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

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 20861 of 2016**

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-36-37-15-16 dated 31.01.2016 passed by the Commissioner of Central Excise, Bangalore – III]

**Hindustan Aeronautics Limited**
Helicopter MRO Division, Helicopter Complex,
Post Bag No. 1796, Vimanpura Post,
Bangalore - 560 017 **......Appellant**

**VERSUS**

**Commissioner of Central Excise,
Bangalore-III**
P.B. No. 5400, Queens Road
Central Revenue Building
Bangalore - 560 001 **.... Respondent**

**Service Tax Appeal No. 20862 of 2016**

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-36-37-15-16 dated 31.01.2016 passed by the Commissioner of Central Excise, Bangalore – III]

**Hindustan Aeronautics Limited**
Helicopter MRO Division, Helicopter Complex,
Post Bag No. 1796, Vimanpura Post,
Bangalore - 560 017 **....Appellant**

**VERSUS**

**Commissioner of Central Excise,
Bangalore-III**
P.B. No. 5400, Queens Road
Central Revenue Building
Bangalore - 560 001 **....Respondent**

**Appearance:**
Mr. Mihir Deshmukh, Advocate for the Appellant
Mr. Rajesh Shastry Authorised Representative (AR) for the Respondent
**Coram:**
**Hon'ble Mr. P.A. Augustian, Member (Judicial)**
**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**<u>Final Order Nos. 21543 - 21544 / 2023</u>**

Date of Hearing: 30.10.2023
Date of Decision: 30.10.2023

**Per: Pullela Nageswara Rao**

These 2(two) Appeal Nos. 20861/2016 and 20862/2016 were filed against Orders-in-Original No. BLR-EXCUS-003-COM-36-37-15-16 dated 31.01.2016 passed by the Commissioner of Central Excise, Bangalore-III. The show cause notice (SCN) for the period April 2012 to March 2013 was issued on 21.04.2014 demanding service tax under section 65B(44) on the 'advances from Defense customers and advances from other customers' of Rs. 684.84 lakhs, Rs.4.07 lakhs on Inter Factory Demand (IFD) charges and Rs. 3.31 lakhs on import of service under proviso to section 73(1) along with interest under section 75 and proposing penalty under section 76 of the Finance Act, 1994. The show cause notice (SCN) for the period April 2013 to March 2014 was issued on 09.04.2015 demanding service tax under section 65B(44) on the 'advances from Defense customers and advances from other customers' of Rs. 1617.24 lakhs and Rs. 6.14 lakhs on Inter Factory Division (IFD) charges under section 73(1) along with interest under section 75 and proposing penalties under section 76 and under section 77(2) of the Finance Act, 1994.

2. The brief facts are M/s. Hindustan Aeronautics Ltd., the appellant is engaged in the manufacture, repair, and overhaul of various aircrafts operated by Indian Airforce, Indian Navy, Indian Army, Coast Guard, Border Security Force, Corporate Sector, State Government and other civilian customers. The appellant is registered under service tax under the taxable service "Management, Maintenance or Repair Service". The advances received by the appellant from Defence customers represent the milestone payment for material value involved in the maintenance, repair and overhaul activities undertaken by the appellant. The appellant's Maintenance Repair and Overhaul (MRO) facility has been set up exclusively for the maintenance, repair and overhaul activities for Dhruv-Advanced Light Helicopter (ALH).

3. Respondent-Department has asked the appellant to submit the details of advances received from customers, IFD charges received from

other divisions, foreign technician fees for the period from April 2012 to March 2013. Thereafter, Department issued a show-cause notice for the non-payment of service tax on the advances received, Inter Factory Demand (IFD) charges and import of services. The Commissioner on adjudication confirmed the demand of Rs 684.84 lakhs of service tax on advances received from Defence and from other customers and service tax of Rs. 3,31,486/-on import of service under section 73(1) along with interest under section 75 and imposed penalty under section 76 of the Finance Act, 1994. However, he has dropped the demand of Rs. 4.07 lakhs on IFD charges. In the other show cause notice (SCN) for the period April 2013 to 2014 the Commissioner on adjudication confirmed the demand of Rs.1617.24 lakhs on advances received from Defence and from other customers under section 73(1) along with interest under section 75 and imposed penalty under section 76 of the Finance Act, 1994. However, he dropped the demand of Rs. 6.14 lakhs on IFD charges. Aggrieved by the orders of the Commissioner the appellant has filed these 2(two) Appeals before this Tribunal.

4. The learned counsel during the hearing reiterated the submissions in the appeal memorandum and submitted that; the advances from Defence constitute stage payments with respect to material value involved in the maintenance, repair or overhaling of the Dhruv-ALH and supply of spares for Defence as well as other customers; claims for advance from Defence customers are made to the Deputy Controller of Defence Accounts based on task letters issued by the Indian Airforce and Indian Army; the task letters indicate likely numbers of helicopters to be serviced during the next year (firm task) and the forecast for the next 4(four) years; advances are paid for the firm task letters by the customers to enable the Division to initiate procurement action for components and spares likely to be used for carrying out servicing; further no amount is received towards service portion in the 'Management, Maintenance or Repair' Service and the advances are received only towards the material value; the appellant submits that the advances received from Defence, and other customers are adjusted in the final billing over a period of time on which service tax is duly

discharged. Learned counsel further submits that the advance amount received from Defence as well as non-Defence customers is primarily for procurement of components and spares, which are used for servicing activity; hence, on the advances received they did not discharge service tax since the advance is not towards provision of any service but for procurement of material; the appellant submits that the advances received for the MRO Division are adjusted against the final invoices against which service tax liability is duly computed and discharged. Learned counsel further submits that demanding service tax again on the advance amount is not correct as the service tax amount is duly discharged by them at the time of raising final invoices on their customers.

5. The learned counsel with regard to the above contentions relied on the following case laws;

a) Hindustan Aeronautics Ltd. Vs. Commissioner of Service Tax 2010 (17) STR 249 (TRI)
b) Hindustan Aeronautics Ltd. Vs. Commissioner of Service Tax Bangalore 2014 (34) STR 874
c) Order dated 1.03.2018 passed by CESTAT, Mumbai in Appellant's own case in ST/86342/2013 vide Final Order No. A/86655/2018.

6. The learned counsel as regards the foreign technical fees payment, submitted that M/s. BEL is a domestic vendor and the payment paid to M/s. BEL had been inadvertently shown under the head of foreign technician fee during the 2012-13 and they are under no obligation to discharge service tax under reverse charge mechanism in respect to payments made to M/s. BEL. Further, in terms of Section 68(1) of the Act it is the person providing the taxable service to any person, shall be liable to pay service tax at the rate specified in section 66B of the Finance Act, 1994. Accordingly, M/s. BEL being the provider of service is liable for the payment of service tax in accordance with the aforesaid provisions of law, if applicable. Hence, confirmation of demand of service tax on the payments made to M/s. BEL are liable to be set aside.

7. The learned counsel as regards the payment made to M/s. Thales Avionics submits that they relate to the technical assistance provided in respect of import of ground support equipment and that they have accepted the liability and will pay the service tax along with interest at the earliest.

8. The learned counsel further submitted that; since the demand itself is not sustainable, imposition of penalty is not tenable. In this regard learned counsel submitted that; service tax has been discharged on the advances at the time of raising the final invoices after deducting actual value of goods; however, the demand of service tax is on the same advance amounts received; assuming but not admitting that service tax would be payable at the time of receipt of advance, the same was already paid at time of raising the final invoices, therefore, there was a delay in remitting of service tax since service tax was paid on final invoice; consequently, the demand of service tax on the advances received once again is not sustainable and liable to be dropped; there should not be any additional demand of service tax on the advances received and there was no malafide intent to evade payment of appropriate service tax; further, it has been sufficiently elaborated that there was no dolus-malus on our part. The learned counsel placed reliance on the following decisions in support of their contention that no penalty is imposable when there are no malafides; M/s. G. S. Enterprises Vs. CCE, 2002 (50) RLT 012, wherein the penalty imposed was set-aside as there was no misdeclaration, mis-statement, and suppression of facts or fraud.

9. Learned counsel further submitted that Section 80 (as in existence during the period of dispute) of the Finance Act, 1994 specifically provides that no penalty is imposable under section 76 to 79, if the assessee proves that there was reasonable cause for any failure; the expression 'reasonable cause' has been interpreted in the case of Addl. CIT Vs. Mohammed and Sons, 1985 (154) ITR 220 (Raj) and CWT Vs. S.L. Khunnah 1989 (180) ITR 340 (All), to the effect that *"when a particular cause operated upon the mind of the assessee which prevented him from filing the returns it is a reasonable cause' and 'that*

*a thing is generally considered reasonable if it is not actuated by bad faith, dishonesty or false grounds*", the Hon'ble Allahabad High Court held in the second mentioned case that there is no hard and fast rule for governing or deciding when a certain ground would be considered reasonable or not; there was and is a reasonable cause when there was no bad faith, dishonesty or any false motive attributable to warrant imposition of penalty; the demand of penalty is therefore untenable and liable to be set aside; they have not suppressed the facts with an intention to evade the payment of duty; further as there was no intention of fraud on Appellant's part, they are not liable for penalty; in this regard, reliance is placed on the following case law decided by the Hon'ble Supreme Court in **M/s. Hindustan Steel Ltd. Vs. The State of Orissa [AIR 1970 SC 253].**

10. The learned counsel submitted that; interest under Section 75 of the Act is leviable only in the case of a delay in payment of service tax on the part of the assessee. In the instant case, Appellant is not liable to pay any tax or any other amount to the account of the Central Government, hence the question of levy of interest does not arise; when the demand itself is not sustainable, there is no question of any interest, because interest is an accessory to the principal and when the principal itself is not payable the question of paying interest or penalty does not arise; reliance is placed on the decision of the Supreme Court in the case of **Prathibha Processors Vs. UOI [1996 (88) ELT 12 (SC)].**

11. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner in the impugned orders.

12. Heard both sides and perused the records.

13. The issue involved in the present case is whether the demand of Service tax, on the Appellant of Rs. 684.84 lakhs (Period from April 2012 to March 2013) and Rs. 1617.224 (Period from April 2013 to 2014) on advances received from Defence and from other customers under the category of 'management, maintenance or repair' service under proviso to Section 73(1) of the Finance Act, 1994 and demand of

Service tax of Rs. 3.31 lakhs (Period April 2012 to 2013) on import of service along with interest under section 75 and imposition of penalty under section 76 of the Finance Act, 1994 are tenable.

14. We find that the appellant has contended that the advances received from the Defence and the other customers were towards the advances from Defence and they constitute stage payments with respect to material value involved in the maintenance, repair or overhaling of the Dhruv-ALH and supply of spares for Defence and the claims for advance from Defence customers are made to the Deputy Controller of Defence Accounts based on task letters issued by the Indian Airforce and Indian Army, the task letters indicate likely numbers of helicopters to be serviced during the next year (firm task) and the forecast for the next 4(four) years; advances are paid for the firm task letters by the customers to enable the appellant to initiate procurement action for components and spares likely to be used for carrying out servicing; further no amount is received towards service portion in the 'Management, Maintenance or Repair' Service and the advances are received only towards the material value; the appellant contended that the advances received from Defence, and other customers are adjusted in the final billing over a period of time on which service tax is duly discharged. Learned counsel further contended that the advance amount received from Defence as well as non-Defence customers is primarily for procurement of components and spares, which are used for servicing activity; hence, on the advances received they did not discharge service tax since the advance is not towards provision of any service but for procurement of material; the appellant submits that the advances received for the Maintenance Repair and Overhaul (MRO) Division are adjusted against the final invoices against which service tax liability is duly computed and discharged, therefore demanding service tax again on the advance amount is not correct as the service tax amount is duly discharged by them at the time of raising invoices on their customers.

15. The learned counsel vehemently contended that they have not received any advances for the 'Management, Maintenance or Repair'

Service of the Dhruv-Advanced Light Helicopters (ALHs) from the Defence or the other customers and that the service tax on this service is paid for the provision of the services on the final invoice after completion of the service on the net amount after deducting the value of the components and spares, i.e., on the service value. We find the fact of payment of service tax on the final invoice can only be verified by the adjudicating authority hence the matter has to be remitted back to the adjudicating authority for ascertainment of the facts. Further the learned counsel submitted that the appellant with regard to the payments made to M/s. Thales Avionics as they relate to the technical assistance provided in respect of import of ground support equipment the appellant has accepted the liability and will pay the service tax along with interest at the earliest.

16. In view of the above discussion the impugned orders are set aside, and the matter is remitted back to the adjudicating authority to consider the contentions of the appellant as regards the payment of appropriate service tax on the final invoices and the payment of service tax on the technical fees paid to M/s. Thales Avionics. Needless to mention that reasonable opportunity is afforded to the appellant to be heard and for the appellant to submit the relevant documents and case laws in support of their claim.

(*Operative portion of the order was pronounced in the open court on 30.10.2023)*

**(P.A. Augustian)**
**Member (Judicial)**

**(Pullela Nageswara Rao)**
**Member (Technical)**

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