

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

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No.589 of 2012**

(Arising out of OIO-SSP/66/SURAT-II/2012 dated 28/09/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

**J M Huber India Pvt Ltd**

Plot No. 754,  
Gidc, Jhagadia, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Surat-ii**

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

**.....Respondent**

**APPEARANCE:**

Shri Vinay Kansara, Advocate for the Appellant  
Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

**CORAM:       HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
                  HON'BLE MEMBER (TECHNICAL), MR. RAJU  
                  Final Order No. A/11778/2022**

DATE OF HEARING: 24.11.2022

DATE OF DECISION: 28.11.2022

**RAMESH NAIR**

This appeal arises out of Order-In-Appeal dated 28.09.2012 passed by learned Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II whereby, the learned Commissioner (Appeals) has upheld the demand of service tax and set aside the appeal filed by the appellant.

1.1 The brief facts of the case are that the appellant was issued a show cause notice dated 28.09.2010 wherein, it was contended that the appellant have received commission from various companies of foreign for providing services in India, the said commission was earned by them for supply of material of foreign parties (including its principal abroad) i.e. service provided towards coordinating the customers in India with the overseas suppliers. The case of the department is that the appellant have provided the services of Commission Agent which is considered as 'Business Auxiliary Service' and the same is taxable with effect from 09.07.2004. It was further contended that the said services were rendered in India hence, it shall not be treated as export even if it is rendered to any foreign national and he pays for the same in convertible foreign currency accordingly, the

adjudicating authority while adjudicating show cause notice confirmed the demand of service tax and imposed penalties and demanded interest. Being aggrieved by the Order-In-Original, the appellant filed the appeal before the Commissioner (Appeals) who upheld the Order-In-Original therefore, the present appeal filed.

02. Shri Vinay Kansara, learned counsel appearing for the appellant submits that even though the service was provided in India but the service recipient is located outside India and the appellant have received the consideration in convertible foreign currency therefore, as per the Export of Service Rules, 2005 the service of the appellant qualifies as 'Export of Service' and the same is not liable to service tax. He placed reliance on the following judgments:-

- YAMAZAKI MAZAK INDIA PVT. LTD.- 2018 (12) GSTL 66 (Tri.-Mumbai)
- PULCRA CHEMICALS (INDIA) PVT. LTD.- 2015 (39) STR 700 (Tri.-Mumbai)
- WARTSILA INDIA LTD.- 2019 (24) GSTL 547 (Bom.)
- CITI BANK N.A.- 2018 (18) G.S.T.L. 587 (Bom.)
- LIFE CARE MEDICAL SYSTEMS- 2018 (18) G.S.T.L. 587 (Bom.)
- A.T.E. ENTERPRISES PVT. LTD.- 2018 (8) G.S.T.L. 123 (Bom.)
- IBM INDIA PVT. LTD.- 2018 (17) G.S.T.L. 268 (Tri.-Bang.)
- IBM INDIA PVT. LTD.- 2020 (34) G.S.T.L. 436 (Tri.-Bang.)
- ISHIDA INDIA PVT. LTD.- 2016 (41) S.T.R. 87 (Tri.-Del.)
- LENOVO (INDIA) PVT. LTD.- 2010 (20) S.T.R. 66 (Tri.-Bang.)
- KSH INTERNATIONAL PVT. LTD.- 2010 (18) S.T.R. 404 (Tri.-Mumbai)
- BLUE STAR LTD.- 2008 (11) S.T.R. 23 (Tri.-Bang.)

03. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the fact is not under dispute that the appellant have provided sales promotion and marketing service in India for sale of the goods supplied by the foreign based companies and the service recipient is those foreign based companies and the payment is received in convertible foreign currency. The contention of the revenue is that since the service was provided in India therefore, the same will not be treated as 'Export of Service' hence, the service is taxable. We find that despite the fact that the service was provided in India but the service recipient is admittedly located outside India. The service of the appellant falls under sub-clause

(zzb). As per Rule 3 of 'Export of Service' Rules, 2005 in respect of service falling under sub-clause (zzb), the same falls under clause (iii) of Rule 3(1) according to which the only condition to qualify the service as export of service, it provides that the service is required only in relation to business or commerce be provision of such service to recipient located outside India and when provided otherwise be provision of such service to a recipient located outside India at the time of provision of such service. In addition to this, to qualify the service as export of service as per Sub-rule (2) of Rule 3 the provision of any taxable service as specified in Sub-rule (1) shall be treated as export of service when the following conditions are satisfied:-

- (a) Such service is provided from India and used outside India; and
- (b) Payment of such service is received by the service provider in convertible foreign exchange.

We find that the appellant's activity is squarely covered under Rule 3(1)(iii) read with Sub-Rule (2) of Rule 3 of Export of Service Rules, 2005 therefore, the service of the appellant is clearly covered under export of service. This issue has already been considered by this tribunal in various judgments including the case of YAMAZAKI MAZAK INDIA PVT. LTD. (supra) wherein on the identical service, this tribunal has considered the issue in detail and held that Commission Agent Service provided to foreign based entity for promoting/marketing their goods in India on consideration the activity of the Indian agent providing promotion/marketing, technical support, installation, commission, etc. for sale of goods of foreign based entities in India on commission basis amounts to export of service and no service tax is demandable on such activities particularly when such commission received in convertible foreign exchange.

4.1 Considering the said judgment and also the various other judgments cited on the identical issue, we are of the view that the appellant's service is clearly qualified as export of service hence, the same is not taxable.

05. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 28.11.2022)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**