# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.60225 of 2013**

(Arising out of the Order-In-Original No-04-COMMR-ST-GZB-2013-14, dated-29/07/2013 passed by Commissioner, Customs & Central Excise, Ghaziabad)

**M/s Hi-Tech Engineering Co.** **.....Appellant**
(G-14A, Durga Appt. Ground Floor,
Swaroop Park, Sahibabad, Ghaziabad)

*VERSUS*

**Commissioner of Custom & Central Excise, Ghaziabad** **....Respondent**
(CGO Complex-II, Kamla Nehru Nagar,
Ghaziabad, U.P.)

**APPEARANCE:**

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70410/2024**

DATE OF HEARING : 12.03.2024
DATE OF DECISION : 09.07.2024

**P. K. CHOUDHARY:**

The present appeal has been filed by the Appellant assailing the Order-In-Original No-04-COMMR-ST-GZB-2013-14, dated-29/07/2013 passed by the Commissioner, Central Excise & Service Tax, Ghaziabad.

2. The facts of the case in brief are that the Appellant was providing the 'Technical Consultancy Services' and 'Manpower Supply Services' to M/s Reliance Petroleum India Ltd.[1] Jamnagar and ONGC Mangalore Petroleum Ltd[2]. both of which were SEZ units and located in the area notified under the SEZ Act. Since

[1] RPIL
[2] ONGC

the services provided by the Appellant were consumed by the SEZ units located in SEZ area, therefore, the Appellant was not discharging service tax on the value of services provided by it. Further, till 2009 the Appellant was providing services only to the units located in SEZ area, therefore, they had not taken service tax registration and it was only after the Appellant had planned to begin providing services to units other than SEZ units, it obtained the said registration.

3. Show cause notice[3] dated 28.03.2012 was issued alleging that the Appellant is a sub-contractor of M/s Larsen & Toubro[4] and therefore the services provided by the Appellant were not given to SEZ units or to developer of SEZ units but to L&T which was neither a developer of SEZ nor SEZ unit. Thus, the denial of benefit of the exemption had been proposed alleging that the Appellant had not complied with the conditions prescribed in Notifications No. 04/2004-ST dated 31.03.2004, 09/2009-ST dated 03.03.2009 and 15/2009-ST dated 20.05.2009.

4. The SCN culminated into the impugned order confirming the demand as proposed in the SCN and penalties under Section 76, 77 & 78 were imposed. Hence, the present appeal before the Tribunal.

5. The learned Advocate appearing on behalf of the Appellant submits that the Appellant is directly providing the services to SEZ units and is not a sub-contractor and hence the Appellant is entitled to the benefit of exemption. It is his submission that the conditions prescribed under various Notifications cannot override the exemption provided in the SEZ Act.

6. He further submitted that the Appellant is providing the services to ONGC and RIL located in SEZ area and the said understanding of the Ld. Adjudicating Authority that the Appellant is providing the services to L&T is fallacious. M/s L&T is only acting as an intermediary between the Appellant and the SEZ unit where the orders are placed upon the Appellant through

[3] SCN
[4] L&T

M/s L&T, however, the services are provided directly to the SEZ unit and the ***invoices are also raised directly*** upon the said SEZ units. The said fact is substantiated upon perusal of the Work Orders (at page 120 as annexure-11 in the appeal paperbook) executed between the Appellant and M/s L&T wherein it has been categorically provided that all billings shall be done by the Appellant directly upon the SEZ units and all the payments to the Appellant were to be made directly by the said SEZ units only. The Work Order also provided that the invoices shall necessarily bear the name of the SEZ units. The invoices issued by the Appellant (annexure-10 at page 108) also indicate the name of the SEZ units as the recipient of services. In view of the same, it is evident that the Appellant is not providing services to M/s L&T but is infact providing the services to RIL and ONGC directly i.e. to the SEZ units themselves and hence the allegation of the Department to the effect that exemption won't be available as the services are provided to L&T which is not an SEZ unit is not correct.

7. Alternatively, he submitted that assuming that the main contractor L&T of the SEZ Units, sub-contracted the work to the Appellant, even in that case in terms of 1$^{st}$ proviso to Rule 27 of the SEZ Rules, the exemption from service tax is available on services provided to a contractor. Thus, for this reason also, the Appellant was eligible for exemption from service tax.

8. He submitted that the Department has denied the benefit of exemption provided under Section 26(1)(e) of the SEZ Act on grounds that the Appellant had not satisfied the conditions prescribed under Notification No. 04/2004-ST, 09/2009-ST & 15/2009-ST. In this regard, it is submitted that Section 26(1)(e) of the SEZ Act clearly provides that every developer or entrepreneur shall be entitled to an exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a developer or unit to carry on the authorized operation in an SEZ. In terms of Section 2(j) of the SEZ Act, ONGC qualifies to be an entrepreneur as being a person who has been granted a letter of approval (annexure-12 of the appeal) by

the Development Commissioner. The exemptions under the said Section 26 are subject to the conditions provided by the Central Government by means of rules framed in this regard. Rule 31 of the SEZ Rules, framed in relation to the said exemption, provides that all service providers shall be exempt from payment of service tax on the taxable services rendered by them to a Developer or a unit. As established in the preceding paragraph, the Appellant is providing the taxable services directly to the SEZ units therefore all the conditions required under Section 26(1)(e) of the SEZ Act read with Rule 31 of SEZ Rules stand satisfied and hence the Appellant is entitled to the benefit of the said exemption.

9. Further, it was submitted that the conditions prescribed vide the Notifications mentioned hereinabove will have no bearing on the exemption available to the Appellant under the SEZ Act as the said Act will have an overriding effect over every other Notification/ law made in this regard by virtue of Section 51. It is submitted that when a benefit has been provided by means of a substantive law which is accompanied with an overriding clause, then the scope of the said provision cannot be restricted by means of Notification or any other delegated legislation whatsoever. In this regard, reliance is placed on the decisions referred in the compilation of cases, wherein it has been categorically held that exemption provided vide the SEZ Act shall be available irrespective of the existence of anything contained to the contrary in any other law.

10. In view of the submissions made hereinabove, he submitted that in terms of the SEZ Act the Appellant shall be eligible to avail the benefits of exemption from payment of service tax on the services rendered by it. During the period in question, the Appellant has not received any payment towards the service tax as no such allegation has been made in terms of Section 73A of the Finance Act, 1994.

11. It is also submitted that as the issue involved in this matter was a complex legal interpretational issue, therefore, extended period of limitation was not applicable. There was a

doubt prevailing during the period, whether the provisions of the SEZ Act would override the provisions of the Exemption Notification regarding service tax issued under the Finance Act, 1994. However, subsequently in almost all the decisions, it has been held that the SEZ provision will have overriding effect on the service tax exemption notifications. In such circumstances, it is submitted that it may not be correct to allege that the Appellant was having any mala fide intention to evade service tax. Further, the Appellant being a petty service provider, whom the impression was given by L&T and SEZ units that no service tax is payable and the Appellant acted accordingly. Thus, extended period of limitation is not invokable against the Appellant as there is no proof adduced in the show cause notice that there was any positive act by the Appellant with mala fide intention to evade payment of service tax.

12. Learned Departmental Representative reiterated the discussions and findings in the impugned order.

13. Heard both sides and perused the appeal records.

14. We find that usually, for the services transaction takes place between two parties, i.e. Service provider and Service receiver but in the present case there are three parties to the transaction. If sub-contractor is providing services to the main contractor for completion of main contract, then service tax is not leviable on the services provided by such sub-contractor. Unequivocally, Appellant qua sub-contractor had provided services exclusively to SEZ units and also wholly consumed by the SEZ units, hence not liable to service tax. Reliance has been placed on the Board's Circular No. 147/16/2011-ST dated 21.10.2011. Reliance is also placed on judgments mentioned below:-

(i) L&T V/s. State of Andhra Pradesh–[(2006) 148 STC 616(AP)]
(ii) State of Andhra Pradesh Vs. Larsen & Toubro [(2008) 16STT 501 =17VST 1(SC)]

15. Further by relying on the provisions of SEZ Act and Rules, the services rendered by the Appellant are fully exempted from

service tax in terms of the provisions of the SEZ Act, the condition of exemption by way of refund imposed under the Notification issued under the Finance Act would be inconsistent with the provisions of the SEZ Act. It also needs to be noted that the SEZ Act was enacted in 2005, much after the enactment of the Finance Act in 1994. The Notification has been issued only to operationalize the exemption/immunity available to SEZ units under Section 26(1)(e) of the SEZ Act, 2005. Service tax is exempted by Section 26 of SEZ Act, 2005. Thus, exemption Notification itself not necessary. Hence, the Appellant has rightly availed the exemption.

16. The conjoint reading of Section 26(1)(e) of SEZ Act with Rule 31 of SEZ Rules would show that the only condition required for availing exemption from payment of service tax by developer/entrepreneur/ unit is that the taxable services should be used for carrying on the authorized operations by the Developer/Entrepreneurs/Unit. The location of the service provider or the place of service is entirely irrelevant for this exemption.

17. We also find that the provisions of an Act which provide for an exemption from a tax have to be interpreted strictly. It is well settled legal principle that in a taxing statute, the provision has to be read in it’s as is form. There is no room for any intendment or import of external terms. In view of the plain language, to include a condition, that the exemption would be available only if the services are rendered within SEZ. Ipso facto, services were rendered within SEZ and that too to the SEZ unit for authorized operation in the present case. The impugned notifications have no nexus with the object and purpose of SEZ Act and SEZ Rules which was to provide impetus to exports.

18. We find that even though the sub-contractor provided the service as sub-contractor to the main contractor but it is not under dispute that the service was provided in the SEZ which prima-facie show that services were provided by the Appellant as sub-contractor which was ultimately received by the SEZ developer or unit in SEZ. As per the decisions cited by the

learned Counsel, in some of the case laws, identical issue has been considered where the service was provided by sub-contractor even then the exemption notification was extended under Notification No. 9/2009-ST and/ or 15/2009-ST.

19. Issue involved in the present case is in respect of the liability of the subcontractor to pay service tax. The issue as such was highly debatable and clearly an issue involving interpretation of complex provisions of law. It is also not in dispute that the issue in respect to liability of subcontractors to pay service tax has been decided by the larger bench of tribunal in case of Melange Developers Pvt Ltd [2020 (33) GSTL 116 (T-LB)]. Larger Bench has in the said case observed as follows:

> *"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.*
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> *…..*
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> *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.*

*…………..*

*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 subcontractor 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.*

*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.""***

20. Thus in view of the above decision of the larger bench the issue in respect of leviability of service tax on the sub contractor is decided holding that the sub contractor is required to be accessed to service tax independently. However in the present case the demand for short/ not paid service tax by the sub contractor during the period upto 31st March 2010 has been made vide Show cause notice dated 2012, by invoking extended period of limitation as per proviso to Section 73 (1) of the Finance Act, 1994. For invoking the extended period of limitation. Impugned order observes as follows:

> *"4.18. I find that the party vide their letter dt. nil , received on 26.11.2010, and letter dated 04.04.2011 has accepted to render taxable services 'i.e. 'Technical consultancy" and 'Supply Of Manpower' since November 2006. Rule 4 of the Service Tax Rules, 1994 read with Section 69 of the Finance Act-1994, 1994 casts an obligation on the service provider to submit an application for registration within a period of thirty days . from the date of commencement of provision of service. Since, the party started business of providing taxable service w.e.f. November 2006, but applied for the Service Tax registration under Section 69 of the Finance Act-1994 (in form ST-1) on 18.05.2009 after a delay of 868 days since 01.01.2007. In view of the above mentioned facts, I find that the party had contravened the provisions of Rule 4 of Service Tax Rules-1994 read with Section 69 of the Finance Act-1994, and hold that the party is liable for penalty under Section 77 (1)(a) of the Finance Act-1994.*
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> *4.19. I further find that the party had not filed any return up to the F.Y. 2008-09, in 2009-10 they had filed incorrect ST-3 returns in as much as neither any amount had been shown to be received n money against the services provided by them nor reflecting the details of applicable exemption notification, gross amount received in money against service provided, value of service on which either Service Tax was not payable or Service Tax was exempted. I hold that by not filing the prescribed Return i.e. ST-3, the party had*

*contravened the provisions of Rule 7 of Service Tax Rules-1994 read with Section 70 of the Finance Act-1994.*

*4.20. In view of the facts discussed in the preceding paragraphs hold that the party had contravened the various provisions of Finance Act-1994 and Rules made there under with an intent to evade payment of Service Tax, in as much as:*

- *Sections 65A, Section 66, Section 67 as they failed to determine the correct value of the taxable services along with correct classification and rate of Service Tax applicable for charging Service Tax,*
- *Rule 6 read with Section 68 as they failed.to make payment of Service Tax with in the prescribed time limit,*
- *Rule 4 read with Section 69 as they failed to obtain registration in the prescribed time,*
- *Rules 7 read with Section 70 as they failed to file prescribed Service Tax returns*

*They have wilfully suppressed the facts from the department about providing taxable service, non/short payment of Service Tax with the intention to evade payment of Service Tax by late applying for Service Tax registration and by giving false declaration in their ST-3 returns that no amount has been received in money, against the services provided by them. As regards invocation of extended period of limitation, since the party has not obtained registration, has not paid Service Tax due and has not filed ST-3 returns truthfully and correctly with intent to evade payment of Service Tax in contravention of the various provisions of the said ACT and rules made thereunder larger period of demand is legally tenable. Reliance is placed on a recent judgement of Hon'ble CESTAT in the case of Rajasthan State Beverage Corporation Limited 2013 (TIOL) 1110-CESTAT(Delhi) wherein it was held that:-*

*"Despite the clear obligation enjoined by unambiguous provisions of the Act, the appellant neither obtained registration as a taxable service provider; nor filed periodical returns nor remitted service tax*

*as mandated by the provisions of the Act. The tax evasion by the appellant came to notice of Revenue only when Intelligence Officers of the Anti Evasion Wing came upon information of the activities of the appellant. ....*

*The requisite information was provided by the appellant to Revenue in bits and pieces In these totality of circumstances, the conclusion by revenue that there was willful suppression of relevant material with a view to evade liability to tax cannot be faulted nor considered inconsistent with the statutory prescription that justify invocation of the extended period of limitation."*

*The ratio of this judgement is squarely applicable to this case I hold that the said Service Tax amounting to Rs.76,40,698 along with Education Cess and S.&.H.Ed. Cess amounting to Rs.2,19,868, total Rs. 78,60,566/- (Rupees Seventy eighty Lakhs sixty thousand five hundred sixty six only) is liable to be demanded and recovered from them under Section 73 (1) of the Finance Act-1994, read with the proviso to that Section for extended period of limitation, together with interest due thereon under Section 75 of the said Finance Act-1994."*

21. However We find that after taking note of decision of Larger bench in case of Melange Developers Pvt Ltd., supra and also the fact that there was stage of confusion with regards to liability of subcontractor to pay service tax, chandigarh bench has in case of Meghraj Bansal [Final Order No 60187/2023 dated 07.07.2023] observed as follows:

*"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 9 ST/1124/2010*
- *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 10 ST/1124/2010 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."*

22. In view of the above decisions we are clear in our mind that an extended period of limitation could not have been invoked for making this demand. Entire demand is barred by limitation.

23. In view of the above we do not find merits in the impugned order confirming the demand by invoking extended period of limitation. As we are setting aside the demand of service tax, the demand for interest and penalty imposed is also set aside.

24. Appeal is allowed with consequential relief if any as per law.

(Pronounced in open court on 09.07.2024)

**(P. K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

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