

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60340 of 2021**

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-04-2021-22 dated 26.04.2021 passed by the Commissioner (Appeals), Chandigarh]

**M/s Competent Constructions**

1258 Sector 37B Chandigarh 160036

**.....Appellant**

*VERSUS*

**C.C.E & S.T. Chandigarh**

Plot No. 19 Sector 17-C, Chandigarh 160017

**.....Respondent**

**APPEARANCE:**

Present for the Appellant: Shri S.P. Singh, Advocate

Present for the Respondent: Shri Amandeep Kumar & Ms. Shivani,  
Authorized Representatives

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 60441/2023**

DATE OF HEARING: 26.05.2023

DATE OF DECISION: 21.09.2023

**PER S. S. GARG**

The present appeal is directed against the impugned order dated 24.04.2021 passed by the Commissioner (Appeal) whereby the Commissioner (Appeals) has confirmed the demand in respect of services provided to Thapar University, Patiala for the period 01.07.2012 to 31.03.2013 (post negative list regime) and ordered to be deposited by the appellant along with interest and also imposed penalty under Section 76 of the Act equal to 10% of the service tax.

2. Briefly the facts of the present case are that the appellants are engaged in providing services under the category (i) Management, Maintenance or Repair services (ii) Erection, Commissioning or installation and (iii) Construction of Residential Complex and (iv) Commercial or industrial construction services.

3. That on the basis of information, that the appellant had provided taxable services under the category of taxable services provided i.e. "Construction of Residential complex Services" & Commercial Construction services. An enquiry was conducted by C.Ex. Commissionerate Chandigarh I, against the appellants and as a result, a show cause notice for Rs. 35,35,436/- for the period from November 2005 to 31.03.2010 issued on 31.03.2011 and show cause notice for the period April-2010 to 31.03.2011 for Rs. 43,81,840/- issued on 22.10.2011. The demands were partially confirmed by adjudicating authority vide Order-In-Original No. 14/ST/JC(P)/CHD-1/2012 dated 14.09.2012. Two separate appeals were preferred against the said OIO, one by the Department against the dropped demand and the other by the Appellants against the confirmed demand. That both the appeals were decided vide a common OIA No.CHD-Excus-000-APP474475-14-15 dated 13.03.2015. That on the basis of above, it was observed that the appellants rendered services which fell under category of taxable services i.e.

"Construction of Residential Complex Services" "Management, Maintenance or repair Services and Electrical Installations under the category of "Erection, commissioning or installation on which, the

appellants were liable to pay service tax. Accordingly, Show Cause Notice for the period 2011-12 issued on 23.04.2013 for demand of Service tax of Rs. 10,58,539/- and a statement issued under Section 73(IA) for the subsequent period for the period 2012-13, for demand of Service tax of Rs. 30,11,158/-. Both demands of Rs. 40,69,697/- (1058539+30,11,158) confirmed by the adjudication authority vide OIO No. 31/AC/ST/GST/CHD-III/2018-19 dated 23.01.2019 alongwith penalty of Rs. 10,000/- under Section 77 and penalty of Rs. 40,69,697/- under Section 78.

4. The Appellant filed an appeal before Commissioner(Appeals) CGST Commtt. Chd, against OIO dated 23.01.2019, who vide OIA No. CHD-EXCUS-001-APP04/2021-22 dated 26.04.2021, thereunder, ordered to deposit the demand in respect of services provided to Thapar University, Patiala for the period 01.07.2012 to 31.03.2013(Post-negative list regime) alongwith interest and imposed penalty under Section 76 of the Act equal to 10% of the service tax.

The Appellants are in appeal against the said OIA.

5. Heard both the parties and perused the record.

6. 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. He further submitted that the service tax liability on the service of Commercial and industrial constructions provided during the period 01.07.2012 to 31.03.2013 is

to the tune of Rs. 20,29,280/- and the said liability was discharged by the appellant in the year 2013-2014.

7. He further submitted that the Commissioner (Appeals) has wrongly held that the appellant has failed to establish co-relation to the tax paid during the period 2013-2014 that was payable for the period 01.07.2012 to 31.03.2013. He further submitted that the appellant had filed an application under SVLDRS, 2019 for settlement of dispute covered by the said appeal, since the disputed amount has already been paid on account of commercial and industrial construction provided to Thapar University but the contention was not accepted by the department. He further submitted that the designated committee again issued form SVLDRS-3 without considering the grounds and the appellant brought to the notice of Principal Commissioner but nothing was heard from the Principal Commissioner or designated committee. He further submitted that since the appellant has already paid the service tax for the disputed period 2012-13 and nothing remains payable at the end of the appellant. He further submitted that service tax for the period 01.07.2012 to 31.03.2013 on the services provided to the Thapar University stands discharged before issuance of show cause notice on 23.04.2013 and 23.04.2014, as such provisions of Section 73(3) of Finance Act, 1994 no penal action warranted and further the penalty under Section 76 liable to be set aside.

8. On the other hand, Ld. DR reiterated the findings of the impugned order and submitted that the allegation of the appellant

that he has paid the service tax for the period 01.07.2012 to 31.03.2013 to the tune of Rs. 20,29,280/- was discharged in the year 2013-2014 has been considered by the Commissioner and he has given detailed findings in the impugned order in para no. 8B.3 to 8B.3.1.

9. She further submitted that if the appellant has excess paid in their service tax returns for the period 2013-14, then there is a separate mechanism to handle the same as provided in Rule 6(4A) of the service Tax Act, 1994.

10. She further submitted that the right procedure is to file refund and the appellant cannot ask for adjustment of excess payment in one period towards the service tax liability of the other period as there is no provision for adjustment of excess payment but the party has to file refund for the excess payment. She further submitted that if the appellant files refund for excess payment during 2013-14 then in that case the unjust enrichment has also to be examined.

11. After considering the submissions of both the parties and perusal of the material on record, I find that by the impugned order the Commissioner (Appeals) has confirmed the demand in respect of Thapar University but the appellant has never challenged the Order-in-Appeal on merits.

12. Further, I find that the period of 2013-14 is not in dispute and hence never been examined by the department. Further, I find that the contention of the appellant that he has paid excess payment in

2013-14 has been examined by the department and the Ld. Commissioner has dealt with the same in para 8B.3 and 8B3.1 which is reproduced hereinbelow:

*" 8B.3 Further, the appellants have canvassed that they had already deposited service tax of Rs. 26,92,635/- against service tax amount of Rs.1,53,530/-as per details in Annexure B attached with the appeal, on their own ascertainment before the issue of impugned statement under Section 73, hence no show cause notice/Statement was required to be issued as per the provisions of Section 73(3) of the Act.*

*"8B.3.1 However, on examining the details annexed with the appeal and the challans submitted by the appellants, I find that there is nothing to co-relate the amounts paid with the liability of the appellants for the post negative list regime period, therefore, nothing could be deduced regarding payment of service tax liability w.e.f. 01.07.2012 in want of any corroborative documents."*

13. Further, I find that the ground taken by the appellant that the service tax liability for 01.07.2012 to 31.03.2013 was discharged in the year 2013-14 is not tenable as the service tax return for the financial year 2013-14 filed by the appellant has never been challenged nor the revise return was filed by the assessee. Further, I find that if the appellant has discharged their service tax liability for the period 2012-13 in ST-3 returns of financial year 2013-14 but they have not given any intimation to the department regarding the payments of service tax liability in financial year 2013-14 for the period 2012-13.

14. Further, if the contention of the appellant is accepted that they have paid excess service tax in the returns filed for the period 2013-14 then the only course left to him is to seek refund of the same. There is no provision of adjustment of excess payment of service tax of one period towards the liability of the other period.

15. In view of the above discussion, I am of the considered view that there is no infirmity in the impugned order passed by the Commissioner (Appeals) which I uphold by dismissing the appeal of the appellant.

(Order pronounced in the open court on 21.09.2023)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**