CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70660 of 2019

(Arising out of Order-in-Appeal No.88-ST/APPL/LKO/2019 dated 18/02/2019 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Vibgyor Info Pvt. Ltd., ...Appellant

(1st Floor, B-Block, Rohit Bhawan,
Sapru Marg, Hazaratganj, Lucknow)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow ....Respondent

(3/194, Vishal Khand, Gomti Nagar, Lucknow-226010)

APPEARANCE:

Shri Prakhar Shukla, 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.70747/2025

DATE OF HEARING : 18 July, 2025
DATE OF DECISION : 18 July, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.88-ST/APPL/LKO/2019 dated 18/02/2019 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

> *"The appellant has not filed the appeal with the requisite pre-deposit of 7.5% of the service tax demanded, as required under Section 35F of the Central Excise Act, 1944 (made applicable to service tax matters). Therefore, the appeal cannot be entertained and is dismissed on the same ground."*

2.1 Appellant have filed this appeal after making the pre-deposit of 10% of the disputed tax for admitting the appeal before the Tribunal.

2.2 The present case is filed in respect of statement of demand dated 02.08.2017. Relevant findings as recorded in the said statement of demand/show cause notice is reproduced below:-

"In terms of Section 73(1) read with 73(1A) of the Finance Act 1994, this Statement of Demand is issued to M/s VIBGYOR lnfo Pvt. Ltd., B-Block, 1" Floor, Rohit Bhawan, Sapra Marg, Hazratganj, Lucknow (hereinafter referred to as "the noticee/party") in continuation to earlier. ***Demand Cum Show Cause Notice No: 01/COMMR/S.Tax/2015-16 Jateil 17.04.2015 issued by the Commissioner (Audit), Central Excise & Service Tax. Lucknow for the period 2009-10 (Oct 09 to March 10) to 2013-14 as the grounds relied upon in the instant Statement of Demand are the same as mentioned in the Show Cause Notice dated 17.04.2015.***

2) Whereas, the noticee was asked vide letters C.No. 206-ST/MRS-19/LKO-11/04-05/89 dated 22.07.2015, even C.No. 106 dated 31.07.2015. 136 dated 25.08.2015. 193 dated 30.10.2015, 207 dated 20.11.2015, 253 dated 16.12.2015, 291 dated 13.01.2016 (RUD No. 01 to 07) for providing the detailed information in respect of services rendered by them during 2014-15 along with profit & loss account of the Balance Sheet for the year 2014-15 and copies of 51-3 Returns. The letter C.No. VIPL-2543 dated 08.08.2015 of the noticee and copy of Balance Sheet for the period 2014-15 was received in the office on 11.02.2015 (RUD No. 08 & 091. On the basis of ST-3 Returns for the period (April' 14 to Mar'15) (RUD-10 & 11), records submitted by the party and details of services provided by them, short payment/non-payment of Service tax has been worked out as under-

S. No	*Name of Service*	*Financial Year*	*Income as per Balance*	*Taxable value as per ST-3 (excluding*	*Value on which ST*	*S. Tax short paid/noi paid*

			sheet (P&L)	*Taxable value under RCM)*	*not paid (4-5)*	*@ 12.36%*
1	*2*	*3*	*4*	*5*	*: 6*	*7*
I	*Manpower Supply Agency Service*	*2014-15*	*279135585*	*192862990*	*86272595*	*10663293*
2	*Service Charge (Manpower)*	*2014-15*	*3347404*	*0*	*3347404*	*413739*
3	*Painting*	*2014-15*	*91429*	*0*	*91429*	*1,301*
4	*Advertisement*	*2014-15*	*40335*	*0*	*40335*	*4985*
	TOTAL		*282614753*	*192862990*	*89751763*	*1,10,93,318*

3) ....

4) ....

5) Now, M/s VIBGYOR Info Pvt. Ltd., B-Block, I" Floor, Rohit Bhawan. Sapru Marg. Hazratganj, Lucknow are hereby called upon to show cause to the Joint Commissioner. Central GST & Central Excise, 7-4 Ashok Marg, Lucknow, within 30 days of the receipt of this notice as to why-

(i) Service Tax, amounting to Rs.1,10,93,318/- (Rs. One Core Ten Lakh Ninety Three Thousand Three Hundred and Eighteen only) including Education Cess & Higher Edu. Cess should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 for violation of Section 68 of the Act read with Rule 6 of the Service Tax Rules 1994 along with interest as leviable under Section 75 of the Act ibid.

(ii) Penalty should not be imposed upon them under Section 76 of the Finance Ac 1994 for non/short payment of Service Tax as mentioned above

(iii) *The interest amounting to Rs.11,14,582/- should not be recovered under Section 75 of the Act ibid for late depositing the Service Tax."*

2.3 The above said show cause notice was adjudicated as per the Order-in-Original No.001/JC/LKO/ST/2018-19 dated 11.06.2018 wherein following has been held:-

"ORDER

(i) I confirm the demand of Service tax amounting to Rs. 1,10,93,318/-(Rs One Crore Ten Lacs Ninety Three

Thousand Three Hundred and Eighteen only) including Education Cess and Secondary Higher Education Cess and order for recovery of the same from the party under Section 73 of the Finance Act 1994 alongwith appropriate rates of interest under Section 75 of the Act ibid.

ii) I impose penalty of Rs. 11,09,331/- (Rs. Eleven Lacs Nine Thousand and Three Hundred Thirty One Only) upon the party under Section 76 of the Finance Act 1994.

(iii) I further confirm the amount of interest as demanded on late payment of service tax amounting to Rs.11,14,582/- under Section 75 of the Finance Act, 1994 and order to recovery of the same from them."

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

2.5 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Prakhar Shukla learned Counsel appearing for the appellants and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Now, for admitting the appeal before this Tribunal they have made the mandatory pre-deposit and the issue involved in the present case is in respect of statement of demand/ show cause notice and the order confirming the earlier show cause notice for past period has been set aside by this Tribunal vide Final Order No.70711/2024 dated 09.08.2024.
- As the issue is covered by the earlier decision of the Tribunal, the appeal be allowed to that extent.

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 We find that in this appeal we are concerned with the Statement of Demand issued in terms of Section 73 (1A) of the Finance Act, 1994, for subsequent period in terms of Show Cause Notice dated 17.04.2015. In that case the appellant had not disputed the service tax demanded in respect of services rendered other than the man power supply services.

4.3 We find that the show cause notice dated 17.04.2015 issued for the period 2009-10 (Oct 09 to March 10) to 2013-14 was adjudicated by this Tribunal vide Final Order No.70711/2024 dated 09.08.2024 by observing as follows:-

> *"4.8 In view of the discussions as above, the impugned order is modified to the extent of setting aside the demand along with the interest under section 75 in respect of Manpower Supply Services to the extent of Rs. 2,68,36,765/- the penalty imposed under Section 78 in respect of this amount is also set aside. Remaining parts of the order are upheld.*
>
> *5.1 Appeal is allowed, impugned order is partially modified as indicated in para 4.8 above."*

4.4 Accordingly, following the earlier order of this Tribunal, this appeal is also allowed in same terms as has been allowed by Final Order No.70711/2024 dated 09.08.2024

- ➢ the demand made in respect of the manpower services on amount received by them and paid by them to manpower provided as salary, wages and other allowances is set aside and is restricted to the amount received by them as commission for providing the manpower supply services.
- ➢ Demand made in respect of all other services is upheld.
- ➢ Penalty imposed under section 76 also stands modified to that extent.

5.1 Appeal is allowed, impugned order is partially modified as indicated in para 4.4 above.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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