

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70382 of 2020

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-85-19-20, dated - 18/05/2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Motorcraft India Pvt. Ltd.

.....Appellant

(F-8, Sector-8,
Noida, Uttar Pradesh 201301)

VERSUS

Commissioner, Central Goods & Service Tax, Noida-I

....Respondent

(E-23, Sector 8, Noida)

APPEARANCE:

Shri Sanjay Kumar, 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.-70956/2024

DATE OF HEARING : 11.12.2024
DATE OF DECISION : 11.12.2024

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP- 85-20-21 dated 18.05.2020 of Commissioner (Appeals), CGST & Customs, Noida. By the impugned order, Order-in-Original No. 01/AC/DIV-I/ Noida/ 2017-18 dated 13.06.2018 of the Assistant Commissioner, Central GST, Division-I, Noida holding as follows has been upheld:

"ORDER

- a) I confirm the demand of Service Tax amounting to Rs.16,26,159/- (Rs. Sixteen lakh Twenty- six thousand One Hundred and Fifty-nine only) which was not paid during the*

period October. 2014 to March, 2016 and order to recover from the party under Section 73 (2) of Finance Act 1994.

- b) I confirm the demand of interest at the applicable rate under Section 75 of the Finance Act, 1994 on the above amount of demand of Service Tax in para (a) of the order*
- c) I impose penalty of Rs.1,62,616/- (One lakh Sixty two thousand Six Hundred sixteen only) under Section 76 of the Finance Act,1994 read with Section 78 B of the Finance Act'1994 as amended, for failure of payment of Service Tax as discussed in relevant para of discussion and findings supra*
- d) I also impose penalty of Rs.10,000/- under Section 77 of the Finance Act,1994 for the contravention of the various provisions of the Finance Act, 1994. All the dues adjudged should be deposited forthwith."*

2.1 Appellant is authorized service station for M/s Maruti Suzuki India Ltd. (MSIL) and is engaged in providing the services of authorized service station such a denting/ painting/ body shop work etc. They were registered with the department and were paying service tax on the services provided by them under the category of "work contract services"

2.2 During the period Oct'2014 to March'2016, the Appellant paid service tax on 70% of taxable value in case of repair/denting/body shop work, treating the same as 'works contract'. Revenue was of the view that these activities were apparently integral part of repair and maintenance of motor vehicle and could not have been classified as "work contract services" therefore no abatement was available to the Appellant.

2.3 A show cause notice dated 19.06.2017 was issued to the Appellant asking them to show cause as to why

- a. Service tax amounting to Rs. 16,26,159/- (Rs. Sixteen Lakhs Twenty six thousands One Hundred and Fifty nine only), which is not paid during the period October 2014 to March'2016, should not be demanded and recovered from them under Section 73 (1) of Finance Act, 1994.

- b. Interest at the appropriate rate under Section 75 of Finance Act, 1994 on the above amount of demand of Service Tax should not be demanded and recovered from them.
- c. Penalty should not be imposed under Section 76 and Section 77 of the Finance Act, 1994, for contravention of the various provisions of the Finance Act, 1994.

2.4 The show cause notice has been adjudicated as per the order in original referred in para 1 above.

2.5 Aggrieved Appellant filed the appeal before Commissioner (Appeal), which has been dismissed as per the impugned order. Hence this appeal.

3.1 We have heard Shri Sanjay Kumar, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the Appellant, learned counsel submits that:-

- The confirmation of demand of service tax on the material transferred, integral to the rendition of services provided is contrary to the principles laid down in the following decisions:
 - Larsen & Toubro Ltd [2015 (39) STR 913 (SC)]
 - Agarwal Colour Advance Photo System [2020 (38) GSTL 298 (MP)]
 - Vintech Business Solutions [2017 (7) GSTL 371 (T-Chennai)]
 - J P Transformers [**2014-TIOL-1555-HC-ALL-ST**]
- Appellant has paid VAT on the consideration received towards the value of goods transferred while providing the service. Hence the value of these goods is to be excluded for computing the taxable value as per the following decisions:
 - MDD Medical System (I) Pvt. Ltd. [**2017-TIOL-3965-CESTAT-DEL**]
 - Imagic Creative Pvt. Ltd. [2008 (9) STR 337 (SC)]
 - ASL Motors Pvt Ltd [2008 (9) STR 356 (T-Kol)]

- Reliance placed on the circular of 2007 is totally irrelevant.
- Cum tax benefit should have been allowed.

3.3 Authorized representative reiterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

"6.3 On the merit of the case, the Appellant contended that he had paid service tax by treating the said activity as ""Works Contract" as the material involved in Denting/Painting works and its labour cost cannot be distinguished, the material used is subjected to tax as sale of goods and the property of material used during Denting/Painting stands transferred to the customers after completion of repair and vehicle being handed over to the owner. In this regard, he referred the definition of Works Contract Service" prevailing during the relevant period of time in Section 65B(44) and valuation of Service Tax (Determination of Value) Rules, 2006. He submitted that the activity done by him is Taxable activity which has rightly been categorized under "Works Contract Service"

*6.4 I find that the main issue to be decided in the present appeal is whether, in facts and circumstances of the case, the subject activities of repair and reconditioning of motor vehicles carried out by the Appellant would involve transfer of property in goods and would qualify as *works contract' for the purpose of charging service tax on abated value under Rule 2A (ii) of Service Tax (Determination of Value) Rules, 2006. 6.5 The Appellant, in his grounds of appeal has submitted that in the process (*

of repair and reconditioning of motor vehicles, he has used paint, primer, spirit etc, the property in which is passed on to the owner of the vehicle and thus the services provided by him involve both transfer of property in goods (in any form) as well as rendition of services. For this reason, as he vehemently canvassed, the activity performed by him in course of repairing and reconditioning of motor vehicles would categorically fall within the concept and legal definition of ' Works Contract'³

6.6 In general, price of repair and reconditioning of motor car involves the following ingredients -(1) cost of labour and services, (2) pro-rata cost of tools, machineries and overheads, (3) cost of consumables such as paints, primers, spirits etc. and (4) profit element. As above, I find that in the instant case, the activity of the Appellant was only in the nature of service and no sale/transfer of goods was involved. The paints, primers, spirits etc. used by him for the purpose of repairing and reconditioning

of the vehicle were totally consumed in the process of rendering service. The titles of such goods never passed to the buyers /customers since the goods ceased to exist after application/utilization of such consumable items on the vehicle. I find that, before a tax can be levied on a works contract, it must be established that there is transfer of property in goods involved in the execution of a works contract. This presupposes that the goods existed and that either in its original form or in some other form, it is transferred to the customer by the dealer. Transaction involved in the case in hand does not involve transfer of any goods as understood under the provisions of the Value Added Tax Act and Rules thereof. It is a service pure and simple and does not involve any sale of goods since at the end of repairing the vehicle, there are no goods in which property can be transferred. It is needless to state that simply because someone calls an activity as 'Works Contract' that by itself will not ipso facto make the activity a Works Contract'

6.7 In my opinion, it will not be proper to merely go by such expression used sporadically to hold that the contract is a 'Works Contract'. On the other hand, I find that what the Appellant has agreed under the Contract, is only to repair and reconditioning of the car of the customer and after completion of such activity by him, the repaired/reconditioned car is delivered to the customer and nothing more. The Hon'ble High Court of Gujarat at Ahmedabad, in the case of State of Gujarat vs. Bharat Pest Control, reported in [2017 (348) E.L.T 659 (Guj.)], has held that -"Works Contract for pest control - Requiring special knowhow and technical expertise for concentration of pesticides, amount of usage, places to be applied and other aspects - HELD : Dominant purpose was to provide composite pest control and rodent control service - Use of pesticides in process was wholly incidental - There was no intention of sale of goods from assessee - Tribunal view that there was no transfer of property in goods liable to VAT because chemicals are consumed and are not present in tangible form, upheld - Sections 2(13) and 2(23) of Gujarat Value Added Tax Act, 2003". In view of such overwhelming judicial opinion, I hold that in the instant case, there was no transfer of goods and the impugned service cannot be classified under Works Contract Service for the purpose of service tax.

6.8 The Appellant submitted sample copies of invoices issued to the customers by him indicating that some amount of VAT has been charged and collected against such repairing/reconditioning activity during the material period. However, in absence of any incidence of sale or transfer of goods, payment of VAT, if any, does not make him entitled the benefit of classifying the service as works contract service.

6.9 In this regard, the Board, vide para 036.03 of its Master Circular No. 96/7/2007 dated 23.08.2007 has clarified that whether a given transaction between the service station and the

customer is a sale or not, is to be determined considering the real nature and material facts of the transaction. It is also clarified that any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. It is further explained therein that service tax should be levied on the entire bill raised by the service provider, namely, service stations and the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill.

6.10 As per above discussion and finding, I find that the impugned activity cannot be construed as 'Work Contract' for the purpose of levy of service tax and therefore no abatement is available to the Appellant and valuation of such taxable service is required to be done under Section 67 (1)(i) of the Finance Act 1994, relevant text of which is reproduced here:-

"67. Valuation of taxable services for charging Service tax

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,-

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;*
- (ii)*

6.11 I also in the opinion that, in the event of payment of service tax on gross amount charged, there would be no double taxation on the value of paints, primers, spirits etc. consumed during the provision of impugned service as the Appellant is legally eligible for taking Cenvat credit on the Central Excise duty paid on such inputs used for provision of output services subject to observance of procedures prescribed under Cenvat Credit Rules 2004

6.12 The Appellant has pleaded that he paid the service tax under "Works Contract Service" in terms of Service Circular No. D-40/2012 dated 13.07.2012 issued by the principal manufacturer, i.e., Maruti Suzuki India Ltd., to all its Dealers/MASSs across India. I observe that the aforesaid Circular was an internal circular issued by Maruti which neither had any legal authority to determine the classification/valuation of taxable Service nor had any bindings on the department

6.13 Now finally I come to the conclusion that the Appellant is liable to pay service tax on gross amount charged by them for such service provided during the material period and demand of service tax in the SCN which has been subsequently confirmed along with interest by the adjudicating authority is very much legal and sustainable.

7. *I further find that the Appellant not only short paid Service Tax on taxable service due to incorrect classification of service provided as 'Works Contract' but also willfully mis-declared thereby suppressed 30% of the taxable value of provision of taxable services in the disguise of 'Works Contract' during the material period with clear intent to evade payment of service tax to Government A/c. Those acts of deliberate suppression of taxable value of receipts cannot be endured as mere inaction or mistake or failure or omission or ignorance on the part of the Appellant. As per Section 70 of the Finance Act 1994 relating to furnishing of returns - "Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish a return in such form and in such manner and at such frequency" In the era of self-assessment, taxpayers are liable to assess their Service Tax liability before submission of returns to the department and in the instant case the Appellant has intentionally short assessed his tax liability to evade Service Tax payment. When the fact of willful mis-declaration or suppression of taxable value in ST-3's with intent to evade payment of Service Tax is clear and unambiguous, the cases cited by the Appellant cannot help them as a precedence or shield to cover up the consequences of their evasive intention. Due to same reason, benefit of cum-tax calculation of demand, as requested by them, cannot be extended in the instant case. I find that this evasion of Service Tax could only be unearthed on visit of the Departmental officers to the premises of the Appellant for auditing purpose and application of extended period for demand is justified. For the same reason, penalties under Sections 76, 77 and 78 of the Finance Act 1994 have been correctly imposed by the adjudicating authority in his OIO."*

4.3 Undisputedly Appellant has provided the services of denting/ painting/ body shop work etc., and have consumed the certain material during the course of provision of these services. They have also paid VAT in respect of the material consumed while providing the services. They have also paid service tax on the taxable service provided by classifying the services as work contract services and determining the taxable value as per Rule 2 A (ii) of Service Tax 9Determination of Value) Rules 2006.

4.4 The issue has been considered in number of cases and it has been constantly held that the value of the material consumed during the provision of any taxable service on which VAT has been paid cannot again subjected to service tax. In case of Patriot Safety & Control Pvt. Ltd. [2024 (389) ELT 416 (Tri - All)] following has been held:-

"4.8 Though the Appellant is registered with the VAT authorities as dealer for providing "Work Contracts", authorities below have concluded that the services provided by the Appellant are not classified under this category and have denied the benefit of composition of scheme to make this demand. In case of Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.) = [2015] 60 taxmann.com 354 = [2015] 52 GST 1 (SC)]

'24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.'

4.9 In case of Agrawal Colour Advance Photo System [2020 (38) G.S.T.L. 298 (M.P.)] Hon'ble Madhya Pradesh High Court has held as follows :

"19. In view of the law laid down by the Apex Court in M/s. Pro. Lab's case (supra), it can be safely held that photography service, which has both the elements of goods and services is covered under works contract. Thus, in a works contract which involves transfer of property, the provisions as contained in Article 366(29A) of the Constitution are attracted. Therefore, in the light of sub-clause (b) of clause (29A) of Article 366 of the Constitution, in execution of a works contract when there is transfer of property even in some other form than in goods, the tax on such sale or purchase of goods is leviable. In this view of the matter, after the 46th Amendment, there is no question of dominant nature test applying in photography service and the works contract, which is covered by clause (29A) of Article 366 of the Constitution where the element of goods can be separated, such contracts can be subjected to sales tax by the States under Entry 54 of List II of Schedule II.

taxable service. The value of such material should also be indicated on the bill/invoice issued in respect of the taxable service provided."

7. A demand for levy of tax on the gross value of the service rendered including the cost of materials used and transferred was raised and answered against the assessee leading to an appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai (hereinafter referred to as "Appellate Tribunal"). The Learned Appellate Tribunal returned a split verdict with the Technical Member taking the view that the gross value of the service rendered would be exigible to tax under the Act. The Third Member (Technical) to whom the matter was referred held as follows :

'21. From the foregoing, the following emerges :

(a) There is no evidence of sale of materials in rendering the impugned service of "Maintenance and Repairs".

(b) "Maintenance and Repair Service" being as specific service cannot be treated as service under the category of "Works Contract" for the service tax purposes.

(c) The concept of "deemed sales" is relevant only in respect of services under the category of "Works Contract" and not in respect of "Maintenance and Repair Service".

(d) The assessee has not proved that the conditions under Notification No. 12/2003-S.T., dated 20-6-2003 have been satisfied and, therefore, they are not entitled to the benefit of deduction of cost of raw materials consumed in providing the impugned service.'

8. Aggrieved, this appeal has been filed.

9. We have heard the Learned Counsels for the parties.

10. The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service. This, in fact, is what is provided by the Notification dated 20th June, 2003 and C.B.E. & C. Circular dated 7th April, 2004, extracted above, subject, however, to the condition that adequate and satisfactory proof in this regard is forthcoming from the assessee. On the very face of the language used in Section 67 of the Finance Act, 1994 we cannot subscribe to the view held by the Majority in the Appellate Tribunal that in a

contract of the kind under consideration there is no sale or deemed sale of the parts or other materials used in the execution of the contract of repairs and maintenance. The finding of the Appellate Tribunal that it is the entire of the gross value of the service rendered that is liable to service tax, in our considered view, does not lay down the correct proposition of law which, according to us, is that an assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%.

11. An argument has been advanced by Ms. Pinky Anand, Learned Additional Solicitor General that there is no evidence forthcoming from the side of the assessee that the value of the goods or the parts used in the contract and sold to the customer amounts to seventy per cent (70%) of the value of the service rendered which is the taxable component under the State Act. The aforesaid argument overlooks certain basic features of the case, namely, the undisputed assessment of the assessee under the local Act; the case projected by the Department itself in the show cause notice; and thirdly the affidavit filed before this Court by one S. Subramanian, Commissioner of Central Excise, Salem.

12. No dispute has been raised with regard to the assessment of the Appellant on its turnover under the local/State Act, insofar as payment of Value Added Tax on that component (70%) is concerned. A reading of the show cause notice dated 24th January, 2008 would go to show that the entire thrust of the Department's case is the alleged liability of the Appellant-assessee to pay service tax on the gross value. In the aforesaid show cause notice, the details of the value of the goods, raw materials, parts, etc. and the value of the services rendered have been mentioned and service tax has been sought to be levied at the prescribed rate of ten per cent (10%) on the differential amount. It is now stated before us that the aforesaid figures have been furnished by the assessee himself and, therefore, must be understood not to be authentic. This, indeed, is strange. No dispute has been raised with regard to the correctness of the said figures furnished by the assessee in the show cause notice issued to justify the stand now taken before this Court; at no point of time such a plea had been advanced.

13. Besides the above, the affidavit of the learned Commissioner, referred to above, proceeds on the basis that the Appellant assessee is also liable to pay service tax on the remaining seventy per cent (70%) towards material costs in addition to the 30% of the retreading charges. This is clear from the following averments made in the said affidavit of the Learned Commissioner :

"The relevant bills showed that the Appellant had paid service tax only on the labour component after deducting

70% towards material cost on the gross tyre Retreading charges billed and received for the period from 16-6-2005. In short, they have paid service tax only on the 30% of the tyre Retreading charges received from the customers, by conveniently omitting 70% of the consideration received towards Retreading charges to avoid tax burden.

The verification of invoices of the Appellant for the period from Jan., 2007 to March, 2007, the officers noticed that the Appellant have shown material cost, patch cost and misc. charges i.e. Labour charges separately in their invoices. However, on the follow-up action the customers of the Appellant revealed that they have neither purchased nor received raw materials intended for Retreading and they had paid only the Retreading charges for carrying out the Retreading activity."

The invoices which the Appellant assessee has also brought on record by way of illustration show the breakup of the gross value received. There is again no contest to the same. Leaving aside the question that the case now projected, with regard to lack of proof of incurring of expenses on goods and materials which has been transferred to the recipient of the service provided, appears to be an afterthought, even on examination of the same on merits we have found it to be wholly unsustainable."

4.5 In case of J P transformers referred by the Appellant, Hon'ble Allahabad High Court has held as follows:

"In the present case, it has been found as a matter of fact that the value of the goods and materials utilized for repair of the transformers is separately disclosed in the agreement and is separately mentioned in the invoices of the assessee. The assessee has paid excise duty or, as the case may be, value added tax on goods used in the repairing process. It was in this factual background, on which there is no dispute, that the Tribunal held that service tax could not be demanded on that component representing the value of the goods and materials used for carrying out repairs. The mere fact that the cost of the various items was shown for the purpose of price variation was held not to make any difference to the legal position.

On this finding of fact which was recorded by the Tribunal, no substantial question of law would arise. As a matter of fact, we may note that in the memo of appeal which has been filed by the Revenue, no effort has been made to displace the finding of fact which has been recorded by the Tribunal as being admitted.

In this view of the matter, the conclusion of the Tribunal that the agreements and invoices reflected the cost of materials and labour separately, and that the assessee had duly paid

VAT/CST and excise duty on the goods sold, is not in dispute. It was in this background that it was held that no service tax would be leviable on the value of the materials.

Before concluding, we may note that the Tribunal has relied upon its own decision in the case of Balaji Tirupati Enterprises vs. CCE, Meerut Final Order No.ST/A/735/2012-CU[DB], dated 21.11.2012. The Tribunal has noted that this decision was upheld by the High Court in 2013 (32) S.T.R. 530 (All.). This has not been disputed either in the memo of appeal or in the course of submissions before this Court."

4.6 In view of the decisions as above we do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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