

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]**

Application No.: ST/Misc[CT]/41118/2017

Appeal No.: ST/178/2012

[Arising out of Order-in-Original No. 124/2011 dated
19.12.2011 passed by the Commissioner of Central Excise,
Chennai – III Commissionerate, Nungambakkam.]

M/s. Saksoft Ltd., **: Appellant**
No. 40, SP Info City, Dr. M.G.R. Salai,
Kandanchavadi, Perungudi,
Chennai – 600 096

Versus

The Commissioner of G.S.T. & Central Excise **: Respondent**
Chennai South Commissionerate
[Formerly:
“The Commissioner of Service Tax, Chennai”]

Appearance:-

Shri. Raghavan Ramabadran, Advocate
for the Appellant

Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:

Hon’ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon’ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: 27.02.2019

Final Order No. 40401 / 2019

Per Bench :

Brief facts are that the appellants are engaged in the activity of
providing services of IT related solutions including maintenance of

software and are registered with the Service Tax Department under the said category.

2.1 On enquiry by the Officers of the Department, it came to knowledge that the appellants had not discharged service tax under Information Technology Software Services, Management or Business Consultancy Services as well as Manpower Recruitment or Supply Agency Services. It was also noticed that they had wrongly availed the Credit under Maintenance or Repair Services.

2.2 Show Cause Notice was issued for the period from June 2005 to March 2009 raising the above allegations. After due process of law, the Original Authority confirmed the demand along with interest and imposed penalties. Hence, this appeal.

3.1 On behalf of the appellant, Ld. Counsel Shri. Raghavan Ramabadran appeared and argued the matter. He furnished the details of the services, demands as well as the periods involved in the different issues, which are tabulated as under :

Sl. No.	Particulars	Period	Demand (INR)
1.	Demand of Service Tax under Information Technology Software Services ('ITSS')	September 2008 to March 2009	61,70,765/-
2.	Reversal of CENVAT Credit availed on Management, Maintenance or Repair Services ('MMR')	April 2006, June 2006, September 2006, February 2009, March 2009, May 2009	2,24,863/-
3.	Demand of Service Tax under Management or Business Consultancy Services ('MBC')	2006-07 to 2007-08	20,21,174/-

4.	Demand of Service Tax under Manpower Recruitment or Supply Agency Services ('MRSA')	16.06.2005 to 2007-08	1,10,85,881/-
TOTAL			1,95,02,683/-

3.2.1 Ld. Counsel submitted that with regard to the issue in Sl. Nos. 1 and 2 of the above table, the appellant is not contesting the liability. The amount in regard to these two issues were paid/reversed before the issuance of the Show Cause Notice. As per Sub-Section 3 of Section 73, no penalties can be imposed when the amount has been discharged by the assessee prior to issuance of Show Cause Notice. To support his arguments he relied on the decision of the Tribunal in the case of *M/s. Greenland Traders Vs. Commissioner of G.S.T. & Central Excise, Madurai – 2019 (2) T.M.I. 1250 – CESTAT Chennai*.

3.2.2 With regard to the demand in Sl. No. 3 of the above table, Ld. Counsel limited his arguments to the contention that the demand has been proposed under reverse charge basis. Even if the appellant pays the service tax, he would be eligible for Credit of input services. The situation being entirely revenue neutral, the demand cannot sustain. He pointed out that the entire demand is hit by limitation. To support his argument, he relied upon the decision in the case of *M/s. Siemens Ltd. Vs. Commissioner of G.S.T. & Central*

Excise, Puducherry – 2019 (2) T.M.I. 85 – CESTAT Chennai, particularly paragraph 5.6 of the said decision.

3.2.3 With regard to the issue in Sl. No. 4 of the above table, Ld. Counsel submitted that the demand is made under the category of Manpower Recruitment or Supply Agency Services. During the relevant period, there were two views as to the service tax payable under this category for the supply of IT related services. He pointed out that the decision in the case of *M/s. Future Focus Infotech India (P) Ltd. Vs. Commr. of S.T., Chennai – 2010 (18) S.T.R. 308 (Tri. – Chennai)* held the issue in favour of the Revenue whereas the decision in the case of *M/s. Cognizant Tech. Solutions (I) Pvt. Ltd. Vs. Commr., LTU, Chennai – 2010 (18) S.T.R. 326 (Tri. – Chennai)* held the issue in favour of the assessee. Since there were two views on the very same issue of taxability in regard to Manpower Supply to IT related services, he argued that the appellant cannot be saddled with an intention to evade payment of duty. To support his argument that the extended period of limitation cannot sustain in this demand, he relied upon the decision in the case of *M/s. Coromandel Infotech India Ltd. Vs. The Commissioner of G.S.T. & Central Excise, Chennai South Commissionerate – 2019 (1) T.M.I. 323 – CESTAT Chennai*.

4.1 Ld. AR Ms. T. Usha Devi appearing on behalf of the Department supported the findings in the impugned Order.

4.2 With regard to the issue in Sl. No. 4 of the above table, she much emphasized that the facts of this case would not fit into the facts as presented in the case of *M/s. Cognizant Tech. Solutions (I) Pvt. Ltd. (supra)*. She therefore argued that the said decision would not apply to the appellant's case and the decision in the case of *M/s. Coromandel Infotech India Ltd. (supra)* also cannot apply. That the facts of the present case would cover the decision as laid in the case of *M/s. Future Focus Infotech India (P) Ltd. (supra)*.

5. Heard both sides.

6.1 With regard to the issues at Sl. Nos. 1 and 2 of the above table, Ld. Counsel for the appellant has submitted that the demand has been discharged by them much prior to the issuance of the Show Cause Notice. The prayer is only to waive the penalties imposed under the issues at Sl. Nos. 1 and 2.

6.2 As per Sub-Section 3 of Section 73, when the service tax amount along with interest is discharged prior to the issuance of Show Cause Notice, no penalties are required to be imposed. In fact, no Show Cause Notice even can be issued by the Department. The Hon'ble High Court of Karnataka in the case of *C.C.E. & S.T., LTU,*

Bangalore Vs. M/s. Adecco Flexione Workforce Solutions Ltd. – 2012

(26) *S.T.R. 3 (Kar.)* has categorically held that no penalties can be imposed when the service tax amount has been discharged prior to issuance of Show Cause Notice. Following the said decision, we are of the view that the penalties imposed in regard to the issues in Sl. Nos. 1 and 2 are unwarranted and require to be set aside, which we hereby do.

7.1 With regard to the issue in Sl. No. 3, Ld. Counsel has submitted that the demand is proposed under reverse charge mechanism under the category of Management or Business Consultancy Services. Without entering into the merits of their issue, the Ld. Counsel has confined himself to the argument of a revenue neutral situation.

7.2 Indeed, since the demand is under reverse charge mechanism, if the tax is paid, the appellant would be eligible to avail the Credit as input service. The demand is entirely invoking the extended period of limitation. Therefore, being a revenue neutral situation and also as per the decision of the Tribunal in the case of *M/s. Siemens Ltd. (supra)*, we hold that the demand cannot sustain and requires to be set aside, which we hereby do.

8.1 The issue in Sl. No. 4 of the above table is with regard to the demand of service tax under Manpower Recruitment or Supply Agency Services. Ld. Counsel for the appellant has placed reliance on the case of *M/s. Coromandel Infotech India Ltd. (supra)*. In the said decision, the Tribunal had noted that there were two views possible, as rendered in the decisions of *M/s. Future Focus Infotech India (P) Ltd. (supra)* and *M/s. Cognizant Tech. Solutions (I) Pvt. Ltd. (supra)*. Taking note of this situation, the Tribunal had set aside the demand which was raised invoking the extended period.

8.2 In the present case also, the demand is entirely invoking the extended period. Therefore, applying the ratio in the case of *M/s. Coromandel Infotech India Ltd. (supra)*, we are of the view that the demand cannot sustain and requires to be set aside, which we hereby do.

9. The appeal is allowed with consequential reliefs, if any, as per law. The Miscellaneous Application for change of cause title filed by the Department is allowed.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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