

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 87164 of 2018

(Arising out of Order-in-Original No. 19/CGST-NM/Commr/KV/2017-18 dated 29.03.2018 passed by the Commissioner of Central Tax (GST & C.EX.), Navi Mumbai)

M/s. Schindler India Pvt. Ltd.Appellant
B-401-402, Delphi,
Hiranandani Business Park,
Powai, Mumbai-000 076

VERSUS

.....Respondent

Commissioner of CGST, Navi Mumbai
10th Floor, Satra Plaza,
Palm Beach Road, Sector 19D,
Vashi, Navi Mumbai-400 705

WITH

Service Tax Appeal No. 85801 of 2019

(Arising out of Order-in-Original No. 64/CGST-NM/Commr/KV/2018-19 dated 05.02.2019 passed by the Commissioner of Central Tax (GST & C.EX.), Navi Mumbai)

M/s. Schindler India Pvt. Ltd.Appellant
B-401-402, Delphi,
Hiranandani Business Park,
Powai, Mumbai-000 076

VERSUS

Commissioner of CGST, Navi MumbaiRespondent
10th Floor, Satra Plaza,
Palm Beach Road, Sector 19D,
Vashi, Navi Mumbai-400 705

AND

Service Tax Appeal No. 86487 of 2021

(Arising out of Order-in-Original No. 40/CGST-NM/Commr/KV/2020-21 dated 28.01.2021 passed by the Commissioner of Central Tax (GST & C.EX.), Navi Mumbai)

M/s. Schindler India Pvt. Ltd.Appellant
B-401-402, Delphi,
Hiranandani Business Park,
Powai, Mumbai-000 076

VERSUS

Commissioner of Service Tax, Navi MumbaiRespondent
10th Floor, Satra Plaza,
Palm Beach Road, Sector 19D,
Vashi, Navi Mumbai-400 705

APPEARANCE:

Shri Rohan Shah, Advocate along with
Ms. Sweta Upadhyay, Shri Sabazi,
Shri Rajan, and Shri Mohammed, Advocates for the Appellant.

Shri S. K. Mathur, Special Counsel, Authorised Representative for the
Respondent.

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 87008-87010/2013

Date of Hearing: 22.08.2023
Date of Decision: 18.10.2023

PER: DR. SUVENDU KUMAR PATI

Conformation of the entire Service Tax demand raised in 3 Show Cause notices (SCN) dated 16.03.2016 for the Financial Year 2014-15 for an amount of Rs.56,41,79,033/-, SCN dated 19.04.2018 for 2 Financial Years from 2015-2017 for an amount of Rs.166,35,17,279/-, SCN dated 11.02.2020 for the Financial Year April to June 2017 for an amount of Rs.22,97,19,993 along with interest and penalty under Sec 76 and 77 of the Finance Act, 1994 through 3 adjudication orders passed on dated 29.03.2018, 29.01.2019 and 26.02.2021 are assailed in these 3 appeals.

2. Facts of the case, in a nutshell, are that Appellant Company manufactures elevators and also provides service, installation and commissioning of elevators. For both the purposes of manufacturing and installation, it had obtained Excise and Service Tax registration respectively. Under the service category registration was done for 'installation and commissioning and works contract services'. It adapts two business modules namely manufacturing elevators alone and for manufacturing as well as installation of elevators. For the second module it discharges appropriate VAT liability on supply of equipments and paid Service Tax on the component of installation and commission services.

3. Respondent-Department disputed payment of Service Tax on installation and commissioning after deducting the amount paid towards supply of equipments/parts on which VAT was discharged and issue show cause for recovery of Service Tax on the gross amount charged towards the entire process of supply of equipment as well as installation and commissioning on the ground that bifurcation of both the components were not apparently noticeable. First show cause notice was issued on 22.10.2013 under Sec 73 (1) of the Finance Act, 1994 for the Financial Years from 2008 to 2013. Matter was adjudicated upon and demand was conformed along with interest and penalties. Being agrived, Appellant challenged the legality of the order before this Tribunal which had disposed of the appeal on 01.07.2014 by way of remand to the adjudicating authority with specific direction to examine the records of the Appellant and to differentiate both supply of goods and rendering of services. *De novo* adjudication was initiated in pursuant to the order of the Tribunal but the same had not yielded any fruitful result since the Commissioner had conformed the entire demand in its totality along with interest etc. in the said *de novo* adjudication order and also adjudicated *SCN* dated 10.03.2015 for Financial Year 2013-14 that was also disposed of by way of conformation of demand etc. In the second round of litigation initiated by the Appellant before this Tribunal, the said adjudication order was set aside on 15.03.2023. In the mean while three other periodic demand notices, as stated in the first paragraph were issued under Sec 73 (1A) and adjudicated by way of

conformation of demand through three other separate adjudication orders which are assailed here in these appeals.

4. During course of hearing of the appeal, Learned Counsel for the Appellant Mr. Rohan Shah submits that since these three conformation of demand had its genesis to the earlier demand and adjudication order and those were periodic demands issued under Sec 73 (1A) of the Finance Act, 1994 that mandates that the ground raised in the subsequent periodic notices must be the 'same' as that of the previous notice and as the demands raised therein and confirmed by the adjudicating authority were set aside, these 3 adjudication orders are required to be set aside so as to maintain consistency and predictability in the order passed by the Tribunal. In placing reliance on the judgment of Hon'ble Supreme Court passed in the case of *Radhasoami Satsang, Saomi Bagh, Agra v. CIT, (1992) I SSC 6591*, he submitted that Hon'ble Supreme Court has emphasized that rule of consistency is required to be followed in the administration of justice to achieve predictability of the law and to avoid multiplicity of proceedings and issue having been settled in favour of the Appellant for the previous period for both pre and post negative list regime, as well as on the basis of Judicial precedent set by this Tribunal in the case of *M/s Johnson Lifts Pvt. Ltd. Vs Commissioner of Service Tax, Chennai 2017 (9) TMI 32-CESTAT Chennai and Commissioner of CGST & CX, Kolkata Vs. Lumino Industries Ltd. [2022 (1) TMI 509-CESTAT Kolkata]*, the issue is no more *res integra* that value of materials on which VAT liability has been discharged by the assessee should not form part of the 'value' for the

purpose of determination of the Service Tax liability and in furtherance to such principle, Appellant had duly discharged Service Tax liability for which order conforming imposition of duty along with interest and penalties on the gross amount charged is required to be set aside.

5. In response to such submissions, Learned Authorised Representative for the Respondent-Department argued in support of the reasoning and rationality of the order passed by the Commissioner and has drawn our attention to the fact that there is clear finding of the Commissioner that noticee had adopted different valuation methods at different stages as per its suitability and no proof that VAT has been paid on the differential amount or cancellation of payment of VAT with VAT returns was submitted by it for which it is not possible to segregate value of materials from the value of taxable services and, therefore, conformation of the demand on the entire turnover needs no interference by the Tribunal.

6. We have taken note of the submissions and gone through the appeal records as well as the order passed by this Tribunal on 15.03.2023 setting aside demand for two other periods. Needless to mention here that the same person as Commissioner has passed these three orders and they paraphrased each other. In all 3 appeals, she has also referred to the certificates issued by the Chartered Accountant (CA), extracted its paragraph and ultimately concluded that the same certificates were issued in mechanical manner after obtaining computer generated printouts from the Appellant Company's system despite the

fact that the starting word of the extracted portion of the certificate clearly indicates that those were issued on the basis of verification made by the Chartered Accountant (CA). It would be worthwhile, to have a look at paragraph 8 of the order passed by this Tribunal in which it was clearly mentioned that Appellants were maintaining proper and adequate accounting records to demonstrate that there was segregation of the price towards supply of material and for installation and commissioning of equipment and, therefore, denial of the value declared by the appellants without proper substantiation by the adjudicating authority, could not stand Judicial scrutiny.

7. This being the observation of this Tribunal we are of the considered view that the findings of the Learned Commissioner in her three orders under challenge herein that segregation is not possible is apparently based on her observation made at para 5.4 of the order which appears to be prejudiced against the Appellant for the reason that in the earlier *de novo* adjudication, the entire demand was re-conformed by the Commissioner which was accepted like a precedent by her and she took up the rest of the processes only to quantify the demand. For a better clarity para 5.4 is reproduced below:

"I find that the Order-in-Original No. 12/ST-1/RS/2014 dated 28.02.2014 with respect to the first show cause notice has held that the activities carried out by the notice falls under the category of "Works Contract Service" as defined under Section 65(105) (zzzza) of Finance Act 1994 and the demand of Rs.95,78,68,514/- was accordingly confirmed vide the said Order-in-Original dated 28.02.2014. This order was appealed against by
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the noticee before Hon'ble CESTAT, who had remanded the case back to the adjudicating authority for de novo adjudication with the directions to consider the actual value of property involved in the goods transferred during the execution of the works contract adopted for VAT purpose and thereafter determine the value of service portion. Vide de novo adjudication Order No. 15/ ST-VII/RS/2014 dated 30.12.2014 the adjudicating authority upheld the earlier Order dated 28.02.2014 confirming the Service Tax demand of Rs.95,78,68,514/-. I also find that the show cause notices dated 10.03.2015 (for the period 2013-14), 16.03.2016 (for the period 2014-15) and 19.04.2018 (for the period 2015-16 to 2016-17) issued under the provisions of Section 73(1A) have also been decided and confirmed vide Order-In-Original Nos. 08 / ST-VII/RK/2015-16 dated 30.10.2015, 19/CGST-NM/Commr/KV/2017-18 dated 29.03.2018 and 64/CGST-NM/Commr/KV/2018-19 dated 29.01.2019. As the issue of classification has been decided in aforesaid orders, I take up noticees submission on quantification of the demand and appropriation proposed in the notice."

(Underlined to emphasise)

8. On close analysis of the findings noted above, we are of the considered view that the sole basis of conformation of demand made in these three appeals was that in the *de novo* proceeding the demand in its entity was conformed with interest and penalties but having regard to the fact that the said *de novo* adjudication order has been set aside by this Tribunal and the subsequent demands raised through Section 73(1A) as well as its conformation having based on the previous conformation orders, the same is liable to be set aside and we do so. Therefore, in order to maintain consistency and predictability of the

order of this Tribunal and in obedience to judicial precedent set by it, the following order is passed.

THE ORDER

9. All three appeals are allowed and the orders passed by the Commissionerate of CGST & CX `vide Order-in-Original No. 19/CGST-NM/Commr/KV/2017-18 dated 29.03.2018, Order-in-Original No. 64/CGST-NM/Commr/KV/2018-19 dated 05.02.2019, Order-in-Original No. 40/CGST-NM/Commr/KV/2020-21 dated 28.01.2021 are hereby set aside.

(Order pronounced in the open court on 18.10.2023)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)