

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL No. 50399 OF 2014

(Arising out of Order-in-Original No. 125/GB/2013 dated 27 September, 2013
passed by the Commissioner of Service Tax, Delhi)

Commissioner of Service Tax

17-B, I.A.E.A House, I.P. Estate, M.G. Marg
New Delhi

.....Appellant

Versus

M/s Melange Developers Private Limited

C-7/231, 2nd Floor, Sector, 7, Rohini
New Delhi

.....Respondent

APPEARANCE:

S/Shri Amresh Jain, R.K. Manjhi & Vivek Pandey, Authorised Representatives of
the Appellant

Shri A.K. Batra, Chartered Accountant, Shri Anil Sood, Ms. Vibha Narang &
Swati Garg, Advocates, for the Respondent

Date of hearing: 26.11.2018

Date of decision: 23.05.2019

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

MISC. ORDER NO. 50388/2019

JUSTICE DILIP GUPTA :

A Division Bench of this Tribunal in its order dated 23
March, 2018 noticed that there were conflicting decisions of

Division Benches of the Tribunal on the issue as to whether a sub-contractor is liable to pay Service Tax even if the main contractor has discharged the Service Tax liability on the gross amount and, therefore, considered it appropriate to place the matter before a Larger Bench. This Larger Bench has, accordingly, been constituted.

2. The Respondent was registered with the Service Tax Commissionerate for "Commercial or Industrial Construction" services (section 65(105)(zzq)), "Works Contract" services (section 65(105)(zzza) and "Transport of Goods by Road in a Goods Carriage" services (section 65(105)(zzp)) under the Finance Act, 1944 (hereinafter referred to as the '**Act**'). During the period 01 October, 2007 to 31 March, 2012, the Respondent was engaged in providing "Works Contract" service as a sub-contractor to the main contractors and details of the contracts are as follows :

S.No.	Main Contractor	Work Order date	Nature of Work Done by sub-contractor
1.	M/s S. S. Enterprises	08 January, 2007	Supply and application of Primer and Paints on Tanks and Piping – Works Contract Service
2.	M/s Vijay Nirman Co. Pvt. Ltd.	04 April, 2009	Blasting and Painting Works – Works Contract Service
3.	M/s D.K. Industries	20 May, 2008	Grill Blasting and Painting – Works Contract Service

3. It was noticed by the Department that in regard to the work orders awarded by M/s S.S. Enterprises, M/s Vijay Nirman

Company Private Limited and M/s D.K. Industries, the Respondent had provided services mentioned in the above table as a sub-contractor, but had not paid Service Tax. Accordingly, a show cause notice dated 23 April, 2013 was issued to the Respondent requiring it to explain as to why Service Tax should not be demanded and recovered from it by invoking the extended period of limitation with penalty and interest. The Respondent contended, on the basis of letters received from the main contractors, that since the main contractors had discharged Service Tax liability on the entire amount of contract, it being a sub-contractor, was not required to discharge Service Tax liability on the services provided in these projects.

4. The Commissioner, Service Tax Commissionerate, New Delhi, passed a detailed order dated 06 September, 2013 dropping the proceedings initiated by the show cause notice dated 23 April, 2013 insofar as the demand of Service Tax is concerned, but imposed a penalty of Rs. 10,000/- on the Respondent under Section 77 of the Act for various omissions and commissions. The Commissioner referred to the Circulars dated 02 July, 1997, 13 October, 1997, 07 October, 1998, 17 December, 2004 and the Master Circular dated 23 August, 2007 and observed that till 22 August, 2007 a sub-contractor was not required to pay any Service Tax in cases where the principal contractor had discharged the Service Tax on the gross amount paid by it to the sub-

contractors. The Commissioner further observed that even after the issuance of the Master Circular dated 23 August, 2007 that superseded all the earlier circulars, clarifications and communications and provided that a sub-contractor is essentially a taxable service provider, the payment of Service Tax by a sub-contractor would result in double taxation and in any case it would be admissible to the main contractor as CENVAT Credit resulting in revenue neutrality. In reaching such a conclusion, the Commissioner felt bound by the observations made by the Ahmedabad Tribunal in **M/s Urvi Construction vs CST, Ahmedabad**, reported in **2010 (17) STR 302 (Tri.-Ahd)**. The proceedings initiated by the show cause notice were, therefore, dropped by the Commissioner but penalty was imposed as the assessee had failed to adhere to the provisions of the CENVAT Credit Scheme for discharge of Service Tax liability. This was, according to the Commissioner, for the reason that at every stage under the CENVAT Scheme the provision of service is taxed and would not lead to double taxation as the credit of the tax earlier paid would be available at a subsequent stage and this would also ensure correct payment of tax to the government exchequer. The relevant observations of the Commissioner in the order are reproduced below :

"20. In this connection, I observed that it is a fact that no tax can be levied on single activity twice as per the statutory provisions of service tax law. Section 66 of the Act, speaks levy of service tax on the taxable services mentioned in Section 65 of the Act *ibid*. However, in case of service provider liability of paying service tax has cast upon on them

whereas the service tax is ultimately collected from the service receiver itself. This all has been done by the legislature to safeguard the government revenue in case the service recipient does not make payment of service tax on the services received by them. **In the instant case, the service receivers have themselves discharged whole the service liability on the gross amount received by the sub-contractors from them which is also not disputed in the SCN itself. Therefore, requirement of payment of service tax on the taxable service as per Section 66 of the Finance Act is fulfilled. Hence, I find force in the contention of the assessee that in case the assessee is made to pay tax on the gross amount received by them as sub-contractor from 23.08.07 to 31.03.10, it will amount to double taxation which is totally against the provisions of the Service Tax Law. Further, in the case of M/s Urvi Construction Vs. CST, Ahmedabad – 2010 (17) STR 302 (Tri.-Ahmd.), the Hon'ble Tribunal has held that the assessee as a sub-contractor is not liable to pay service tax when the main contractor has paid service tax on the service.**

21. I also find that even if the service tax under Section 68 of the Act read with Rule 6 of the Rules would have been paid by the noticee on the construction service rendered to their principle contractors (M/s SS Enterprises, M/s Vijay Nirman Co. Pvt. Ltd., & M/s D.K. Industries) as sub-contractor then the said amount of tax would have been admissible to the main contractors as CENVAT credit under CENVAT Credit Rules, 2004, therefore, there would be revenue naturally in the instant case and it is a well settled legal position that where revenue neutrality arises, no service tax can be demanded by the revenue.

22. In view of the above discussions, I hold that the noticee is not liable to pay service tax on the gross amount received by them as a sub-contractor as alleged in the SCN. Further, as no service tax is either demandable or recoverable from the noticee, the allegations with respect to interest payable by the noticee as well as question of imposing penalties under section 76 and 78 of the Act as proposed in impugned SCN do not survive.

23. However, while holding that the same amount representing the value of taxable services cannot be subjected to incidence of Service Tax both at the hands of sub-contractor and the main contractor but to my view it is equally important that under the CENVAT scheme every stage of provision of service is required to be taxed and cannot be ignored in as much as the

scheme does not lead to any double taxation as at every stage the credit of earlier tax paid is available at subsequent stage and also ensures the correct payment to the government exchequer. Further, the department's clarifications issued vide Circular No. 96/7/2007-ST dated 23.08.2007 clearly supports my above view. Therefore, I am of considered opinion that the noticee has miserably failed to discharge their procedure liability laid down under the provisions of Finance Act, 1994, as amended read with Service Tax Rules made thereunder, in as much as it is not open to any assessee to determine the stage of discharge of their due Service Tax liability particularly when the same has been clearly provided under the relevant provisions itself. Further, such procedural lapse could have lead to tax evasion which is admittedly not there as per the documents available on record and also the fact of discharge of due Service Tax by the main contractor instead of sub-contractor is not disputed in the SCN itself. Although, I am of the view that the noticee should be punished very heavily in the present case but I am constrained to impose the maximum penalty which I am empowered to impose under the provisions of Section 77 of the Act.

24. Accordingly, I pass the following order :-

ORDER

In view of the above discussions and findings, I order to drop the proceedings initiated vide SCN No. 53/Audit/2013-14 dated 23.04.2013 issued under C.No. I-26(494)ST/AMR/Gr.A7/53/2011-12 against M/r Melange Developers Pvt. Ltd., C-7/231, IInd Floor, Sector-7, Rohini, New Delhi-85, to the extent of demanding Service Tax including Cess & SHEC amounting to Rs. 69,95,854/- under proviso to Section 73(1) of the Act along with proposal for imposing penalties under Section 76 and 78 of the Act. However, I hereby impose a penalty of Rs. 10,000/- upon the noticee under Section 77 of the Act for their various omissions & commissions."

[emphasis supplied]

5. Shri Amresh Jain and Shri Vivek Pandey, learned Authorised Representatives of the Department, submitted that at the time when Service Tax was introduced w.e.f 01 July, 1994, there was no credit mechanism and so to remove any cascading

effect, Circulars were issued from time to time for exemption from payment of Service Tax by a sub-contractor. However, credit mechanism was introduced through Service Tax Credit Rules w.e.f. 01 August, 2002 that gave benefit of tax paid on input services, if input services and output services fell under the same taxable service. An amendment was subsequently made on 14 May, 2003 in the Rules giving the benefit of tax paid on input services, even if the input services and output services belonged to different taxable categories. Later, with effect from 10 September, 2004 the Service Tax Credit Rules were superseded by CENVAT Credit Rules, 2004. Learned Authorised Representative, therefore, contended that after the issuance of the Master Circular dated 23 August, 2007 that superseded all circulars, clarifications and communications, a sub-contractor, being essentially a taxable service provider is required to pay Service Tax. Elaborating his submissions, it was contended that every service provider has to discharge Service Tax liability on the activity undertaken by him on the consideration received, and if the recipient of the Service Tax undertakes a further taxable service, he has to discharge Service Tax liability by taking credit of the Service Tax paid at the preceding stage so that there is no double taxation.

6. Shri A.K. Batra, learned Chartered Accountant and Shri Anil Sood, learned Counsel both appearing for the sub-contractors, however, contended that imposition of any Service

Tax liability on a sub-contractor will amount to double taxation, which would not only be against the spirit of Service Tax Law, but would also be violative of the provisions of Article 265 of the Constitution since it would result in demand of Service Tax without any authority of law. The submission, therefore, that was advanced was that in a situation when the main contractor has discharged Service Tax liability, there will be no revenue loss to the Department if the sub-contractor does not pay the Service Tax and in any view of the matter recovery of tax from the sub-contractor shall give rise to a revenue neutrality situation. Reliance was placed by learned Counsel on certain decisions, to which we shall refer to at the appropriate stage, to contend that Service Tax imposed upon a sub-contractor is liable to be set aside on grounds of 'Double Taxation' and 'Revenue Neutrality'.

7. We have considered the submissions advanced by the learned Authorised Representative of the Department and the learned Chartered Accountant and learned Counsel for the Respondent.

8. It is w.e.f. 01 June, 2007 that sub-section (zzzza) was inserted in Section 65(105) of the Act in relation to execution of 'Works Contract'. Taxable Service under Section 65(105)(zzzza) is defined as :

"65(105)(zzzza) - to any person, by any other person in relation to the execution of a works contract, excluding works

contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation —For the purposes of this sub-clause, “works contract” means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) construction of a new residential complex or a part thereof; or
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”

9. It is not in dispute that the activity undertaken by the sub-contractor falls under the category of ‘Works Contract’ service. What is sought to be contended is that the main contractors, who had given sub-contracts to the sub-contractor

through various work orders, had already discharged the Service Tax liability on the entire contract amount and, therefore, the sub-contractor was not required to pay any Service Tax.

10. Section 66, as substituted by the Finance Act, 2007, provides that there shall be levied a tax (hereinafter referred to as the 'Service Tax') @ 12% of the value of taxable services of various sub-clauses of clause (105) of section 65 and collected in such a manner as may be prescribed. Section 68 of the Act provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in section 66 in such a manner and within such a period as may be prescribed. Section 94 of the Act deals with power to make Rules. Sub-section (1) provides that the Central Government may, by Notification in the official gazette, make Rules for carrying out the provisions of Chapter V of the Act. Sub-section (2)(a) provides that such Rules may provide for collection and recovery of Service Tax under sections 66 and 68 of the Act. In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 and section 94 of the Act and in supersession of the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002, the Central Government framed the CENVAT Credit Rules, 2004. It is, therefore, clear that **every person** (which would include a sub-contractor) providing taxable service to **any person** (which will include a main contractor) **shall pay Service Tax** at the rate specified in section 66 in the manner

provided for. The manner has been provided for in the CENVAT Credit Rules of 2004. 'Input Service' has been defined to mean, any service used by a provider of output service for providing an output service. 'Output Service' has been defined to mean any service provided by a provider of service located in the taxable territory. Rule 3 stipulates that a provider of output service shall be allowed CENVAT Credit of the Service Tax leviable under Section 66, 66A and 67B of the Act. Thus, in the scheme of Service Tax, the concept of CENVAT Credit enables every service provider in a supply chain to take input credit of the tax paid by him which can be utilized for the purpose of discharge of taxes on his output service. The conditions for allowing CENVAT Credit have been provided for in Rule 4. The mechanism under the CENVAT Credit Rules also ensures that there is no scope for double taxation.

11. In the face of these provisions, it may not be open to a sub-contractor to contend that he should not be subjected to discharge the Service Tax liability in respect of a taxable service when the main contractor has paid Service Tax on the gross amount, more particularly when there is no provision granting exemption to him from payment of Service Tax.

12. It is true that prior to 2007, various Service Tax, Trade Notices/Instructions/Circulars/Communications had been issued exempting certain category of persons from payment of

Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/Instructions/ Circulars/Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below :

999.03 / 23.08.07	A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.
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	liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.	Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.
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13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a sub-contractor is required to pay Service Tax, it may amount to ‘Double Taxation’, but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same

taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by CENVAT Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as 'CENVAT Credit') of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that CENVAT Credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the CENVAT Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should

not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the CENVAT Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

16. It is in this light that the main contention of learned Counsel for the Respondent that if a sub-contractor is required to pay Service Tax when the main contractor has actually discharged Service Tax liability, it would amount to 'Double Taxation', has to be examined. For this contention, reliance has been placed by the learned Counsel for the Respondent on the following decisions of this Tribunal :

- (i) **Urvi Construction vs Commissioner of Service Tax, Ahmedabad**, reported in **2010 (17) STR 302 (Tri.-Ahmd.)**;
- (ii) **BCC Developers and Promoters Pvt. Ltd. vs Commissioner of Central Excise, Jaipur**, reported in **2017 (52) STR 22 (Tri.-Del.)**;
- (iii) **M/s Dhaneshra Engineering Works vs Commissioner of Central Excise, Allahabad**, reported in **2018 (2) TMI 788 – CESTAT – Allahabad**;
- (iv) **Power Mech Projects Ltd. vs Commissioner of Customs, Guntur**, reported in **2017 (48) STR 165 (Tri.-Hyd.)**; and
- (v) **M/s Edac Engg. Ltd. vs CST, Chennai**, reported in **2017 (6) TMI 685 CESTAT Chennai**.

17. In **Urvi Construction** a learned Member of the Tribunal observed :

"2.Further the learned advocate also submits that in the Master Circular issued by the Board vide Circular No. 96/7/2007-S.T., dated 23-8-2007, a stand has been taken that there is no exemption to a sub contractor from payment of service tax merely because the contractor pays the tax. However, he submits that for the period circular issued late by the Board in 1997 was applicable and according to this Circular where the services have been provided by the sub-contractors such sub contractors are not liable to pay service tax and service tax liability is on the main contractor. Taking note of the fact of the contention that main contractor has paid the service tax and charging service tax on the sub-contractor again would amount to taxing the same service twice and also taking note of the circular cited by the learned advocate and the decisions of the Tribunal cited, I find that if the appellant is required to pay the service tax it would amount to taxing the same service twice and the circular and the Tribunal's decision are squarely applicable to the facts of this case and accordingly appeal is allowed with consequential relief to the appellant."

18. In **BCC Developers and Promoters Pvt. Ltd.** it was observed :

"6.1 We agree with the submission of the Id. Counsel that no double taxation is permissible under the law. The Constitution (Article 265) provides to take the exact amount of tax i.e. neither more nor less. In the instant case, if the principal has already paid the Service Tax, then the same cannot be demanded from the appellant. As per the clarification of the Board's Circular dated 23-8-2007 as well as dated 7-10-1998, if the principal had not paid the Service Tax then the same can be charged. If the Service Tax has already been paid by the principal, then the same cannot be demanded again."

19. **M/s Dhaneshra Engineering Works** followed the aforesaid decision in **BCC Developers and Promoters Pvt. Ltd.**

20. In **M/s Edac Engg. Ltd.**, the Division Bench, after placing reliance upon the decision of the Tribunal in **Urvi Construction**, observed :

"6.2 We are therefore of the considered opinion that these case laws are distinguishable from the decision taken by this very Bench in the case of the present appellants Edac Engineering Ltd. in Final order dated 19.12.2016. We also find that the very same Board's Circular No. 97/8/2007-ST dated 23.08.2007, relied upon by the Ld. AR has been taken note of by the Tribunal in **Urvi Construction (supra)**). This being so, we have no hesitation in ruling that when service tax has been paid by the main contractor, charging the sub-contractor again will amount to taxing the same service twice. In the circumstances, the issue at hand also requires to be remanded to the adjudicating authority to verify whether the service rendered by the appellant has suffered tax in the hands of the principal contracts. If that aspect is able to be proved by the appellants, no tax liability will accrue to them. Towards this end, the adjudicating authority will give suitable opportunity to the appellants to present their case. Appellants are also produce all evidence and documents to establish their claim that the tax liability required to be discharged by them has already been paid up by the main contractor. If that is provided, their will obviously be no demand for interest unless such demands have been made belatedly. Once this aspect is also able to be proved by the appellant, imposition of penalty will also not arise."

21. The aforesaid decisions do not take into consideration the impact of the CENVAT Rules. It would, therefore, not be correct to conclude that double taxation would result if a sub-contractor is required to discharge the Service Tax liability even if the main contractor has discharged the tax liability.

22. The decisions of the Tribunal holding that double taxation will not result if a sub-contractor discharges the tax liability because of the CENVAT Rules, now need to be referred to.

23. In **Max Tech Oil & Gas Services Pvt. Ltd. Vs Commissioner of Service Tax, Delhi**, reported in **2017 (52) STR 508 (Tri.-Del.)**, the Division Bench has held :

"6. Regarding the contention of the appellant that they have acted only as a sub-contractor and demanding service tax from them will amount to double taxation as the main contractor also is rendering similar service to ONGC, we find no legal basis for the contention of the appellant. The service tax leviable at the hands of each service provider is decided by nature of activities undertaken by them. If the same is covered by scope of the taxable entry under Finance Act, 1994 tax liability arises. The said service becomes part of final service rendered by main contractor is of no consequence to determine the tax liability of each and every service provider. **If at all, the service tax paid by a sub-contractor which becomes part of service further provided by the main contractor, the scheme of credit as envisaged by the Cenvat Credit Rules, 2004 will come into play subject to fulfilment of conditions therein.** It is nobody's case that the sub-contractors per se are not liable to service tax even if they rendered taxable service."

[emphasis supplied]

24. The same view was taken by the Division Bench of the Tribunal in **CCE & ST, Raipur vs. M/s J.K. Transport**, reported in **2017 (9) TMI 993 – CESTAT New Delhi**. The relevant paragraph is reproduced below :

"5. We find that the CBEC vide Circular dated 23.08.2007 has clarified that the services provided by the sub-contractor is a taxable service, even if the same is used for completion of the work by the main service provider. Thus, for providing the taxable service, the sub-contractor is liable for payment of service tax on provision of such service....."

25. Similar views were taken by the Tribunal in (i) **Max Logistics Ltd. vs Commissioner of Central Excise, Raipur**, reported in **2017 (47) STR 41 (Tri.-Del.)**; (ii) **Hargovind Electric Decorators vs. Commissioner of Central Excise, Jaipur-I**, reported in **2016 (43) STR 619 (Tri.-Del.)**; and (iii) **Sew Construction Ltd. vs Commissioner of Central Excise, Raipur**, reported in **2011 (22) STR 666 (Tri.-Del.)**.

26. At this stage, it would also be useful to refer to a larger Bench decision of the Tribunal in **Vijay Sharma & Company vs CCE, Chandigarh**, reported in **2010 (20) STR 309 (Tri.-LB)**. The issue that arose before the larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a sub-contractor is liable to pay Service Tax, the larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the

CENVAT Credit Rules. The relevant paragraph 9 is reproduced below :

"9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."

27. The Commissioner did express in the impugned order that under the CENVAT Scheme every stage of provision of service is required to be taxed and if a sub-contractor discharges the Service Tax liability, it will not result in double taxable even if the main contractor discharges the Service Tax liability because the credit of the earlier tax paid is available at a subsequent stage, but it is because of the decision of the Tribunal in **Urvi**

Construction, that the Commissioner held that double taxation would result if a sub-contractor is also required to discharge Service Tax liability when the main contractor has discharged the entire liability.

28. Learned Counsel for the Respondent has, however, relied upon the decision of the Supreme Court in **Larsen and Toubro Ltd. vs Additional Deputy Commissioner of Commercial Taxes and Anr.**, reported in **2016-TIOL-155-SC-VAT**. In this case, the contracts which were secured by the Appellant therein were works contract and a part thereof was assigned to the sub-contractor who had submitted returns and paid taxes for the execution of the works contract. During the course of the assessment, the Appellant submitted that the sub-contractors had already been taxed and, therefore, the Appellant cannot be taxed again under Section 6B of the Karnataka Sales Tax Act. The submission, therefore, was that the value of the work entrusted to the sub-contractors could not be taken into account while computing the total turnover of the Appellant for the purpose of taxation under the Karnataka Sales Tax Act. It is in view of the provisions of the Karnataka Sales Tax Act that the Supreme Court observed that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6-B of the Karnataka Sales Tax Act. This decision of

the Supreme Court will not come to the aid of the Respondent in this case in view of the specific provisions of Section 66 and 68 of the Act as also the CENVAT Rules discussed in the foregoing paragraphs of this order. It also needs to be noted that there is no provision for input tax credit on deemed sales in levy of VAT.

29. The submission of the learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the CENVAT Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms:

“A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract.”

32. The Appeal shall now be placed before the Division Bench for hearing.

(Pronounced in the open Court on 23.05.2019)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(C.L. MAHAR)
MEMBER (TECHNICAL)**

**(RACHNA GUPTA)
MEMBER (JUDICIAL)**

Golay