CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60348 of 2020

[Arising out of Order-in-Appeal No. APPEAL/CE/PKL/COMMR/24-25/2020-21 dated 05.08.2020 passed by the Commissioner (Appeals), CGST, Panchkula]

M/s Lord Shiva Construction Co. **......Appellant**
Dabwali Road, Near SBI Head Office,
Sirsa, Haryana 125055

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak **......Respondent**
SCO No. 6 to 8 & 10, Sector 1, HUDA Market,
Rohtak, Haryana 124001

<u>APPEARANCE:</u>

Mr. Vikrant Kackria, Advocate for the Appellant

Mr. Aniram Meena and Mr. Shantanu Kumar Meena, Authorized Representatives for the Respondent

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

FINAL ORDER NO. 60485/2026

DATE OF HEARING: 29.07.2026
DATE OF DECISION: 29.07.2026

<u>S. S. GARG</u> :

The present appeal is directed against the impugned Order-in-Appeal dated 05.08.2020 passed by the Commissioner (Appeals), CGST, Panchkula, whereby the learned Commissioner (Appeals) has confirmed the demand of service tax on the services provided by the Appellant to two entities as per the chart below:

Works Contract Services			
	2015-16	**2016-17**	**2017-18**
Haryana State Warehousing Corporation	0	15,68,910/-	7,38,090/-
Labour Supply			
Shivji Singla & Sons	2,90,43,000/-	20,45,7000/-	0
Rate of Service Tax (including cesses)	14.5%	15%	15%
Total Service Tax payable (WCS + Labour)	42,11,235/-	33,03,887/-	1,10,714/-
Total Tax	**Rs. 76,25,835/-**		

2. Briefly stated facts of the present case are that the Appellant is engaged in works contract service for construction of various projects and was registered with the Service Tax Department. The Department initiated an investigation and issued a Show Cause Notice dated 08.03.2019 was issued, invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994, proposing to demand of service tax of Rs. 76,25,835/-, along with interest and penalty. The Appellant filed reply to the said Show Cause Notice contesting the demand on both the counts. After following the due process, the Adjudicating Authority vide Order-in-Original dated 27.02.2020, adjudicated the said Show Cause Notice and dropped the demand in respect of works contract service undertaken for Haryana State Warehousing Corporation in respect of

construction of office building. Against the said Order-in-Original, the Department as well as the Appellant filed appeal before the Commissioner (Appeals), but in the Department's appeal, no ground regarding confirmation of demand on the work undertaken for Haryana State Warehousing Corporation was taken before the Commissioner (Appeals). The learned Commissioner (Appeals), after considering the submissions of both the parties, has confirmed the demand against the Appellant as given in the table above. Hence, the Appellant has preferred the present appeal.

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

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 He further submits that as regard the demand of service tax in the case of Haryana State Warehousing Corporation, the Adjudicating Authority had held that the said service is work contract service and had also given the benefit of abatement; and the Department did not file the appeal for the work undertaken for Haryana State Warehousing Corporation and the same stands finalized; and therefore, no amount of tax could be confirmed on that count.

4.2 As regards the balance amount on confirmation of tax in respect of the work undertaken for M/s Shivji Singla & Sons, the learned Counsel submits that M/s Shivji Singla & Sons had undertaken the following three work orders in respect of PWD (B&R), Haryana:

(i)	Work Order No. 1386/5BWS/14/753 dated 04.03.2014 (Acceptance Letter No. 1463-65/27-A dated 05.03.2014)	Constructing Satrod Mirka Drain RD 0 to 6450 and Dabra Link Drain RD 0 to 7525
(ii)	Work Order No. 1087/NABARD/2015 dated 22.09.2015 (Acceptance Letter No. 6816-17/27-A dated 19.10.2015)	Rehabilitation of Nathore
(iii)	Work Order No. 831/2CU dated 21.04.2016 (Acceptance Letter No. 1294-96/AG dated 21.04.2016)	Remodeling of Petwar Disty from RD 0 to 15275

4.3 He also submits that out of the above said work, some part of work was re-allocated to the Appellant; and the said work was in relation to construction and rehabilitation of small canals passing through the area; the said work was also allotted with material, but the Department had demanded the tax on the ground that the labour contract was covered under the category of manpower supply. He further submits that the Adjudicating Authority had verified the contracts and found that the contracts were with material and hence were qualified under the category of work contract service and therefore, demanded the tax under the said category by allowing the abatement and by charging the tax on 40% of the total value. He further submits that against the order of the Adjudicating Authority, an appeal was filed before the Commissioner (Appeals), contending that the contract was for 'manpower supply' and not for 'works contract'.

4.4 He further submits that it is clear from the copies of contract entered into by M/s Shivji Singla & Sons with PWD (B&R) and contract entered into by the Appellant with M/s Shivji Singla & Sons that the said contracts were 'works contract' inclusive of material, which is also clear from the copies of the bills and certificate dated 08.05.2019 submitted by M/s Shivji Singla & Sons. He also submits that once the contract was for construction with material then it cannot be categorized under the category of 'manpower supply', and it is a settled law that once the tax is demanded under the category of 'manpower supply' then the tax even it is held to be taxable subsequently, cannot be demanded under the category of 'works contract service' as held in the following cases:

- **Vaatika Construction Pvt Ltd vs. Pr. Commr. of ST, Delhi-III - 2020 (43) G.S.T.L. 533 (Tri. Del.)**
- **Raghava Estates & Properties Ltd vs. Commr of Central Tax, Guntur – (2024) 23 Centax 6 (Tri. Hyd.)**
- **Commissioner of Central Excise & Customs, Belgaum vs. Mahakoshal Beverates Pvt Ltd - 2014 (33) STR 616 (Kar.)**
- **Mahakoshal Beverates Pvt Ltd vs. Commissioner of Central Excise & Customs, Belgaum – 2007 (6) STR 148 (Tri. Bang.)**

4.5 He further submits that even otherwise also, the said services were not taxable because the work allotted to the main contractor was exempt under Notification No. 25/2012-ST dated 20.06.2012; the said work was in respect of canal, dam and other irrigation works, therefore, the said work was exempt under the said notification. He also submits that the Appellant, who was a sub-contractor, was also exempt under Sr. No. 29(h) of the said notification. For this, he relies on the decision of the Tribunal in the case of **M/s Saritha Infra & Geo Contractor vs. Pr. Commr. of Central Tax, Vishakhapatnam – 2019 (27) GSTL 2011 (Tri. Hyd.)**.

4.6 He further submits that the Department has wrongly demanded the tax on the entire work order value and not on the actual work done by the Appellant.

4.7 He also contests the invocation of extended period of limitation on the ground that the Appellant had not suppressed any facts and the issue involved relates to interpretation which does not warrant invocation of extended period of limitation.

5. On the other hand, the learned Authorized Representative for the Respondent-Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record. We find that in the present case, the demand has been raised in the Show Cause Notice under the category of 'manpower supply', whereas, the facts on the material is that the Appellant had rendered the services to Haryana State Warehousing Corporation which was a 'works contract' and the Adjudicating Authority, after considering all the facts, had held that the demand with regard to Haryana State Warehousing Corporation in respect of construction of office building was under 'works contracts' and accordingly, dropped the demand. We further note

that though the Department filed an appeal before the Commissioner (Appeals), but no ground regarding confirmation of demand on work undertaken for Haryana State Warehousing Corporation was taken before the Commissioner (Appeals) and therefore, same stands finalized. We further note that the Appellant is a sub-contractor of M/s Shivji Singla & Sons and has also undertaken some part of the work, which was allocated to M/s Shivji Singla & Sons; the work allotted to M/s Shivji Singla & Sons was exempt under Notification No. 25/2012-ST dated 20.06.2012; since the work in respect of canal, dam and other irrigation works, was exempt under the said notification provided by the main contractor, therefore, the work re-allocated to the Appellant, who is a sub-contractor, was also exempt under Sr. No. 29(h) of the said notification, which is reproduced as under:

> *"(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt."*

7. We also find that the said issue is no more *res integra* and has been settled in favour of the Assessee by the Tribunal in the case of **M/s Saritha Infra & Geo Contractor** (supra).

8. Since the issue on both accounts is covered in favour of the Appellant by the decisions as cited above, therefore, by following the ratios of the same, we hold that the Appellant is not liable to pay service tax under the category of 'manpower supply services' as demanded by the Department; accordingly, we set aside the

impugned order on merit. Since we are allowing the appeal on merit, we are not deciding the issue of limitation.

9. In result, the appeal is allowed 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)

RA_Saifi