

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

ST/20587/2018-SM

[Arising out of Order-in-Appeal No. 560/2017-CT dated
21/12/2017 passed by the Commissioner of Central Tax,
Bangalore-II (Appeals)]

**Techno Spark Industries India
Pvt. Ltd.**

Plot No. 178-A-2 & 179-A
Vasanthanarasapura Industrial Area,
1st Phase, Kora Hobli
Tumkur
Karnataka

Appellant(s)

Versus

**Commissioner of Central Tax,
Bangalore North**

No.59, HMT Bhawan
Ground Floor, Bellary Road
Bangalore – 560 032
Karnataka

Respondent(s)

Appearance:

Mr. T. Chandramouli, Authorized Rep.
No. 2, 3rd Floor, 7th Main 5th Cross
Syndicate Bank Colony, Bsk 3rd Stage
Bangalore – 560 085
Karnataka

For the Appellant

Mrs. Kavita Poduwal, Superintendent
(AR)

For the Respondent

Date of Hearing: 01/01/2019

Date of Decision: 01/01/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

FINAL ORDER NO. 20002 / 2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 21.12.2017 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original. Briefly the facts of the present case are that the appellants are engaged in the manufacture of unpolished slabs falling under CETH 25161200 of the first schedule to the Central Excise Tariff Act, 1985 and they are also registered under Service Tax for providing Business Auxiliary Service and Works Contract Service.

1.1. During the course of verification of records of the unit by the audit for the period 10/2010 to 03/2011, it was observed that the appellant had not discharged the service tax liability on "Goods Transport Agency", even though they received the service for transportation of raw-materials/finished goods to and from the factory premises. The expenditure incurred towards the same was reflected in their Balance Sheet/ledger accounts, but they had not discharged the service tax liability. Further, it was observed that, during 2011-12 to 2014-15 though the appellant had paid the service tax on the GTA service, the net taxable value declared in the ST-3 returns were not matching with the values shown in their ledger accounts, resulting in short payment of service tax during the said period. It was seen that ST3 figures of taxable values were always less than the taxable values in their ledger account.

1.2. As per the provisions under Rule 2(1)(d) of the Service Tax Rules, 1994, during the period upto 30.06.2012 as well as during the period from 01.07.2012 onwards, the person liable for paying service tax in respect of GTA Service is the one who pays the freight for the transportation of goods by road in a goods carriage. The appellant appeared to have contravened the provisions under Rule 2(1)(d)(v) of the STR 1994 read with the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended. The appellant appeared to have contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6(1) of the STR 1994 as much as they had not paid the service tax amount of Rs. 89,612/- (Rupees Eighty Nine Thousand Six Hundred and Twelve only) for the period 10/2010 to 03/2011 and have short paid the service tax to the extent of Rs. 4,98,315/- (Rupees Four Lakhs Ninety Eight Thousand Three Hundred and Fifteen only) for the period from 04/2011 to 03/2015.

1.3. On these allegations, a show-cause notice dated 04.04.2016 was issued demanding service tax of Rs. 89,612/- (Rupees Eighty Nine Thousand Six Hundred and Twelve only) and Rs. 4,98,315/- (Rupees Four Lakhs Ninety Eight Thousand Three Hundred and Fifteen only) along with interest and proposal to impose penalty under Section 78(1) of the Finance Act, 1994. After following the due process, the Assistant Commissioner vide Order-in-Original dated 26.04.2017 confirmed the demand of Rs. 89,612/- (Rupees Eighty Nine Thousand Six Hundred and Twelve only) and Rs. 4,98,315/- (Rupees Four Lakhs Ninety Eight Thousand Three Hundred and Fifteen only) along with interest and imposed equal penalty under

Section 78 of the Finance Act. Aggrieved by the said order, appellant filed appeal before the Commissioner (Appeals) who rejected the same.

2. Heard both the parties and perused the records.

3. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly considering the submissions of the appellant and without appreciating the documents and worksheets filed by the appellant. He further submitted that the appellants are regularly paying service tax including the services received from GTA under reverse charge mechanism and are maintaining books of accounts including ledger showing the freight amount paid to GTA. He further submitted that during the period from 10/2010 to 03/2015 they have incurred an amount of Rs. 2,28,89,421/- (Rupees Two Crores Twenty Eight Lakhs Eighty Nine Thousand Four Hundred and Twenty One only) towards freight for transportation of goods by road and they have declared taxable value of Rs. 35,50,043/- (Rupees Thirty Five Lakhs Fifty Thousand and Forty Three only) in the ST-3 return filed to the Department after availing abatement as per law whereas the Department has reckoned an amount of Rs. 1,22,26,931/- (Rupees One Crore Twenty Two Lakhs Twenty Six Thousand Nine Hundred and Thirty One only) being the freight prepaid consignment and recognized as miscellaneous income in the books of accounts. He further submitted that the Department has once again included the said amount in the freight amount paid to GTA and demanded service tax which would amount to demanding the service tax

twice. He also submitted that the appellants have furnished all the documents and the ledger account and worksheets but the same was not considered and the Commissioner (Appeals) has wrongly observed that there is no worksheet or correlation between the submission and the purported entries shown.

4. On the other hand the learned AR reiterated the findings of the impugned order.

5. After considering the submission of both the parties and perusal of the material on record, I find that the appellants are paying service tax on the services received from GTA under reverse charge mechanism and they are maintaining the books of accounts and the ledger wherein they have shown the amount of GTA received and paid on reverse charge mechanism. The duty liability has been confirmed on the ground that the appellants have not produced the ledger accounts and the worksheets showing the correlation whereas as per the appellant he has already furnished the correlation and worksheets and ledger accounts but the same has not been considered by both the parties. The appellant has produced the worksheets before this Tribunal showing the payment of GTA on reverse charge basis but the same has not been considered by both the authorities below. In view of this, I am of the view that this case needs to be remanded back to the original authority and I remand the case back to the original authority with the direction to verify the correctness of the tax liability with the help of ledger account and worksheets submitted by the appellant and thereafter pass a

De novo order in accordance with law. Consequently, the appeal is allowed by way of remand to the original authority.

(Operative portion of the Order was pronounced
in Open Court on **01/01/2019**)

(S.S GARG)
JUDICIAL MEMBER

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