

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

REGIONAL BENCH-COURT NO. 3

**Service Tax Appeal No. 11308 of 2014 - DB**

(Arising out of OIO-SUR-EXCUS-001-COM-24-13-14 dated 11/12/2013 passed by  
Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Shiva Industrial Security Agency Pvt Ltd**

**.....Appellant**

J-1, Sisa House, Sameer Complex,  
R S No. 71, Navsarjan Society, Pandesara,  
Surat, Gujarat

*VERSUS*

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

**.....Respondent**

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

**APPEARANCE:**

Shri Anish Goyal, Chartered Accountant for the Appellant  
Shri P. Ganesan, Superintended (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

**Final Order No. A/11395/2023**

DATE OF HEARING: 21.03.2023  
DATE OF DECISION: 28.06.2023

**RAMESH NAIR**

The fact of the case is that the appellant is a security service provider and as sub-contractor provided security services to M/s Reliance Group Security Services Pvt. Ltd. As per the Appellant's contention that being main contractor M/s Reliance Group Security Services Pvt. Ltd., Jamnagar has paid the Service tax, the Appellant as a sub-contractor would not be liable for service tax payments. After detailed verification and analysis of the activities, statements and records of the Appellants, Show cause notice dated 10.05.2007 was issued for recovery of service tax amount of Rs. 51,41,907/- for the period April 2002 to December 2003 and imposition of penalties under Section 76 and 78 of the Act. In adjudication, Learned Commissioner vide Order-In-Original dated 28.09.2007 confirmed Service tax demand along with interest and penalties. Being aggrieved with the said order appellant filed appeal before the CESTAT. Vide Final Order dated 25.03.2008 CESTAT remanded the matter back to the Ld. Adjudicating authority for fresh decision. In de-novo adjudication Ld. Commissioner vide

impugned Order-In-Original No. SUR-EXCUS-001-COM-24-13-14 dated 11.12.2013 confirmed the Service tax demand and imposed the penalty on the appellant. Being aggrieved by the impugned order, the appellant filed the present appeal.

2. Shri Anish Goyal, Learned Chartered Accountant, appearing on behalf of the appellant submits that the appellant was registered with Service tax department since year 2000. Appellant paid service tax for services provided to M/s Reliance Group Security for the period up to May 2002. On 11.07.2006 statement of Shri Kaustabh Bosh, representative of M/s Reliance Group Security Services Pvt. Ltd. was recorded by Service tax department, Jamnagar, wherein he stated that they have paid Service tax of Rs. 51,41,907/- with respect to services rendered by Appellant. Further vide letter dated 25.05.2007 submitted to department on 28.05.2007, they have categorically stated that they have paid Service tax pertaining to payment made to Appellant.

2.1. He further submits that no liability was cast on sub-contractor if the main -contractor has paid tax. He placed reliance on the following trade notice/ circulars/ clarification issued by department.

- (i) Clarification F.No. 341/18/2004-TRU (Pt.) dated 17.12.2004.
- (ii) Trade Notice No. 53 CE (Service tax)/ 97 dated 04.07.1997
- (iii) Order/Instruction F.No. 341/43/96-TRU dated 31.10.1996
- (iv) M.F (D/R) Circular No. 23/3/97/ST dated 13.10.97

2.2 He also placed reliance on the following judgments:

- (i) Indfos Industries Ltd. Vs. Commissioner of C.Ex, Noida - 2012(26)STR 129 (Tri. Delhi)
- (ii) BBR (India) Ltd. Vs. CCE, Bangalore -III- 2006(4) STR 269 (Tri. Bang.)
- (iii) SEMAC Pvt. Ltd. Vs. Commissioner of Service tax, Bangalore - 2006(4)STR 475 (Tri Bang.)

2.3 He also argued that the subject SCN was issued on 10.05.2007 for the period April 2002 to December 2003 i.e after 3 years of the relevant date. The demand in present matter is Time barred. He placed reliance on the following Judgments:

- (i) M/s Shanti Construction Co. Vs. CCE-ST, Rajkot 2023(3)TMI 14-CESTAT Ahmedabad.
- (ii) Paharia Construction Company Vs. Commissioner of C.Ex. 2020-TIOL-725-CESTAT-DEL.

2.4 Further he also submits that due the facts that M/s Reliance Group Security Services Pvt. Ltd. would be eligible for credit, the whole situation was revenue neutral and for this reason also demand is not sustainable. He placed reliance on the following judgments:

- (i) Karpur K.C.P. Packagings Ltd. Vs. Commissioner of C.Ex., Pondicherry -2007(212)ELT 470 (Tri. Chennai)
- (ii) M/s Vedant Cleaning Agency Vs. Commissioner CGST -2020-TIOL-402-CESTAT-ALL
- (iii) M/s. Marck Bioscience Ltd. Vs. Commissioner of C.Ex.- 2019-TIOL-3153-CESTAT-AHM.

3. Shri P. Ganesan, Learned Superintendent(AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides.

4.1 We find that C.B.E.C. had clarified that if the main contractor discharges the ServiceTax liability, the sub-contractor need not to pay ServiceTax on the same activity and only in August, 2007 the Board issued a clarification in the matter vide Circular No. 96/7/2007-S.T., dated 23-8-2007 wherein it was clarified that the services rendered by the sub-contractors are in the nature of 'input service' and, therefore, Service Tax is leviable on any taxable service 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 service'. In the present case, the period involved is 2002-2003 i.e prior to the issue of the circular. We also find that in number of decisions in the case of *Urvi Construction v. Commissioner of Service Tax, Ahmedabad* - [2010 \(17\) S.T.R. 302](#) (Tri.-Ahmd), *Foto Flash v. Commissioner of Service Tax, Bangalore* - [2008 \(9\) S.T.R. 462](#) (Tri.-Bang.) and *Synergy Audio Visual Workshop Pvt. Ltd v. Commissioner of Service Tax, Bangalore* - [2008 \(10\) S.T.R. 578](#) (Tri.-Bang.) it has been held that once the main contractor has discharged the ServiceTax liability on a value which includes

service provided by the sub-contractor, then the demand for ServiceTax on sub-contractor is not sustainable in law.

4.2 We also find that the tribunal while remanding the matter in the present case vide order dated 25.03.2008 also observed that:

*“We find that the various decision relied upon by the appellant before the adjudicating authority, though noticed by him does not stand discussed by the commissioner. Further, the facts that M/s Reliance Group Support Services Pvt. Ltd. has paid the entire amount of tax in respect of the services provided to the appellant as sub-contractor also does not stand taken note of by the Commissioner, while confirming duty against the appellant. As such, we would like the commissioner to re-consider the issue in the light to the Tribunal’s decisions referred supra. For the said purpose, we set aside the impugned order and remand the matter to the Commissioner for fresh decision. The appeal is allowed by way of remand.”*

Even after the clear instruction of tribunal as above, we find that Learned Commissioner has not dealt with the issue in proper way and decided the matter stating that the case law are not relevant and trade notice/judgments were of different category. Clearly, learned Commissioner has not dealt the issue in proper perspective.

4.3 We also noticed that as regard the verification of payment of service tax by M/s Reliance Group Security Services Pvt. Ltd. Learned Commissioner held that no authentic reconciliation statement and payment particulars along with concerned work order were submitted by the appellant.

4.4 As per the clarification in 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. We are therefore of the view that on this particular issue once again the matter needs to be remanded to Adjudicating Authority for verification of payment particular of Principal i.e M/s Reliance Group Security Services Pvt. Ltd. In the present matter the facts on records is that on 11.07.2006 statement of Shri Kaustabh Bosh, representative of M/s Reliance Group Security Services Pvt. Ltd. was recorded by Service tax department, Jamnagar, wherein he stated that they have paid Service tax of Rs. 51,41,907/- with respect to services

rendered by Appellant. Further vide letter dated 25.05.2007 M/s Reliance Group Security Services Pvt. Ltd. have categorically stated that they have paid Service tax pertaining to payment made to Appellant. On the said evidences if any doubt, at best the Ld. Adjudicating authority can make an inquiry from Jurisdictional Range Officers of M/s Reliance Group Security Services Pvt. Ltd. whether they have paid the service tax or not in respect of services provided by the appellant as sub-contractor.

5. As per our above discussion, we allow the Appellant's appeal by way of remand to Adjudicating Authority for passing a fresh order.

(Pronounced in the open court on 28.06.2023)

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

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

Raksha