CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60313 of 2024

[Arising out of Order-in-Appeal No. APPL/PKL/COMMR/05/2024-25 dated 18.04.2025 passed by the Commissioner (Appeals), Central Goods and Service Tax, Panchkula]

Om Parkash Chugh **......Appellant**
Prop. of Panchkula Auto Services,
Plot No. 300, Industrial Area, Phase II,
Panchkula, Haryana 134113

VERSUS

Commissioner of Central Goods & Service Tax, Panchkula **......Respondent**
GST Bhawan, Sector 25,
Panchkula, Haryana 134116

APPEARANCE:

Shri Naveen Bindal, Advocate for the Appellant

Shri Aniram Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60663/2024

DATE OF HEARING: 12.12.2024
DATE OF DECISION: 12.12.2024

S. S. GARG:

The present appeal is directed against the impugned order dated 18.04.2024 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly stated facts of the present case are that the appellant is a proprietor of M/s Panchkula Auto Services which is an Authorized Service Centre of Maruti Suzuki and is engaged in providing repair and maintenance services and is duly registered with the service tax department. On the basis of third-party information received from the income tax department, gross receipts shown in Form 26-AS; income tax returns and service tax returns were taken into consideration by the department and it was alleged that the appellant had paid service tax on lesser value as per service tax returns as compared to figures shown in income tax returns. On these allegations, a show cause notice dated 22.10.2021 was issued to the appellant raising demand of service tax amounting to Rs.23,01,562/- along with interest and penalty by invoking the extended period of limitation. After following the due process, the Adjudicating Authority confirmed the demand as proposed in the show cause notice. Aggrieved by the order of Adjudicating Authority, the appellant filed appeal before the Commissioner (Appeals), who has rejected their appeal. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.2 The learned Counsel further submits that the Adjudicating Authority has confirmed the demand by placing reliance upon Board's Circular No. 96/7/2007-ST dated 23.08.2007, but the said circular has been wrongly interpreted by the Adjudicating Authority. Further, he submits that as per the said circular, even service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax/VAT. If sales tax/VAT is paid on the transaction, then the transaction is required to be considered as sale of goods. He also submits that in the present case, the appellant has duly paid the VAT on sale of spare parts/goods and the proper authority has duly assessed the goods accordingly in the assessment order. When the goods sold by the appellant were subject to VAT and the same has been paid, demand of service tax on same amount is not sustainable being beyond the legislative competence. Further, the learned Counsel refers to Section 66D(e) of the Finance Act, 1994 and submits that trading of goods specifically falls in negative list and the services falling under negative list are specifically excluded from charge of service tax in terms of Section 66B of the Act.

4.3 The learned Counsel further submits that the Commissioner (Appeals) has dismissed the appeal and confirmed the demand on a new ground which was not the part of Order-in-Original.

4.4 The learned Counsel further submits that this issue is no longer *res integra* and the Tribunal has consistently held in various decisions that when a transaction is subject to VAT, then service tax cannot be demanded on the same. In this regard, he relies on the following decisions:

- **Tanya Automobiles P Ltd vs. CCE, Meerut-I – 2016 (43) STR 155 (Tri. All.)**
- **Sai Powers vs. CCE, Meerut-I – 2017 (5) GSTL 377(Tri. All.)**
- **Singh Sales And Services vs. CC, Allahabad – 2017 SCC Online CESTAT 13046**
- **CCE, Kerala vs. Larsen & Toubro Ltd – 2015 (39) STR 913 (SC)**
- **Ocean Interior Limited vs. CGST, Chennai – 2019 SCC Online CESTAT 9453**

4.5 The learned Counsel further submits that demand is also barred by limitation as the appellant has not suppressed any material from the department and the entire transaction has been recorded in the books of account and the department has not been able to establish that there is an intention to evade payment of tax on the part of the appellant. For this submission, he relies on the following decision:

- **Uniworth Textiles Ltd vs. CCE, Raipur – 2013 (288) ELT 161 (SC)**

5. On the other hand, the learned AR for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that in the present case, the show cause notice was issued on the basis of income tax returns and gross receipts shown in Form 26-AS. Further, perusal of

the invoices produced on record clearly shows that the appellant has paid the VAT on all the goods supplied during the service rendered by the appellant. This is also an admitted fact that the appellant has paid the VAT on all the parts supplied at the time of servicing of the vehicles.

7. Further, we find that the Adjudicating Authority has misinterpreted the circular dated 23.08.2007 and has not produced the entire circular, which was subsequently produced in the decision of the Tribunal in the case of **M G Motors vs. CCE, Alwar – Final Order No. 51579/2019 dated 13.11.2019 in ST Appeal No. 51890 of 2015**. We find that this issue is no more *res integra* and has been elaborately discussed by the Principal Bench of the Tribunal in the case of **M G Motors vs. CCE, Alwar** (supra), wherein identical issue was involved and the Tribunal after relying upon the decision **Samtech Industries vs. CCE, Kanpur - 2015 (38) STR 240 (Tri. Del.)** has held that when invoices are issued showing the value of the goods used and the service charges separately, service tax would be chargeable only on the service/labour charges and the value of the goods used for repair would not be includable in the assessable value of the services. Here it is relevant to reproduce the findings of the decision in the case of **Samtech Industries vs. CCE, Kanpur** (supra), recorded in para 5, which are reproduced herein below:

> "**5**. We have considered the submissions from both the sides and perused the records. The appellants provided the services of repair of transformers to their customers and in

course of repair, they used various parts and consumables like transformers oil, for which separate amounts were shown in the invoices. The invoices issued by them show the value of the goods used and the service charges separately. The amounts charged for various parts like HV/LV oils and transformer oil are as per the rates specified in the contracts. **It is not disputed that in respect of the supply of the goods used for providing the service of repair, Sales Tax/VAT is paid. This fact is clear from the invoices placed on record. In view of this, the appellants' contracts with their customers have to be treated as split contracts for supply of goods and rendering the service. When the value of the goods used has been shown separately in the invoices and Sales Tax/VAT has been paid on the same, the supply of the goods would have to be treated as sale and the transactions which are sale, cannot be the part of service transaction. In view of this, we hold that Service Tax would be chargeable only on the Service/Labour charges i.e. on service component and the value of goods used for repair would not be includible in the assessable value of the service**. The learned DR has cited Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 accordingly to which that "where any expenditure or costs are incurred by any service provider in the course of providing a taxable service, all such expenditures or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of the services for the purpose of charging Service Tax on the said service, unless such costs or expenditure have been incurred by the service provider as "Pure Agents" of the service recipient. However, this Rule has been struck down as ultra vires the provisions of Section 66 & Section 67 of the Finance Act, 1994 by Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India & Others Ltd. reported in 2012- TIOL-966- HC-Del.-

ST = 2013 (29) S.T.R. 9 (Del.). **In view of this judgment of Hon'ble Delhi High Court, the value of goods used for providing the service, which had been shown by the appellant separately in their invoices and on which Sales Tax/VAT had been paid, cannot be included for assessable value and no Service Tax can be charged on the same**. The impugned orders, therefore, are not sustainable. The same are set aside. The appeals are allowed. Miscellaneous Application No. ST/Misc/60886/2013 for extension of stay in respect of Appeal No.ST/286/2012 also stands disposed of as the appeals itself has been allowed."

[emphasis supplied]

8. By relying upon the ratios of the decisions in **Samtech Industries vs. CCE, Kanpur** (supra)'s case and **M G Motors vs. CCE, Alwar** (supra)'s case, we are of the considered opinion that the impugned order is not sustainable in law and is liable to be set aside and we do so by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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