed to be provided shall be treated as export of service, when –

(a) The provider of service is located in the taxable territory

(b) The recipient of service is located outside India

(c) The service is not a service specified in the section 66D of the Act,

(d) The place of provision of the service is outside India

(e) The payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) The provider of service and recipient of service are not merely establishments of a

distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act.

4.3 Further, Rule 3 of the Place of Provision of Service Rules, 2012 ['POPS Rules'] provides that the place of provision of a service shall be the location of the recipient of service. Therefore, in the positive list regime, the requirements for a transaction to be treated as export of service was that such services are to be provided to a recipient outside India, and the payment has to be received in convertible foreign exchange. In the negative list, apart from such two conditions, other conditions as mentioned above are also prescribed, in order for a transaction to qualify as export of services. The Department has disputed the transaction and attempted to levy service tax on the same, solely basis the contention that such services were rendered in India. It is submitted that the place of performance has no relation whatsoever, and only the location of recipient is necessary to determine the place of provision of service. In the instant case, the Appellant has entered into agreements with NSEC Japan, wherein Administrative and Marketing Services are provided on a principal to principal basis.

4.4. Further, the Appellant is fulfilling all the requirements of all the conditions in the positive and negative list regime, for the instant transaction to qualify as "export of services" as provided below –

Sr. No.	***Condition***	***Appellant's case***
1.	*Service provider is located in the taxable territory*	*The Appellant is located in the taxable territory.*

2.	*Service recipient is located outside India*	*NSEC Japan is located outside India*
3.	*The service is not a service specified in the section 66D of the Act.*	*The appellant is not rendering any service covered under the Negative List*
4.	*The place of provision of the service is outside India*	*The place of provision of service is the location of the recipient as per Rule 3 of the POPS Rules. In the instant case, the recipient is located in Japan, and therefore, the place of provision of service is outside India.*
5.	*The payment for such service has been received by the provider of service in convertible foreign exchange*	*Payment has been received in foreign exchange, undisputedly.*
6.	*The provider of service and recipient of service are not merely establishments of a distinct person*	*Appellant and NSEC Japan are not establishments of a distinct person.* *The Hon'ble Gujarat High Court in the case of* ***Linde Engineering India Pvt. Ltd. v. Union of India – 2020 (8) TMI 181 – Gujarat High Court****, has held that separately incorporated holding company in a different country, and a subsidiary incorporated separately in India, are not "establishments of a distinct person"*

4.5. Accordingly, since the Appellant is fulfilling all the above conditions, in both the positive list as well as the negative list, the Administrative and Marketing service rendered by the Appellant to NSEC Japan would squarely fall within the ambit of "export of services". Therefore, the Appellant is not liable to pay any service tax on the transaction.

4.6. In this regard, reliance is placed on the decision of the CESTAT Chandigarh in the case of ***Microsoft Corporation (India) Pvt. Ltd. v. Commr. of C. Ex., Delhi – III – 2018 (18) G.S.T.L. 465 (Tri. – Chan.)*** affirmed by the Hon'ble Supreme Court in ***Commissioner of Service Tax – III Mumbai v. M/s. Vodafone Idea Ltd. – 2025 (8) TMI 938 – Supreme Court***, in a similar set of facts wherein the assessee was providing marketing services in India, for its overseas group company in Singapore, and was charging consideration from the overseas company basis the cost plus model. The Department attempted to levy service tax on the grounds that such service was being rendered in India. However, the Tribunal set aside the demand by holding that such services amounts to export of services since it satisfies all the conditions of Export of Service Rules, 2005.

4.7. Reliance is also placed on the decision of the CESTAT New Delhi in the case of ***M/s. Research in Motion India Pvt. Ltd. v. CCE, Delhi – 2018 (3) TMI 509 – CESTAT New Delhi*** , also affirmed by the Hon'ble Supreme Court in ***Commissioner of Service Tax – III Mumbai v. M/s. Vodafone Idea Ltd (supra)***, wherein it was held that marketing and promotion services rendered for a foreign entity, for which payment was made in

convertible foreign currency, was held to be export of services.

4.8. Reliance is also placed on the following decisions (both during the positive list and negative list regime) wherein in similar set of facts, it was held that such services amount to export of services, for which no service tax is liable to be paid.

M/s. Witness Systems Software (India) Pvt. Ltd. v. CCE, Bangalore and M/s. Witness Software Systems (India) Pvt. Ltd. v. Commissioner of Service Tax, Bangalore – 2026 (5) TMI 367 – CESTAT Bangalore

Microsoft Corporation (India) Pvt. Ltd. v. Commissioner of Service Tax, Delhi, CCE & ST, Gurgaon – I – 2024 (5) TMI 780 – CESTAT Chandigarh

Wacker Chemie India Pvt. Ltd. v. Commr of Service Tax – VI, Mumbai – 2025 (11) TMI 1698 – CESTAT Mumbai

Verizon India Pvt. Ltd. v. Commr of Service Tax, Delhi – 2021 (45) G.S.T.L. 275 (Tri. – Del).

Blackberry India Pvt. Ltd. v. CCE, Delhi – (2023) 10 Centax 236 (Tri. – Del.) affirmed in (2023) 9 Centax 113 (Del.)

Commissioner of Central Tax, GST Commissionerate, Bengaluru East v. Informatica Business Solutions Pvt.

Ltd. – (2025) 26 Centax 167 (Tri. – Bang.)

Commissioner of CGST & Central Excise, Kolkata South v. M/s. Global Reach & Anr. – 2026 (1) TMI 519 – CESTAT Kolkata

4.9. Also, reliance is placed on the **Circular No. 111/5/2009-ST dated 24.02.2009** wherein also it has been clarified that for services covered under Rule 3(1)(iii), in order to qualify the service as "Export of Service", the relevant factor is the location of the service receiver and not the place of performance. It is a trite law that circulars are binding on the Department. Reliance is placed on the decision in ***UOI v. Arviva Industries (I) Ltd 2008 (10) STR 534 (SC)***.

4.10. Accordingly, placing reliance on the above, the appellant submits that the services provided by the Appellant amount to export of services, for which no service tax is liable to be paid.

SERVICE TAX IS NOT LEVIABLE ON THE AMOUNT WHICH IS IN THE NATURE OF REIMBURSEMENTS.

5. In the instant case, the Department has also alleged that as per the Balance Sheet of the Appellant, the Appellant has earnings from 'Reimbursement of expenses in foreign exchange' amounting to Rs. 45,29,736/- which is required to be included in the export value. In this regard, the appellant submits that the entire transaction amounts to export of service for which no service tax is liable to be paid. Accordingly, such reimbursements also do not attract any service tax.

Without prejudice, the appellant submitted that the reimbursements of the cost /expenses incurred by the Appellant cannot be regarded as consideration flowing to the Appellant towards any taxable service provided by the Appellant. In the absence of any consideration charged by the Appellant, there cannot be any levy of service tax under the provisions of the Finance Act, 1994.

5.1. It is submitted that the issue is no longer res-integra since the Hon'ble Supreme Court in the case of ***Union of India v. Intercontinental Consultants & Technocrats Pvt. Ltd. 2018 (10) GSTL 401 (SC)*** has already decided this issue for the period prior to the amendment of Section 67 relating to consideration vide Finance Act, 2015, w.e.f. 14.05.2015. The Hon'ble Supreme Court held that reimbursable expenditure or cost were not includible in the scope of consideration for services under the unamended Section 67 of the Chapter V of the Finance Act, 1994. Therefore, in the absence of any such mandate in the Act, Rule 5 of the Service Tax Valuation Rules providing for inclusion of reimbursable expenditure and costs in the value of consideration is *ultra-vires* the Act.

5.2. Reliance in this regard is also placed on the following decisions:

> ***M/s. Mars Mountain Security Services Pvt. Ltd. v. Principal Commissioner of CGST & C. Ex., Patna – 2026 (4) TMI 3 – CESTAT Kolkata***
>
> ***M/s. Rajarshi Motors Private Limited v. Commissioner of Central Excise,***

Shillong, 2024 (8) TMI 18 - CESTAT Kolkata

M/s Apollo Gleneagles Hospital Limited Versus Commissioner of Service Tax, Kolkata, 2024 (8) TMI 1604 - CESTAT Kolkata

5.3. Therefore, in view of such settled principle of law it is submitted that since the amendment was prospective in nature and the period of dispute in the present case is prior to 14.05.2015, therefore, the Appellant was not liable to pay any service tax on the reimbursement of expenses during the relevant period.

THE APPELLANT HAS RIGHTLY AVAILED THE CENVAT CREDIT AMOUNTING TO RS. 6,96,493/-.

6. The appellant submitted that the Department has denied the CENVAT Credit of Rs. 6,96,493/- during the period F.Y. 2011-12 on the grounds of failing to produce any documents in support of availing the credit. In this regard, the appellant submitted that such denial of CENVAT Credit is wholly unjustified and without any basis, since the Appellant has disclosed the availment of such CENVAT Credit in the ST-3 returns filed periodically. The Department has invoked the extended period of limitation, which is not sustainable, since the availment of such credit was disclosed in the returns. Therefore, such demand is entirely barred by limitation. Further, the Appellant submitted all the details, including the original copy of invoices in respect of such invoices on which CENVAT Credit is availed, at the time of audit as well as filing of

periodical refund claims. The said fact is evident from pages 125 to 128 of the appeal paperbook which contains the periodical refund claims of the Appellant, wherein it specially mentioned that the relevant documents including copies of invoices are submitted. Therefore, the denial of CENVAT Credit of Rs. 6,96,493/- is without any basis, and is liable to be set aside.

EXTENDED PERIOD OF LIMITATION IS NOT INVOKABLE.

7. The impugned order has confirmed the demand by invoking the proviso to Section 73(1) of the Finance Act, 1994. However, the Department has failed to bring to light any positive act on part of the Appellant while invoking extended period. It is submitted that the normal period of limitation during the relevant period was 18 months. The underlying SCN has been issued on 19.04.2016, therefore, the demand till 31.03.2014, is barred by limitation. In this regard, the appellant submits that the entire demand has been raised from the ST-3 returns and balance sheet of the Appellant. It is a trite law that extended period cannot be invoked since the Appellant was regularly filing the statutory returns. In this regard, reliance is placed on the following decisions –

M/s. DTM Construction (India) Limited v. Commissioner of Service Tax, Kolkata – 2024 (3) TMI 71 – CESTAT Kolkata

M/s. M.A. Enterprise v. CCE & ST, Kolkata – 2024 (4) TMI 906 – CESTAT Kolkata

7.1. Further, reliance in this regard is placed on the decision of ***Black Box Ltd v. Commissioner of C. Ex. & S.T. Ahmedabad III – 2023 (73) G.S.T.L. 381 (Tri. – Ahmd.)*** wherein it was held that when the assessee has disclosed the transaction in the balance sheet, no suppression or mis-declaration can be attributed to invoke extended period of limitation. Reliance is also placed on the decision in ***M/s. Borthakur & Co. v. CCE & ST – 2024 (3) TMI 455 – CESTAT Kolkata***, wherein similar proposition of law was upheld.

7.2. Further, it is a trite law that when the dispute has arisen out of interpretational issue as is evident from the various decisions cited supra, no *malafide* can be attributed to invoke extended period of limitation / levy penalty. In this regard reliance is placed on the following decisions –

Maruti Suzuki Ltd. v. CCE, Delhi – III – 2009 (240) E.L.T. 641 (S.C.)

M/s. Amit Metaliks Limited v. Commr. of Central Excise, Bolpur – 2023 (11) TMI 721 – CESTAT Kolkata

7.3. As regards the demand on availment of CENVAT Credit, which is for the FY 2011-12 only, the Appellant submits that they had duly disclosed the required details in the statutory returns. The invoices basis which CENVAT Credit was availed was not required to be enclosed with the returns. Therefore, extended period cannot be invoked. In this regard, reliance is placed on the decision of the Hon'ble CESTAT in the case of ***M/s. Hero MotoCorp Limited (Global Parts Center) v. Commissioner (Appeals), CE and CGST, Jaipur –***

2024-VIL-437-CESTAT-DEL-CE wherein it was held that extended period of limitation cannot be invoked for non-disclosure of information which is not required to be disclosed in the ER-1 return or other statutory forms. Therefore, the demand till the period March 2014, being barred by limitation ought to be set aside.

8. The appellant submits that as the principal demand itself is not sustainable, the ancillary demands for interest and penalty have no legs to stand. Further, in view of the fact that the Appellant has not suppressed any information, the demand for penalty is not sustainable.

8.1. Regarding the Penalty of Rs. 38,600/- imposed under Section 77(1)(a) of the Finance Act, 1994, the appellant submits that they were not required to take the registration, as the service rendered by them was not liable to service tax. Hence, the penalty imposed under section 77(1)(a) of the Finance Act is not sustainable. The Appellant further submits that even if penalty is imposable, the maximum penalty imposable under the said section for delay in taking registration is Rs.10,000/- only. Accordingly, the Appellant prayed for reducing the penalty imposed under the said section to Rs.10,000/-

9. The Ld. A.R. reiterated the findings in the impugned order.

10. Heard both sides and perused the appeal documents.

11. From the facts on record, we find that the Appellant have entered into agreements with the overseas entity NSEC Japan, for providing Marketing

and Administrative support service. As per such agreements, the Appellant has to provide the service of gathering information of customers, competitors, constructors, suppliers, relevant companies related to NSEC Japan and its subsidiary companies or other related organizations. Further, the Appellant also has to provide administrative support and communication coordination between the NSEC Japan and its Indian customers. We find that the department has alleged that the Appellant has not provided services to a recipient located outside India and hence the services cannot be considered as 'Export of Service'. As the Appellant performed their activities within the country, the Ld. Adjudicating authority confirmed the demand of service tax. Thus, we observe that the primary issue to be decided in the appeal is the place where the recipient of the service is located.

11.1. A perusal of the agreements executed by the Appellant with NSEC Japan clearly shows that the Marketing and Administrative Support services are provided by the Appellant to NSEC Japan, which is a company located outside India. We find that the Department has also not disputed the same, as evident from para 2.1.0 of the underlying SCN.We observe that the Appellant carries out the gathering of information of customers, competitors, suppliers, and providing administrative support etc., to NSEC Japan, in India. In this regard, we are of the view that the place of performance of contract has no relation whatsoever in determining the recipient of services. It is a settled position of law that the **recipient is determined basis the person who is responsible for making the payment**.

11.2. We find that the above said view has been held in the decision of the Larger Bench of the Tribunal in the case of ***Arcelor Mittal Stainless (I) Pvt. Ltd. v. Commissioner of Service Tax, Mumbai – II – (2023) 11 Centax 269 (Tri. – LB)***, wherein on similar set of facts, it has been held that the relevant factor for determining if a service is exported, is the location of service receiver. In the instant case, we find that NSEC Japan is receiving the Administrative and Marketing service, and is therefore, obliged to make the payment. Therefore, we find that NSEC Japan is the service recipient, which is an entity outside India. Accordingly, we hold that the Appellant have duly exported the services rendered by them to an entity located outside India, and therefore, the services rendered are categorisable as 'Export of Service'. We find that the same view has been held in the case of ***Kingfisher Airlines Pvt. Ltd. v. Commissioner of Service Tax, Mumbai – I – 2015 (37) S.T.R. 358 (Tri. – Mumbai)***.

11.3. We find that the demand in this case covers both the positive list and negative list regime. Thus, it is pertinent to refer to the provisions of both the positive list and negative list regime. During the positive list regime, the provisions concerning export of service were contained in Export of Service Rules 2005. As per Rule 3(1)(iii) of the Export of Service Rules, which was applicable to the Business Auxiliary Services and Business Support services being rendered by the Appellant, export of taxable services provided in relation to business or commerce, shall mean the provision of such services to a recipient located outside India. Further, in Rule 3(2) of the Export of Service Rules, 2005, it is provided that the provision of any taxable service specified in sub-rule

(1) shall be treated as export of service when the payment for such service is received by the service provider in convertible foreign currency. As discussed in paras 11.1 and 11.2 supra, the recipient of service in this case is located outside India.

11.4. In the negative list regime, we find that Rule 6A of the Service Tax Rules, 1994 provides that the provision of any service provided or agreed to be provided shall be treated as export of service, when–

(a) The provider of service is located in the taxable territory

(b) The recipient of service is located outside India

(c) The service is not a service specified in the section 66D of the Act,

(d) The place of provision of the service is outside India

(e) The payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act.

Further, Rule 3 of the Place of Provision of Service Rules, 2012 [‘POPS Rules’] provides that the place of provision of a service shall be the location of the recipient of service.

11.5. Therefore, we observe that in the positive list regime, the requirements for a transaction to be treated as export of service was that such services are to be provided to a recipient outside India, and the payment has to be received in convertible foreign exchange. In the negative list, apart from such two conditions, other conditions as mentioned above are also prescribed, in order for a transaction to qualify as export of services. We find that the Department has disputed the transaction and attempted to levy service tax on the same, solely basis the contention that such services were rendered in India. We are of the view that the place of performance has no relation whatsoever, and only the location of recipient is necessary to determine the place of provision of service. In the instant case, it is on record that the Appellant has entered into agreements with NSEC Japan, wherein Administrative and Marketing Services are provided on a principal to principal basis and the service recipient is located outside India. Hence, the service rendered by the Appellant qualify as 'Export of Service'.

11.6. In support of our view, we rely upon the decision of CESTAT Chandigarh in the case of ***Microsoft Corporation (India) Pvt. Ltd. v. Commr. of C. Ex., Delhi – III – 2018 (18) G.S.T.L. 465 (Tri. – Chan.)*** which is affirmed by the Hon'ble Supreme Court in ***Commissioner of Service Tax – III Mumbai v. M/s. Vodafone Idea Ltd. – 2025 (8) TMI 938 – Supreme Court***, in a similar set of facts wherein the assessee was providing marketing services in India, for its overseas group company in Singapore, and was charging consideration from the overseas company

basis the cost plus model. The Department attempted to levy service tax on the grounds that such service was being rendered in India. However, the Tribunal set aside the demand by holding that such services amounts to 'export of services' since it satisfies all the conditions of Export of Service Rules, 2005.

11.7. We also place our reliance on the decision of the CESTAT New Delhi in the case of ***M/s. Research in Motion India Pvt. Ltd. v. CCE, Delhi – 2018 (3) TMI 509 – CESTAT New Delhi*** also affirmed by the Hon'ble Supreme Court in ***Commissioner of Service Tax – III Mumbai v. M/s. Vodafone Idea Ltd (supra)***, wherein it was held that marketing and promotion services rendered for a foreign entity, for which payment was made in convertible foreign currency, was held to be export of services.

11.8. In the present case, we find that the Appellant has fulfilled all the conditions in the positive and negative list regime, for the instant transaction to qualify as "export of services". Accordingly, we hold that the services rendered by the Appellant are 'Export of services' on which no service tax was payable by them. Thus, we hold that the demand of service tax confirmed in the impugned order is legally not sustainable and hence we set aside the same. As the demand of service tax is not sustained, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

12. Regarding the denial of CENVAT Credit in the impugned order, we find that the Department has denied the CENVAT Credit of Rs. 6,96,493/- during

the period F.Y. 2011-12 on the ground that the appellant has failed to produce any documents in support of availing the credit. In this regard, we find that CENVAT Credit has been denied by invoking extended period of limitation. We find that the Appellant has disclosed the availment of such CENVAT Credit in the ST-3 returns filed periodically. Since the availment of such credit was disclosed in the returns, we hold that invoking the extended period of limitation is not sustainable, Therefore, we find that the said demand is entirely barred by limitation. Further, we find that the Appellant has ssubmitted all the details, including the original copy of invoices in respect of such invoices on which CENVAT Credit is availed, at the time of audit as well as filing of periodical refund claims. The said fact is evident from pages 125 to 128 of the appeal paperbook which contains the periodical refund claims of the Appellant, wherein it specially mentioned that the relevant documents including copies of invoices are submitted. Therefore, we hold that the denial of CENVAT Credit of Rs. 6,96,493/- is without any basis, and hence we set aside the same.

13. The Appellant has contested the demand confirmed on the ground of limitation also. We find that the impugned order has confirmed the demand by invoking the proviso to Section 73(1) of the Finance Act, 1994. However, the Department has failed to bring to light any positive act on part of the Appellant while invoking extended period. The normal period of limitation during the relevant period was 18 months. The underlying SCN has been issued on 19.04.2016, therefore, the demand till 31.03.2014, is barred by limitation. It is a trite law that extended period cannot be invoked since the

Appellant was regularly filing the statutory returns. Accordingly, we hold that the demands confirmed in the impugned order by invoking the extended period of limitation are not sustainable and hence we set aside the same.

14. Regarding the Penalty of Rs. 38,600/- imposed under Section 77(1)(a) of the Finance Act, 1994, we observe that even if the service rendered by the Appellant are classifiable as 'Export of Service' and exempted from payment of service tax, the Appellant is required to take registration and file their returns disclosing the details of exempted service rendered by them. In the present case, we find that there was a delay of 193 days in taking the registration. Thus, we observe that the appellant is liable for penalty under section 77(1)(a) of the Finance Act. However, we find that the maximum penalty imposable under the said section for delay in taking registration is Rs.10,000/- only. Accordingly, we restrict the penalty imposed under the said section to Rs.10,000/-.

14. In view of the above findings, we pass the following order:

A. The services rendered by the Appellant are 'Export of services' on which no service tax was payable. Thus, we set aside the demand of service tax confirmed in the impugned order on this count. The demand of interest and penalty imposed on this count is also set aside.

B. We hold that the denial of CENVAT Credit of Rs. 6,96,493/- is not sustainable and hence the demand confirmed on this count in the impugned order is set aside along with interest and penalty.

C. We restrict the penalty imposed under the section 77(1)(a) of the Finance Act to Rs.10,000/-

D. The appeal filed by the appellant is disposed of on the above terms.

(Order Pronounced in Open court on 30.06.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP