

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61030 of 2018

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-787-17-18 dated 27.03.2018 passed by the Commissioner (Appeals), CGST, Ludhiana]

M/s Bharij Fabricators

E-98-99, Industrial Focal Point,
Chanallon (Kurali), Mohali,
SAS Nagar, Punjab

.....Appellant

VERSUS

**Commissioner of Central Excise, Goods
and Service Tax, Ludhiana**

GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

.....Respondent

APPEARANCE:

Ms. Krati Singh and Ms. Khushbu Sood, Advocates for the Appellant

Mr. 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. 61684/2025

DATE OF HEARING: 14.11.2025

DATE OF DECISION: 14.11.2025

S. S. GARG:

The present appeal is directed against impugned order dated 27.03.2018 passed by the Commissioner (Appeals), CGST Ludhiana, 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 engaged in the manufacture of bulletproof morchas, bomb disposal baskets, bulletproof patkas and fabrication of bulletproof truck bodies. The appellant also undertakes the activity of bullet proofing various types of vehicles by fitting bulletproof steel sheets, bulletproof glass and other protective materials within the vehicle body. The department entertained the view that the activity of bullet proofing of vehicles is more appropriately classifiable under 'Business Auxiliary Service' as defined under Section 65(19) of the Finance Act; whereas the appellant has discharged the service tax on the said activity under 'Works Contract Service' as per Section 67 of the Finance Act read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006. On the allegation that the appellant had misclassified their activity under 'Works Contract Service' instead of 'Business Auxiliary Service', a show cause notice was issued to the appellant proposing demand of service tax along with interest and penalty. After following the due process, the Adjudicating Authority, vide Order-in-Original dated 27.03.2017, confirmed the demand of service tax along with interest and penalty. Aggrieved by the order of the Adjudicating Authority, the appellant filed appeal before the Commissioner (Appeals), who has rejected their appeal and upheld the Order-in-Original; hence, the present appeal.

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

4. The learned Consultant for the appellant submits that the issue involved in the present case is no more *res integra* as already stands settled by the Tribunal in appellant's own case reported as **M/s**

Bharij Fabricators vs. CCE & ST, Chandigarh-II [2020 (1) TMI 942 CESTAT Chandigarh]. She further submits that in the said case, the Tribunal, after considering the facts and nature of activity undertaken, has held that the appellant was providing the service of bullet proofing along with supply of material, on which VAT had been duly paid; thus, the same merit classification under the 'Works Contract Service'. She further submits that in reaching the said conclusion, the Tribunal relied upon the judgment of Hon'ble Supreme Court in the case of **CCE & Cus. vs. M/s Larsen & Toubro and Others [2015 (8) TMI 749 Supreme Court]**. She also submits that as per the appellant, the department has not filed any appeal against the said decision of the Tribunal, hence, the findings of the Tribunal have attained finality and therefore, the impugned order in the present case is liable to be set aside.

4.1 She further submits that the activity of bullet proofing by way of erection, commissioning and installation of bulletproof steel & glass sheets in vehicles, undertaken by the appellant, involves both transfer of property in goods and provision of service, therefore, the said activity clearly qualifies as a 'Works Contract'. In this regard, she relies on the following cases:

- **Janta Electric Store vs. CCE & ST, Rohtak – 2025 (1) TMI 678 CESTAT Chandigarh**
- **Bestech India Pvt Ltd vs. CCE & ST, Delhi -2025 (1) TMI 542 CESTAT Chandigarh**

She also submits that in terms of Section 65B(54) of the Act, the goods portion i.e. the bulletproof glass and steel sheets, attracts tax liability as sale of goods on which the appellant has already

discharged the VAT and as regards the service portion, the appellant has duly discharged the service tax liability. She further submits that after the introduction of negative list regime, the category of Business Auxiliary Service has ceased to exist and hence, classifying the appellant's activity under Business Auxiliary Service is legally untenable.

4.2 She further submits that proposed demand in the show cause notice is under the pre negative list whereas the period involved is post negative list, therefore, the demand confirmed under inapplicable or repealed provisions is not sustainable in law. For this, she relies on the following case:

- **Frisco Foods Private Limited vs. CCE & ST, Dehradun – 2021 (110 TMI 428 CESTAT New Delhi**
- **Commr of CE, CGST, Delhi East vs. Sanjay Electricals (vice versa) – 2024 (1) TMI 891 CESTAT New Delhi**
- **Borthakur & Co vs. CCE & ST – 2024 (3) TMI 455 CESTAT Kolkata**

4.3 She also submits that the impugned order has also travelled beyond show cause notice and Order-in-Original, which is not permissible as held in the following cases:

- **M/s Bridgeview Broadband Network P Ltd vs. CCE & CGST, Shimla – 2025 (5) TMI 1994 CESTAT Chandigarh**
- **M/s Parwindra Enterprises vs. CST, Chandigarh-II – 2025 (2) TMI 590 CESTAT Chandigarh**

4.4 As regards the invocation of extended period of limitation, the learned Counsel submits that a part of the demand is beyond the period of limitation because the appellant was regularly filing their ST-3 returns and has not suppressed any material fact from the

department, therefore, invocation of extended period of limitation is not sustainable. She also submits that extended period of limitation cannot be invoked for proceedings of subsequent period. For this, she relies on the following cases:

- **Nizam Sugar Factory vs. Collector of CE, AP – 2006 (4) TMI 127 Supreme Court**
- **International Merchandising Company vs. CCE & CGST, Gurugram – 2025 (4) TMI 1600 CESTAT Chandigarh**
- **M/s Indian Oil Corporation Ltd vs. CCE, Sonapat Delhi-III – 2025 (3) TMI 429 CESTAT Chandigarh**

5. On the other hand, the learned Authorized Representative 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 identical issue for the earlier period in the appellant's own case, as cited supra, has been settled in favour of the appellant. We further note that the department has not filed appeal against the said order, therefore, the order of the Tribunal in the said case has attained finality; accordingly, the issue involved in the present case is no more *res integra* and hence, the impugned order case is not sustainable in law.

7. Further, we find that the activity of the appellant falls more appropriately under the 'Works Contract' rather than 'Business Auxiliary Service' and the appellant has also discharged the VAT on the goods portion used in the provisions of service.

8. We also find that the period involved in the present case is post negative list but the provisions invoked for confirming the service tax

liability are under pre negative list; the same cannot be done in view of the decisions cited supra.

9. We also find that the show cause notice and the Order-in-Original have confined to Section 65(19)(v) of the Act, which relates to the pre negative list regime, whereas the impugned order has traversed beyond the show cause notice and Order-in-Original by mentioning the Section 66B of the Act; which is not permissible in law. Similarly, the substantial part of the demand is beyond the limitation as prescribed under law because the appellant has not suppressed any material facts from the department and was regularly filing the ST-3 returns. Moreover, the issue for earlier period has been decided in favour of the appellant, therefore, the extended period of limitation cannot be invoked for proceedings of subsequent period as held in the decisions cited supra.

10. In view of the discussion above, we are of the considered opinion that the impugned order is not sustainable, therefore, we set aside the same and allow the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)