CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No.53026 of 2016

[Arising out of Order-in-Original No.44/PC/ST/BPL-ST/2016 dated 24.08.2016 passed by the Principal Commissioner, Customs, Central Excise and Service Tax, Bhopal.]

M/s.Crompton Greaves Ltd. **Appellant**
(T-3, Transformer Division),
29-31-32, New Industrial Area,
Mandideep, Distt. Raisen (MP)

VERSUS

Commissioner of Customs, Central Excise **Respondent**
& **Service Tax**,
48, Administrative Ara, Arera Hills,
Hoshangabad Road,
Bhopal (M.P.)

APPEARANCE:

Shri Nitin N. Mehta, Consultant for the appellant
Dr. Radhe Tallo, Authorised Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO.51900/2021

DATE OF HEARING/DECISION: 03.09.2021

ANIL CHOUDHARY:

The Appellants, along with their Joint Venture partner- M/s.Ganz Transelektro Electric Co. Ltd. Hungary [Ganz], had entered into three separate contracts for supply of Transformers/related equipment and to provide various services to M/s.Power Grid Corporation Ltd. [PGCIL], during the period of dispute 2011-2012 to 2012-2013, as per details given below :

Contract	Contract Number	Description	Value
Contracts for supply of goods			
First	C-47210-S0163/CA-I/2992	Supply of Transformers and Equipment and conducting of Type Testing, by Ganz, Hungary, on CIF basis.	3,47,75,000/- Euro [Copy in Paper-book]
Second	C-47210-S0163/CA-II/2992	Supply of Transformers and Equipment and conducting of Type Testing, by the Appellants on Ex-Works basis.	Rs.75,50,80,000 [copy in Paper-book]
Contract for provision of various services			
Third	C-47210-S0163/CA-II/2992	Provisions of various services by the Appellants, including services of: (1) Inland Transportation of goods imported by PGCIL from Ganz, Hungary; (2) Providing training; (3) Erection service; and (4) Works Contract services of installation, including civil works.	Rs.8,81,96,000/- 10,00,000/- 16,80,00,000/- (Copy in Paper Book)
		Total Value of Services Rs.	**25,71,96,000/-**

b) The total value shown in the contract for provision of services was indicative value, since the amount was dependent on the actual quantum of services to be provided, as well as the contract was also subject to price variation clause. Therefore, though the total amount was indicated in the contract, the actual total value was dependent on the actual quantum of services provided by the Appellants, and the actual prices as determined at the time of execution of the contract, subject to variations in the prices of the materials.

c) Further, the project meant for Ranchi (Jharkhand) was subsequently shifted by PGCIL to Wardha, Maharashtra.

Due to this shifting of the project also, there were variations in the total value of the services provided.

d) The Contract for provision of services was on all inclusive terms i.e. the total value indicated in the contract was inclusive of all taxes, e.g. VAT/WCT, Service Tax, etc.

e) Contract for arranging inland transportation of the goods (imported by PGCIL from GANZ) is concerned, the Appellants had availed services of various transporters and had paid Service Tax on the amount of freight charged by the transporters, under Reverse Charge Mechanism, as a recipient of the service. In relation to invoices raised for recovery of transportation charges to PGCIL, as provider of GTA Service, the said service was covered in negative list at clause (p)(i) of Section 66D, since no consignment note was issued by the Appellants. Otherwise also even when services of transportation of goods are chargeable to tax, tax was payable by the recipient of the service on reverse charge basis. Therefore, no Service Tax was payable by the Appellants on the services of transportation of the goods imported by PGCIL, from port of import to destination (site of PGCIL).

f) As far as contract for provisions of training service is concerned, since PGCIL subsequently felt that training was not required, neither training services were provided nor any invoices were raised, nor consideration were received by the Appellants from PGCIL.

g) As regards provision of services of erection, which did not involve transfer of property in goods in provision of service, and not covered by works contract, the Appellants had paid Service Tax at normal rate of 10.3% or 12.36% as the case may be, on the entire value of services as per the invoices.

h) In relation to provision of Works Contract services, the Appellants did not opt for composition scheme. However, due to bonafide error initially the Appellants had paid Service Tax on such services @ 4.12% instead of 12.36%. When the Appellants realised their mistake of short payment of Service Tax, they had corrected the same from February-2012 and started paying Service Tax at full applicable rate of 12.36%.

i) As far as the invoices in which the Appellants had paid service tax at lower rate of 4.12%, the Appellants on their own, voluntarily made payment of the differential Service Tax amounting to Rs.1,01,91,385/-, under intimation to the Department. The Appellants also paid interest amount of Rs.6,44,201/- on the said differential Service Tax.

j) The total value of services of erection and works contract actually provided under the Third Contract worked out to Rs.15,79,05,395/- (inclusive of VAT and Service Tax) and the total Service Tax payable on the same worked out to Rs.1,50,77,260/- on cum-tax value of Rs.15,43,31,885/-.

k) The details of Service Tax liabilities and the actual amount of Service Tax payable and paid are as given below:

Total Value of Services actually provided

Description	**Value as per Contract** **Rs.**	**Actual value as per invoices** **Rs.**	**Service Tax liability** **Rs.**
Inland Transportation & Insurance Charges including port handling charges/port clearance charges wherever applicable ***Covered by negative list at entry (p)(i) of Section 66D, and otherwise also Service Tax was payable by the recipient under Reverse Charge Mechanism***	8,81,96,000	7,39,55,968	NIL
Installation/Erection Charges, including civil works charges	16,80,00,000	15,79,05,395	1,50,77,260
Charges for training which was contracted to be provided (***No training services were provided***)	10,00,000	NIL	NIL
Grand Total Rs. (A)	25,71,96,000	23,18,61,363	1,50,77,260

Computation Of Service Tax liability

Description	**Rs.**
Total gross value as services of erections and works contract, as per invoices	15,79,05,395
Less : amount of VAT paid	35,73,510
Value Inclusive of Service Tax	**15,43,31,885**
Service Tax, including Cess	**1,50,77,260**
Service Tax assessable value	13,92,54,625
Service Tax originally paid	95,37,042
Differential Service Tax paid on 05.03.2012	59,12,294

Total Service Tax paid (B)	1,54,49,336
Excess Service Tax paid (*Rs.1,54,49,366 (-) Rs.1,50,77,260)* *(B) – (A)*	**(+)3,72,076**

2. The Principal Commissioner of Customs, Central Excise & Service Tax, Bhopal, had issued show cause notice No.34/PC/ST/BPL-II/2015 dated 13.10.2015, demanding differential Service Tax amounting to Rs.14,19,96,871/-, invoking the extended period of limitation, on the alleged grounds that:

1. the Appellants are deemed to have opted for Works Contract Composition scheme;
2. value of the Transformers and other equipment sold by the Appellants as well as imported by PGCIL from Ganz, Hungary, was liable to be included for computing the total value of services; and
3. the Appellants suppressed value of services, by not including value of Transformers and other equipment, hence extended period was liable to be invoked.

3. The Principal Commissioner, passed impugned Order-In-Original No.34/PC/ST/BPL-II/2014 dated 13.10.2015, in which he has accepted the contentions of the Appellants, *inter alia,* holding that:

(1) the Appellants had not opted for Works Contract Composition Scheme;

(2) it cannot be deemed or assumed that they had opted for, Works Contract Composition scheme;

(3) that in relation to works contract service of installation of Transformers, value of Transformers to be installed cannot be included in the value of works contract and only value of the materials to be used in erection and installation service can be included in the value of services; and

(4) that all three contracts are independent contracts and there was no artificial bifurcation of supply and service contracts.

4. However, despite holding as above in favour of the Appellants, the Principal Commissioner confirmed demand for the Service Tax for Rs.2,82,92,476/- @ 12.36% by taking the total projected contract value as service for Rs.25,71,96,000/-, as cum-tax value (i.e. Service Tax of Rs.2,82,92,476/- @ 12.36% on value of Rs.22,89,03,524/-, totaling to Rs.25,71,96,000/-), and ordered appropriation of Service Tax of Rs.2,07,87,860/- already paid by the Appellants, hence this appeal.

5. Ld. Counsel for the appellant urges that ld. Commissioner has mis-conceived and erred in taking the amount of projected gross turnover at Rs.25,71,96,000/-, as taxable turnover on cum tax basis, instead of taking the value of service actually provided, which is relatable to the invoices raised. The amount of Rs.25.71 crores was the appox value of the three contracts, as is evident from the table given hereinabove. The actual gross turnover during the period under dispute with regard to the services, including material provided PGCIL was Rs.23,18,61,363/-.

6. During the period of dispute, the appellant has raised the bills on the basis of the actual work done. Further, the bills were subject to price variation clause after taking into account the variations, though the contract was for separate consideration in respect of training to be provided by the appellant to the employees of the PGCIL, however, no training services were provided. Hence, in absence of any consideration, no service tax is attracted. No service tax was chargeable on the 'Goods Transport Service' as the same is covered by the negative list – entry (p)(i) of Section 66 D. Admittedly, the appellant have paid the service tax as the recipient of service under Reverse Charge Mechanism, as the GTA have raised the bills on the appellant for providing the transport services, the actual receiver of service is PGCIL.

7. The total gross value of service actually provided during the period is Rs.23,18,61,363/-. That service tax is payable only on the value of Rs.15,79,05,395/- being the value towards erection and installation charges, which includes civil works (subject to adjustments of material component). Further, adjustment needs to be made towards the value of VAT as well as service tax as the said gross amount of Rs.15,79,05,395/- is inclusive of VAT and service tax. It is evident from the table above (in para 1 K) that the appellant have paid the excess service tax of Rs.3,72,076/- on the taxable/assessable value of Rs.13,92,54,625/-.

8. It was further urged that M/s.PGCIL had imported certain equipments from Ganz, Hungry. The appellant was required to arrange for transportation of the goods from the port in India to the site of PGCIL. Thus, the appellant is (pure agent) neither the service provider nor the receiver. The appellant has simply arranged for transportation service as a pure agent, the actual service receiver being PGCIL. However, erroneously, the appellant has discharged service tax on such transportation amount (under reverse charge basis). Admittedly, the appellant is not a Goods Transport Agency. Hence, no service tax was payable for the transportation services arranged for PGCIL. Services provided by non-GTA is covered by the negative list under Section 66 D Clause (p).

9. It is further urged that under the admitted facts, the appellant have maintained proper records of their transactions and have filed their returns periodically. The show cause notice has evidently been issued on the basis of the presumptions and assumptions, which has no legs to stand. It is evident from the face of the record that the show cause notice was issued proposing demand of Rs.14.20 crores approx. Whereas the demand confirmed in the impugned order is Rs.2.83 crores approx. Ld. Counsel urges that the impugned order may be set aside on the ground of limitation alone, as extended period of limitation is not attracted. Admittedly, there was correspondence between the appellant and the Department prior to the period Jan. 2012, wherein the appellant have provided all the details as per the requirement/notice. However, the show cause notice has been issued only on 13.10.2015, which is more than 3 years since Jan. 2012.

10. Ld. Counsel prays for allowing their appeal with consequential benefit in accordance with law.

11. Ld. Authorised Representative for the Department has relied on the impugned order.

12. Having considered the rival contentions, we find that the impugned order is erroneous and mis-conceived as service tax has been demanded on the apparent gross value, as per contract/ agreement, of Rs.25,71,96,000/-. The same is also in contrast to the findings of the ld. Commissioner. All the three contracts are independent contracts , there being no artificial bifurcation and supply of goods and supply of services. Ld. Commissioner has also observed in the impugned order that in relation to the works contract service, the value of transformers cannot be included.

13. In view of Section 66 D (p), we hold that the appellant is not liable to pay service tax on the transportation charges paid by them, as they are neither a GTA and have admittedly arranged transportation for the service receiver viz. PGCIL, as a pure agent.

14 We further hold that no service tax is payable towards projected training as per contract, as admittedly the appellant has not provided any training nor they have raised any invoice towards the training charges. So far the service tax on installation/erection charges(including civil work) is concerned, we hold that the turnover of

Rs.15,79,05,395/- has to be adjusted for the amount of VAT and service tax included in the gross value, and after deduction of these, the appellant shall be further entitled to deduction for the material component as per Service Tax (Determination of Value) Rules 2006.

15. Accordingly, we allow this appeal by way of remand, after setting aside the impugned order for the limited purpose of calculation of service tax payable on the gross value towards erection/installation charges of Rs.15,25,05,395/- in terms of our directions given hereinabove. The appellant is directed to prepare the calculation of admitted tax and appear before the Original Adjudicating Authority for verification and/or adjustment, if any. We further direct that the appellant shall be entitled to refund of the excess amount of service tax paid, if any, as the same is in the nature of revenue deposit, and no limitation is attracted.

16. This appeal is allowed in part and part by way of remand. Ordered accordingly.

[Operative portion already pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(C.J. MATHEW)
MEMBER (TECHNICAL)

Ckp.