CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 1101 Of 2011

[Arising out of Order-in-Appeal No.11/ST/Appeals/CHD-1/2011 dated 19.04.2011 passed by the Commissioner of Central Excise, Chandigarh]

M/s VIR Enterprises .... **Appellant**
#207, Shivalik Avenue,
Phase-1 B, Naya Nangal,
Distt. Ropar (Punjab)-140126

Versus

The Commissioner of Central
Excise and Service Tax, Chandigarh-I .... **Respondent**
Central Revenue Building, Sector-17C
Chandigarh-160017

APPEARANCE:
Shri Naveen Bindal, Advocate for the Appellant
Shri Raman Mittal, 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.60065/2025

Date of Hearing: 10.01.2025
Date of Decision: 13.01.2025

P.ANJANI KUMAR:

The appellants, M/s Vir Enterprises, Ropad, are allegedly engaged in the provision of Cargo Handling Services and Manpower Recruitment Agency Service to M/s PACL, Naya Nangal, Punjab. A Show Cause Notice dated 17.10.2008 and a corrigendum dated 04.06.2009 were issued to the appellants demanding service tax of Rs.7,20,317/-, along with interest and penalty, invoking extended period; Additional Commissioner vide OIO dated 09.11.2009
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confirmed the proposals in the Show Cause Notice appropriating Rs.3,03,864/- deposited by the appellants; imposing equal penalty under Section 78; penalty of Rs.1000/- under Section 77 and a penalty of Rs.200/- per day or @ 2% per month of the amount of service tax due. Learned Commissioner (Appeals) vide Order dated 19.04.2011 held that the activity of loading/ un-loading undertaken by the appellants during the period 2003-04 to 2006-07 does not amount to "Cargo Handling Service" and therefore, the demand cannot be sustained; in respect of demand of Rs.3,03,864/- under the category of "Manpower Recruitment and Supply Agency Service", the demand is rightly invoked and is not barred by time and the appellants did not contest the same; that the appellants have rendered Manpower Recruitment and Supply Agency Service during the period 2003-04 to 2006-07 and that service tax on the same was not quantified by the jurisdictional authority and the same is to be quantified and recovered by the jurisdictional authorities. Aggrieved by the above order, the appellant is before us.

2. Shri Naveen Bindal, learned Counsel for the appellant, submits that learned Commissioner dropped the demand on account of "Cargo Handling Service" for the period 2003-04 to 2006-07 but the demand for "Manpower Recruitment and Supply Agency Service" for the same period was confirmed even though the same was not proposed in the Show Cause Notice; learned Commissioner has travelled beyond the scope of the Show Cause Notice and therefore, the same needs to be set aside. He submits that, interestingly, learned Commissioner

confirmed the demand on Cargo Handling Service for the period 2007-08 also along with the demand in respect of "Manpower Recruitment and Supply Agency Service", though he has held categorically that the activity undertaken by the appellants did not amount to rendering Cargo Handling Service.

3. Learned Counsel submits that learned Commissioner not only travelled beyond the scope of the Show Cause Notice but upheld the invocation of extended period, mechanically, even though there was no suppression etc. on the part of the appellants. He submits that in the cases where extended period is invoked, demand cannot be sustained for the normal period. He relies on Gas Authority of India Ltd. – 2008 (232) ELT 7 (SC) and Uniworth Textiles Ltd. – 2013 (288) ELT 161 (SC).

4. Shri Raman Mittal, learned Authorized Representative for the Revenue, reiterates the findings of the OIO and OIA.

5. We have heard both sides and perused the records of the case. We find that the SCN is categorical in stating that during 2003-04 to 2006-07, the appellants surrendered Cargo Handling Service to M/s PACL, Naya Nangal and rendered the service of Manpower Recruitment and Supply Agency during the period 2007-08, it was incorrect on the part of the learned Commissioner to confirm the demand on "Manpower Recruitment and Supply Agency Service" for the period 2003-04 to 2006-07. Secondly, we find that extended period has been invoked in the Show Cause Notice and confirmed in the orders in a mechanical manner; nothing has been brought forth as

evidence to show that the appellants have indulged in suppression of facts etc. with intent to evade payment of duty so as to necessitate the invocation of the extended period. It is also the case of the Revenue that the appellants were registered with them and were paying service tax and therefore, there was short payment of service tax; in the light of the fact that the appellants have been paying service tax and were filing the Returns and in the absence of any evidence to allege suppression etc., we are of the considered opinion that Revenue has not made any case for invocation of extended period.

6. Learned Counsel for the appellants further argues that when the extended period is held to be not invocable, the demand for normal period cannot be sustained. We find that Hon'ble Kolkata High Court, in the case of Infinity Infotech Parks -2014 (36) S.T.R. 37 (Cal.) decided on 30.04.2014, observed as follows:

> "92. When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transaction, once it is found that the extended period of limitation is not invocable. This proposition find support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4SCC 630=2003 (153) E.L.T. 241 (S.C.)."

7. The Principal Bench of CESTAT has followed the above in the case of Shyam Spectra Private Limited vide Final Order No.56196/2024 dated 31.07.2024. Therefore, we find that in the

impugned case, demand cannot be sustained for the normal period also.

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

(Order pronounced in the open Court on 13/01/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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