CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I
E-Hearing
Service Tax Appeal No.70552 of 2019

(Arising out of Order-in-Appeal No.122-ST/APPL/LKO/2019 dated 28/02/2019 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Vision India Services (P) Ltd., **.....Appellant**
(A-11, Sector-67, Noida-226001)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow **....Respondent**

(7-A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Dharmendra Kumar, Chartered Accountant for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70048/2025

DATE OF HEARING : 22 August, 2024
DATE OF PRONOUNCEMENT : 31 January, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.122-ST/APPL/LKO/2019 dated 28/02/2019 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"6. Regarding limitation, it is apparent from the record that ST-3 return for the period April 2011 to September 2011 was filed on 22.12.2011 and impugned Show Cause Notice was issued on 02.12.2016, thus, the demand was duly raised within five years time allowed under the law.

Regarding valuation of the impugned service, it is settled law that service tax is to be charged on the full consideration for the supply of manpower whether full time or part time. The value includes staff salary and contributions, if any, as held by Hon'ble Kerala High Court in the case of M/s Security Agencies Association v/s UOI, reported at 2012 (28) STR 03 (Ker.).

8. As the service tax was not separately collected by the appellant, they are eligible to cum-tax value benefit in terms of section 67(2) of the said Act. The service tax liability has to be re-calculated by the department accordingly. The appellant will pay the re-calculated service tax liability along with interest and equal penalty under section 78 of the said Act. However, they will be eligible to pay reduced penalty at 25% if service tax and interest is paid within thirty days of communication of the re- calculated service tax liability, in terms of the second proviso to section 78(1) of the said Act. Further, as penalty under section 78 has already been imposed, penalty under Section 77 is not warranted. Therefore, the penalty imposed under section 77 is set aside."

2.1 Appellant is engaged in providing Manpower Recruitment and Supply Agency Services.

2.2 During the course of investigation, it was detected that there was difference between revenue from operations as per balance sheet and gross amount shown in ST-3 for the period 2011-12 and 2012-13. Thus, appellant have short paid service tax amounting to Rs.80,70,547/-.

2.3 A show cause notice dated 02.12.2016 was issued to the appellant, asking them to show cause as to why-

"(i) Service tax, amounting to Rs. 80,70,547/- (Rs. Eighty Lacs Seventy Thousands Five Hundred and Fourty Seven Only) (Service Tax 78,35,484/- + Edu. Cess 1,56,709/- + S& E Cess 78,354/-) payable by them during F.Y. 2011-12 and 2012-13 should not be demanded & recovered from

them in terms of proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at appropriate rate should not be recovered under section 75 of the Act ibid for not depositing ting the above said service tax within the stipulated period.

(iii) Penalty should not be imposed upon them under section 78 of the Act ibid.

(iv) Penalty should not be imposed under Section 77(2) of the Finance Act, 1994."

2.4 This show cause notice was adjudicated as per the Order-in-Original dated 28.03.2018 by holding as follows:-

"i. I confirm the amount of Service tax, amounting to Rs. 80,70,547/ (Rs. Eighty Lacs Seventy Thousands Five Hundred and Forty Seven Only) (Service Tax 78,35,484/- + Edu. Cess 1,56,709/- + S & E Cess 78,354/-) on M/s Vision India Services Pvt. Ltd. (Formerly known as M/s Vision India Staffing Pvt Ltd.), D-29, RN Complex, Vibhuti Khand, Gomti Nagar, Lucknow in terms of proviso to Section 73(1) of the Finance Act, 1994

ii. Interest at appropriate rate should be recovered under Section 75 of the Act ibid for not depositing the above said service tax within the stipulated period.

iii. I impose a penalty of Rs. 80,70,547/- (Rs. Eighty Lacs Seventy Thousands Five Hundred and Forty Seven Only) upon the party under first proviso to Section 78 of the Finance Act, 1994. The party has an option to pay penalty @25% of the amount of Service Tax, as determined above if they pay Service Tax as determined above along with interest and reduced penaity within a period of thirty days of the date of receipt of the order in terms of second proviso to Section 78 of the Finance Act, 1994.

iv. I impose penalty of Rs Rs 10000-00 (Ten Thousand) only on Mis Vision India Services Pvt. Ltd. (Formerly known as M/s Vision India Staffing Pvt Lid), D-29, RN Complex, Vibhuti Khand, Gomti Nagar, Lucknow under Section 77(2) *of the Finance Act, 1994 for the contravention of the provisions of Finance Act, 1994 and Rules made there under as discussed in the foregoing paras."*

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 We have heard virtually Shri Dharmendra Kumar learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

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

4.2 The basic issued involved in the present case is with regard to valuation of Manpower Agency Services. Whether the amounts paid as salary and allowances to the manpower supplied by the service provider needs to be included in the taxable value for determination of service tax payable or paid, is the issue under consideration.

4.3 The said issue has already been considered by this Bench of the Tribunal in the case of M/s Vani Systems (Pvt.) Ltd. Final Order No.70267/2023 dated 28.11.2023 wherein following has been held:-

4.3 "The appellant gets only a part amount towards the service charges and fixed amount towards the wages/remuneration which for the manpower provided. In case of these amounts received by the appellant towards wages/remuneration are in terms of these agreements payable to the concern person who have been provided by the appellant to the concern Government Department. These are in nature of reimbursable expenses and could not have levied to service tax in terms of decision of Hon'ble Supreme Court in case of Intercontinental Consultants And Technocrats Pvt. Ltd [2018 (10) G.S.T.L. 401 (S.C.)] wherein following has been held:-

"24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner :

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

27. The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel :

"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form *part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under :*

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we *do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

30. As a result, we do not find any merit in any of those appeals which are accordingly dismissed."

In the present case entire period of demand is before the amendments made in Section 67 of the Finance Act, 1994 by the Finance Act, 2015 as a consequence of Hon'ble Delhi High Court decision on the matter reported at [2013 (29) S.T.R. 9 (Del.)]. On this ground alone by applying the principles laid down in the above judgment of Hon'ble Apex Court we find no merits in the impugned order.

4.6 Notification No.30/2012-ST dated 20th June, 2012 as amended by Notification No.7/2015 dated 1st March, 2015 clearly provides as under:-

Sl No.	*Description of Services*	*Percentage of Service Tax payable by the person providing Service.*	*Percentage of Service Tax payable the Service.*
	In respect of services provided or agreed to be provided by way of supply of manpower for any purpose	*25%*	*75%*

In terms of the above notification appellant was required to pay service tax only of 25% of the value of service tax leviable on the taxable value of the services provided and 75% was required to be collected from the recipient of the service under reverse charge mechanism. There is nothing on record to show that any demands have been made from the service recepients.

4.7 Further, we find that the Tribunal has in the case of Dhariwal Industries Ltd. Final Order No. A/12248/2023 dated 11.10.2023 wherein it has been held as follows:-

4.2 In view of the above judgments it has been settled that once the service provider discharged the service tax where the service recipient is liable to pay the service tax, demand of service tax on the same service from the service recipient shall not sustain on the ground that the particular service which already suffered the service tax cannot be suffer the service tax twice on the same service.

Accordingly, the service tax paid by the transport agency in the facts of the present case is the payment of service tax and not deposit. Therefore, no demand can be raised from the appellant, for the same reason once the amount paid by the transport agency being service tax amount, the appellant is eligible for cenvat credit.

5. Accordingly, on both the count the impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed.

Tribunal in the case of Mahatma Gandhi University of Medical Sciences dated 08.09.2021 held as follows:-

"Appellant has admitted his liability of paying Service Tax for receiving manpower recruitment and supply agency service to the extent of 75% on the gross value of service received under reverse charge mechanism. There is no dispute about the discharge of the liability to the said extend by the appellant. There is also no dispute that this liability was in terms of the Notification No.30/2012 dated 20.06.2012 which stands amended vide Notification No.7/2015 –ST dated 01.03.2015 requiring such service recipient to pay tax on 100% value of service received. There is also no dispute about the fact that the period in dispute is exactly from the date of coming into affect of said amendment i.e. 01.04.2015 till the end of the said Financial Year i.e. March, 2016 unawareness of the appellant to such a sudden change to be implemented in so proximity of time of its coming into effect cannot be ruled out. Consequently, I am of the opinion that nonpayment by the appellant for the said period is merely due to his bonafide belief of his liability to the extent of paying the service tax at 75% of the service value. Once there is no apparent malafide on part of the

appellant and in view of the aforesaid bonafide belief of the appellant, fastening the allegations as that of concealment fraud and suppression are held to be highly unjustified.

7. Hon'ble Supreme Court in the case of ***Pushpam Pharmaceuticals Co. Vs. Collector of Central Excise, Bombay reported in 1995 (78) ELT 401 (S.C.)*** *has held that word and phrase as that of "suppression of facts" as used in proviso to section 11A (1) of Central Excise Act, 1944 are to be interpreted strictly because of its use with the strong words like fraud collusion or willful default. It has been held that mere omission to disclose a correct information is not a suppression of fact unless it was deliberate to escape from paymen5t of duty. The Hon'ble Apex Court in another decision n the case of* ***Continental Foundation Jt. Venture vs. CCE, Chandigarh reported in 2007 (216) ELT 177 (SC)*** *has held that when the Revenue invokes the extended period of limitation under Section 11A, the burden is cast upon it to prove the suppression of fact as far as fraud and collusion are concerned, it is evident that intent to evade duty is built into these very words so far as misstatement or suppression or facts are concerned, they are clearly qualified by the word "willful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words" with intent to evade payment of duty". Therefore, there cannot be suppression or misstatement of fact which is not willful.*

8. In the present case, the above observations are sufficient for me to hold that the alleged non-

payment cannot be called as willful or intentional act of the appellant to evade the payment of duty. Otherwise also, there is no denial on part of the Department that the balance service tax on 25% value of the service has already been paid by the service provider. The Department, thus, has received 100% tax amount on the impugned transaction. Confirming such liability again under the pretext of the amendment of the applicable Notification will be nothing but will amount to receiving tax twice for the same transaction. Without going into the other merits of the status of appellant as to whether it is a business entity or a body Corporate or a charitable trust, the above discussion makes it clear that the appellants liabilities stands already discharged. The demand should not have been confirmed. Commissioner (Appeals) in para 7.4 has acknowledged that the Journal Vouchers, cash memo bill, salary details of housekeeping having reference of the amount of Rs.63,072/- against service tax were very much available. The demand confirmed in the present case is of said Rs.63,072/- only. The findings of Commissioner (Appeals) that there is no documentary evidence to prove the payment of service tax twice in support of appellants contention is therefore, not at all sustainable. Accordingly, the findings are liable to set aside. Above all, the Department was not entitled to invoke the extended period of limitation for no willful suppression on part of appellant that too with intent to not to pay duty (full duty already stands paid). Show Cause Notice of the year 2018 alleging recovery for the period 2015-16 is definitely beyond the normal period of one year. The Show Cause Notice is therefore held being barred by time. The demand for the normal period is also not sustainable in view of above discussion.

9. In view of entire above findings, the order under challenge is hereby ordered to be set aside. Appeal consequently stands allowed."

4.8 In the case of Security Guards Board For Greater Bom. & Thane Dist.[2017 (51) S.T.R. 51 (Tri. - Mumbai)] following has been observed:

4.1 Further, under section 6 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981, following has been provided :-

6. Constitution of Board. - …

……Clause 31 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Scheme, 2002 provides as follows :-

"31. Disbursement of wages and other allowances to registered Security Guards of the Board. - The wage and other allowances payable to the registered Security Guards of the Board every month by the registered principal employer shall be remitted by the registered principal employers by cheque to Secretary, of the Board, within such time after the end of the month, as may be specified by the Board. The Secretary thereupon shall arrange to disburse the wages and other dues, if any to the registered Security Guards of the Board on specified days every month subject to deductions, if any, recoverable from them under the Scheme; Provided that the Board may, if it thinks fit, and subject to such conditions as may be laid down by it, allow a registered principal employer to pay directly to the Security Guards the wages and other allowances after making such deductions as may be authorized and recoverable from them under the Scheme, within such time and in such manner as may be specified by the Board."

From the above clause, it is apparent that the wages and allowances are collected by the Board as an Agency for payment to the concerned persons/authorities. Therefore, the wages and allowances are excludible from the value of service tax. Thus, the taxable value for the purpose of levy needs to exclude these charges. The demand is modified to that extent."

4.9 In case of M.P. Security Force [2020 (43) G.S.T.L. 253 (Tri. - Del.)], Delhi Bench has observed as follows:

"11.*We, accordingly, hold that the appellant is entitled for the abatement towards the payment made on account of contribution towards ESI, EPF and PF and also towards wages and salaries while computing the assessable value in terms of Section 67 of the Act for the payment of service tax."*

4.10 In the case of Gurubani Security Pvt. Ltd. [2021 (51) G.S.T.L. 404 (Tri. - Del.)] Delhi bench observed as follows:

"10. It is on record that the appellant has provided the services of manpower supply and security agency to various educational institutes and has been collected service tax during the relevant period i.e. from 2009 to Feb., 2014. The appellant has agreed to the fact that they have not deposited the service tax collected from the educational institute which was not required to be collected in terms of the exemption notification mentioned above. As far as the contribution made towards EPF, ESI and salary, the same stand settled in favour of the appellant in view of the decision of Hon'ble High Court of Allahabad and Tribunal's decision in case of Security Guards Board for Greater Bombay and Thane District v. Commissioner of Central Excise, Thane - 2017 (51) S.T.R. 51 (Tri. - Mumbai). The

relevant portion of the two judgments is extracted as under :

"9. In view of above, the contributions made towards EPF and ESI are not liable to be included for the computation of gross amount under Section 67(1) of the Act. We also find that the similar issue had been come up for consideration before this Tribunal in case of Young Brothers Transporters and Contractors v. CCE, Meerut-I - 2017 (6) G.S.T.L. 513 (Tri. - Del.), wherein it is held that employer contribution towards PF, EPF, ESI into Central Govt. account is not required to be included for the purpose of a computation of gross amount for discharge of service tax liability. Paragraph 6 of the order which is relevant is reproduced as under :

"6. The Employees Provident Fund & Miscellaneous Provisions Act, 1952 and the Employees State Insurance Act, 1948 created the liability upon the principal employer to contribute to the respective funds, an amount equal to employees contribution. Thus, in compliance of the said provisions, the service receiver M/s. HNGIL had contributed to such funds, the amount towards the workmen deployed by the appellant. The fact is not under dispute that such contributed amount was never given by such service receiver to the appellant. Thus, the gross value for the computation of service tax liability in the hands of the appellant will not take into consideration the amount of contribution made by the service receiver M/s. HNGIL directly into the respective heads of account. Therefore, in our considered view, service tax demand cannot be confirmed on the employer's contributed amount towards P.F., E.P.F. and E.S.I."

In this order the decision of Hon'ble Tribunal in case of Neerv Jaisawal was also considered, which is referred in the impugned order and held to be inapplicable. In this regard, we also find that the Hon'ble Allahabad High Court in the case of Security Services v. Union of India, 16 (399) in Civil Writ Petition No. 437 of 1998 held that the respondent shall be entitled to charge service tax on the gross except after giving the abatement in respect of statutory levy and the tax is and if the same as the direct relation with the services rendered by the client and charged specifically in the bill.

10. As far as the abatement towards deduction of wages and salaries paid to the personal employees by the appellant is concerned, the same is covered by the decision of Mumbai Bench of this Tribunal in case of Security Guards for Greater Bom. & Thane Dist. v. CCE, Thane-II - 2017 (51) S.T.R. 51 (Tri. - Mum.), wherein it is held that wages and allowance including salary and administrative charge collected from its client is excludible from the gross value of taxable service in terms of Section 67 of the Act. The relevant paragraph of order is reproduced hereinafter :

"4.1 ....."

Following the same, we are of the view that the demand confirmed by the impugned order is required to be re-quantified after giving abatement towards the salary and wages and the contribution made towards EPF and ESI. We also find in this case the appellant is collected service tax which was not required to be collected by him which is unconditionally exempted in terms of Notification No. 25/2012. In the circumstances, we find that the entire amount of the duty of service tax collected is *required to be deposited with service tax department which appears to have been done in terms of the submissions made on behalf of the appellant. Regarding the imposition of penalty, we find that the same is settled in favour of appellant by the decision of Hon'ble Punjab & Haryana High Court in the case of Ajay Kumar Gupta (supra). We also find that the decision of Hon'ble Delhi High Court in case of Intercontinental Consultants (supra) has held that for arriving at the gross amount to be charged under Section 67 of the Act, only such amount is required to be included which is attributable towards the services rendered by the appellant, any other element, which is reimbursable in nature, is not required to be included for the purpose of computation of assessable value under Section 67 of the Act, as this decision has been upheld by the Supreme Court, we are of the view that the various statutory deduction the payment made towards salary and wages are, therefore, required to be deducted from the total amount charged by the appellant from the service recipient for the rendition of the service. Thus, the charges attributable to the service element can only to be considered in the gross amount charged. It is, therefore, held that the demand, as confirmed in the impugned order, is required to be re-worked out in view of the findings as indicated above. We also hold that in the given circumstances that there is no justification of imposition of penalty on the appellant"*

4.11 Following the ratio of the above judgments this demand cannot be sustained and the impugned order is set aside."

4.4 Hence, the decision of Hon'ble Kerala High Court referred in the impugned order cannot be treated as binding precedence in view of the decision of Hon'ble Supreme Court in the case of Intercontinental Consultants And Technocrats Pvt. Ltd. referred in above order.

4.5 Accordingly, we find no merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Order pronounced in open court on- 31 January, 2025)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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