CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70352 of 2023

(Arising out of Order-in-Appeal No.885/ST/ALLD/2023 dated 21.04.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

Shri Ram Surat Maurya,
Prop – M/s S K & Company **.....Appellant**
(R/o Haidarpur Sadar, Jaunpur-222001 U.P.)

VERSUS

Commissioner of Central Excise &
CGST, Allahabad ....Respondent
(38, M.G. Marg, Civil Lines, Allahabad-211001)

<u>APPEARANCE:</u>

Shri Ramji Khare, Advocate & Shri S.P. Mishra, Consultant for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70511/2025

DATE OF HEARING : 04.04.2025
DATE OF PRONOUNCEMENT : 22.07.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.885/ST/ALLD/2023 dated 21.04.2023 passed by the learned Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad.

2. The facts of the case in brief are that on the basis of third party information received from the Income Tax Department for the Financial Year 2016-17 a show cause notice[1] dated 19.10.2021 was issued proposing to demand service tax amounting to Rs.9,57,881/- on the alleged gross receipts of

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[1] SCN

Rs.63,85,870/- Vide the Order-in-Original dated 07.01.2023 the demand as proposed in the SCN was confirmed and equal amount of penalty under Section 78 and penalty of Rs.10,000/- each under Sections 77(1)(a), 77(2) & 77(1)(c) of the Finance Act, 1994 and late fee of Rs.40,000/- for non filing ST-3 returns under Section 70 of the Finance Act, 1994. Being aggrieved, the Appellant assessee filed the appeal before the first Appellate Authority and the learned Commissioner (Appeals) re-quantified the demand as under:-

S. No.	**Gross Amount**	**Taxable amount (40% of total amount)**	**Total S. Tax involved (@ 15%)**	**Liability of S. Tax on appellant (50%)**
1.	6385870	2554348	383152	191576

However, it is the case of the Appellant that their entire service tax liability has been discharged by the service recipient and therefore they are not liable for payment of service tax. Accordingly, the assessee has filed the present appeal before the Tribunal.

3. Learned Advocate appearing on behalf of the Appellant submitted that they have received the entire payment from M/s U.P. State Construction Infra Structure Development Corporation Ltd[2]., Jaunpur for providing Works Contract Service to Shri Veer Bahadur Singh Poorvanchal University[3], Jaunpur and Gram Panchayat against the work orders issued by the main contractor

[2] SIDCO
[3] VBSP University

SIDCO. The entire service tax liability arising there on has been borne by the main contractor i.e. SIDCO. They have produced a certificate dated 27.01.2023 issued by the Executing Engineer U.P. SIDCO, Jaunpur mentioning that the entire liability of service tax has been paid by them. It is his submission that in the impugned order, the learned Commissioner (Appeals) has observed that 50% liability of service tax is to be discharged by the said recipient for works contract service rendered to a body corporate i.e. SIDCO and the liability of 50% service tax lies upon the Appellant being the service provider.

4. The learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

6. I find that the Appellant is a sub contractor of SIDCO. It is undisputed fact that the entire liability of service tax including the part of liability payable by the Appellant has also been discharged by the main contractor. Thus, there is no loss of revenue to the Government exchequer. In the present case the amount of service tax if collected from the Appellant would amount to double taxation, which is not justified. It is also submitted by the learned Advocate that had the service tax been paid by the Appellant, the same would have been available to the main contractor as Cenvat credit, making the situation revenue neutral. I find that SIDCO has issued a certificate dated 27.01.2023. A copy of the certificate is reproduced as under:-

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ANNEXURE — VI

कार्यालय अधिशासी अभियन्ता
उत्तर प्रदेश स्टेट कन्सट्रक्शन एण्ड इन्फ्रास्ट्रक्चर डेवलपमेन्ट कार्पोरेशन लि0,
वन विहार रोड भूपतपट्टी जौनपुर ।

पत्रॉक– 383 / अधि0अभि0 / जौनपुर / 2022–23 दिनॉक– 27/1/2023

प्रमाणित किया जाता है कि सर्वश्री रामसूरत मौर्या / एस0के0एण्ड कम्पनी,हरखपुर,सदर,जौनपुर द्वारा इस विभाग में वर्ष–2016–17 में पूर्वान्चल विश्वविद्यालय,जौनपुर परिसर में रिसर्च एण्ड इन्वोशन सेन्टर के भवन का निर्माण कार्य कराया गया है । जिस पर विभाग द्वारा पूर्वान्चल विश्वविद्यालय ,जौनपुर से समय–समय पर प्राप्त होने वाली धनराशि पर सर्विस टैक्स जमा किया जा चुका है। विवरण निम्नवत् है–

कमॉक	प्राप्त धनराशि	सर्विस टैक्स की जमा की गयी धनराशि	चालान सं0 एवं दिनॉक
1	1,83,33,333.00	18,05,007.00	80373 Dt-05-02-16
2	4,80,83,334.00	24,83,857.00	80262 Dt-04-11-16
3	1,80,51,000.00	9,41,791.00	80063 Dt-04-03-17
4	3,36,15,667.00	11,72,496.00	80398 Dt-30-03-17
TOTAL	11,80,83,334.00	64,03,151.00	

संलग्नक–उक्तवत् (चालान)

अधिशासी अभियन्ता
यूपी0सिडको जौनपुर
अधिशासी अभियन्ता
यू0 पी0 स्टेट कन्स्ट्रक्शन & इन्फ्रास्ट्रक्चर डेवलपमेन्ट कारपोरेशन लि0
जौनपुर

S. K. & COMPANY
Proprietor

S. K. & COMPANY
Proprietor

S. K. & COMPANY

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Name of Work	Amount of M.B.	Amount of Adavance	TOTAL	Deduction					Net Amount Paid by Cheque (4-(5+6+7+8+9))	Date of Payment
				Security	Income Tax	Vat	Royalty	Advance Adjusted		
2	3		4	5	6	7	8	9	10	11
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	4,00,000	4,00,000	-	8,000	-	-	-	3,92,000	19/07/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	4,00,000	4,00,000	-	8,000	-	-	-	3,92,000	05/08/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	4,00,000	4,00,000	-	8,000	-	-	-	3,92,000	10/08/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	4,00,000	4,00,000	-	8,000	-	-	-	3,92,000	26/08/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	4,00,000	4,00,000	-	8,000	-	-	-	3,92,000	24/10/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	4,00,000	4,00,000	-	8,000	-	-	-	3,92,000	26/10/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	11,55,744	-	11,55,744	60,000	1,615	-	16,811	10,75,000	2,318	24/12/2016
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	18,01,267	-	18,01,267	87,142	9,525	15,748	7,144	13,25,000	3,56,708	11/01/2017
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	8,00,000	8,00,000	-	16,000	-	-	-	7,84,000	20/01/2017
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	-	8,00,000	8,00,000	-	16,000	-	-	-	7,84,000	23/02/2017
B.tech Hostel Pu Jaunpur	4,68,705	-	4,68,705	23,500	9,374	17,671		-	4,18,160	21/03/2017
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	26,70,448	-	26,70,448	1,36,000	21,409	-	-	16,00,000	9,13,039	30/03/2017
Reaserch And Innovation Center At Purvanchal University , Jaunpur (IDRC PU)	2,89,706	-	2,89,706	15,000	5,794	-	-	-	2,68,912	31/03/2017
Mar-17	63,85,870	40,00,000	1,03,85,870	3,21,642	1,27,717	33,419	23,955	40,00,000	58,79,137	

S. K. & COMPANY
Proprietor

Proprietor

स० अधिशासी अभियन्ता
उ० प्र० स्टेट कंस्ट्रक्शन & इन्फ्रास्ट्रक्चर डेवलपमेन्ट कारपोरेशन लि०
जौनपुर

7. I find that as per various pronouncements of the Tribunal, if the service tax liability stands discharged on the full and complete value, the sub-contractor cannot be taxed again in respect of the same services of that part valued in the services provided by them. Admittedly, demand amounts to double taxation in respect of same services.

8. The practice of payment of Service Tax on the full value was the general practice being adopted, the separate

confirmation of Service Tax against the sub-contractor would not be justified, though the Cenvat credit Rules, as rightly argued by learned Authorized Representative requires separate payment of Service Tax on separate activities, which Service Tax would be available as credit to the main contractor. Learned Authorized Representative relies on the Tribunal's decision in the case of *Safe and Sure Marine Services Pvt. Ltd.* vs. *CST, Mumbai* reported as 2012 (28) S.T.R. 30 (Tri.-Mumbai) laying down that it is the responsibility of the sub-contractor to pay Service Tax. But keeping in view the other decisions referred supra, and keeping in view that when the principle contractor has paid the Service Tax on the entire value, and keeping in view that exchequer cannot be enriched on account of double taxation and keeping in view that the Revenue has already earned its share of Service Tax whether coming from the pocket of main contractor or from the pocket of sub-contractor and keeping in view the earlier Boards' clarifications which were relevant during the period which stand relied upon the case of *JAC Air Services* and keeping in view that concept of Service Tax are still not clear and keeping in view that there was a pattern in the industry for payment of Service Tax by the main contractor and keeping in view that entire situation is revenue neutral, I deem it fit to set aside the impugned order and allow the appeal with consequential relief, as per law.

(Order pronounced in open court on - **22.07.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS