

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 42252 of 2016

(Arising out of Order in Appeal No. 497/2016 (STA – I) dated 29.8.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

Sree Nandhees Technologies Pvt. Ltd.

99/208, 3rd Street, 8th Main Road
AH Block, Anna Nagar
Chennai – 600 040.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

APPEARANCE:

Shri V. Ravindran, Advocate for the Appellant
Smt. G. Krupa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41408/2025

Date of Hearing: 24.11.2025

Date of Decision: 02.12.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 497/2016 (STA – I) dated 29.8.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that the appellant is registered as service providers for 'Maintenance or Repair Service'. It was noticed during the audit that the appellant had received taxable value of Rs.1,19,53,559/-from M/s. Emerson Network Power India Pvt. Ltd. (Principal) during the period from 2004-05 to 2006-07 towards

provision of maintenance of UPS. However, the appellant had not paid service tax. Hence Show Cause Notice dated 25.8.2009 was issued to demand Service Tax of Rs.13,18,116/- for the above period and for invoking extended period. After due process of law, the Ld. Adjudicating Authority confirmed the demand along with interest and imposed equal penalty under section 78 of the Finance Act, 1994. The appeal filed by the appellant was dismissed by the Ld. Commissioner (Appeals). Hence the present appeal.

3. The learned Advocate Shri V. Ravindran appeared for the appellant and Ld. Authorized Representative Smt. G. Kripa appeared for the respondent.

3.1 Learned Counsel Shri V. Ravindran, representing the appellant, stated that the appellant acts as dedicated sub-contractor, undertaking maintenance and repair of UPS systems for their Principal. The appellant receives commission for this work, on which service tax has been duly paid, with no dispute arising in this regard. Additionally, the appellant collects repair charges from customers on behalf of the Principal and remit these amounts to the Principal. The central issue in the present appeal pertains to whether the appellant is also liable to pay service tax on the aforementioned 'Maintenance or Repair Service' as classifiable under Section 65(105)(zzg) of the Finance Act, 1994, given that the Principal has already discharged the relevant service tax. The Ld. Counsel referred to the letter of the Principal dated 25.09.2009, submitted along with their reply to the SCN. He stated that their action of not paying Service Tax was consistent with the prevailing legal position as seen from the Boards Circular issued during

that time which were prior to the issue of Master Circular No 96/7/2007-ST, dated 23-8-2007, reversing the earlier clarification. He presented a summary of the Circulars in a Tabulated form which is reproduced below:

S. No.	Circular / Instructions FAQ / Trade Notice	Page No.	Extract / Gist of clarification given
1.	FAQ 01.10.2003	4 - 8	<p>Maintenance and Repair service:</p> <p>Q.23-If there is a total sub-contract of the service, whether sub-contractor is supposed to take out a registration and discharge the tax liability.</p> <p>Ans: The sub-contractor need not take a registration under service tax. In all such cases, the service tax is to be paid by main service provider</p>
2.	F. No. 341/43/96 TRU dated 31.10.1996	9 - 15	<p>P.16 In this context, it is clarified that co-loaders provide service to the courier agencies as such. They do not provide directly any service to the customer.... What is chargeable to service tax is the service provided by Courier Agency to the customer. In this case, the courier agency being not a customer as such, the service provided by co-loader is not chargeable to service tax. It is significant to point out that the charges of the co-loaders to the courier agency for ultimately recovered by the courier agency from the customer and these charges are included in the gross amount charged by the courier agencies from customers on which the service tax is computed.</p>
3.	F. No. B43/1/97-TRU dated 6.6.1997 (rescinded in may 2007)	16 - 22	<p>2.6. Some times, CHAs sub-contract their work to CHAs located in other stations. In such cases it is possible that the sub-contracting CHA raises the bill on the main CHA who in turn raises the bill to the client. It has been decided that in such cases, the</p>

			sub-contracting CHA will not be required to pay service tax on the bills raised by him on the main CHA. The service tax will be payable by the CHA who provides actual service to the client and raises the bill to the client.
4.	F.No.B.43/7/97-TRU dated 11.07.1997	23 - 27	3.5. However service tax will not be payable in cases where a bill has been raised on a Rent-a-Cab Scheme operator, by another rent-a-cab scheme operator who has sub-let the motor cab to the latter operator provided who pays service tax on the amount bill to his client for renting out the motor cab so obtained by him.
5.	Cir.B11/3/98 dated 07.10.1998/Trade Notice No.5/98 dt.14.10.1998 of Indore Commissionerate	28 - 31	3.6. Further, cases where an architect/interior decorator sub-contracts part/whole of his work to another architect/interior decorator, it is clarified that no service tax is required to be paid by the sub-contractor provided that the principal architect/interior decorator has paid the service tax on the services rendered by him to the client and provided the sub-contracting is in respect of the same service category. In other words, work is sub-contracted by one architect to another architect. In such cases, if the principal architect pays the service tax on services rendered by him to his client, the sub-contracting architect is not required to pay service tax.....

Ld. Counsel further submitted that the demand relates to the financial years 2004-05 to 2006-07; however, the show cause notice was issued only on 25.08.2009, after the lapse of the normal period of one year. The appellant during this period was registered with the department and consistently filed ST-3 returns. It is evident that there was no

suppression of facts, and therefore, the notice issued beyond one year is barred by limitation. The impugned order is thus unsustainable in law. Furthermore, the expression "to a customer" in Section 65(105)(zzg) of the Finance Act, 1994, was replaced by "to any person" only with effect from 16.05.2008. Prior to this date, the appellant provided services only on behalf of the Principal and such services were not rendered directly to the appellant's own customers, precluding taxation of this activity. The record confirms that all consideration received for "Repair Services" was forwarded to the Principal, who discharged the applicable service tax. Service tax on commission received by the appellants from the Principal was also paid, and there are no disputes regarding these facts. The Ld. Counsel stated that the following case laws support their position:-

- a. Semac Pvt. Ltd. Vs CST, Bangalore-2006 (4) STR 475 (Tri. Bang.)
- b. JAC Air Services Pvt. Ltd. Vs CCE [2008 (11) STR 516 (Tri.Del.)
- c. OIKOS VS CCE, Bangalore III [2007 (5) STR 229 (Tri. Bang.)
- d. Visesh Engg. Co. Vs CCE & ST, Guntur [2016 (43) STR 232 (Tri. Hyd.)]
- e. DOT COM Advertising Vs CCE, Lucknow [2019 (27) GSTL 691 (Tri. All.)]

Further the Ld. Counsel stated that for the very same set of facts and for the same period of dispute, in the case of another sub-contractor rendering maintenance and repair services to the Principal, the demand has been dropped, vide Order-in-Original No. 04/ADC/ST/BPL-1/09 dated 13.02.2009.

3.2 The Ld. Authorized Representative Smt. G. Kripa stated that the

issue of payment of tax by the sub-contractor is no more res integra and stands unequivocally settled by different judgments of appellate authorities and especially by the Mumbai Bench of this Tribunal in **Sunil Hi-Tech Engineers Ltd Vs Commissioner of C. Ex., Nagpur** [2014 (36) STR 408 (Tri.-Mumbai)]. She stated that the Boards Circulars referred to by the appellant pertain to specific services like 'Architects and Interior Decorators', 'Market Research Agencies', 'CHA' etc and do not cover 'Maintenance or Repair Service'. Further it has been noted in the OIO that the assessee had not stated anything or furnished any proof as evidence to show that their principal contractor had also provided the same service i.e. 'Maintenance and repair services' as stated under heading 'C. Market Research Agencies', of Boards Circular No. B11/3/98 dated 07.10.1998. In the absence of any such evidence reliance placed on the Boards circular are not sustainable. Apart from the above judgment the Ld. A.R. relied upon the following judgments/ Circular.

- a. Synergy Engineers Group Vs PC, CE & ST, Bhopal [2023 (73) GSTL 546 (Tri-Del)]
- b. Max Logistics Ltd Vs CCE, Jaipur [2017 (47) STR 41 (Tri-Del)]
- c. CST, New Delhi Vs. Melange Developers Pvt. Ltd. – 2020 (33) GSTL 116 (Tri. LB)
- d. Vinoth Shipping Services Vs. CCE, Tirunelveli – 2021 (55) GSTL 313 (Tri. Chennai)
- e. Vishal Engineering Company Vs. CCE, Panchkula – 2023 (9) CENTAX 154 (Tri. Chan.)
- f. Furnace Fabrics (India) Ltd. Vs. Joint Commissioner of Central Excise, Kochi – 2016 (43) STR 175 (Ker.)
- g. Board's Circular No. 138/7/2011-ST dated 06.05.2011

4. We have heard the rival parties and perused the appeals. We find that the main dispute relates to:

(i) Whether a sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability.

(ii) The expression "to a customer" in Section 65(105)(zzg) of the Finance Act, 1994, was replaced by "to any person" only with effect from 16.05.2008. Hence whether the activity of the appellant, during the period from 2004-05 to 2006-07, for having provided services to the Principal and not 'to a customer', was classifiable under the said section.

5. We find that a Larger Bench of this Tribunal in **COMMR. OF S.T., NEW DELHI Vs MELANGE DEVELOPERS PRIVATE LTD.** [2020 (33) G.S.T.L. 116 (Tri. - LB)], had examined the issue of duty payable by sub-contractors for services rendered to the Principal. It had also examined the practice being followed prior to the issue of Master Circular No 96/7/2007-ST, dated 23-8-2007 and held as under:

"12. It is true that prior to 2007, various Service Tax, Trade Notices/ Instructions/ Circulars/ Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/ Instructions/ Circulars/ Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications

keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below:

999.03/ 23-8- 2007	A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.
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13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

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31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

(emphasis added)

6. Hence while the issue on merits, that the sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability, has been settled by the Order of the Larger Bench of this Tribunal in **MELANGE DEVELOPERS** (supra). We do not hence examine the other judgments cited by revenue. It is also clear that prior to the issue of the Master Circular in 2007, Boards Circulars held that Service Tax was not required to be paid by certain categories of the sub-contractor, provided the principal had paid the Service Tax. Hence there was some ambiguity in the understanding of law prior to 23-8-2007. Further even in the case of **Sunil Hi-Tech Engineers** (supra), cited by revenue there was a difference of opinion among the Members of the Division Bench and the issue was finally decided by a majority opinion after the matter was referred to a third Member, highlighting that there were divergent views involving interpretation of law. Moreover, there is nothing in the SCN that shows that there was any intent on the part of the appellant to evade duty. Not indicating the income in the ST3 return as a result of the prevailing practice and the appellants understanding of law does not in itself show an intention to evade payment of duty. As stated by a three Judge Bench of the Hon'ble Supreme Court in **Cosmic Dye Chemical Vs Collector of Central Excise** [(1995) 6 SCC 117], in the context of Section 11A of

the Central Excise Act, 1944, which is identical to Section 73 of the Finance Act, 1994 that:

“Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word “wilful” preceding the words “misstatement or suppression of facts” which means with intent to evade duty. The next set of words “contravention of any of the provisions of this Act or rules” are again qualified by the immediately following words “with intent to evade payment of duty”. **It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.**”

(emphasis added)

7. Having found that the demand in this case is time barred, we find that the Hon’ble Allahabad High Court in **Commissioner Customs, Central Excise & Service Tax Vs M/S Monsanto Manufacturer Pvt. Ltd.** [2014 (35) STR 177 (ALL)], was of the view that once it is held that the demand is time barred, there would be no occasion for the Tribunal to enquire into the merits of the issues raised by the Revenue. In **State Bank of India Vs. B.S. Agricultural Industries (I)** [AIR 2009 SUPREME COURT 2210], the Supreme Court held that, if the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside. Further the Hon’ble Supreme Court in **Commissioner Of Customs, Mumbai Vs M/S B.V. Jewels And Ors** [AIR 2005 SUPREME COURT 1231 / (2004) 172 ELT 3], held that “If, in reality, the CEGAT found that the action taken by the departmental authorities was beyond the period of limitation, it could have disposed of the

appeals before it only on that ground without examining the merits". Hence the impugned order merits to be set aside along with interest and penalty imposed.

8. For the reasons stated we do not propose to examine the dispute regarding the exigibility of the service rendered by the appellant to tax prior to 16.05.2008, when the expression "to a customer" in Section 65(105)(zzg) of the Finance Act, 1994, was replaced by "to any person". As regards the proof sought from the appellant by revenue to show that the principal contractor had also provided the same service, we find that the letter of the Principal dated 25.09.2009, cited above, has not been disproved by revenue. In any case the point gets subsumed in the larger issue of time bar, resulting from the prevailing practice due to the divergent interpretation of law and lack of evidence in the SCN to demonstrate any intent on the part of the appellant to evade duty.

9. In the circumstances we set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 02.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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