

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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10568 of 2014- DB

(Arising out of OIO-SUR-EXCUS-001-COM-57-58-59-13-14 dated 31/12/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

J B Exports

.....Appellant

Now Bindal Exports Pvt Ltd
270, Bindal House, PunaKumbharia Road.
Surat, Gujarat

VERSUS

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

.....Respondent

Vadodara-II, GST Bhavan,
Subhanpura, Vadodara
Vadodara, Gujarat- 390023

With

Service Tax Appeal No. 13917 of 2014- DB

(Arising out of OIO-SUR-EXCUS-001-COM-042-14-15 dated 05/09/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Oswal Mills India

.....Appellant

1-tulsi Apartment, Adarsh Society,
Near SMC Office, Athwalines,
Surat, Gujarat

VERSUS

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

.....Respondent

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

And

Service Tax Appeal No. 11773 of 2016- DB

(Arising out of OIO-SUR-EXCUS-001-COM-030-15-16 dated 01/01/2016 passed by Commissioner of Central Excise and Service Tax-SURAT-I)

Oswal Prints Pvt Ltd

.....Appellant

312, Shree Kuberji Textile Park-2,
Delhi Gate, Ring Road,
Surat, Gujarat

VERSUS

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

.....Respondent

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

APPEARANCE:

Shri H D Dvae, Advocate for the Appellant

Shri Tara Prakash, Deputy Commissioner(AR) for the Respondent

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

Final Order No. 12098-12100/2023DATE OF HEARING: 15.09.2023
DATE OF DECISION: 22.09.2023**RAMESH NAIR**

The brief facts of the case are that the appellant are engaged in export of goods to foreign buyers. While raising the invoices in the sale invoice the appellant have deducted 10%/12.5% as commission and after deduction of the said commission the amount was realized against the exports proceeds. The case of the department is that since the deduction from the invoice value was made in the nomenclature of commission. It is a commission paid to the foreign buyer and which is chargeable to Service Tax as commission agent service under 'Business Auxiliary Service'. In appeal No.ST/11773/2016 apart from the above common issue in all the appeals, one more issue is involved i.e. whether the appellant is liable to pay service tax on the GTA service availed in respect of goods actually exported.

2. Shri H.D. Dave, Learned Counsel appearing on behalf of the appellant submits that on the identical facts this Tribunal has passed various judgments that merely by mentioning commission in the sales invoices. It does not amount to commission chargeable to service tax, whereas, the same is sales discount, therefore, the same is not chargeable to Service Tax. As regard the service tax demand on GTA in respect of appeal No.ST/11773/2016, he submits that since the GTA service was used for export of goods, the said service even though taxable at the initial stage of availing the service but used for export of goods and eligible for exemption under Notifications 18/2009-ST & 31/2012-ST therefore, the demand is not sustainable on this ground.

2.1 Without prejudice he further submits that the demand was raised by invoking extended period. But since the appellant have been declaring commission in the sales invoices which is meant for export the same was known to the department while processing the export consignment. Therefore, there is no suppression of the fact on the part of the appellant. Hence, the demand is also not sustainable on ground of time bar. In support of his above submissions, he placed reliance on the following judgments:

- Laxmi Exports Vs. CCE 2021 (44) GSTL 284 (T)
- Aquamarine Exports Vs. CCE&ST 2022 (2) TMI 361 – CESTAT
- Duflon Industries Pvt. Ltd. Vs. CCE 2017 (47) STR 335 (T)
- Hindustan Petroleum Corporation Ltd. Vs. CCE 2019 (24) GSTL 569 (T)
- Prabhakar Marotrao Thaokar & Sons Vs. CCE 2019 (20) GSTL 294 (T)
- Balaji Enterprises Vs. CCE 2020 (33) GSTL 97 (T)
- CCE Vs. Swapnil Asnodkar 2018 (10) GSTL 479 (T)
- United Telecoms Ltd. Vs. CST 2011 (22) STR 571 (T)
- Wanbury Ltd. Vs. CCE 2019 (21) GSTL 154 (T)
- Prudential Process Mgmt. Service (I) (P) Ltd. Vs. CST
- Texyard International Vs. CCE 2015 (40) STR 322 (T)
- Chiripal Polyfilms Ltd. Vs. Commr. of C. Ex. & S.T. Vadodara-I 2022 (67) GSTL 454 (Tri.-Ahmd.)
- Calibre Chemicals Pvt. Ltd. Vs. Commr. of C. Ex. & S.T., Daman 2021 (52) GSTL 618 (Tri.-Ahmd.)
- Commr. of Cus. & C.Ex., Hyderabad-iv Vs. Pokarna Ltd. 2013 (292) ELT 316 (Tri.-Bang.)
- T.V. Sundram Iyengar& Sons Pvt. Ltd. Vs. Commr. of CGST & C. Ex. Madurai 2021 (55) GSTL 144 (Mad.)

- Monnet Ispat & Energy Ltd. Vs. Commr. of C.Ex. Cus. & S.T. Raipur
2015 (39) STR 434 (Chattisgarh)

3. Shri Tara Prakash, Learned Deputy commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the appellant while issuing the sales invoices for export of goods shown 10%/12.5% as commission in the invoice, which was deducted from the gross sale price of the goods exported. Since this 10%/12.5% was shown as commission in the invoice, department has contended that the same is a commission paid to the foreign buyer. Hence, the appellant is liable to pay the service tax on the commission under 'Business Auxiliary Service' under reverse charge mechanism in terms of Section 66A read with Rule 2(1)(d)(iv) of Service Tax Rules, 1994. To understand the transactions, we have perused the invoice, some sample export invoices are scanned below:

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PROFORMA INVOICE

Exporter
M/S. BINDAL EXPORTS PVT. LTD.,
270 - BINDAL HOUSE,
SURAT KADODARA ROAD,
KUMBHARIA, SURAT-394 210 (INDIA)
TEL 91261-2640700/01/02/03 FAX:2640705.

Invoice No
BE/ 83 /10-11

Date:
15.09.2010

Consignee
M/S. MAHARAJA FABRICS LTD
36, CEMETERY ROAD
BRADFORD BD8 9RY
BRADFORD BD8 9RY,
WEST YORKSHIRE, U.K.

Buyer (if other than consignee)

Pre Carriage by

Place of Receipt by Pre Carrier

Country of Origin of Goods
INDIA

Country of Final Destination
U.K.

Vessel/Flight No

Port of Loading
JNPT/INDIA

Terms of delivery & payment
CIF FELIXSTOWE
DA 150 DAYS FROM THE DATE OF B/L.

Port of Discharge
FELIXSTOWE

Final Destination
BRADFORD, U.K.

Marks & No. /
Container No.

No. & Kind of Pkg.

Description of Goods

Quantity
in
YARDS

Rate
IN
US\$

Amount in US\$
CIF
FELIXSTOWE

MAHARAJA/
U.K.IN TRANSIT.

(TOTAL 80 CARTONS ONLY.)

PTD FABRICS MADE FROM 100%
POLYESTER FILAMENT YARN/TEXTURISED YARN

RENIAL PTD HAND WORK

CARTON NOS
4250 TO 4260, 4480 TO 4548

CARTON NO 4548 SAMPLE FOLDER
HAVING NO COMMERCIAL VALUE

25023.00

1.65

41287.95

25023.00

41287.95

TOTAL METERS : 22881.000

TOTAL YARDS : 25023.000

TOTAL PCS : 1239.000

TOTAL NET WT. : 1645 510 KGS

TOTAL GROSS WT : 2189.510 KGS

LESS COMMISSION @ 10%

4128.80

Amount in
(In Words)

US DOLLARS THIRTY SEVEN THOUSAND ONE HUNDRED
FIFTY NINE AND CENTS SIXTEEN ONLY.

Total

37159.16

WE HEREBY DECLARE THAT :-
1. WE ARE EXPORTING THESE GOODS UNDER DEPB SCHEME IN TERMS OF PARA 4.3 OF EXIM POLICY 2004-2009.
2. WE SHALL NOT CLAIM ANY DUTY DRAWBACK OR BENEFIT OF DUTY FREE LICENCE UNDER DUTY EXEMPTION
SCHEME IN RESPECT OF EXPORT MADE AGAINST THIS SHIPPING BILL.
3. THE GOODS ARE COVERED UNDER SR NO. 43A OF DEPB RATE LIST UNDER THE PRODUCT GROUP CODE
TEXTILE ITEMS I.O. NORMS J-30.
4. THE CREDIT AMOUNT WILL NOT BE MORE THAN 50% OF THE PMV OF THE PRODUCT.
DEPB REG.NO. 1040330397 DT. 28/01/1998.

INVOICE VALUE USD

41287.95

FREIGHT USD

250.00

INSURANCE USD

40.00

FOB VALUE IN USD

40997.95

FOB VALUE IN RS.

1898205

Exch. Rate
@ 46.30

Signature

FOR BINDAL EXPORTS PVT LTD.

Authorized Signatory

Declaration:
We Declare that this Invoice shows the actual price of the goods
described and that all particulars are true and correct

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PROFORMA INVOICE

Exporter
M/S. BINDAL EXPORTS PVT. LTD.,
270 - BINDAL HOUSE,
SURAT KADODARA ROAD,
KUMBHARIA, SURAT-394 210 (INDIA)
TEL: 91261-2640700/01/02/03 FAX: 2640705.

Invoice No.
BE/06 /11-12
Date:
28.04.2011

Consignee
M/S. SAMITAH TRADING CO.
P.O.BOX 3364,
BUR DUBAI, U.A.E.
TEL: 0505187195
FAX: 3550203.

Buyer (if other than consignee)

Pre Carriage by

Place of Receipt by Pre Carrier

Terms of delivery & payment
CIF JEDDAH
D/A.150 DAYS FROM THE DATE OF B/L.

Vessel/Flight No.
BY SEA

Port of Loading
JNPT/INDIA

Port of discharge
DUBAI

Final Destination
JEDDAH

Country of Origin of Goods
INDIA

Country of Final Destination
K.S.A.

Marks & No. / Container No.	No. & Kind of	Description of Goods	Quantity in YARDS	Rate IN US\$	Amount in US\$ CIF JEDDAH
JASMINE FASHIONS	(TOTAL 72 CARTONS ONLY.)				
CARTON NOS 354 TO 425.		DYED AND PTD FABRICS MADE FROM 100% POLYESTER FILAMENT YARN/TEXTURISED YARN WITH EMBROIDERY WORK. POLY X POLY PTD DRESS MATERIALS WITH WORK POLY X POLY DYED DRESS MATERIALS WITH WORK	10595.00	1.70	18011.50
			15715.00	1.60	25144.00
		DYED COTTON DRESS MATERIALS WITH WORK (DEPB SR.NO. 57)	3384.00	1.80	6091.20
		DYED/PTD MADE-UPS MADE FROM 100% POLYESTER FILAMENT YARN/TEXTURISED YARN. POLY X POLY DYED DUPATTA. (CUT: 2.25 MTRS)	3753.00 PCS.	3.60	13510.80
		COTTON MADE-UPS INCLUDING QUILTED COTTON MADE-UPS WITH OR WITHOUT EMBROIDERY AND/OR WITH OR WITHOUT METALLISED YARN. DYED COTTON DUPATTA (CUT: 2.25 MTRS) DEPB SR.NO. 68	360.00 PCS.	3.26	1173.60
WE ARE EXPORTING THE GOODS IN DISCHARGE OF EXPORT OBLIGATION AGAINST EPCG LIC.NO. 5230006910/3/11/00 DT.08.04.2010 ISSUED TO M/S. SHREE SIDDHI VINAYAK KNOTS & PRINTS PVT LTD, PLOT NO. A-26 TO A-28, CENTRAL PARK, G.I.D.C., PANDESARA, SURAT, GUJARAT - 394 221.					63931.10
TOTAL PCS : 4747.000 LESS COMMISSION @ 10%					6393.11
TOTAL METERS : 42081.000					
TOTAL YARDS : 46021.000					
TOTAL NET WT. : 3270.200 KGS					
TOTAL GROSS WT : 4318.300 KGS					
Amount in US DOLLARS FIFTY SEVEN THOUSAND FIVE HUNDRED THIRTY SEVEN (In Words) AND CENTS NINETY NINE ONLY.			Total		57537.99

WE HEREBY DECLARE THAT:-
1. WE ARE EXPORTING THESE GOODS UNDER DEPB SCHEME IN TERMS OF PARA 4.3 OF EXIM POLICY 2004-2009.
2. WE SHALL NOT CLAIM ANY DUTY DRAWBACK OR BENEFIT OF DUTY FREE LICENCE UNDER DUTY EXEMPTION
SCHEME IN RESPECT OF EXPORT MADE AGAINST THIS SHIPPING BILL.
3. THE GOODS ARE COVERED UNDER SR.NO. 43A.57,43B.68 OF DEPB RATE LIST UNDER THE PRODUCT GROUP CODE
TEXTILE ITEMS.
4. THE CREDIT AMOUNT WILL NOT BE MORE THAN 50% OF THE PMV OF THE PRODUCT.
DEPB REG.NO. 1040330397 DT. 28/01/1998.
5. WE SHALL ALSO CLAIM INCENTIVES AS PER CHAPTER 3 OF FOREIGN TRADE POLICY 2009-14.

INVOICE VALUE USD	63931.10
FREIGHT USD	200.00
INSURANCE USD	35.00
FOB VALUE IN USD	63696.10
FOB VALUE IN RS.	2821737

Exch. Rate
@ 44.30

Signature
For BINDAL EXPORTS PVT. LTD

Authorised Signatory

Declaration:
We Declare that this invoice shows the actual price of the goods
described and that all particulars are true and correct

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PROFORMA INVOICE				Date: 23.09.2010											
Exporter M/S. BINDAL EXPORTS PVT. LTD., 270 - BINDAL HOUSE, SURAT KADODARA ROAD, KUMBHARIA, SURAT-394 210 (INDIA) TEL: 91261-2640700/01/02/03 FAX: 2640705.		Invoice No. BE/85/10-11		SC No & Dt:											
Consignee M/S. ROYAL CROWN TRADING LLC, AL FAHIDI STREET, P.O.BOX NO.6784, BUR DUBAI, U.A.E. TEL: 3535150.		Buyer (if other than consignee)		Country of Origin of Goods INDIA											
Pre Carriage by		Place of Receipt by Pre Carrier		Country of Final Destination K.S.A											
Vessel/Flight No. BY SEA		Port of Loading JNPT/INDIA		Terms of delivery & payment CIF JEDDAH D/A.150 DAYS FROM THE DATE OF B/L.											
Port of discharge DUBAI		Final Destination JEDDAH													
Marks & No. / Container No.	No. & Kind of Pkg.	Description of Goods	Quantity in YARDS	Rate IN US\$	Amount in US\$ CIF JEDDAH										
DUBAI IN TRANSIT. CARTON NOS 4552 TO 4614.	(TOTAL 63 CARTONS ONLY.)	DYED & PRINTED FABRICS. FABRICS MADE FROM 100% POLYESTER FILAMENT YARN/TEXTURISED YARN POLY X POLY DYED AND PRINTED DRESS MATERIALS	45281.00	1.65	74713.65										
					74713.65										
WE ARE EXPORTING THE GOODS IN DISCHARGE OF EXPORT OBLIGATION AGAINST EPCG LIC. NO. 5230002898/3/11/00 DT. 27.03.2008 ISSUED TO M/S. SHREE SIDDHI VINAYAK SAREE PVT LTD, PLOT NO. A-26 TO A-28, CENTRAL PARK, G.I.D.C., PANDESARA, SURAT, GUJARAT - 394 221.					7471.37										
TOTAL METERS : 41405 TOTAL YARDS : 45281 TOTAL PCS : 5915 TOTAL NET WT. : 2293.380 KGS TOTAL GROSS WT. : 2727.880 KGS Amount in (In Words) US DOLLARS SIXTY SEVEN THOUSAND TWO HUNDRED FORTY TWO AND CENTS TWENTY NINE ONLY.					Total 67242.29										
WE HEREBY DECLARE THAT :- 1. WE ARE EXPORTING THESE GOODS UNDER DEPB SCHEME IN TERMS OF PARA 4.3 OF EXIM POLICY 2004-2009. 2. WE SHALL NOT CLAIM ANY DUTY DRAWBACK OR BENEFIT OF DUTY FREE LICENCE UNDER DUTY EXEMPTION SCHEME IN RESPECT OF EXPORT MADE AGAINST THIS SHIPPING BILL. 3. THE GOODS ARE COVERED UNDER SR.NO. 43A OF DEPB RATE LIST UNDER THE PRODUCT GROUP CODE TEXTILE ITEMS I.O. NORMS J-30. 4. THE CREDIT AMOUNT WILL NOT BE MORE THAN 50% OF THE PMV OF THE PRODUCT. DEPB REG.NO. 1040330397 DT. 28/01/1998.															
			<table border="1"><tr><td>INVOICE VALUE USD</td><td>74713.65</td></tr><tr><td>FREIGHT USD</td><td>150.00</td></tr><tr><td>INSURANCE USD</td><td>23.00</td></tr><tr><td>FOB VALUE IN USD</td><td>74540.65</td></tr><tr><td>FOB VALUE IN RS.</td><td>3495956</td></tr></table>			INVOICE VALUE USD	74713.65	FREIGHT USD	150.00	INSURANCE USD	23.00	FOB VALUE IN USD	74540.65	FOB VALUE IN RS.	3495956
INVOICE VALUE USD	74713.65														
FREIGHT USD	150.00														
INSURANCE USD	23.00														
FOB VALUE IN USD	74540.65														
FOB VALUE IN RS.	3495956														
Declaration: We Declare that this invoice shows the actual price of the goods described and that all particulars are true and correct			<table border="1"><tr><td colspan="2">Signature</td></tr><tr><td colspan="2">M/S. BINDAL EXPORTS PVT. LTD.</td></tr><tr><td colspan="2">Authorized Signatory</td></tr></table>			Signature		M/S. BINDAL EXPORTS PVT. LTD.		Authorized Signatory					
Signature															
M/S. BINDAL EXPORTS PVT. LTD.															
Authorized Signatory															

From the above sample invoices, it can be seen that the invoice was raised to the buyer of the goods and in that invoice the appellant have deducted 10%/12.5% showing it as a commission.

4.1 In our considered view, if any amount in the sale invoice is deducted by whatever name, the same is nothing but discount given during the course of sale of goods. In the present transaction only appellant being a seller of the goods and foreign buyer of the goods are involved. Therefore, relationship between the appellant and the foreign buyer is of seller and buyer of the goods and the transaction is purely of sale of goods. Even, though the word 'commission' is mentioned in

invoice and the same was deducted from the sale price, it is nothing but extended the discount to the buyer. The commission shall be chargeable to the Service Tax only in case, if there is a third party who has independently provided the commission agent service in relation to sales promotion and related service. In the present case no independent sales commission agent is involved. Therefore, even though the deduction was made in the invoice under nomenclature of commission but the same is not in the nature of commission, but it is only a discount and the sales discount cannot be termed as a service charge. This issue has been considered in various judgments by this Tribunal some of the judgments are reproduced below:

- In the case of Laxmi Exports (Supra) this Tribunal on the absolutely identical issue decided matter as under:

“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 (ICRES)

LEO Date: 22/03/2011
EP Code: 1/157

JNCR, Khava Sheva, Tal:Uram, Dist:Rajkot-400707

Shipping Bill for Export

SI No : 9481723 / 27/03/2011 BRC Realisation Date :
SA : AAAF2472DCH001 RAJNIMAR FREIGHT FORWARDERS
Inst Date : 28/04/2011 14:33
This consignment was not opened for physical examination by Customs
Port of Ldg-Code : INDNSA1 State of Origin : GUJARAT

EXPORTER DETAILS

CONSIGNEE

SI050140591
LAXMI EXPORTS
Branch & O 142, 1ST FLOOR, ASRIRWAD IND CODESRA FISH R/A AL QAZI
SOCIETY LTD., BHEKSTAM
STRAAT/GUJARAT
395023

PAN No. : AFMP28195MF001
M/S. ALDEYAA SPARE PARTS
BUILDING OFFICE & 304,
DUBAI, U.A.E
PH: 2711728
UNITED ARAB EMIRATES

Port of Loading : UNST , Khava Sheva Total Pkgs : 95
Port of Discharge:Jebel Ali Loose pkts: 0
Gross Wt(KGS) : 4894.500 Net Wt(KGS): 4379.500
Country of Dest : UNITED ARAB EMIRATES No.of Ctrs. : 1
Location No. : 28338 Rotation Date : 28/02/2011
Nature of Cargo : C
Marks and Nos.: ASKAD CTN NOS. 7510 TO 7604
FOREX BANK ACC:25950400000031
BRI Mailer No/Date:
POB VALUE (EXR) : 82163886.25 / DAK (INR) : 80.00 P
AD. Code : 0202995 Bank a/c No :
I.F.S. Code :

INVOICE DETAILS

Invoice 1/1

Inv.Val : 2160117.50 INR 48450.00 USD
FOB Val : 2161806.25 INR
Inv.No. : LB/EXP/129/2010-1 Inv Dt : 16/03/2011
Nat. of con : BCF PCurr(Inv):USD
Exp Contract No:
Exchange rate : 1.00 (USD) = 44.750 (INR)

Insurance Rate Currency Amount

Freights: 0.00 0.00

Discount: 0.00 USD 95.00

Commissions: 11.58 USD 0.00

Other Deductions:0.00 0.00

Packing Charges: USD 0.00

Nature of payment:DA Period of Payment:180

Buyer Name & Address

M/S. SHRIAM STAR GENERAL TRADING LL
C,
MAIP ROAD, DHIRA
P.O.BOX : 42659

(Page 1 of 1)

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LAXMI EXPORTS		INVOICE			
142, 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 Buyer's Order No & Date: RRI Code No. 5205014099			
Consignee: M/S. ALDEYAA SPARE PARTS DEERA FISH BIA AL QAIZI BUILDING OFFICE # 304, DUBAI U.A.E. PH: 2711728		Buyer (If Other Than Consignee) Notify Party:- M/S. SIMMAN STAR GENERAL TRADING LLC, NAIF ROAD, DEIRA P.O. BOX: 42659, DUBAI, U.A.E.			
Pre-Carriage by:	Place of Receipt by Pre Car:	Country of origin of Goods	Country of Final Destination.		
Vessel/Flight No. BY SEA	Port of Loading JNPT	INDIA	DUBAI		
Port of Discharge DUBAI	Final Destination DUBAI	Terms of Delivery and Payment. C & F DUBAI			
Marks & Nos./ Container No.	No & Kind of Pkgs	Description of Goods	Quantity	Rate	Amount
ASSAD	(95 -CARTONS)	DYED AND/OR PRINTED FABRICS MADE FROM 100% POLEYSTER FILAMENT YARN/TEXTURISED YARN, WITH OR WITHOUT EMBROIDERY AND/OR WITH OR WITHOUT METALISED YARN.			
CARTON NOS:	QUALITY		YARDS	US\$/YD.	C & F/US\$
7510 TO 7604	1.) Zig- Zag Chiffon Laquier Printed Fabrics		57000.00	0.85	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			Commission:-	11%	5329.50 43,120.50
We are exporting these goods under DEPS scheme in terms of para 4.37 of adgn policy 2008-2014. We shall not claim any duty drawback or benefit of duty free license under the duty exemption scheme in respect of Export made against this shipping bill. The goods are covered by S.No 43(A) of DEPS rate list under the product code the prescrip-ALMA value of the goods being exported under this shipping bill and benefit under DEPS SCHEME against the exports. We shall also avail benefits under Chapter-3 of FTP, if applicable.			TOTAL: - 43,120.50		
Amount Chargeable: (In Words) US Dollars: Forty Three Thousand One Hundred Twenty and Cents Fifty Only.					
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, Rashmi Bhawan, Lal Dargah, SURAT/Wa. M/s. Laxmi Exports, 142, 1st Floor, Ashirwad Ind. Co-Op Soc. Ltd. Bhestan, Surat-395 023. (Name and Address of the Exporter) 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 (2) Invoice Date: 16-03-11
(3) Export Promotion Copy of S/BILL duly authenticated by the Customs No.: 9481723 (4) S/BILL Date: 17-03-11
(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. DYED AND/OR PRINTED FABRICS MADE FROM

(6) Bill of Lading/Airway Receipt/Receipt No.: GLMUM11030682 (7) B/L Date: 23-03-11
(8) Destination of goods Country Name: DUBAI

(9) Bill Amount CIF/C&F/FOB in Foreign Exchange	(10) Freight Amount as per Bill of Lading/ Freight Memo	(11) Insurance Amount as per Insurance Company's Bill/receipt	(12) Commission/Discount paid to Foreign Buyer/ Agent	(13) Whether the Export is in freely convertible or in Indian Rupees	(14) FOB Value Actually Realised 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	Rs. -11% US\$. 5329.50 @ 44.750 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) O.R.R./PP/SDP Form No.: SDP FORM

(17) No. Date & Category of Duty Free License/Import License if any applicable: DEPS SCHEME

We further declare that the above said 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).

Signature of the Exporter: LAXMI RATHI
Name in Block Letter: LAXMI RATHI
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 Sapari Society, Bhatar Road, SURAT.

Authorized Foreign Exchange Dealer Code No. Allotted to the Bank by RBI: 5205256/5600002
Date: 01.04.2011

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 realisation of export proceeds are to be verified by the Bank against confirmed irrevocable letter of credit or exports made against the confirmed irrevocable letter of credit or exports made under Deferred Payment/Suppliers Line of Credit Contract backed by S.C.U.C. 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 E.P. Scheme)

4. We have also verified the amount of the commission paid as declared above by the exporter to the foreign buyer (in figure and words) with O.R. Form and found to be correct.

Note:-
1. Bank can issue a consolidated certificate (consignment-wise) for more than one consignment.
2. FOB actually realised and date of realisation of export proceeds are to be given in all cases except where consignment has been sent against confirmed irrevocable letter of credit.
3. This shall be required wherever specifically prescribed in the policy/ procedure.

FOR BANK OF BARODA

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

J. P. RATHI
R - 1183

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 Prabhakar MarotraoThaokar & 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.

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-S.T., dated 6-10-2007 and 18/2009-S.T., dated 7-7-2009 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-S.T., dated 6-10-2007 and 18/2009-S.T., dated 7-7-2009. 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 mala fide 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 v. CCE, Salem (supra) and Texyard International v. 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."

- The similar issue was taken up by this Tribunal in the case of Duflon Industries Pvt. Ltd. (Supra) wherein the following order was passed:

"5 .We have considered the submissions made at length by both sides and perused the records.

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.

7. In view of the foregoing discussion, the impugned orders are set aside and the appeals are allowed."

- Identical issue in the case of Hindustan Petroleum Corporation Ltd.

(supra) was considered as under:

“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."

- In the case of Prabhakar Marotrao Thaokar & Sons (supra) the Mumbai Tribunal has passed the following order:

"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 THAKAR & COMPANY 53-
JARDA MANUFACTURER 33 G. SMALL FACTORY AREA, BHANADARA ROAD, NAGPUR - 440008 - 28-

Date of Removal: 4.4.2010 Invoice No: 61
Time of Removal: 12:35 PM
M/s: P.M. Thakkar & Sons
Place: Nagpur

PLA/E.C.G. No.: ANBFG 5605 LUM 001
Name of Excisable Goods: BRANDED CHEWING TOBACCO
Chapter sub-head: 2403 9010

Authorized For G.M. Thakkar & Co.
PARTNER
AMOUNT
Rs. P.

PARTICULARS		AMOUNT Rs.	P.
Description and Specification of Goods	Re. 3.20 SARVOTKRUST NAGPURI JARDA 6 gr. in each Pudi 50 Pudis one Poda 50 Pudis one Bag = 12.0 Kgs.		
2. Number & Description of Packages	Total Bags 133 Pudis 2000 No. To		
3. Total Quantity of goods	Kgs. 120.0		
4. Total Wholesale Value (Under Sec. 3A of C. Ex. Act 1944)	Rs. 15000.00 Per Thousand Pudis = 6.0 Kgs.	51880	50
5. A) Value as per M.R.P. Rs. @ B) Abatement @ 55% (Under Sec. 4A of C. Ex. Act 1944)	Rs. Per Thousand Rs. Pudis = Kgs.	15000	00
6. Trade Discount Re.	50.00 Per Thousand Pudis (-)	309055	50
7. A. Value			
8. Rate of Duty @	75 % = b. E. Duty 60 % = N.C.C.D. 10 % = Ad. Duty Surcharge 5 % = Total =		
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 amounts indicated represent the price actually charged and not there is no other additional consideration. Signature of the manufacturer.		Total Amount	509055.50
		VAT @ 2%	6181.00
P/s: Five bags, High Quality, Style hundred, Study 113		Roundup Amount	508866.00
Manner of Transport: By Road 1305 1305 1305 1305 1305 For Gunaji Marotrao Thakkar & Company			
Date and time of preparation of Invoice: 4.4.2010 12:35 PM			

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 Duty) dt. 27th February 2010 as per Order No. 11/16/30-16/ST/UP/564311 dt. 11-3-10, issued by A.C.C. Ex. Duty Nagpur.

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 :

30-
M/S PRABHAKAR MAROTRAO THAKAR & SONS
THAKAR ANAJI BAZAR, NAGPUR - 440 002
PHONE: (02) 6712-271178
VAT IN: 27TH/03/2010
CET IN: 27TH/03/2010

TAX INVOICE
BILL NO. 11307
DATE: 01/02/2010

PRODUCTS	PACK	BILL NO.	QTY.	RATE	AMOUNT
SHREYAS HONEYED JARDA (100)	3750	2.5000	3	3125.00	9375.00
ORDER TOTAL					9375.00
V.A.T. 20.00%					1875.00
ROUND UP TOTAL					11250.00

M/S PRABHAKAR MAROTRAO THAKAR & SONS
THAKAR ANAJI BAZAR, NAGPUR - 440 002
PHONE: (02) 6712-271178
VAT IN: 27TH/03/2010
CET IN: 27TH/03/2010

TAX INVOICE
BILL NO. 11307
DATE: 01/02/2010

PRODUCTS	PACK	BILL NO.	QTY.	RATE	AMOUNT
SHREYAS HONEYED JARDA (100)	3750	2.5000	3	3125.00	9375.00
ORDER TOTAL					9375.00
V.A.T. 20.00%					1875.00
ROUND UP TOTAL					11250.00

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.”

In the above decisions, this Tribunal has taken a consistent view that merely by mention of commission or any other term, whereby the deduction was given in the sale invoice, the same cannot be treated as commission for the purpose of levy of Service Tax under 'business Auxiliary Service'. Accordingly, the demand of service tax on the commission shall not sustain.

4.2 As regard the submissions of the appellant that the demand is also not sustainable on limitation, we are convinced with the fact and submission made by the Learned Counsel that appellant have explicitly mentioned commission and shown its deduction in its sales invoice. Since this sale is for export of goods obviously the departmental officers have verified the transaction at the time of export for various reason of refund/ drawback or any other export incentive. Accordingly, the entire fact about the commission being shown deduction in the sales invoice was very much in the knowledge of the department. The appellant being registered manufacturer with Central Excise having filed their regular return to the department, there is absolutely no suppression of fact of mis-declaration on the part of the appellant.

4.3 This is also the submission of the appellant that even if the so called commission is liable to Service Tax the said service tax was available as Cenvat credit to the appellant. Therefore, the present case is of revenue neutrality for this reason also extended period cannot be invoked as held in various judgments. we do agree with this proposition

that if at all there is a service tax liability on the commission the appellant is not only entitled for Cenvat credit but also *prima facie* eligible for refund, as the said commission service is exclusively in respect of export of goods. For this reason also the demand for extend is not invokable. Accordingly, the demand of service tax on the commission as well as on GTA service is not sustainable also on the ground of limitation. As per our above discussion and finding, the impugned orders are not sustainable.

5. Hence, the impugned orders are set aside. Appeals are allowed with consequential relief.

(Pronounced in the open court on 22.09.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha