CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. ST/60862/2019-ST[SM]

(Arising out of Order-in-Appeal No. JNK-EXCUS-APP-2488-19-20 dated 22.05.2019 passed by the Commissioner (Appeals), Jammu)

The Additional Se Civil Works Division Transco ......**Appellant**
(Shakti Vihar, Near 23 No Phatak,
Patiala, Punjab - 147001)

VERSUS

Commissioner of CE & ST, Ludhiana ......**Respondent**
(Central Excise House, F-Block, Rishi Nagar,
Ludhiana, Punjab - 141001)

APPEARANCE:

Present for the Appellant: Mr. Vikrant Kackria, Advocate

Present for the Respondent: Mr. H.S. Brar, Authorised Representative

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 61028/2019

DATE OF HEARING: 13.11.2019
DATE OF DECISION: 13.11.2019

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed against them on the ground that as the appellant did not pay service tax, therefore, they are liable to pay service tax.

2. The facts of the case are that the appellant received certain services under works contract from a contractor. As per Notification No. 30/2012 dated 20.06.2012 in respect of the service received by

the appellant, 50% of the service tax is to be paid by the service provider and balance 50% of the service tax is to be paid by the appellant. But during the impugned period, the appellant reimbursed the total amount of service tax to the service provider who paid the entire service tax.

3. The case of the revenue is that it is immaterial whether the service provider paid 100% service tax or not. As per Notification No. 30/2012 dated 20.06.2012, the appellant is required to 50% of the service tax, therefore, the proceedings were initiated to the appellant to demand service tax. The demand of service tax was confirmed and penalty was also imposed. Against the said order, the appellant is before me.

4. The ld. Counsel for the appellant submits that the identical issue came up before this Tribunal in the case of Additional ***S.R. TLSC Division vs. Commission of CGST, Ludhiana*** and this Tribunal vide ***Final Order No. 63244/2018 dt. 05.10.2018*** relying on the decision of ***Katrina R. Turcottee – 2013 (31) STR 670 (Tri.)*** has held that if service tax is paid by the third party on behalf of the assessee, the assessee is not liable to pay service tax. Therefore, the appellant is not liable to pay service tax.

5. Heard the parties.

6. Considering the fact that the said issue came up before this Tribunal in the case of ***Additional S.R. TLSC Division (supra)***, wherein this Tribunal has observed as under:

*"**5**. It is not in dispute that on the service received by the appellant, whole of the service tax has been paid by service provider. Although service provider was required to be 50% of the service tax but paid 100%, therefore, in the light of the decision of this Tribunal in the case of Katrina R. Turcottee reported in 2013 (31) STR 670 (Tri.), wherein it has been held that if service tax has been paid on behalf of the assessee by third party, the same shall be treated that assesssee himself has paid service tax, therefore, as service provider has paid service tax on behalf of the appellant, the same to be deemed as the appellant paid service tax. In that circumstances, I hold that the appellant has discharged their service tax liability through service provider. Therefore, no liability of service tax arises against the appellant. In view of the above, the impugned order deserves no merits, hence, set aside. In result, the appeal is allowed."*

7. As the issue has already been settled by this Tribunal in favour of the appellant, therefore, I hold that the appellant is not liable to pay service tax demanded as the same has been paid by the service provider. Therefore, the impugned order is not sustainable, accordingly, the same is set aside.

8. In result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

RA_Saifi