CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70670 of 2018

(Arising out of Order-in-Appeal No.65/ST/Appeal/Audit/LKO/2018 dated 16/02/2018 passed by Commissioner (Audit) Central Excise & CGST, Lucknow)

M/s Tapasya Projects Ltd., **.....Appellant**
(120/500(10) Lajpat Nagar, Kanpur)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow **....Respondent**

(Commissioner (Audit), CGST &

Central Excise, Lucknow)

APPEARANCE:

Shri Amit Awasthi, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70623/2025

DATE OF HEARING : 16 July, 2025
DATE OF PRONOUNCEMENT : 09 September, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.65/ST/Appeal/Audit/LKO/2018 dated 16/02/2018 passed by Commissioner (Audit) Central Excise & CGST, Lucknow. By the impugned order, Commissioner (Appeals) has rejected the appeal filed by the appellant filed against Order-in-Original No.56/ST/Tapasya/AC/17 dated 22.02.2017 wherein following has been held:-

"ORDER

1. *I confirm the demand of Service Tax of Rs. 10,49,780/- (Rupees Ten Lakh Forty Nine Thousand Seven Hundred Eighty) only (inclusive of, Ed. Cess and SHE Cess) upon M/s Tapasya Projects Ltd., 120/500(10), Lajpat Nagar, Kanpur 208005 under Section 73(2) of the Finance Act, 1994, alongwith interest under Section 75 ibid.*
2. *I also impose a penalty of Rs.10,49,780/- (Rupees Ten Lakhs Forty Nine Thousand Seven Hundred Eighty only) upon M/s Tapasya Projects Limited, 170/500(16) Lajpat Nagar, Kanpur under Section 78 of the Finance Act, 1994."*

2.1 Appellant is holding Service Tax Registration No. AABCT4247NST002 and is engaged in providing service of Renting of Immovable Property and Security Detective Agency Service under Partial Reverse Charge Mechanism.

2.2 During the course of audit of records of the party, it was observed that appellant has received commission from M/s Ritu Tandon, Kanpur for mobilizing funds in insurance policies. M/s Ritu Tandon is an insurance agent of M/s Birla Sunlife insurance Co. Ltd. Appellant supports the business of M/s Ritu Tandon by way of arranging clients for M/s Ritu Tandon and in lieu thereof they receive commission from M/s Ritu Tandon.

2.3 Prior to introduction of negative list based taxation regime i.e. before 01.07.2012, services provided by the appellant were taxable under the category Business Auxiliary Services as defined under Section 65(19) of the Finance Act 1994. The said Section 65(19) ibid states that "Business Auxiliary Service' meant any service in relation to promotion or marketing of services provided by the client by way of evaluation or development of prospective customers. Further, as per Section 65(105)(zzb) of the said Act taxable service meant any service provided to a client by any person in relation to Business Auxiliary Service.

2.4 In view of the nature of the activities undertaken by the appellant in respect of the services provided to M/s Ritu Tandon which apparently were Business Auxiliary Service. It was alleged that appellant has short paid service tax on the commission received as indicated in table below:-

			Amount in Rs
Financial Year	Commission	Service Tax	
		Rate (%)	Payable
2011-12	2214164	10.30	228059
2012-13	4135936	12.36	511202
2013-14	0	12.36	0
2014-15	2512294	12.36	310520
Total	8862394		1049781

2.5 A show cause notice dated 23.08.2016 was issued to the appellant, asking them to show cause as to why-

> *"(i) The aggregate amount of Rs.88,62,394/- charged/received by them towards providing Business Auxiliary Service/Services other than those specified in the negative list (w.e.f.01.07.2012), should not be considered as taxable value under the provisions of the Finance Act, 1994. (as amended from time to time) & rules made thereunder and accordingly Service Tax (including Education Cess and Higher Education Cess) amounting to Rs. 10,49,780/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (as amended from time to time) for the reasons as discussed here-in-above.*
>
> *(ii) Interest should not be demanded/recovered from them on the amount demanded in Para 9(1) above under the provisions of Section 75 of chapter V of the Finance Act, 1994.*
>
> *(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by them from the department and contravening the provisions of the Finance Act. 1994. with intent to evade payment of service tax.*

Further, a corrigendum was issued under. CNo. V(15)Off/Adj/ST/Tapasya/103/2016/3618-19 dt. 29.09.2016 in terms of CBEC Circular No.1049/37//2016-CX dt. 29.09.2016 regarding revised powers of adjudication, making the said show cause notice answerable to the Assistant Commissioner, Service Tax, Division, Kanpur."

2.6 The said show cause notice was adjudicated as per the Order-in-Original dated 22.02.2017 referred in para 1 above.

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Amit Awasthi, Advocate for the appellant and Shri A.K. Choudhary, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- The first point is to be determined is that if service tax liability stands to be discharged on full and complete value by the insurance agent (M/s Ritu Tandan) then the sub-contractor cannot be taxed again in respect of the same services for this proposition if appellant is asked to pay service tax then it would amount to double taxation. Reliance is placed on the following decisions-
  - M/s Vijay Sharma & Co.2010 (20) STR 309 (Tri.-LB);
  - CCE, Kanpur Vs M/s PK Khandelwal and Co 2016-TIOL-45-CESTAT-All;
  - M/s Amar Travels (India) Ltd. Vs CCE, Delhi 2018 (10) GSTL 77;
  - Navyug Alloys Pvt. Ltd. 2009 (13) STR 421 (Tri.-Ahmd.);
  - Menon Pistons Ltd. 2010 (18) STR 803 (Commr.-Appl.);
  - Mandev Tubes 2009 (16) STR 724 (Tri.-Ahmd.);

  - Geeta Industries Pvt. Ltd. 2011 (22) STR 293 (Tri.-Del.);
- The demand is time barred as the extended period of limitation is not applicable to them. Reliance is placed on the following decisions:-
  - ITI (TID) Ltd. vs. CCE, 2007 (11) ELT 316(Tri)
  - Neyveli Lignite Corporation Ltd. vs. CCE, 2007 (209) ELT 310(Tri)
  - Commissioner vs. Bentex Industries, 2004 (173) ELT A079 (SC)
  - Commissioner vs. Binny Limited, 2003 (156) ELT A327 (SC)
  - Collector vs. Ganges Soap Works (P) Ltd., 2003 (154) ELT A234 (SC)
- In view of the above, no penalty is payable on them.

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

4.1 We 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:-

"I have carefully gone through the order-in-original, grounds of appeal, submissions made at the time of personal hearing and facts on record. In the case, I find that the appellant was asked to pay service tax on the following allegations;

A. The aggregate amount of Rs. 88,62,394/- should not be charged under Business Auxiliary Services and service tax on the above gross amount amounting to Rs. 10.49.780/- should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994.

B. The appellant has not paid the service tax by suppressing the Income made in the name of

COMMISSION and even not declared in Statutory Returns 1.e. ST-3.

After thorough examination of Show cause Notice in the light of Relled upon Documents, Order In Original and appellant's defense Statements along with documents submitted by the appellant I find that;

Appellant failed to establish that the Income made as COMMISSION already suffers burden of Service Tax. Single documentary evidence has not been submitted by the Appellant which supports the submission made by them.

Now I proceed to discuss the definition of "business auxiliary service" as provided in SECTIONS 65 OF THE FINANCE ACT, 1994.

Relevant portion of Section 65 is reproduced as;

[(19) "business auxiliary service" means any service in relation to,-

(i) Promotion, or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) Promotion or marketing of service provided by the client; or

(iii) Any customer care service provided on behalf of the client; or

(iv) Procurement of goods or services, which are Inputs for the client; or

[Explanation For the removal of doubts, It is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

[(v) Production or processing of goods for, or on behalf of, the client;]

(vi) Provision of service on behalf of the client; or

(vii) a service incidental or auxillary to any activity specified in sub-clauses (i) to (vl), such as billing, Issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, Inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, [but does not Include any activity that amounts to manufacture of excisable goods].

[Explanation for the removal of doubts, it is hereby declared that for the purposes of this clause,

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and Includes any person who, while acting on behalf of another person

(i) Deals with goods or services or documents of title to such goods or services; or

(ii) Collects payment of sale price of such goods or services; or

(iii) Guarantees for collection or payment for such goods or services; or

(iv)undertakes any activities relating to such sale or purchase of such goods or services;

[(b) "excisable goods" has the meaning assigned toilt in clause (d) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944)]

Relevant definition of "commission agent" clearly says that, "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person.

Further the appellant failed to establish that; why they not declared their Income as commission in the statutory returns. This failure of Appellant established the fact that was an intention to evade payment of tax. The essential Ingredient to invoke extended period under proviso to Section 73 (1) of the Act is present in the case of the appellant hence, the demand for the extended period is not time barred."

4.3 The only issue that needs to be determined in the present case vis-à-vis the liability of the sub-contractor to pay the service tax in respect of the services provided to the main contractor. We find that this issue has been considered and decided by the Tribunal in the case of CST Vs Melange Developers P. Ltd., 2020 (33) GSTL 116 (LB) by holding that the liability to pay service tax of sub-contractor needs to be discharged separately by the sub-contractor, even if the tax on the entire value has been paid by the main contractor.

4.4 We also note that the service tax has been demanded from the sub-contractor appellant under the taxable category of "Business Auxiliary Services" on the commission received from the M/s Ritu Tandon for arranging the clients for her. Service tax on the services rendered by M/s Ritu Tandon under the category of 'insurance agent service' has been discharged by the insurance company (M/s Birla Sun Life Insurance Company) on reverse charge basis. Thus we find that neither the tax has been demanded from the appellant under the same category nor the tax has been demanded on the same transaction. Thus we do not find any merits in the submissions made by the appellant that demand of service tax made from him under this category would result in the double levy of tax, and reject the same.

4.4 Further, in the case of M/s Om Sai Fabricators 2023 (6) Centax 208 (Tri.-Bom) this Tribunal has held as follows:-

> *"**4.3** On merits we find that issue has been decided by larger bench of tribunal in the case of Melange Developers Private Limited [2020 (33) G.S.T.L. 116 (Tri. - LB) wherein larger bench has held as follows:*
>
> *"12. It is true that prior to 2007, various Service Tax, Trade Notices/ Instructions/ Circulars/ Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/ Instructions/ Circulars/ Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below :*

999.03/ 23-8-2007	*A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as subcontractor who undertakes only part of the whole work.*	*A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.* *Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a subcontractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.*

13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a subcontractor is required to pay Service Tax, it may amount to 'Double Taxation', but this issue has to be examined in the light of the credit mechanism earlier *introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by Cenvat Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as 'Cenvat Credit') of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that Cenvat credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.*

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the Cenvat Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the Cenvat Rules allow a provider of output *service to take credit of the Service Tax paid at the preceding stage.*

16. It is in this light that the main contention of Learned Counsel for the Respondent that if a sub-contractor is required to pay Service Tax when the main contractor has actually discharged Service Tax liability, it would amount to 'Double Taxation', has to be examined. For this contention, reliance has been placed by the Learned Counsel for the Respondent on the following decisions of this Tribunal :

(i) Urvi Construction v. Commissioner of Service Tax, Ahmedabad, reported in 2010 (17) S.T.R. 302 (Tri. - Ahmd.);

(ii) BCC Developers and Promoters Pvt. Ltd. v. Commissioner of Central Excise, Jaipur, reported in 2017 (52) S.T.R. 22 (Tri. -Del.);

(iii) M/s. Dhaneshra Engineering Works v. Commissioner of Central Excise, Allahabad, reported in 2018 (2) TMI 788 - CESTAT - Allahabad;

(iv) Power Mech Projects Ltd. v. Commissioner of Customs, Guntur, reported in 2017 (48) S.T.R. 165 (Tri.- Hyd.); and

(v) M/s. Edac Engg. Ltd. v. CST, Chennai, reported in 2017 (6) TMI 685 CESTAT Chennai.

17. In Urvi Construction a Learned Member of the Tribunal observed :

"2. . Further the learned advocate also submits that in the Master Circular issued by the Board vide Circular No. 96/7/2007-S.T., dated 23-8-2007, a stand has been taken that there is no exemption to a sub-contractor from payment of service tax merely because the contractor pays the tax. However, he submits that for the period circular

issued late by the Board in 1997 was applicable and according to this Circular where the services have been provided by the sub-contractors such sub-contractors are not liable to pay service tax and service tax liability is on the main contractor. Taking note of the fact of the contention that main contractor has paid the service tax and charging service tax on the sub-contractor again would amount to taxing the same service twice and also taking note of the circular cited by the learned advocate and the decisions of the Tribunal cited, I find that if the appellant is required to pay the service tax it would amount to taxing the same service twice and the circular and the Tribunal's decision are squarely applicable to the facts of this case and accordingly appeal is allowed with consequential relief to the appellant."

18. In BCC Developers and Promoters Pvt. Ltd. it was observed :

"6.1 We agree with the submission of the Ld. Counsel that no double taxation is permissible under the law. The Constitution (Article 265) provides to take the exact amount of tax i.e. neither more nor less. In the instant case, if the principal has already paid the Service Tax, then the same cannot be demanded from the appellant. As per the clarification of the Board's Circular dated 23-8-2007 as well as dated 7-10-1998, if the principal had not paid the Service Tax then the same can be charged. If the Service Tax has already been paid by the principal, then the same cannot be demanded again."

19. M/s. Dhaneshra Engineering Works followed the aforesaid decision in BCC Developers and Promoters Pvt. Ltd.

20. In M/s. Edac Engg. Ltd., the Division Bench, after placing reliance upon the decision of the Tribunal in Urvi Construction, observed :

"6.2 We are therefore of the considered opinion that these case laws are distinguishable from the decision taken by this very Bench in the case of the present appellants Edac Engineering Ltd. in Final order dated 19-12-2016. We also find that the very same Board's Circular No. 97/8/2007-S.T., dated 23-8-2007, relied upon by the Ld. AR has been taken note of by the Tribunal in Urvi Construction (supra). This being so, we have no hesitation in ruling that when Service Tax has been paid by the main contractor, charging the subcontractor again will amount to taxing the same service twice. In the circumstances, the issue at hand also requires to be remanded to the adjudicating authority to verify whether the service rendered by the appellant has suffered tax in the hands of the principal contracts. If that aspect is able to be proved by the appellants, no tax liability will accrue to them. Towards this end, the adjudicating authority will give suitable opportunity to the appellants to present their case. Appellants are also produce all evidence and documents to establish their claim that the tax liability required to be discharged by them has already been paid up by the main contractor. If that is provided, their will obviously be no demand for interest unless such demands have been made belatedly. Once this aspect is also able to be proved by the appellant, imposition of penalty will also not arise."

21. The aforesaid decisions do not take into consideration the impact of the Cenvat Rules. It would, therefore, not be correct to conclude that double taxation would result if a sub-contractor is required to discharge the Service Tax liability even if the main contractor has discharged the tax liability.

22. The decisions of the Tribunal holding that double taxation will not result if a sub-contractor discharges the tax liability because of the Cenvat Rules, now need to be referred to.

23. In Max Tech Oil & Gas Services Pvt. Ltd. v. Commissioner of Service Tax, Delhi, reported in 2017 (52) S.T.R. 508 (Tri. - Del.), the Division Bench has held :

"6. Regarding the contention of the appellant that they have acted only as a sub-contractor and demanding service tax from them will amount to double taxation as the main contractor also is rendering similar service to ONGC, we find no legal basis for the contention of the appellant. The service tax leviable at the hands of each service provider is decided by nature of activities undertaken by them. If the same is covered by scope of the taxable entry under Finance Act, 1994 tax liability arises. The said service becomes part of final service rendered by main contractor is of no consequence to determine the tax liability of each and every service provider. If at all, the service tax paid by a sub-contractor which becomes part of service further provided by the main contractor, the scheme of credit as envisaged by the Cenvat Credit Rules, 2004 will come into play subject to fulfilment of conditions therein. It is nobody's case that the sub contractors per se are not liable to service tax even if they rendered taxable service " [Emphasis Supplied]

24. The same view was taken by the Division Bench of the Tribunal in CCE & S.T., Raipur v. M/s. J.K. Transport, reported in 2017 (9) TMI 993 - CESTAT New Delhi. The relevant paragraph is reproduced below :

"5. We find that the CBEC vide Circular dated 23-8-2007 has clarified that the services provided by the sub-contractor is a taxable service, even if the same is used for

completion of the work by the main service provider. Thus, for providing the taxable service, the sub-contractor is liable for payment of service tax on provision of such service........."

25. Similar views were taken by the Tribunal in (i) Max Logistics Ltd. v. Commissioner of Central Excise, Raipur, reported in 2017 (47) S.T.R. 41 (Tri. - Del.); (ii) Hargovind Electric Decorators v. Commissioner of Central Excise, Jaipur-I, reported in 2016 (43) S.T.R. 619 (Tri. - Del.); and (iii) Sew Construction Ltd. v. Commissioner of Central Excise, Raipur, reported in 2011 (22) S.T.R. 666 (Tri. - Del.).

26. At this stage, it would also be useful to refer to a Larger Bench decision of the Tribunal in Vijay Sharma & Company v. CCE, Chandigarh, reported in 2010 (20) S.T.R. 309 (Tri. - LB). The issue that arose before the Larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a subcontractor is liable to pay Service Tax, the Larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the Cenvat Credit Rules. The relevant paragraph 9 is reproduced below :

"9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of

same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."

27. The Commissioner did express in the impugned order that under the Cenvat Scheme every stage of provision of service is required to be taxed and if a sub-contractor discharges the Service Tax liability, it will not result in double taxable even if the main contractor discharges the Service Tax liability because the credit of the earlier tax paid is available at a subsequent stage, but it is because of the decision of the Tribunal in Urvi Construction, that the Commissioner held that double taxation would result if a sub-contractor is also required to discharge Service Tax liability when the main contractor has discharged the entire liability.

28. Learned Counsel for the Respondent has, however, relied upon the decision of the Supreme Court in Larsen *and Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes and Anr., reported in 2016-TIOL-155-SC-VAT. In this case, the contracts which were secured by the Appellant therein were works contract and a part thereof was assigned to the subcontractor who had submitted returns and paid taxes for the execution of the works contract. During the course of the assessment, the Appellant submitted that the sub-contractors had already been taxed and, therefore, the Appellant cannot be taxed again under section 6B of the Karnataka Sales Tax Act. The submission, therefore, was that the value of the work entrusted to the sub-contractors could not be taken into account while computing the total turnover of the Appellant for the purpose of taxation under the Karnataka Sales Tax Act. It is in view of the provisions of the Karnataka Sales Tax Act that the Supreme Court observed that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6B of the Karnataka Sales Tax Act. This decision of the Supreme Court will not come to the aid of the Respondent in this case in view of the specific provisions of Section 66 and 68 of the Act as also the Cenvat Rules discussed in the foregoing paragraphs of this order. It also needs to be noted that there is no provision for input tax credit on deemed sales in levy of VAT.*

29. The submission of the Learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A subcontractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the

Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

4.4-4.7 ----------------------------------

***4.8** To argue on the limitation appellant have pressed the ground of bonafide belief and for that reason they rely upon the certificate issued to them by M/s Gammon. They also submit that there were conflicting views in the matter. However on query from the bench the counsel for appellant was unable to point out to a single decision available during the relevant period giving a contrary view. Further the submission to the effect that there were conflicting circulars is also not borne out by any evidence. Larger bench has in case of Melange Developer Pvt Ltd. clearly in para 12 noted that all Trade Notices/Instructions/Circulars/Communications were superseded by the Master Circular dated 23 August, 2007, and this circular had clarified the liability of sub contractor to pay the service tax. It is settled law that bona fide belief is not the blind belief and needs to be established. Hon'ble Bombay High Court has in case of Responsive Industries Ltd. [2019 (26) G.S.T.L. 457 (Bom.)] held as follows:*

"9. The contention that there was a bona fide belief that the Appellant are not liable to pay the service tax on outward transportation of goods and the GTA is not

supported by any reasonable explanation. The bona fide belief that one is not liable to pay the tax has to be based on some facts on record which led to the belief. It is not the Appellant's case that the belief based on a ruling of the some authority that it not liable to pay service tax on outward transportation. A mere statement to the effect that the Appellant was under a bona fide belief of non liability of paying tax cannot be accepted in the face of clear provision of law. Thus, it is not possible to accept the contention that the Appellant had bona fide belief of for non-payment of tax, so as to invoke Section 80 of the Act."

4.9 *A statement of Shri Sukhdeo Vasudeo Yadav (proprietor of appellant} was recorded on 10-11-2008 wherein he stated that he has paid the service tax but has not filed any service tax return so far and submitted copies of taxable invoices, bank pass book and bank statement for 2006-07; that as a sub-contractor, he has provided commercial & industrial construction service to Gammon India Ltd, Mumbai, Japsin Jacob Wire Drawing P Ltd, New Delhi and Man Infra Project Ltd, Mumbai but has not paid any service tax till 31-3-2008 being a sub-contractor; that from 1-4-2008, he started charging service tax on the service provided as sub-contract and that the same would be credited to the service tax department; that he does not have any agreement with these 3 firms but has letter of indent from Gammon India Ltd.*

4.10 *Shri Sukhdeo Vasudeo Yadav, in his statement dated 21-11-2008 deposed that he paid service tax for the year 2006-07 but did not pay service tax for 2007-08 and 2008-09(up to October 2008); that in 2006-07, he discharged service tax on the invoices where contract was direct but where contract was on sub-contract basis, he did not discharge service tax; that he was not aware that a sub contractor is liable to pay service tax; that he collected*

Rs. 1,44,904.00 @12.24% for the period 2007 08 and Rs. 14,49,484.00 @12.36% for the period 2008-09 (till Oct 2008); that he would pay the service tax amount by December 2008 after rechecking his liability and agreed to submit VAT returns and balance sheet on 5-12-2008.

4.11 *On verification of sample work order bearing number 8450/112 dated 07/04/2007, issued by M/s Gammon India Limited in favor of the appellant, it is observed that as per Clause/ Condition No. 23 of the said contract, "Sub-Contractor has agreed that the service tax is included in his offer and so no claim whatsoever shall not be entertained in this regard & Gammon shall not be liable to pay the same." This condition clearly indicates that contract itself placed service tax liability on the appellant. In contradiction to specific provision of the contract, the submission of the appellant on the basis of the certificate issued by the M/s Gammon India only need to be negated. This condition in contract itself shows that appellant was aware of his liability to pay service tax.*

4.12 *The Appellant concealed the correct taxable amount with the service tax department, until the Departmental officers initiated an inquiry in this regard. These facts were suppressed with intent to evade the payment of service tax due on various taxable services provided by them thereby facilitating the evasion of service tax payable on the said services so rendered by them. Thus it the extended period, as provided for under the proviso to sub-section (1) of section 73 ibid for recovery of such service tax not paid and/or short paid by Appellant has been correctly invoked by the revenue authorities.*

4.13 *For the facts as stated above when we hold that the ingredients for invocation of the extended period of limitation were present, we are bound to uphold the penalties imposed on the appellant under section 78 of*

Finance Act, 1994 in view of the decision of Hon'ble Apex Court in case of Rajasthan Spinning Mills [2009 (238) E.L.T. 3 (S.C.)] wherein following has been held:

"20. At this stage, we need to examine the recent decision of this Court in Dharamendra Textile (supra). In almost every case relating to penalty, the decision is referred to on behalf of the Revenue as if it laid down that in every case of non-payment or short payment of duty the penalty clause would automatically get attracted and the authority had no discretion in the matter. One of us (Aftab Alam, J.) was a party to the decision in Dharamendra Textile and we see no reason to understand or read that decision in that manner. In Dharamendra Textile the court framed the issues before it, in paragraph 2 of the decision, as follows :

"2. A Division Bench of this Court has referred the controversy involved in these appeals to a larger Bench doubting the correctness of the view expressed in Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai & Anr. [2007 (8) SCALE 304]. The question which arises for determination in all these appeals is whether Section 11AC of the Central Excise Act, 1944 (in short the "Act') inserted by Finance Act, 1996 with the intention of imposing mandatory penalty on persons who evaded payment of tax should be read to contain mens rea as an essential ingredient and whether there is a scope for levying penalty below the prescribed minimum. Before the Division Bench, stand of the revenue was that said section should be read as penalty for statutory offence and the authority imposing penalty has no discretion in the matter of imposition of penalty and the adjudicating authority in such cases was duty bound to impose penalty equal to the duties so determined. The assessee on the other hand referred to Section 271(1)(c) of the Income-tax Act, 1961 (in short the IT Act') taking the stand that Section 11AC of the Act is identically worded and in a given case it was open to the

assessing officer not to impose any penalty. The Division Bench made reference to Rule 96ZQ and Rule 96ZO of the Central Excise Rules, 1944 (in short the "Rules') and a decision of this Court in Chairman, SEBI v. Shriram Mutual Fund & Anr. [2006 (5) SCC 361] and was of the view that the basic scheme for imposition of penalty under section 271(1)(c) of IT Act, Section 11AC of the Act and Rule 96ZQ(5) of the Rules is common. According to the Division Bench the correct position in law was laid down in Chairman, SEBI's case (supra) and not in ***Dilip Shroff's*** *case (supra). Therefore, the matter was referred to a larger Bench."*

After referring to a number of decisions on interpretation and construction of statutory provisions, in paragraphs 26 and 27 of the decision, the court observed and held as follows :

"26. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.

"27. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analysed the legal position in the correct perspectives. The reference is answered........ ".

21. From the above, we fail to see how the decision in Dharamendra Textile can be said to hold that Section 11AC would apply to every case of non-payment or short *payment of duty regardless of the conditions expressly mentioned in the section for its application.*

22. There is another very strong reason for holding that Dharamendra Textile could not have interpreted Section 11AC in the manner as suggested because in that case that was not even the stand of the revenue. In paragraph 5 of the decision the court noted the submission made on behalf of the revenue as follows :

"5. Mr. Chandrashekharan, Additional Solicitor General submitted that in Rules 96ZQ and 96ZO there is no reference to any mens rea as in section 11AC where mens rea is prescribed statutorily. This is clear from the extended period of limitation permissible under section 11A of the Act. It is in essence submitted that the penalty is for statutory offence. It is pointed out that the proviso to Section 11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable. Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed. It is pointed out that even if in some statues mens rea is specifically provided for, so is the limit or imposition of penalty, that is the maximum fixed or the quantum has to be between two limits fixed. In the cases at hand, there is no variable and, therefore, no discretion. It is pointed out that prior to insertion of Section 11AC, Rule 173Q was in vogue in which no mens rea was provided for. It only stated "which he knows or has reason to believe". The said clause referred to wilful action. According to learned counsel what was inferentially provided in some respects in Rule 173Q, now stands explicitly provided in Section 11AC. Where the outer limit of penalty is fixed and the statute provides that

it should not exceed a particular limit, that itself indicates scope for discretion but that is not the case here."

23. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section (2) of Section 11A. That is what Dharamendra Textile decides."

***4.14** As appellant had not taken registration and had not filed ST-3 returns within the prescribed time, penalty imposed under section 77 is justified.*

***4.15** As we uphold the demand for service tax, demand for interest follows, and needs to be upheld. It is now settled law that once the tax is demandable the interest as prescribed by law will automatically follow."*

4.5 This decision of the Tribunal has been upheld by the Hon'ble Supreme Court reported as 2023 (6) CEN 210 (SC). Hence, we do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on- 09 September, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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