CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70496 of 2020

(Arising out of Order in Appeal - GZB-EXCUS-000-APPL-MRT-124-2020-21, dated -14/08/2020 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

Commissioner, CGST & Central Excise,
Ghaziabad **.....Appellant**
(CGO Complex-II, Kamla Nehru Nagar,
Ghaziabad, UP 201002)

VERSUS

M/s Priserve Infrastructure Pvt. Ltd. **....Respondent**
(S-10, Aditya Mega City Centre, Plot No. 3,
Vaibhav Khand, Indirapuram,
Ghaziabad, Uttar Pradesh 201010)

APPEARANCE:

Shri A.K. Choudhary, Authorized Representative for the Appellant
Shri Balram Mishra, Consultant for the Respondent

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

FINAL ORDER NO.-70254/2025

DATE OF HEARING : 20.02.2025
DATE OF DECISION : 05.05.2025

P. ANJANI KUMAR:

This appeal is filed by the Revenue against the impugned order dated 14.08.2020 passed by the Commissioner, CGST (Appeals) Meerut.

2. Brief facts of the present case are that the appellants, who are engaged in provision of services in the category of Man Power Recruitment Services Consulting Engineering Services

etc., having subjected to audit and it appeared to the audit team that the appellants have not discharged service tax liability under reverse charge mechanism and have also availed input credit of Swachh Bharat Cess which is not admissible. Accordingly, a show cause notice, dated 11.06.2019, was issued to the appellants demanding service tax of Rs. 58,57,288 on Man Power Recruitment Service; 6,20,560 on Rent a cab service; wrongly availed Cenvat credit of Rs. 2,56,423 on Swachh Bharat Cess and Rs. 5,73,464 on Rent a Cab service along with interest and penalty. The Original Authority vide Order-in-Original, dated 18.05.2020, confirmed the demands raised. On an appeal filed by the Learned Commissioner (Appeals) vide impugned order dropped the demands raised, except on an amount of Rs. 1,46,316 on account of credit availed on Swachh Bharat Cess, on merits and limitation. Hence, this appeal filed by the Revenue.

3. Shri A.K. Chaudhary, Authorized Representative for the Revenue reiterates the grounds of appeal. Which are as follows, in brief

- Commissioner (Appeals) wrongly held that the show cause notice is barred by limitation. Commissioner ignored the judgment of Hon'ble High Court of Madras in the case of Maruti Plastics reported in 2019 (367) ELT 43 (Mad.)
- Commissioner erred in observing that the appellant was right in not discharging service tax under reverse charge mechanism when the service provider themselves have paid the tax. He should have followed the decision of the

Hon'ble Supreme Court in the case of Dharampal Satyapal 2005 (183) ELT 241 (SC) and in the case of Gujarat Ambuja Cements Limited 2006 (3) STR 608 (SC).

4. Shri Balram Mishra, learned Consultant, appearing for the respondent submits that the findings of the learned Commissioner has correctly analysed the facts and came to logical conclusions and passed a reasoned order relying on applicable cases. He relies on the following cases

- ***Devraj Luxury Hotels Pvt. Ltd 2022 (67) GSTL 76 (Tri.Del.)***
- ***International Foundation for Research and Education 2020 (41) GSTL 339 (Tri.Chan.).***

5. Heard both sides and perused the records of the case. We find that the learned Commissioner (Appeals) has considered each of the demands raised in the show cause notice and has given categorical, reasoned findings based on the law and the case laws. Learned Commissioner (Appeals) finds that extended period is not invokable as no evidence has been adduced in the show cause notice to substantiate the allegation of suppression of facts which intend to evade payment of service tax; the entire demand was raised on the basis of records maintained by the appellant which were provided to the audit. We find that learned Commissioner (Appeals) has rightly observed, relying on the Hon'ble Supreme Court's decision in the case of Chemphor Drugs 1989 (40) ELT 276 (SC), that mere inaction are failure on the part of the assessee does not suffice to invoke the extended

period; a conscious are deliberate withholding the information, which the appellants were aware of, was required. He has correctly relied on a supreme court judgment in the case of Continental foundation joint venture Pvt. Ltd. (Supra). We find that in the following cases in was held that extended period cannot be invoked if the show cause notice issued on the basis audit

- ***Devraj Luxury Hotels Pvt. Ltd 2022 (67) GSTL 76 (Tri.Del.)***
- ***International Foundation for Research and Education 2020 (41) GSTL 339 (Tri.Chan.).***
- ***International Foundation for Research and Education 2020 (41) GSTL 339 (Tri. Chan.) (upheld by Hon'ble Apex Court in Civil Appeal Diary No. 13082/2020.***
- ***Vodaphone SR South Limited 2020 (43) GSTL 2014 (Tri. Bang.)***

6. In view of the above, we are of the considered opinion that there is no infirmity in the impugned order as regards the limitation is concerned. Because of this reason alone, the impugned show cause notice and the Order-in-Original cannot be upheld. We find that on merits also learned Commissioner (Appeals) has given a reasoned order. The Relevant paras are as under:

> *"6.1 Regarding sustainability of demand of service tax, on merits, I find that in respect of the manpower recruitment services, on the RCM basis, the appellant*

has contended that the adjudicating authority has travelled beyond the show cause notice in as much as in the SCN the demand was raised under Manpower Recruitment Agency Service whereas the demand has been confirmed under Manpower Supply Services. In this regard, I find that the Services namely Manpower Recruitment Agency Service, and Manpower Supply services were not defined under separate heads but defined under single head "Manpower Recruitment or Supply Agency" under Section 65(68) of the Act and covered under the category of taxable service under Section 105(k) of the Act. Further, the SCN was issued to the appellant for the period from April, 2014 to June, 2017 when no specific classification of service was available under the law. During the said period all the services, except specifically listed under Section 66D of the Act or otherwise exempted by virtue of notifications issued by the government were taxable. Therefore, the contention of the appellant does not affect the taxable nature of the services and payment of service tax, under RCM, in the situations as provided under Notification No. 30/2012 ST dated 20.06.2012.

Regarding contention of the appellant that he was not required to pay service tax on the said service under reverse charge as the service providers had already paid service tax and collected the same from him, I find that the appellant had also contended the same before the adjudicating authority but the adjudicating authority had not accepted the said contention of the appellant stating that the appellant had only provided the sample copies of the invoices and agreement in respect of M/s Orion enterprises in support of his contention but had not provided the copy of invoices and agreement in respect of the other clients from whom he had received the services. The findings of the adjudicating authority are not tenable because as mentioned above the SCN was issued on the basis of the audit of the records of the appellant, and the invoices on which the services providers had billed to the appellant, against which the appellant had taken the Cenvat credit. These records/ documents should have been examined by the audit. I further find that the SCN does not propose to deny the Cenvat credit taken by the appellant. Besides, it was not the case of the department that in the invoices produced before the adjudicating authority the service *providers had not charged and made payment of the service tax of which the appellant had taken the Cernvat credit. I further find that in order to substantiate his claim the appellant has submitted some invoices of M/s Orion Enterprises Gurgaon, Alavista International, Delhi, APL Enterprises, and UnichemEquipmentsPvt. Limited along with copy of Ledges Account maintained by him under the head Manpower Outsourcing Charges. On perusal of the said documents it was observed that the service tax was duly assessed by the service providers on their invoices and the same was paid by the appellant to them. In the absence of any evidence to the contrary it was evident that the service providers had paid the service tax (of which the appellant had also taken the Cenvat Credit which had not been alleged to have been wrongly taken). Besides, there was nothing on record to suggest that the department had conducted any enquiry at the end of the service providers and had adduced any evidence regarding no-payment of service tax by the service providers. I find that the demand was made only on the ground that the appellant was required to pay service tax on RCM basis but without refuting the contention of the appellant or adducing any evidence that the service tax so demanded already stood paid by the service providers. Under the circumstances, I hold that once the services tax was paid by the service providers the same was not demandable again from the appellant the service recipient as the same would amount to double taxation which was not permissible under law. The Hon'ble Tribunal, Ahmedabad in the case of TranspekSilox Industries (P) Limited vs. Commissioner of Central Excise, Vadodara-l [2018(17)GSTL 434(Tri-Ahnd)] has held that-*

"Demand - Manpower Recruitment or Supply Agency Service - Reverse Charge -Double Taxation - Under Notification No. 30/2012-S.T., service provider required to pay 75% of Service Tax while recipient balance 25% under reverse charge-Since instant case, service recipient has discharged 100% Service Tax, demanding 75% tax from appellant service provider amounting to double taxation, which is not permissible Demand on this count not sustainable - As regards non-payment in respect of another invoice in initial period, since service tax paid immediately on being pointed out by Revenue,

demand on this count also not sustainable- Impugned order set aside - Section 73 of Finance Act, 1994. [para 6]"

The demand of service tax of Rs.58,27,288/- in respect of the manpower recruitment services is, therefore, legally not sustainable. The same is, therefore, set aside.

6.2 Regarding the demand of service tax of Rs. 6,20,560/-, on RCM basis, in respect of the Rent a Cab services availed by the appellant, I find that the appellant had contended that while raising the demand under Rent- a cab Services, the expenses booked in ledgers towards reimbursement of diesel petrol expenses of the employees for conveyance charges had been considered towards rent-a-cab services. These expenses were, not for the rent a cab expenses but also included Guest House Charges, and other incidental and ancillary charges incurred while putting the employees at the site of the clients for interview and screening. The appellant has further contended that M/s Mehra Ram Chaudhary who had provided the rent cab services to the appellant had already charged and collected service tax from him under the invoices issued by him. In this regard lI find that the appellant, while submitting reply to the SCN, had put forth the said contentions before the adjudicating authority as mentioned in para 6.8 of the impugned order wherein it was also mentioned that the appellant had deposited the service tax of Rs. 1,90,530/- for the normal period. The adjudicating authority has, however, neither negated the contentions of the appellant with any sustainable piece of evidence nor has recorded any findings to the contrary. He has, only vaguely and without any basis, mentioned that the appellant was trying to misguide the department as he had not submitted the copy of the Challan. I find that the demand has been raised and mechanically confirmed on the sole ground that the appellant was required to pay service tax under RCM. There was nothing on record to dispute the contention of the appellant that the service providers had already paid the service tax. This fact was clearly verifiable by the audit and there was no evidence to infer that the service providers had not paid the service tax. The department has failed to adduce any evidence to the contrary before raising the demand. I further find that *the appellant along with the memo of appeal also submitted some invoices of M/s Mehra Ram & Sons evidencing that the service tax was assessed by the service provider at full rate and charged to the appellant. There was no evidence whatsoever to draw any contrary inference. It was, therefore, evident that the raising of the demand of the service tax and the confirmation of the same vides impugned order was done without any supporting and sustainable piece of evidence. I find that the Board vide Circular F. No. 341/18/2004-TRU (Pt.), dated 17-12-2004 has clarified that - "If Service Tax due on transportation of a consignment has been paid or is payable by a person liable to pay Service Tax, Service Tax should not be charged for the same amount from any other person, to avoid double taxation." Further the Hon'ble CESTAT, Mumbai in the case of M/s Umasons Auto Component Pvt. Limited versus Commr. "of C. Ex. &Cus., Aurangabad reported as [2017 (47) S.T.R. 377 (Tri. - Mumbai)] has held that -*

"Goods Transport Agency service - Demand - Recipient liability - Service Tax paid by service provider - Once, Service Tax paid by service provider is accepted by Revenue, it cannot be again demanded from the recipient of GTA service - Impugned order set aside - Section 73 of Finance Act, 1994. [paras 2, 4, 5]"

6.3 I further find that the adjudicating authority had also not considered the contention of the appellant that the expenses incurred towards the. Reimbursement charges to the employees and other incidental and ancillary charges did not fall under the purview of Service Tax. As discussed above the demand was raised without any enquiry and without any supporting evidence to substantiate that the appellant was in fact liable to pay the service tax. The adjudicating authority had mechanically confirmed the demand without considering the contentions of the appellant and without referring to any other evidence in support of the demand. The impugned order was, therefore, not only vague but also bad in law. The Board vide Circular No. 1053/o2/2017-CX dated 10.03.2017 has categoricaly emphasized that the adjudication order must be a speaking order and is expected to stand the test of legality, fairness and reason at higher appellate forums. Further the

Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his Observations and findings in the adjudication. I find that the ingredients of an adjudication order as emphasized by the Board are conspicuously missing from the impugned order.

The demand of service tax is, therefore, not sustainable in view of the settled position regarding double taxation which was not permissible under law. Besides, as discussed above the demand was raised and confirmed without any sustainable evidence.

6.4 Regarding demand and recovery of Cenvat credit of Rs. 5,73,464/- in respect of input services of rent a cab services, I find that in the show cause the cenvat credit was proposed to be denied on the win grounds of the same having been taken on the invoices of M/s ND Saran wherein no element of Cenvat Credit was passed on, and the Rent a Cab service was not an input service for the appellant as per definition given under Rule 2 (l) of CCR. In this regard the appellant has contended that out of the total amount of Rs.5,73,464/- the amount Rs. 3,80,413/- was related to tax paid invoices of M/s Mehra Rarg Chaudhary, and the remaining amount of Rs. 1,93,051/- was related to the services provided by M/s ND Sharan Tour and Traders. The appellant has further submitted that on being pointed out by the department he had deposited the service tax of Rs. 1,90,530/- vide challan dated 29.04.2019 [Inclusive of Cess(s) and interest] which was the total amount of service tax liability for the normal period of. demand. In this regard I find that the appellant, along with memo of appeal, has submitted copies of the invoices issued by Ms. Mehra Ram Chaudhary, a perusal of which reveals that the service provider had assessed the service tax and charged the same to the appellant who in turn had taken Cenvat credit of the same. The service tax already paid by the service provider was not demandable again from the appellant /service recipient as the same would amount to double taxation which was not permissible under the *law. Therefore, the demand of Rs. 3,80,413/- was not sustainable. The appellant has righty taken the Cenvat credit of the service tax paid by him to the service provider as the said service was an eligible input service, as has been discussed below. Regarding Cenvat credit of Rs.1,93, 051/- taken by the appellant against the invoices of M/s N.D. Saran Tours & Travels, I find that the said credit was taken by the appellant without the same having been paid either by the appellant, under ROCM, as was required as per law, or by the service provider. The demand to this extent was sustainable and the Cenvat credit taken was not admissible. However, the service tax payable on RCM basis was available to the appellant as cenvat Credit, as discussed below, which leads to a situation of revenue neutrality. Therefore, the allegation of intent to evade was not sustainable. Accordingly, only the demand for the normal period was sustainable, which the appellant, on being pointed out by the department has already paid along with the applicable interest before the issue of the SCN. The proceedings in respect of the above demand are, therefore concluded under the provisions of Section 73(3) of the Act. The penalty to this extent was, therefore, not sustainable as no show cause notice was required to be issued when the tax along with the applicable interest was already paid by the appellant.*

Regarding eligibility of Cenvat credit on the Rent a Cab service I find that the Hon'ble CESTAT in the case of M/s Jet Airways (1) Limited verses Commissioner of Service Tax, Mumbai [2016(44) STR465 (Tri Mumbai)] has held that-

"Demand - Revenue neutrality- Online information and database access or retrieval - Receipt of service from foreign CRS/GDS companies demand based on reverse charge mechanism - Credit of Service Tax paid or impugned service available to the service provider for discharging tax on output service of transport of passenger by air and other services' - Further, having paid Service Tax tinder reverse charge, impugned service relating to issue of tickets, also becoming output service for appellant Hence entire issue revenue neutral Relying upon 2014 (36) S. IR. 598 (Tribunal), demand and consequent interest and penalty set aside - Section 73 of Finance Act, 1994. (paras 10.2, 10.3, 10.4, 11]

I further find that in the show cause notice no evidence has been adduced to substantiate the allegation that the Rent a Cab service was not an input service for the appellant as per definition given under Rule 2 () of CCR. The denial of the Cenvat credit was, therefore, not sustainable in the absence of any evidence to substantiate allegation of ineligibility of the Cenvat credit on the said service which was used by the appellant for making the transport arrangements of his employees in connection with the provision of his taxable output services. I find that as per the provisions of Rule 2(1) of CCR any service used in providing of output service or any activity relating to business is eligible for input credit. The Hon'ble Punjab and Haryana High Court decision in the case of Commissioner of Central Excise, Delhi-lii Versus Maruti Suzuki India Ltd. [2017(49) STR 261(P&H)] has held that:

"Cenvat credit - Availment of - Rent-a-Cab services used by executives of assessee for traveling for business meetings, visits to dealerships, visits to vendor sites, dealers meet, business promotion activities, vehicles launch, conferences, etc. - HELD: This expenditure was related to business as it was incurred to promote sales and for efficient running of business Hence, assessee was entitled to avail Cenvat credit of Service Tax paid thereon - Rule 3 of Cenvat Credit Rules, 2004. [paras 24, 25]"

6.5 Regarding the wrong availment and utilization of credit of Swachh Bharat Cess (SBC) amounting to Rs. 2,56,423/- I find that the appellant had utilized the credit of SBC, which was not admissible to him as per the provisions of the Rules. However, the contention of the appellant that he had taken the Cenvat Credit under the bonafide belief that the said credit was available to him was tenable as no evidence had been adduced by the department to substantiate that the appellant had taken the said credit with intent to evade tax. Therefore, as discussed in para 6 above, the extended period of limitation was not available for raising the demand and the demand beyond the normal period of prior to October-16 was, therefore, time barred. Under the circumstance, the demand of Cenvat Credit on Swachh Bharat Cess amounting to Rs.1,46,316/- (Rs.42,497- for Oct.2016 to March, 2017 + Rs.

1,03,819/- for April to June, 2017 was upheld along with interest, as per the details mentioned in para 7 of the SCN. Accordingly, equal penalty under Section 78 of the Act was not imposable. The penalty was, therefore, reduced to Rs. 10,000/- (Rupees ten thousand only) under Rule 15 of the Rules and the rest of the penalties imposed were set aside."

6. As the appeal fails squarely on limitation, we are of the considered opinion that the other issues on merit do not require any discussion and findings,more so, when we have endorsed findings, of the impugned order in this regard.

7. In view of the above, the appeal is rejected.

(Pronounced in open court on 05.05.2025)

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

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash/Nihal