CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 1124 of 2010

[Arising out of Order-in-Original No. 75/STC/CHD-I/2010 dated 30.04.2010 passed by the Commissioner of Chandigarh]

M/s Megh Raj Bansal **……Appellant**
SCO No. 867, 1st Floor Cabin No. 2 NAC
Manimajra, Chandigarh

VERSUS

Commissioner of Central Excise, Chandigarh **……Respondent**
C.R. Building, Plot No. 19, Sector 17-C, Chandigarh-160017

APPEARANCE:

Present for the Appellant: Shri Bipin Garg & Shri Jwaria Kainaat, Advocates
Present for the Respondent:Shri Rajeev Gupta & Shri Narinder Singh , Authorized Representatives

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60187/2023

DATE OF HEARING: 26.06.2023
DATE OF DECISION: 07.07.2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 30.04.2010 passed by the Commissioner of Central Excise and Service Tax, Chandigarh whereby he has confirmed the demand of service tax of Rs. 54,16,682/- with equivalent penalty under section 78 and penalty under Section 76 along with interest under Section 75 of the Finance Act, 1994.

2. Briefly the facts of the present case are that the appellant is a partnership concern and registered with the Central Excise Department under the category of 'Commercial or Industrial Construction Service' and were duly paying service tax and filing ST-3 returns. The records of the appellant was examined by central excise audit team from 02.04.2007 to 03.04.2007 for the period 2004-05, 2005-06 upto 30.09.2006 and raised objection that the appellant is liable to pay service tax on the services rendered by them to the main contractors. The stand of the appellant was that in view of the trade notices issued by the department they were not liable to pay service tax. The appellant also submitted letters received from the main contractor showing that the service tax has been paid by the main contractor on the activity undertaken by the sub contractor in pursuance of the contract. Thereafter, the show cause notice dated 25.03.2009 was issued to the appellant demanding service tax amounting to Rs. 59,69,183/- besides interests and penalty by invoking the extended period of limitation. After following the due process the adjudicating authority confirmed the demand of Rs. 54,16,682/- after giving cum duty benefit and imposed penalty under Section 76, 78 and demanded interest under Section 75. Aggrieved by the said order, the appellant has filed the present appeal.

3. Heard both the parties and perused the record.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial

precedents. He further submitted that the appellant being a sub-contractor is not liable to pay service tax when the main contractor has paid the service tax on the entire work. The appellant has also attached the copies of letter received from their main contractor showing that the service tax has been paid by them on the entire activity. The appellant has also relied upon the trade notice 98 ST dated 14.10.1998 and various other decisions of the Tribunal wherein it has been held that the sub-contractor is not liable to pay service tax on the services provided by it when the main contractor has paid the service tax on the entire activity. For this submission, he relied upon the following decisions as under:-

_ Vinoth Shipping Services Vs. CCE- 2021 (55) GSTL 313 (Tri.-Chennai)

_ Semac Pvt. Ltd. Vs. CCE – 2006 (4) STR 475 (Tri.-Bang.)

_ Koch-Glitsch India Ltd. Vs. CCE – 2009 (13) STR 636 (Tri.-Ahmd.)

_ Jac Air Services Pvt. Ltd. Vs. CCE – 2013 (31) STR 155 (Tri.-Delhi)

_ Larsen & Toubro Ltd. Vs. CCE – 2007 (211) ELT 513 (S.C.)

_ Jaiprakash Industries Ltd. Vs. CCE – 2002 (146) ELT 481 (S.C.)

_ Continental Foundation JT. Venture Vs. CCE – 2007 (216) ELT 177 (S.C.).

5. He further submitted that the whole of the demand is time barred because period in dispute is 2004-05 and 2005-06 and the audit was conducted on 02.04.2007 and 03.04.2007 whereas show cause notice was issued on 25.03.2009 which is entirely time barred. He further submitted that the earlier decisions cited (Supra) holding

that sub-contractor is not liable to pay service tax when the main contractor has paid the service tax on the entire activity including that of sub-contractor have been overruled by the decision of the Larger Bench of the CESTAT in the case of ***CST Vs. Melange Developers P. Ltd., 2020 (33) GSTL 116 (LB)***. He further submitted that even after the decision of the Larger Bench in the case of ***Melange Developers P. Ltd (Supra)*** the appellant is not liable to pay service tax on the extended period of limitation. In this regard, he referred the decision of ***Max Logistics Ltd. Vs. Commissioner of Central Excise, Jaipur, 2017 (47) S.T.R. 41 (Tri.-Del.)*** and ***Vinod Shipping Services Vs. CCE & S.T. Tirunelveli, 2021 (55) GSTL 313 (Tri.-Chennai).***

6. On the other hand, Ld. DR supported the findings in the impugned order and submitted that even if the main contractor has discharged the service tax on the 'Commercial or Industrial Construction Service', but still the appellant being the sub-contractor is liable to pay service tax because the appellant is providing the services to the main contractor, and the consideration received by the appellant from the main contractor is the consideration received for the services provided to the main contractor.

8. After consideration the submissions made by both the sides and perusal of the material on record, we find that the issue whether sub-contractor is liable to pay service tax on the services on which the main contractor had paid the service tax, there were contrary decisions on this issue among the various benches of the Tribunal and

the matter was referred to the Larger Bench and the Larger Bench has settled the issue in the case of ***CST Vs. Melange Developers P. Ltd., 2020 (33) GSTL 116 (LB).*** Further, we find that in the case of ***Vinoth Shipping Services Vs. Commissioner of Ex. & S.T., Tirunelveli reported in 2021 (55) GSTL 313 (Tri.-Chennai)*** where the Division Bench of the Tribunal after following the Larger Bench Decision has held as under:-

"8.1 It is seen that the amount received from the clients have been subjected to Service Tax at the hands of the main contractor. However, since the appellant, as a sub-contractor has provided services to the main contractor, is liable to discharge Service Tax on the consideration received from the main contractor namely, M/s. ACL. As correctly submitted by the Learned Authorized Representative for the Department, the main contractor would then be eligible to take credit of such Service Tax paid by the appellant as these are input services for the main contractor. This issue is no longer res integra and is settled by the decision of the Larger Bench of the Tribunal in the case of Commr. of S.T., New Delhi v. M/s. Melange Developers Pvt. Ltd. reported in 2020 (33) G.S.T.L. 116 (Tri. CB). It was observed as under:

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 .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.

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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."

9. Following the above decisions, we have no hesitation to hold that the appellant/sub-contractor is liable to pay the Service Tax even if the main contractor has discharged the liability. The issue on merits is found against the assessee and in favour of the Department.

10. Further, we find that the issue whether in such cases extended period of limitation can be invoked or not was also considered by various benches of Tribunal and in this regard the Delhi Tribunal in the case of ***Max Logistics Ltd. Vs. Commissioner of Central Excise, Jaipur, 2017 (47) S.T.R. 41 (Tri.-Del.).*** In para 11 has held as under:

"11. Considering the above discussion and analysis the service tax liability on the appellant cannot be contested as invalid. We uphold the findings in the impugned order regarding tax liability. However, the appellants contested the demand on the question of time bar also. It is their case that the full amount collected by RSIC from the importers and exports has been subjected to service tax. Even if the appellant is held liable on their share of Revenue received from RSIC the said tax is eligible for credit to RSIC. Further, the issue involved is interpretation of law and there is no intend to evade payment of duty in such situation. The appellants relied on various case laws to reiterate their views. We find that the appellant is having a strong ground regarding the question of time- bar. It is to be noted

that all invoices, for full consideration, have been raised by RSIC and the amount collected from the clients [importers and exports] were subjected to service tax which was deposited to the Government. RSIC in turn are paying certain amount to the appellants to get the services in these ICDs. In such situation, there is a clear possibility for a bona fide belief that as the whole amount has been subjected to service tax the amount received by the appellant may not be liable to service tax in connection with the services rendered by them.

The issue involved has been a subject matter of interpretation by the Tribunal and High Courts. In fact the earlier Circular issued by the Board, covering the period prior to the introduction of Cenvat Credit Rules gave an impression that when the main service provider discharged the service tax on gross value there may not be tax liability on the sub-contractor rendering similar service to the main contractor The Tribunal in various cases held in such a case involving interpretation of law and also a bona fide belief regarding service tax liability, will not attract the demand for extended period. We also take note that service tax liability on the appellant when discharged will be available as a credit to RSIC which can be used by RSIC for discharging their overall service tax liability. As such, to impute motivation to the appellant for intention to evade payment of duty is not sustainable. A reference can be made to the Tribunal's decisions in British Airways v. CCE (Adjn.), Delhi reported in 2014 (36) STR. 598 (Tri. - Del.), Atul Ltd. v. CCE, Surat-Il reported in 2009 (237) E.LT. 287 (Tri. - Ahmd.). In the facts and circumstances of this case, we find that the demand for extended period is not sustainable. We have also perused the reasons recorded by the Original Authority for invoking extended period of demand. He recorded that but for the Department's investigation the non- payment of tax would not have come to the notice. Further, the balance sheet for certain years have not been furnished in time by the appellant which was obtained from Registrar of Companies. As such, it was held that the appellants wilfully suppressed material facts. We find that the service tax demand against the appellant was sought to be confirmed mainly on the basis of the terms of agreement between the appellant and RSIC. The gross receipt of RSIC and service tax payment thereupon is available with the Department. A portion of that receipt is now being taxed under BIS at the hands of the appellant. The service. tax liability is as such on the arrangement based on agreement which is also the basis for payment of full service tax by RSIC. In other words, the service tax liability of both RSIC and the appellant has common source agreement. As such, we find the demand for extended period is not sustainable in the present case.”

11. The said findings on limitation has also been approved by the Larger Bench of the Tribunal in the case of ***Melange Developers Pvt. Ltd. cited*** (Supra). Further, we find that this issue has also been considered recently by the Division Bench of the Ahmadabad Tribunal in the case of **Shanti Construction Company Vs. CCE & S.T., Gujarat** reported in ***2023-TIOL-223-CESTAT-AHM*** wherein the Hon'ble Tribunal has considered various circulars issued by the department from time to time and also considered various decisions given by the Tribunal and thereafter held that extended period of limitation cannot be invoked to demand service tax in such cases.

12. In this regard, it is relevant to reproduce the said findings of the Tribunal in para 5.2 as under:

"*On limitation also we agree with the argument of Ld, Counsel. We find that during the relevant period there were various Circulars and trade notices by the Commissionerate clarifying that where the principle service provider discharged his service tax liability on the entire value of the services, a separate liability cannot be imposed against the sub-contractor. The said Circulars stands taken note of by the Tribunal in various judgments and its stand held that where the entire service tax has been paid on the full consideration of the services, the sub-contractors' liability would not arise to pay service tax again on the part of principle service. One such reference can be made by following circulars:*

TRU letter F. No. 341/18/2004-TRU (Pt.) dated 17-12-2004

-Circular No. 23/3/97-5.T., dated 13-10-1997 - Master Circular No. 96/7/2007-ST dated 23-8-2007

In fact, also from various following decisions of the Tribunal:-

- Urvi Construction v. CST, Ahmedabad 2010 (17) S.T.R. 302 (Tri. Ahmd.) = 2009- TIOL-1890-CESTAT-AHM

-CCE, Indore v. Shivhare Roadlines - 2009 (16) S.T.R. 335 (Tri.-Del.) =2009-TIOL-526-CESTAT-DEL

- Harshal & Company v. CCE, Vadodara - 2008 (12) S.T.R. 574 (Tri.-Ahmd.)

- Semac Pvt. Limited v. CCE, Bangalore-2006 (4) S.T.R. 475 (Tri.-Bang.) 2006-TIOL- 1546-CESTAT-BANG

Shiva Industrial Security Agency v. CCE, Surat - 2008 (12) S.T.R. 496 (Tri.-Ahmd.)

- *Synergy Audio Visual Workshop P. Ltd. v. CST, Bangalore 2008 (10) S.T.R. 578 (Tri.-Bang.)= 2008-TIOL-809-CESTAT-BANG*

- OIKOS v. CCE , Bangalore 2007 (5) S.T.R. 229 (Tri-Bang)= 2006-TIOL-1760-CESTAT-BANG

In the Tribunal's decision in the case of OIKOS v. CCE, Bangalore - III reported in 2007 (5) S.T.R. 229 confirmed against the sub-contractor. To the similar effect the Tribunal decision in the case of Viral Builders v. CCE, Surat reported in 2011 (21) S.T.R. 457 (Tri.-Ahmd.) =2010-TIOL-1575-CESTAT- AHM observed that service stands provided only once and as such tax is not payable twice for the same service. Further in the case of Sunil Hi-Tech Engineers Ltd. v. CCE, Nagpur reported in 2010 (17) S.T.R. 121 (Tri.-Mumbai) 2009-TIOL-1867-CESTAT-MUM, the service tax confirmed against the sub-contractor was set aside on the ground that the main contractor has already paid the Service Tax and the matter was remanded to verify the above effect. The same ratio was laid down by the Tribunal in the case of Newton Engg. & Chemicals v. CCE, Vadodara reported in 2008 (12) S.T.R. 378 (Tri- Ahmd.) and by the Larger Bench decision of the Tribunal in the case of Vijay Sharma & Co. v. CCE, Chandigarh reported in 2010 (20) S.T.R. 309 (Tri.-LB) 2010-TIOL-1215-CESTAT-DEL-LB."

13. In view of our discussion above by following the ratio of the above said decisions we hold that the appellant being a sub-contractor is liable to pay service tax on of 'Commercial or Industrial Construction Service' in view of the decision of the Larger Bench cited (Supra). But, extended period cannot be invoked to demand service tax from the appellant and in the present case the entire demand is

barred by limitation as the demand pertains to the year 2004-05 and 2005-06 whereas show cause notice was issued on 28.03.2009 which is completely time barred.

14. In the result, we allow the appeal of the appellant by setting aside the impugned order on the ground of limitation with consequential relief, if any as per law.

(Order pronounced in the open court on 07.07.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash