CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 22990 of 2014
(Arising out of **Order-in-Original** No.HYD-EXCUS-002-COM-013-14-15 dated 30.05.2014 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

M/s Mars International India Pvt Ltd., .. **APPELLANT**
11th Floor, Western Aqua,
Whitefield, Hitechcity,
Hyderabad, Telangana - 500 034.

VERSUS

Commissioner Of Central Tax Hyderabad - II .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Deepak Suneja & Shri Manish Sachdeva, Advocates for the Appellant.
Shri B. Sangameshwar Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30512/2025

Date of Hearing: 25.07.2025
Date of Decision: 21.11.2025

[ORDER PER: ANGAD PRASAD]

M/s Mars International India Pvt Ltd., (hereinafter referred to as appellant) has filed this appeal against the Impugned Order/Order-in-Original No. HYD-EXCUS-002-COM-013-14-15 dated 30.05.2014 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad.

2. Appellant was engaged in trading of chocolates and manufacturing as well as sale of pet foods and related accessories. A Service Tax audit for the period April 2006 to October 2011 was conducted by the Audit Commissionerate. In pursuance of the audit, SCN dated 09.04.2012 was issued wherein demands under various categories of services, were proposed for the period April 2006 to March 2011 on the ground that Service Tax is

leviable under reverse charge(RCM). The appellant had filed reply to the SCN and had contested the demands on facts, merits and limitation. Learned Commissioner, without considering the submissions made by the appellant, the passed order vide OIO dated 13.05.2014 confirming the demand as under:

> (i) I confirm the demand for an amount of Rs. 34,31,662/- (Rupees Thirty Four Lakhs Thirty One Thousand Six Hundred and Sixty Two only) towards Service Tax (including Education Cess and Secondary Higher Education Cess), under the category of "Goods Transport Agency Service", for the period October, 2006 to March, 2011 under Section 73(2) of the Finance Act, 1994 against M/s Mars International India Pvt Ltd., Hyderabad; The rest of demand amounting to Rs. 25,47,073/- is hereby dropped.
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> (ii)I confirm the demand for an amount of Rs. 2,13,04,862/- (Rupees Two Crore Thirteen Lakhs Four Thousand Eight Hundred and Sixty Two only) towards Service Tax (including Education Cess and Secondary Higher Education Cess), under the category of "Management or Business Consultant Service", for the period October, 2006 to March, 2011 under Section 73(2) of the Finance Act, 1994 against M/s Mars International India Pvt Ltd., Hyderabad; The rest of demand amounting to Rs. 7,60,859/- is dropped.
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> (iii)I confirm the demand for an amount of Rs. 36,58,468/- (Rupees Thirty Six Lakhs Fifty Eight Thousand Four Hundred and Sixty Eight only) towards Service Tax (including Education Cess and Secondary Higher Education Cess) under "Scientific and Technical Consultancy Service" for the period 2009-2010 under Section 73(2) of the Finance Act, 1994 against M/s Mars International India Pvt Ltd., Hyderabad;
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> (iv)I confirm the demand of interest at the applicable rates on the amount confirmed at (i), (ii) and (iii) above, under Section 75 of the Finance Act, 1994 on M/s Mars International India Pvt Ltd., Hyderabad;
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> (v) I impose a penalty of Rs. 2,83,94,992/- (Rupees Two Crore Eighty Three Lakhs Ninety Four Thousand Nine Hundred and Ninety Two only)

under Section 78 of the Finance Act, 1994 on M/s Mars International India Pvt Ltd., Hyderabad. However, this penalty is liable to be reduced to 25% of the Service Tax payable as determined at (i), (ii) and (iii) above, in the case said Service Tax is paid along with interest and reduced penalty amount within 30 days from the date of communication of this order;

3. Learned Counsel for the appellant submits that the demand for the period April 2006 to October 2006 was dropped as they were clearly beyond the period of even 5 years of limitation and demand from the GTA category to the tune of INR 25,47,073 was also dropped to the extent of the charges related to (i) Octroi charges and (ii) Ocean Freight charges.

4. The appellant had paid pre-deposit amounting to 7.5% of the confirmed demand. Subsequently due to pendency of the case, the Appellant had deposited the remaining confirmed demand through challans dated 27.04.2023 under protest.

5. Heard Learned Counsel for the appellant Shri Deepak Suneja & Shri Manish Sachdeva and Learned Representative of Department Shri B. Sangameshwar Rao and perused the records with their submissions.

6. Regarding Goods Transport Agency service (GTA). Learned Counsel for the appellant submits that the local delivery charges are reimbursements given to distributors and C&F agents on account of various reasons namely channel expenses, margins, schemes, damages freight incurred by them for delivering products, discounts. The distributors and C&F agents take reimbursement of local freight (rickshaw) from the appellant. The appellant do not take any services from Goods Transport Agency (GTA), and no consignment note is issued by any GTA to the Appellant. Therefore, no Service tax is leviable under Section 65 (105)(zzp) of the Act.

7. Learned Counsel for the appellant also submits that the appellant is not the payer of the freight, and therefore Rule 2 (1) (d) (v) is not applicable. The distributor and C&F agents are paying the freight themselves and thereafter claiming reimbursements from the appellant.

8. Learned Counsel for the appellant submits that the appellant sells products to the Distributors and C&F agents are consignment agents, who provide services on their own account to the appellant. Out of various charges like margins, schemes, damages, freight is also recovered by them. Hence the appellant do not avail the services from the GTAs.

9. Appellant relied on the following decisions:

(i) Rajalakshmi Paper Mills Pvt Ltd., Vs CCE [2011 (22) S.T.R. 635 (Tri-Chennai)]

(ii) Sumangalam Suitings Pvt Ltd., Vs CCE [2010 (19) S.T.R. 809 (Tri-Del.)]

10. Learned Counsel for the appellant argued that the amount of freight is claimed as reimbursement by the distributor and C&F Agents from the respective invoices. Prior to 14.05.2015, the value of reimbursements by the service providers is not includible in the value of services under Section 67 of the Act in the light of Hon'ble Delhi High Court's judgment in Intercontinental Consultants and Technocrats Pvt Ltd., Vs Union of India [2013 (290) S.T.R. 9 (Del.)] and affirmed by Hon'ble Supreme Court in Union of India Vs Intercontinental Consultants and Technocrats Pvt Ltd., [2018 (10)G.S.T.L. 401 (S.C.)]

11. Learned Counsel for the appellant also submits that the appellant is also entitled for exemption under on the freight amounts, where consignment value is lower than INR 1,500, in view of Notification No. 34/2004 dated 03.12.2004.

12. The finding of Learned Commissioner that the appellant had not claimed the exemption in the returns is erroneous in as much as the appellant had been considering the services as non-taxable in view of above submissions. The denial of exemption on this ground is not proper. Since, there is no prohibition for claiming exemption even on the adjudication or appellate stage as that case may be. Learned Counsel for the appellant relied on following judgments in this regard:

(i)Share Medical Care Vs Union of India [2007 (209) E.L.T. 321 (S.C.)]

(ii)Indfos Industries Ltd., Vs CCE [2012 (26) S.T.R 129 (Tri-Del.)] affirmed by Allahabad High Court in 2015 (40) S.T.R. 220 (All.).

13. Stickering charges relate to stickering of chocolate products and are not linked to the provision of transport service. Hence the Service Tax is not leviable under RCM under Rule 2 (1) (d) (v) of ST Rules read with Notification No. 36/2004 dated 31.12.2004.

14. Learned Representative of Department reiterates the finding given by Lower Authority, Department has relied on the following decisions:

(i) Oren Hydrocarbons Pvt Ltd., Vs Commissioner of Customs, Central Excise and Service Tax, Tirupati [2020(40) G.S.T.L. 324 (Tri-hyd.)]

(ii) Commissioner of Central Excise, Salem Vs Suibramania Siva Co-Op. Sugar Mills Ltd., [2014 (35) S.T.R. 500 (Mad.)]

(iii) Commissioner of Central Excise, Jaipur – II Vs Rajasthan State Mines & Minerals [2017 (4) G.S.T.L. 94 (Tri-Del.)]

15. So far as the Goods Transport Agency service is concerned, since no service has been availed through Goods Transport Agency and no consignment has been issued, in such a conditions, considering the legal provisions, no Service Tax is payable. Section 65(105) (zzp) defines taxable service as any service provided or to be provided to any person, by a Goods Transport

Agency, in relation to transport of goods by road in goods carriage Section 65b (26) defines GTA "Goods Transport Agency" means any person should provides service in relation to transport of goods by road and issue consignment note, by whatever name called. There is no any consignment note. Since appellant is not the payer of the freight, the distributor and C&F agents are paying the freight themselves. The appellant do not avail the services from the GTA. The Coordinate Bench Chennai in the case of Rajalakshmi Paper Mills Pvt Ltd., supra, held that "Consignment agent paying freight to the transporters and deducting the freight from the total amount received from ultimate buyers. It is not established that consignment agents have paid the freight amounts on behalf of appellants. Consignment agents squarely fall under the category of persons who are liable to pay Service tax since they have paid freight amount themselves".

16. Appellant claims exemption under Notification No. 34/2004 dated 03.12.2004 whereas Lower Authorities denied the benefit on the ground that it never claimed in the ST-3 filed by appellant. Hon'ble Supreme Court in the case of Share Medical Care, supra, held that "if no time is fixed for the purpose of getting benefit under the exemption notification, it could be claimed at any time. If the notification applies, the benefit there under must be extended to the appellant. The Court held that the authorities as well as the Tribunal were not right in holding that the appellant ought to have claimed the benefit of the notification at the time of filing of classification lists and not at a subsequent stage". This decision was followed by Principal Bench New Delhi in the case of Indfos Industries Ltd., supra. Therefore, finding of the Learned Commissioner is not according to settled law. Thus, in our considered view, the appellant is entitled to take benefit of Notification No. 34/2004 dated 03.12.2004 at any stage. In so far as decision of Oren Hydrocarbons Pvt Ltd., supra, which is

cited by Department are concern, since no any transportation of goods to the appellant is own unit, therefore, this case law is distinguishable.

17. Therefore, we find, regarding Goods Transport Agency (GTA) service, order of Commissioner is not sustainable.

18. Regarding Management or Business Consultant Services (MBCS). Learned Counsel for the appellant submits that the services i.e. Management or Business Consultant (MBC) under Section 65 (65) of the Act, means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management. In the present case, the appellant had employed certain employees from its overseas principal related companies, on secondment basis. Learned Counsel for the appellant argued that the Service may be covered under Section 65 (68) of the Act under the category of "Manpower Recruitment or Supply Agency". As per Hon'ble Supreme Court judgment in CCE, ST Vs Northern Operating Systems Pvt Ltd., [2022 (61) G.S.T.L. 129 (S.C.)]. However, since this categorization was neither alleged in the SCN, nor it was confirmed in the OIO. Service Tax demand cannot be confirmed under a category which is not proposed in the Show Cause Notice. Learned Counsel for the appellant relied on following decisions:

(i) Prashanh Sai Builders Vs Commissioner of Central Tax [2024 (12) TMI 946 – CESTAT Hyderabad]

(ii) Raghava Estates & Properties Ltd., Vs Commissioner of Central Excise [2024 (8) TMI 1336 – CESTAT Hyderabad]

(iii) ST Electricals Pvt Ltd., Vs Commissioner of Central Excise [2019 (20) G.S.T/L. 273 (Tri-Mumbai)]

(iv) Commissioner of Central Excise Vs ST Electrical pvt Ltd., [(2024) 16 Centax 385 (S.C.)]

(v) Commissioner of Central Excise Vs Ballapur Industries Ltd., [2007 (215) E.L.T. 489 (S.C.)]

(vi) Commissioner of Central Excise Vs Mahakoshal Beverages Pvt Ltd., [2014 (33) S.T.R. 616 (Kar.)]

(vii) Radiowani Vs CST [2019 (21) G.S.T.L. 157 (Tri-Mumbai)]

(viii) H.P. Singh Chanda Vs C.CGST [(2024) 24 Centax 61 (Tri-Chan.)]

19. Appellant states that he had employed certain employees from its overseas companies of secondment basis. Agreement dated 01.04.2003 provides that "EFFEM (Appellant) had hired the services of expatriate employees who are currently employed with EC (Overseas Companies). EC has agreed to release these employees to work for EFFEM. Such employees hereinafter referred to as employees." Relating to remuneration, it is provided that "in consideration of the employment services provided, the employees to EFFEM, EFFEM agrees to same reimburse EC their salaries and other related benefits, from time to time." Hon'ble Supreme Court in the case of Commissioner of Central Excise and Service Tax Vs Northern Operating Private Ltd., supra, held that "the assessee was, service recipient of the overseas company concerned, which can be said to provided man power supply service or a taxable service. Therefore, argument of the Learned Counsel that the service between the appellant and expatriates constitute employment service and therefore, outside the perview of Service Tax under Section 65b (44) of the Finance Act. In view of the Supreme Court decision Learned Counsel

submits that service may be covered under Section 65(68) of the Finance Act under the category of "Man Power Recruitment or Supply Agency" and not under Management of Business Consultant service, as proposed in Show Cause Notice. Since, Show Cause Notice has not been issued under the category of "Man Power Recruitment or Supply Agency" as defined under Section 65(68) of the Finance Act, the Service Tax cannot confirmed under this category. It is a settled law, that when no demand was made under a specific category, the authorities could not have confirmed demand under the said category. Therefore, demand under Management or Business Consultant category is not sustainable.

20. Regarding Scientific and Technical Consultancy Services. Learned Counsel for the appellant submits that the appellant is engaged in manufacture of pet care products or acquire products from co-manufacture. The companies under the agreement are group companies, these companies are doing research for developing the pet care products in house. Neither the companies are "Scientific or Technocrats or any Science or Technology Institution or Organization", nor there are any finding in this regard in the impugned order. Therefore, the services are not taxable under Section 65 (105) (za) of the Finance Act.

21. Learned Counsel for the appellant relied on the following judgments in this regard:

(i) Commissioner of Central Excise Vs Hindustan Aeronautics Ltd., [2015 (40) S.T.R. 289 (Tri-Mumbai)]

(ii) Administrative Staff College of India Vs Commissioner of Central Excise [2008 (8) TMI 194 – CESTAT, Banglore]

(iii) Maruti Suzuki India Ltd., Vs Commissioner of Central Excise, Delhi [2018 (5) TMI 216 – CESTAT Chandigarh]

22. Learned Counsel for the appellant's submits that the research and development expenditure was incurred pursuant to a cost-sharing arrangement among group entities. Under this agreement, there is no service provider-service recipient relationship, and therefore there should not be any Service Tax. Learned Counsel for the appellant relied on following judgment.

(i) Gujarat State Fertilizers & Chemicals Ltd., Vs CCE [2016 (45) S.T.R. 489 (S.C.)]

(ii) Reliance ADA 'Group Pvt Ltd., Vs CST [2016(43) S.T.R. 372 (Tri-Mumbai)]

(iii) HT Media Ltd., Vs Commissioner of Service Tax [2017 (7) G.S.T.L. 364 (Tri-Del.)]

(iv) Historic Resort Hotels Pvt Ltd., Vs Commissioner of Central Excise [2018 (9) G.S.T.L. 433 (Tri-Del.)]

23. Learned AR for the Department reiterates findings given by the Learned Commissioner.

24. As per Show Cause Notice, appellant incurred expenditure towards enhancing the produce (pet food) quality and manufacturing process for the service received from the abroad, whereas per the appellant, there is no service involve, as these are not rendering any service to the appellant, only allocating common expenses incurred by them and in the absence of service provider and service receiver relation, no Service Tax can be demanded.

25. As per Section 65 (105) (za) taxable service means any service provided or to be provided to any person by a scientist a technocrat or any science and technology institution or organization, in relation to scientific or technical consultancy. There is no any allegation that any service were received by such person or institution as provided in the above provision, the appellant is engaged of manufacturing of pet care products or acquire products from co-

manufacture. The company under the agreement is for developing the pet care products in house. They are not scientific or technocrat or related institution there is no any service provider or recipient. In these circumstances, order of Commissioner is not sustainable.

26. Learned Counsel for the appellant submits that there is no suppression of facts. Something which was required to be declared in the returns has not been declared or something which was sought by the Department was not submitted. There is no other meaning of 'suppression'. The declaration of particulars, as per the appellant's understanding, does not constitute "suppression of facts". When the appellant believed service tax was leviable only on the GTA services to the extent they had paid to the GTA agency, the appellant couldn't have declared anything more.

27. Further, when the appellant believed that the services of employees and cost sharing were not taxable, it was inconceivable as to how appellant could have declared the amount paid for these expenses as taxable service.

28. There was no field in the ST-3 returns to declare information relating to agreements entered for secondment or cost sharing agreements, or even what was the arrangement between the appellant and C&F agents/distributors. When there was no field in the returns, it could not be the case of suppression on appellant's part. Learned Counsel for the appellant relied on the decision of Commissioner of Central Excise Vs Reliance Industries Ltd., [(2023) 8 Centax 96 (S.C.)].

29. Principal Bench CESTAT Delhi in the case of G.D Goenka Pvt Ltd., Vs CCGST [2023-TIOL-782-CESTAT-DEL.], had clearly stated the reasons for which extended period of limitation was not invokable, namely "Difference of opinion between assessee and Revenue could not be a case of suppression by

the assessee, the mere existence of self-assessment regime does not put any demand into the bracket of 'suppression', if that was the case, then the provisions regarding suppression of facts would be rendered otiose, the appellant cannot be faulted for not disclosing anything which it is not required to disclose and the assessee can only self-assess as per his understanding. Once the assessee self assessee, it is department's responsibility to scrutinize the returns." The appellant was of the bona fide belief that no Service Tax was leviable on the above. Therefore, extended period of limitation should not be invoked.

30. Appellant further submits that there was reasonable cause for non-depositing of tax and in view of Section 80 of the Finance Act, penalties are not imposable.

31. Learned AR reiterates the findings given by the Lower Authority.

32. Hon'ble Supreme Court in the case of Anand Nishikawa Company Ltd., Vs Commissioner of Central Excise, Meerut [2005 (7) SCC 749] held that 'In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.'

33. Hon'ble Supreme Court in the case of Pushpam Pharmaceutical Company Vs Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462] held that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. In the instant case no any facts that appellant was not furnish any information which

was required by Department. Appellant also submitted that there was no field in the ST-3 returns to declare information relating to agreements for secondment, it could not be, the suppression of facts on the appellants part. Therefore, no any suppression of facts, therefore, extended period of limitation is not invokable.

34. Since, demand is not tenable both on merit and limitation, therefore, imposing of penalties also not sustainable.

35. In view of the above, appeal is liable to be allowed.

36. Appeal allowed.

(Pronounced in open court on _21.11.2025_)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha