CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70287 of 2022

(Arising out of Order-in-Appeal No.01/ST/ALLD/2022 dated 24.01.2022 passed by Commissioner (Appeals) Customs, GST & Central Excise, Allahabad)

M/s Fragrance &
Flavour Development Centre, **.....Appellant**
(GT Road, Makrand Nagar,
Industrial Estate Kannauj U.P.-209726)

VERSUS

Commissioner of Central Excise &
CGST, Kanpur **....Respondent**
(117/7, Sarvodaya Nagar, Kanpur-208005)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70775/2024

DATE OF HEARING : 29.10.2024
DATE OF DECISION : 28.11.2024

P. K. CHOUDHARY:

The instant Appeal arises out of Order-in-Appeal No.01/ST/ALLD/2022 dated 24.01.2022 passed by the learned Commissioner (Appeals), Customs, GST & Central Excise, Allahabad.

2. The Appellant namely M/s Fragrance & Flavour Development Centre[1] is an autonomous body of Government of India, Ministry of MSME and are engaged in providing Taxable services under the category of "Business Auxiliary Service", "Technical Testing and Analysis Service" and "Scientific & Technical Consultancy" for which they are duly registered with the Service Tax Department with Registration No.

[1] FFDC

AABFF1913EST001 and is also availing and utilizing CENVAT credit under CENVAT Credit Rules, 2004[2].

3. The present Appeal is limited to only one service i.e., 'Technical Testing and Analysis Service' on which Service Tax has been paid by the service recipient under RCM as per Notification No.30/2012-ST dated 20.06.2012 as amended from time to time.

4. An audit of the records relating to payment of Service Tax by the Appellant for the period from April, 2015 to June, 2017 was conducted by the Officers of Department. During the course of audit, certain documents were submitted by the Appellant on being asked by the officers, which was admitted in Show Cause Notice[3] as well as in Order-in-Original also. On the basis of those documents, the SCN was issued to the Appellant.

5. It was alleged that the Appellant issued invoices to M/s. MCX, Sohan Lal Commodity Management Pvt. Ltd., 615-618 and 642-644, DLF Tower, 15, Shivaji Marg, Najafgarh Road, Moti Nagar, New Delhi against service of testing of mint samples and charged due Service Tax in the invoices issued by them. It has been further alleged that the Appellant has taken and utilized CENVAT Credit of the Service Tax so mentioned in their own invoices for payment of Service Tax under the category of "Technical Testing and Analysis Service".

6. It was also alleged that the version of the Appellant that the Service Tax on "Technical Testing and Analysis Service" has been paid by the service recipient under Reverse Charge Mechanism[4] is not tenable because testing of mint samples has not been considered under RCM under Section 68 (2) of the Finance Act, 1994 and in Rule 2 (1) (d) of Service Tax Rules, 1994 or in the relevant Notification issued by the Government from time to time. It has been further alleged that the statutory liability of service provider cannot be shifted on service recipient by mutual agreement until and unless the provisions of law allow doing so.

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[2] CCR, 2004
[3] SCN
[4] RCM

7. A SCN C. No.151/ST/IAR/GR. V/CIR.-II/2018/1102 dated 28.10.2020 was issued to the Appellant answerable to the Assistant Commissioner, Audit Circle-II, Central Tax and Central Excise, Audit Commissionerate, Kanpur wherein CENVAT Credit amounting to Rs.27,49,185/- was proposed to be demanded and recovered under Rule 14 of CCR, 2004 read with Section 73 of the Finance Act, 1994 alongwith interest and proposal to impose penalty under Rule 15 of the CCR, 2004 read with Section 78 of the Finance Act, 1994.

8. The Appellant filed a detailed written reply with all the relevant enclosures. The Assistant Commissioner, CGST & Central Excise, Audit Commissionerate Circle-II, Kanpur disallowed the CENVAT Credit of Rs.27,49,185/- under Rule 14 of the CCR, 2004 read with Section 73 of the Finance Act, 1994 alongwith the interest payable under Section 75 of the Finance Act, 1994 as made applicable vide Section 174 of Central Goods and Service Tax, 2017. He also imposed equal amount of penalty of Rs.27,49,185/- under Rule 15 of the CCR, 2004 read with Section 78 of the Finance Act, 1994 as made applicable vide Section 174 of Central Goods and Service Tax, 2017.

9. Aggrieved by the said Order-in-Original, the Appellant preferred an Appeal before the learned Commissioner (Appeals) CGST & Central Excise, Allahabad which has been disposed of vide the impugned Order-in-Appeal No.01/ST/Alld/2022 dated 24.01.2022 and upheld the confirmation of demand of CENVAT Credit along with penalty made in the Order-in-Original. Hence the present appeal before the Tribunal.

10. It has been submitted by the Appellant that they are engaged in providing taxable services under the category of "Business Auxiliary Service", "Technical Testing and Analysis Service" and "Scientific & Technical Consultancy". The Appellant is paying Service Tax payable on the services under the category of "Business Auxiliary Service" and "Scientific and Technical Consultancy Service" as service provider under Sub-section (1) of Section 68 of Finance Act, 1994. Service Tax on "Technical Testing and Analysis Service" was paid by the service recipient

under RCM as per Notification No.30/2012-ST dated 20.06.2012 w.e.f. 01.07.2012 issued under Sub-section (2) of Section 68 of Finance Act, 1994. The fact of payment of Service Tax by the service recipient was explained before the audit officers as well as before the Ld. Adjudicating Authority who have not disputed this fact.

11. It has been further submitted by the Appellant that it has been admitted in the SCN issued to the Appellant that the audit officers found that the due Service Tax has been paid by the recipient of the service namely M/s. MCX Sohan Lal Commodity Management Pvt. Ltd., New Delhi and that it was felt by the departmental officers that the party's version may be correct but the party could not protect themselves from depositing of Service Tax under the shelter of RCM.

12. It has also been submitted that the Order-in-Original also does not dispute that Service Tax on "Technical Testing and Analysis Service" was payable by the recipient of service under reverse charge as per provisions of Sub-section (2) of Section 68 of the Finance Act, 1994.

13. The Appellant have also stated that it has been admitted in the SCN, Order-in-Original as well as in the impugned order, that the Appellants are an autonomous body under Government of India, Ministry of Micro, Small and Medium Enterprises (MSME). It has also been admitted in the SCN that service provided by Government by way of support services excluding renting of immovable property and services specified in Sub-clause (i) i.e. postal services, (ii) i.e. services in relation to an aircraft or a vessel, and (iii) i.e. transport of goods or passengers of Clause (a) of Section 66D of Finance Act, 1994 are notified under Notification No.30/2012-ST dated 20.06.2012 w.e.f. 01.07.2012 Sub-section (2) of Section 68 of Finance Act, 1994.

14. It was also pointed out in this respect that the word support services were omitted from the Notification w.e.f. 01.04.2016 by virtue of Notification No.18/2016-ST, dated 01.03.2016. Thus, all the services provided or agreed to be provided by Government or local authority except renting of

immovable property and services specified in Sub-clause (i) (i.e., postal services), (ii) (i.e., services in relation to an aircraft or a vessel), and (iii) (i.e., transport of goods or passengers) are covered under RCM.

15. As regards services rendered during 2015-16, service of 'Technical Testing and Analysis' is covered under the definition of support services as defined under Clause (49) of Section 65B of the Finance Act, 1994 prior to its omission w.e.f. 01.04.2016. Support services have been defined as under: -

> *(49)* ***"support services"*** *means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security****, testing and analysis****;"*

16. Thus, the Service recipient and in fact M/s. MCX, Sohan Lal Commodity Management Pvt. Ltd. (service recipient) had *bona fide* belief that the Service Tax on **"Technical Testing and Analysis Service"** was payable under Reverse Charge which has not been disputed in the SCN as well as in the Order-in-Original. Findings of Ld. Commissioner (Appeals) are beyond the allegations in the SCN as well as the findings in the Order-in-Original.

17. It was also submitted that the Service Tax leviable and paid on 'Technical Testing and Analysis Service' has been properly discharged by the recipient of service namely M/s. MCX, Sohan Lal Commodity Management Pvt. Ltd. and any further demand on the same transaction shall amount to double taxation.

18. Findings of Ld. Commissioner (Appeals) that the Appellant failed to provide any corroborative evidence that Service Tax has been deposited by the service recipient, are beyond the allegation in the SCN as well as Order-in-Original. It has been admitted in the impugned order that the service recipient has

paid only service charges to the Appellant. The summary of Service Tax payable under the transactions of the Appellant with M/s. MCX Sohan Lal Commodity Pvt. Ltd. and paid by the service recipient as well as challans evidencing payment of such tax, were duly submitted before the Adjudicating Authority and are also produced before the Tribunal.

19. It was also strongly contested that the Appellant being an autonomous body of Government under the Ministry of MSME, cannot have intent to avoid payment of Service Tax, particularly under the facts and circumstances of the case when the Service Tax has admittedly being paid by the recipient of service, extended period of limitation cannot be invoked in the facts and circumstances of the present case.

20. Ms. Stuti Saggi, Advocate appearing for the Appellant submitted that the Appellant is an autonomous body of Government of India under Ministry of MSME and they are engaged in providing various taxable services including 'Technical Testing & Analysis Service' which is covered under the definition of 'support service' and as such the Service Tax was paid by the recipient under RCM as per Notification No.30/2012-ST dated 20.06.2012 as amended from time to time. The demand herein made shall amount to double taxation. She also submitted that the complete details of Service Tax paid by service recipient under RCM and respective challans have been filed with the Appeal. She also strongly contested that in the facts and circumstances of the case, the demand is barred by limitation as extended period of limitation is not applicable in as much as the Appellants are Governmental Authority and there cannot be any malice on the part of the Appellants. She also relied on many case laws as cited in the Appeal.

21. On the contrary, Shri Manish Raj, Authorized Representative submitted that the Appellants have availed inadmissible CENVAT Credit on the basis of the payments made by the recipient of service which is evident from the entries in ST-3 Returns of the Appellants.

22. In her rejoinder, Ms. Stuti Saggi, Advocate argued that the Appellant have neither availed nor utilized any CENVAT Credit and that the entries in ST-3 Returns are a case of purely clerical error.

23. The Appellants have filed an affidavit that they have not availed and utilized CENVAT Credit in respect of 'Technical testing & analysis Service and that the Service Tax on 'Technical testing and analysis Service' has been paid by the service recipient namely M/s. MCX, Sohan Lal Commodity Management Pvt. Ltd., 615/618 and 642-644, DLF Tower, 15, Shivaji Marg, Najafgarh Road, Moti Nagar, New Delhi. The recipient of service M/s. MCX Sohan Lal Commodity Management Pvt. Ltd. have also submitted certificate wherein they certified that they have paid the Service Tax on the services of 'Technical testing & analysis Service' received from the Appellants under reverse charge.

24. Heard both the sides and perused the appeal records.

25. I observe that the learned Commissioner (Appeals) while passing the impugned order, has among other things, observed that : -

> *"The Appellant failed to provide any corroborative evidence that Service Tax has been deposited by the service recipient. The ledger account produced by the Appellant only shows that the service recipient has paid only taxable value after deducting TDS on the said transaction. Since. There is no evidence on record that entire Service Tax liability was discharged by the service recipient (not legally liable to pay Service Tax under RCM), therefore I find no force in the submissions of the Appellant."*

26. I find from the Appeal memorandum and the documents submitted therewith that the Appellants have submitted a chart indicating payment of Service Tax by the recipient of service namely M/s. MCX Sohan Lal Commodity Management Pvt. Ltd., New Delhi alongwith respective challans evidencing payment of Service Tax. I also take note that the recipient of service has now issued a certificate, certifying that they have paid the Service Tax on the services received from the Appellants under reverse charge under Notification No.30/2012-ST dated 20.06.2012 as amended from time to time. I also take note that

the Appellants have filed an affidavit wherein they have stated that they have neither availed nor utilized any CENVAT Credit in respect of 'Technical Testing and Analysis Service'. I also observe that the learned Commissioner (Appeals) has in his observation admitted that the Appellants have received the payment of value of taxable services only after deducting TDS and that no payment of Service Tax was received by the Appellants. This fact also envisage that the burden of Service Tax was borne by the recipient of service.

27. I find from the facts and documents on record that it is not disputed that the service recipient namely, M/s. MCX Sohan Lal Commodity Management Pvt. Ltd., New Delhi have in fact paid the Service Tax on 'Technical testing & Analysis Service' received by them from the Appellants. The Challans evidencing payment of such tax were submitted before the Adjudicating Authority below and again annexed with this Appeal. I find force in the contention of the Appellant that once the Service Tax has been discharged by the recipient of service, demand of Service Tax from the Appellant again will amount to double taxation which is not permissible under law. The case laws relied upon by the Appellant and the CBEC Circular dated 17.12.2004 are applicable in the facts and circumstances of the case.

28. I also observe that the Appellants have been filing regular ST-3 Returns and maintaining the statutory records relating to payment of Service Tax wherein all the transactions were duly recorded. There is no allegation that any transaction was found beyond the mandatory records maintained by the Appellant. It is also an admitted fact that the Appellants are an autonomous body under Government of India, Ministry of MSME. In the facts and circumstances of the case, I am of the considered view that the extended period of limitation is not applicable in the instant case. I find support in this regard from the decision of the coordinate bench in the case of Rajasthan Renewable Energy Corporation Limited versus Commissioner of Central Excise, Jaipur-I, 2017 (51) S.T.R. 269 (Tri. - Del.)

> *"Demand - Limitation - Extended period, invocation of - Adjudicating Authority extending benefit of Section 80 of Finance Act, 1994 - Same ingredients required for invocation of extended period of limitation - Extended period not be invocable - Assessee, a public sector undertaking - Being a State Govt. enterprise allegation of willful misstatement, suppression of facts or deliberate contravention of Rule with an intention to evade duty payment cannot be made - Demand for longer period of limitation set aside - Section 73 of Finance Act, 1994."*

29. Support is also drawn from the decision in the case of B.S.N.L. versus Commissioner of Central Excise, Ahmedabad 2009 (14) S.T.R. 359 (Tri. -Ahmd.):-

> *"Demand (Service tax) - Limitation - Show cause notices issued in September, 2002 for the period from August 1995 to March 1997 and in March 2003 for period April 1997 to December 2001 - SCN issued beyond five years period in one case - Appellant being PSU owned by Government of India, mala fide intention to evade not attributable - Demand time-barred - Merits not considered - Impugned order set aside - Section 73 of Finance Act, 1994. [para 4]"*

30. My opinion on limitation also gets support from the decision of Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-1 2007 (2016) E.L.T. 177 (SC).

31. Since, the demand itself is not sustainable, there is no question of payment of interest and the same are set aside. The penalty imposed is also set aside.

32. The Appeal is accordingly allowed with consequential relief, if any.

(Order pronounced in open court on – **28th November, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS