CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.I

Service Tax Appeal No.70362 of 2022

(Arising out of Order-in-Appeal No.48-ST-ALLD-2022 dated 04/03/2022 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s New Tech Transformers, **.....Appellant**

(G-34, Road No.16, Udyog Kunj,
Site-V, Panki, Industrial Area, Kanpur)

VERSUS

Commissioner of Central Excise &

CGST, Kanpur **....Respondent**

(38, MG Marg, Civil Lines, Allahabad)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70803/2024

DATE OF HEARING : 02 December, 2024
DATE OF DECISION : 02 December, 2024

SANJIV SRIVASTAVA:

This Appeal is directed against Order-in-Appeal No.48-ST-ALLD-2022 dated 04/03/2022 of teh Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order following has been held:

5. In view of the above, I modify the impugned Order dated 17.11.2021, as under:

(i) Confirmation of demand of Service Tax (including Cesses) is reduced to Rs. 9,00,763/- along with interest;

(ii) Penalty imposed upon the appellant, under Section 78 of the Act, is reduced to Rs. 9,00,763/-;

(iii) Penalty of Rs. 10,000/- imposed under Sections 77(1)(d) shall. remain unchanged; and

(iv) Penalty of Rs. 10,000/- imposed under Sections 77(1)(c) for non furnishing of records and late fee of Rs. 20,000/ - for non filing of ST-3 returns are set aside

1.2 By Order in Original No 23/ST/Adj/AC/D-I/2021 dated 17.11.2021 following was held:

"ORDER

(i) I order that the amount of Rs.78,20,357/- (Rupees Seventy Eight Lakhs Twenty Thousand Three Hundred and Fifty Seven only) charged and received by the party from their customers during the Financial Year 2014-15 to 2017-18 [01.10.2014 to 30.06.2017] in lieu of providing the taxable services, to be treated` as the taxable value of taxable services provided by them for the purpose of charging the service tax. Accordingly, I confirm the demand of Service Tax amounting to Rs.9,00,763/- (Inclusive of Service Tax, Education Cess and Higher & Secondary Education Cess/ Swachh Bharat/ Krishi Kalyan Cess) under the provisions of Section 73(2) of the Finance Act. 1994 invoking provisions of an extended period of demand against M/s New Tech Transformers, G-34,Road No.16, Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur;

(ii) I order that the amount of Rs.14,16,012/- was paid as freight by the party during the Financial Year 2014-15 to 2017-18 [01.10.2014 to 30.06.2017] in lieu of receiving the taxable services, to be treated as the taxable value of taxable services provided by them for the purpose of charging the service tax. Accordingly, I confirm the demand of Service Tax amounting to Rs.49,671/- (Inclusive of Service Tax, Education Cess and Higher & Secondary Education Cess/ Swachh Bharat/ Krishi Kalyan Cess) under the provisions of Section 73(2) of the Finance Act. 1994 invoking provisions of an extended period of

demand against M/s New Tech Transformers, G-34,Road No.16, Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur;

(iii) *I order that the amount of Rs.95,200/- was paid as advocate fees by the party during the Financial Year 2014-15 to 2017-18 [01.10.2014 to 30.06.2017) in lieu of receiving the taxable services, to be treated as the taxable value of taxable services provided by them for the purpose of charging the service tax. Accordingly, I confirm the demand of Service Tax amounting to Rs.13,622/- (Inclusive of Service Tax, Education Cess and Higher & Secondary Education Cess/ Swachh Bharat/ Krishi Kalyan Cess) under the provisions of Section 73(2) of the Finance Act. 1994 invoking provisions of an extended period of demand against M/s New Tech Transformers, G-34,Road No.16, Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur;*

(iv) *Interest at the appropriate rate for the relevant period till the payment of the Service Tax to be demanded and recovered from M/s New Tech Transformers,G-34,Road No.16, Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur under the provisions of Section 75 of the Act;*

(v) *I impose a Penalty of Rs.9,64,056/- (Rupees Nine Lakhs sixty-four Thousand fifty-six only) upon M/s New Tech Transformers, G-34, Road No.16, Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur under Section 78 of the Finance Act, 1994 for the reasons as discussed above. Further, I give an option to the party to pay a 25% penalty of demand confirmed as provided in Section 78 of the Act, if Service Tax and Interest is paid within a period of 30 days of the date of receipt of this order. Further, the benefit of reduced penalty shall be available only if the amount of such reduced penalty is also paid within 30 days;*

(vi) *I impose a penalty of Rs. 10,000.00 (Rupees Ten Thousand only) upon M/s New Tech Transformers, G-34,Road No.16,* *Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur, under Section 77(1)(c) of the Finance Act, 1994 for failed to furnish the documents as desired by the department with intent to evade service tax;*

(vii) I impose a penalty of Rs. 10,000.00 (Rupees Ten Thousand only) M/s New Tech Transformers, G-34,Road No.16, Udyog Kunj, Site-V, Panki, Industrial Area, Kanpur, under Section 77(1)(d) of the Act ibid upon the party for their alleged failure to pay the Service Tax electronically against the services provided by them;

(viii)I impose a penalty of Rs. 20,000.00 (Rupees Twenty Thousand only) upon M/s New Tech Transformers, G-34,Road No.16, Udyog Kun), Site-V, Panki, industrial Area, Kanpur under Section 70 of the Finance Act, 1994 read with Rule 7C of Service Tax Rules 1994 for not filing ST-3 returns for the period from April 2017 to June 2017."

2.1 The appellant is registered with the department under Service Tax registration No.AAGFN6120LST001 for providing services taxable under Finance Act,1944.

2.2 On the basis of information received from the Income Tax Department, an enquiry has been initiated against the appellant and record has been called for. The appellant has produced copy of balance sheet/profit & loss account, FORM 26As, ITR for the F.Y 2014-15 to 2017-18 and did not provide copy of any agreement/ work orders & invoices issued by them during the said period.

2.3 On scrutiny of documents submitted by the appellant, it was noticed that the value shown in ST-3 return does not match with the value shown under the head job work as reflected in the profit & loss account & FORM 26AS. The appellant failed to produce proper reply in respect of difference between FORM 26AS & ST-3 returns, therefore, service tax liability has been calculated on the entire value of Rs 78,20,357/- as reflected in FORM 26AS for the F,Y 2014-15 (Oct2014 to March2015) to 2017-18 (upto June'2017) which comes to Rs. 11,27,074/- but as per ST-3 returns the appellant has paid service tax amounting to Rs. 2,26,311/- only during the said period, thus, they have short paid service tax amounting to Rs. 9,00,763/- during the period Oct' 2014 to June 2017.

2.4 The appellant has also failed to pay service tax of Rs. 53,642/- under GTA services and service tax of Rs. 49,671/- on the audit fee paid during the period Oct’ 2014 to June'2017 and also an amount of Rs 13,622/- as service tax on the audit fees paid by them.

2.5 A show cause notice dated 23.06.2020 was issued to appellant asking them to show cause as to why:

(i) an amount of Rs.78,20,357/- (Rupees Seventy Eight Lakhs Twenty Thousand Three Hundred and Fifty Seven only) received as per Form-26AS from their customer/service receiver during the Financial Year 2014-15 to 2017-18 [01.10.2014 to 30.06.2017] in lieu of providing the taxable services should not be treated as the value of taxable services provided by them and accordingly. why the short paid Service Tax amounting to Rs.9,00,763/- (Inclusive of Service Tax, Education Cess and Higher & Secondary Education Cess/ Swachh Bharat/ Krishi Kalyan Cess) should not be demanded and recovered from them under the provisions of Section 73(1) of the Finance Act. 1994 invoking provisions of extended period of demand.

(ii) Service Tax amounting to Rs.49,671/- by treating the taxable value of Rs. 14,16,012/- as per profit & Loss account should not be demanded and recovered from the party against Freight paid by them during the period covered in the Show Cause Notice under the provisions of Section 73(1) of the Finance Act. 1994 invoking provisions of extended period of demand;

(iii) Service Tax amounting to Rs.13,622/- by treating the taxable value of Rs. 95,200/- should not be demanded and recovered from the party against the Audit Fee paid by them during the period covered in the Show Cause Notice

under the provisions of Section 73(1) of the Finance Act. 1994 invoking provisions of extended period of demand;

(iv) interest-at the appropriate rate for the relevant period till the payment of the Service Tax should not be demanded and recovered from them under the provisions of Section 75 of the Act;

(v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for the reasons as discussed above

(vi) a penalty under Section 77(1)(c) of the Act ibid should not be imposed upon the party as the party failed to furnish information and documents called for by the Central Excise officer

(vii) a penalty under Section 77(1)(d) of the Act ibid should not be imposed upon the party as they failed to pay the Service Tax electronically against the services provided by them;

(viii) a penalty under Section 77(2) of the Act ibid should not be imposed upon the party as they failed to file Service Tax Return for the period April '2017 to June '2017.

2.6 Show Cause Notice was adjudicated as per order in original referred in para 1.2 above. In appeal filed by the appellant, First Appellate authority modified the order in original to the extent as indicated in the impugned order referred in para 1 above.

2.7 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Dharmendra Srivastava Chartered Accountant for the appellants and Shri A.K. Choudhary Authorised Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- In respect of the second issue undisputedly Commissioner (Appeals) has himself observed that certain work order/agreements entered into with M/s Purvanchal Vidyut Vitran Nigam Ltd. certain goods such as paint, caustic, welding materials, MS Plates, soap, cutting gasser etc., have been consumed in providing the service and the property inthese goods have passed on to the service recipient.

- as the property in the good consumed has been on to the service recipient the services provided would merit classification as work contract service, as has been held in various decisions
- As these services are classifiable as work contract services the benefit of composition scheme would be available and the appellant would be liable to pay service tax to the tune of 50% only and remaining amount would be payable by the service recipient under reverse charge mechanism..

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the findings as follows:

"4.2 The appellant has contested that demand of service tax on the basis of balance sheet/profit & loss account/FORM 26AS is not sustainable. I observe that in the instant case the appellant has submitted copy of balance sheet/profit &. Loss account/FORM 26AS for the F.Y 2014-15 to 2017-18 vide letter dated 04.10.2019. Since copy of entire work order/agreement, bills/ invoices were not submitted to the department to ascertain exact nature of services rendered by them and to examine abatement or exemption available to them. It is on record (Para No.5 of the SCN that the department has written letter dated 14,10.2019, 25.10.2019 and summons dated 24.01.2020, 11.02.2020 and 09.02.2020 to the appellant for furnishing relevant information/documents but no compliance has been made on the part of the appellant. Last letter dated 29.05.2020 was issued by the department to furnish information/documents within three days but again the appellant has not responded, therefore, department has no option but issue SCN on the basis of documents submitted

by the appellant vide letter dated 04.10.2019. Thus, I find no force in the contention of the appellant.

4.3 The appellant has contested that the Works Contract Services provided to M/s PVVNL are covered under entry No. 12 of the mega exemption Notification No. 25/2012-ST dated 20.06.2012, therefore, demand of service tax on the same is not sustainable for the work done against contracts entered prior to 01.03.2015. I observe that entry No. 12 of the mega exemption notification 25/2012-ST dated 20.06.2012 provides as under:

> *12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fiting out, repair, maintenance, renovation, or alteration of-*
>
> *(a) a civil structure or any othr original works meant predominantly for use other than for commerce, industry, or any other business or profession (lomitted w.ef 01.04.2015)*
>
> *(b) a historical monument, archaeological site or remains of national. importanee archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*
>
> *(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment (omitted w.e.f 01.04.2015)*
>
> *(d) canal, dam or other irrigation works;*
>
> *(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*
>
> *(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of*

section 65 B of :he said Act (omitted w.e.f 01.04.2015)

4.3.1 Further, vide Notification No. 09/2016- Service Tax dated 01.03.2016 following entry has been inserted after entry No. 12 in the Notification No. 25/2012-ST dated 20.06.2012:

12A. Services provided to the Govemment, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, . repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or

(c) a residential complex predominantly- meant for setfuse or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or after the 1st April, 2020

4.4 The appellant has provided copy of work order No. 2252/PVVNL(V)/MM/EE-II/EAV-228/12-13 dated 27.05.2013 issued by M/s PVVNL Varanasi for repair and testing of copper wound damaged distribution transformers 250 to 1000KVA capacities. On perusal of work order, I find that for the purpose of calculation of price variation of HV/LV Leg coil, transformer oil and excise duty, Up VAT, the break of repair package rates such as total labour charges, HV/LV

Leg coil, transformer oil and supply items has been specifically mentioned. In Para 6 of said work order it has been mentioned that service tax along with educational cess shall be payable extra as applicable on labour charges only and for other items viz HV/LV leg coil, transformer oil excise duty shall be payable. Thus, it is evident that there is definite clause in the work order for payment of service tax on the labour charges received by the appellant. The appellant has not produced any bill or invoice which shows that service tax has not been charged on the labour charges for repair of damaged transformers. I also observe that entry No. 12 of the notification No. 25/2012-ST dated 20.06.2012 exempts services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. Thus, it is evident repair of damaged transformers of power corporation limited do not come under repair or maintenance of a civil structure or any other original works, therefore, entry No,12 or 12A of the mega exemption notification No. 25/2012-ST dated 20.06.2012 is not applicable in the instant case. Thus, I find no merit in the contention of the appellant

4.5 As regards to cum tax benefit, I observe that the appellant has not produce any evidence such as bill/invoice to substantiate their claim, Thus, in absence of any documentary evidence to show that amount received by the appellant from the service recipient was inclusive of service tax, cum tax benefit cannot be granted [CCE v Radra Galaxy Channel Ltd (2015) 38 STR 445 (Tri-Mum) relying on Amrit Agro Industries Lts v Cmmr (2007) 210 ELT 183 (SC)]

4.6 In view of the above discussion, I am of the considered view that the appellant is liable to pay service tax amounting to Rs. 9,00,763/- along with interest."

4.4 In respect of the demand made in respect of the services provided to Pakshimanchal Vidyut Vitran Nigam Ltd (DVVNL) appellant claimed that the services provided by them should be classified under the category of Work Contract Service is not disputed in the impugned order. However the demand has been confirmed against the appellant by denying the benefit of exemption claimed by the appellant under Notification No 25/2012-ST. Impugned order specifically notes the work order provided by the appellant wherein it has been specifically provided that service tax along with education cess will be payable by the appellant only on the labour charges. Having noted that the impugned order, should have-

- either restricted the demand to the extent of amount paid towards service tax by the service recipient; or
- determined the demand after allowing the benefit of composition scheme and partial recharge as per notification No 30/2012-ST.

4.5 However I find that the impugned order has proceeded to confirm the demand made on the basis of amounts reflected in the TDS return after denying the benefit of the exemption claimed by the appellant. Appellant has in submissions made before me not agitated the issue of exemption denied but have agitated the matter on re-computation of demand. I find the merits in the submissions made that demand needs to be recomputed.

4.6 In view of the discussions as above the demand made needs to be recomputed by treating the services provided to PVVNL as work contract service either on the basis determination of labour charges as per the work order or by allowing the benefit of composition scheme and partial recharge as per notification No 30/2012-ST. For limited purpose of re-computation of demand matter is remanded back to the original authority. The penalty imposed under section 78 is also set aside, to be recomputed after re-computation of the demand.

4.7 All other parts of impugned order not challenged are upheld.

5.1 Appeal partially allowed and the matter remanded to original authority for re-computation of demand and penalty under Section 78.

5.2 As the matter is substantially old, Original Authority should decide the matter in remand proceedings within three months of the receipt of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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