

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.4081 Of 2012**

[Arising out of OIA No.169/ST/CHD-I/2012 dated 18.09.2012 passed by the Commissioner (Appeals), Central Excise and Service Tax, Chandigarh-I]

**M/s Channel Management and  
Marketing, Chandigarh**

SCO 306, Sector-38, Chandigarh

**: Appellant (s)**

Vs

**The Commissioner of Central  
Excise, Chandigarh-I**

Plot No. 19, Central Revenue Building,  
Sector-17C, Chandigarh-160017

**: Respondent (s)**

APPEARANCE:

Shri Sudeep Singh Bhangu, Advocate for the Appellant

Shri Shivam Syal, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60579/2023**

Date of Hearing: 30.10.2023

Date of Decision: 31.10.2023

***Per: P. ANJANI KUMAR***

The appellants, M/s Channel Management and Marketing Chandigarh, assails the Order-in-Appeal dated 04.10.2012 vide which the OIO dated 25.11.2009 was upheld which in turn upheld the demand raised vide show-cause notice dated 10.04.2007.

2. Briefly stated the facts of the case are that the appellants are engaged in the business of collection of all the fees/ dues payable to the T.V Channels by the cable operators as per contract, with their

principals M/s Set Discovery Pvt. Ltd. (M/s SETD), on their sole cost and expense besides promoting and marketing on behalf of T.V Channels. It was alleged that the principals have discharged duty whereas the appellants were under obligation to discharge the same.

3. Shri Sudeep Singh Bhangu, learned Counsel for the appellants, submits that the fact of discharge of the service tax liability, of the appellants, by M/s Set Discovery Pvt. Ltd., was informed to the Department; M/s SETD have also given a certificate to the effect that for the period July 2003 to March 2005, they have paid service tax on behalf of the appellants. He relies on Navyug Alloys (P) Ltd. 2009 (13) STR 421 and Motiwal Yunus Jan Mohammad- 2017 (4) GSTL 34 and submits that as the tax stands paid by M/s SETD; the proof, of payment of service tax by M/s SETD, was submitted to the Appellate Commissioner vide submissions dated 23.08.2012.

4. Shri Shivam Syal, learned Authorized Representative for the Department, on the other hand, submits that the impugned order gives a clear finding that the appellants have not submitted any proof of deposit of service tax by the service recipient to support their contention. He relies on M/s Melange Developers Pvt. Ltd. - 2020 (33) GSTL 116 (LB) and submits that even if the main contractor has paid the service tax, the liability of the service provider, though as a sub-contractor, is not mitigated. He further relies on M/s Bajaj Travels- 2012 (25) STR 417 (Del.) and M/s Northern Operating Systems Pvt. Ltd.- 2022 (61) GSTL 129 (SC). He also submits that as the appellants

have suppressed the facts and have not paid the applicable tax, extended period is invocable.

5. Heard both sides and perused the records of the case. The brief issue which requires consideration in the instant case is as to whether the appellants are required to pay service tax for the services rendered by them even though, their principals have discharged the duty on behalf of all the agents. We find that contrary to the findings of the impugned order that the appellants have not submitted proof of payment of duty by M/s SETD, the show-cause notice is categorical in stating that the disputed tax stands paid albeit by M/s SETD; Para 7 of the show-cause notice reads as under:

"7. The onus of payment of service tax has been placed on the service provider and not on the service recipient. But in the present case, the service tax has been discharged by the service recipient and the liability of the service provider cannot be treated as discharged.

6. In view of the above, it is clear that the applicable service tax stands paid in the instant case. The facts of the impugned case are different from those in the case of M/s Melange Developers (supra) relied upon by the learned Authorized Representative. The issue before the Larger Bench in the case of M/s Melange Developers (supra) was that whether a sub-contractor is liable to pay service tax where the main contractor has paid service tax on the total value of the contract. In the instant case, however, it is clear that M/s SETD have discharged the service tax payable by the Agent. Payment of service tax into the Revenue Exchequer is not in dispute. What is in dispute is who has to discharge the service tax liability. We find that

service tax having been paid, though, by the principal on the services rendered by the appellant, it cannot be a case of non-payment of applicable service tax. Once service tax is paid, there is no loss to the revenue of the Government, the question as to who has paid the same, remains a procedural issue and thereto, an empty one.

7. We find in addition to the above that the appellants have kept the Department informed of the fact that applicable service tax is being paid or has been paid by their principals i.e., M/s SETD. Therefore, there are cogent reasons for the appellant to believe that they are not obliged to pay service tax again; therefore, the ambiguity in the minds of the appellant is a *bona fide* one. Therefore, extended period cannot be invoked. Hon'ble Apex Court, in the case of M/s Northern India Operating System (*supra*) relied upon by the appellants also, find that extended period is not invocable. Thus, we are of the considered opinion that no case has been made for invocation of extended period. Therefore, the appeal succeeds both on merits and limitation.

8 In view of the discussion as above, the appeal is allowed.

*(Pronounced on 31/10/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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