CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH – COURT NO.III

Service Tax Appeal No.51759 of 2017 (DB)

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-40-17-18 dated 24.07.2017 passed by the Commissioner of Customs (Appeals-I), GST, Customs & Central Excise, Bhopal (M.P.)]

Dashrat Singh Shekawat **Appellant**
RV-11,Royal Villa, Indus Town, Ratanpur, Misrod,
Bhopal (M.P.) 462 026.

Versus

Commissioner of CGST, Central Excise and Customs, **Respondent**
35-C, GST Bhawan,
Administrative Area,
Arera Hills, Jail Road,
Bhopal,
Madhya Pradesh-462 015.

APPEARANCE:
Shri Abhas Mishra, Advocate for the appellant.
Shri S.K. Meena, Authorised Representative for the Respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.51406/2023

DATE OF HEARING:03/08/2023
DATE OF DECISION:09.10.2023

BINU TAMTA:

The appeal has been filed challenging the Order-in-Appeal No.BHO-EXCUS-001-APP-40-17-18 dated 24.07.2017 passed by the Commissioner of Customs (Appeals).

2. The brief facts of the case are that the appellant, M/s. Dashratha Shekawat having service tax registration number are engaged in providing taxable service in the category of "Maintenance or Repair Service" as classified under Section 65(B) of the Finance Act, 1994. During the course of scrutiny of ST-3 Return for the period October-March, 2012-13, it has been

observed that the notice has claimed an abatement under Notification No.24/2012-ST(I) and deducted Rs.26,51,524/- from gross amount taxable and not paid service tax on this amount. On going through the contents of the notification, it has been observed that this notification is not applicable in case of 'Maintenance and Repair Service" provided by them and this notification is for 'Works Contract'. In this way, abatement availed and claimed by the appellant is improper and invalid and ultimately it appears that they have short paid service tax to the tune of Rs.3,27,728/-. Therefore, show cause notice dated 24.02.2015 was issued to the appellant for demand of service tax amounting to Rs.3,27,728/- for the period October, 2012 to March, 2013 along with applicable interest and alleging penalty under the Finance Act, 1994.

3. Subsequently, during the course of scrutiny of ST-3 Return for the period April-2013 to September, 2013, October-March, 2013-14 and April-September, 2014-15, it was observed that the appellant had claimed an abatement under Notification No.24/2012-ST(1) and deducted Rs.37,83,066/- from gross amount taxable and not paid service tax on this amount, however, the said notification is not applicable in case of 'Maintenance and Repair Service' and, therefore, another show cause notice dated 20.04.2015 was issued to the appellant for demand of service tax amounting to Rs.4,67,586/- for the period April, 2013 to September, 2014 along with applicable interest and penalty under the Finance Act, 1994.

4. The Adjudicating Authority vide order dated 06.04.2016 confirmed the demand of service tax proposed in both the show cause notices along with applicable interest and imposed penalty of Rs.7,95,314/- under Section 78 of

the Finance Act, 1994 and also ordered for recovery of Rs.500/- as late fee under the provisions of Rule 7(C) of the Service Tax Rules, 1994.

5. Aggrieved by the said Order-in-Original, the appellant filed the appeal before the Commissioner (Appeals), Bhopal, challenging the said order, which was rejected by the Commissioner (Appeals) vide Order-in-Appeal dated 24.07.2017. Hence, the appellant has filed the present appeal before this Tribunal.

6. Having heard both the sides and perused the records, we are now taking-up the issue raised in this appeal. Firstly, whether the services rendered by the appellant are in the nature of "Manpower Supply Services" or "Maintenance and Repair Services" and therefore entitle to claim abatement under Notification No.24/2012-ST dated 06.06.2012.

7. The contention of the learned Counsel for the appellant is that they have submitted the copies of the contract and the bills raised by them to the Department, which clearly establish that the appellant has been providing the taxable service of 'supply of manpower/labour'. It is also their contention that the service tax demanded has already been paid by the receiver of the services under the Reverse Charge Mechanism (RCM). According to them, the correct notification number is 30/2012-ST, though they have erroneously mentioned the Notification No.24/2012-ST and hence, the benefit under the notification cannot be denied due to clerical error.

8. Learned Authorised Representative for the Revenue has relied on the findings arrived at by the Authorities below. It is their submission that the Notification No.24/2012-ST has been issued for making rules regarding

valuation of the service of 'Works Contract' and has nothing to do with the abatement to be allowed in respect of the rate of service tax or the value of the service. As per the Revenue, the appellant paid service tax only under the category of service "maintenance and repairs" and have not paid any service tax towards "manpower supply" and the same is evident from ST-3 Returns and the GAR challan, for which no abatement is allowed. Further, the bills/invoices submitted by the appellant nowhere show that any amount of service tax has been paid by the recipient of the service. It is the contention of the Revenue that the appellant is working under self-assessment system and is, therefore, duty bound to correctly assess their service tax liability and accordingly, filed ST-3 Returns.

9. We would first deal with the issue of classification of the services provided by the appellant. Having perused the ST-3 returns filed by the appellant, we find that the category of service shown in the returns is "Maintenance and Repairs Services". The copies of the GAR challan annexed by the appellant shows the payment of Service Tax under heading 00440245 and refers to the category of service as "Maintenance and Repairs". The ledger records submitted by the appellant also show that the payment has been made towards labour charges for winding assembly, "labour charges for winding works", etc which shows that amount has been paid against specific work. None of the bills submitted by the appellant show that they have been issued for "Man Power Supply". At page 185 of the appeal, the document annexed by the appellant shows the category of services as "Maintenance or Repairs". For ready reference , we would quote the contents of the Counterfoil of service tax paid by the appellant which is self explanatory as to the category of service provided by the appellant :

Bank of Baroda Internet Banking Services

Taxpayers Counterfoil

SERVICE TAX PAYERS COUNTERFOIL		
Received from Assessee Code No.	AXWPS3420KST001	
Name of the Assessee	124, Behind Midile School Anand Nagar, Piplani Bhopal, Madhya Pradesh	
Location Code	540106	
Accounting Code of the Service	Amount (in Rs. Only)	For use in Receiving Bank Bank of Baroda Byculla, Mumbai Date of Realisation 05.03.2014 BSR Code: 0200388 Date of Tender: 05.03.2014 Challan Serial No. 03481 Challan Identification No. 02003880503201403481
00440245 – MAINTENANCE OR REPAIR SERVICE	88424	
00440246 – MAINTENANCE OR REPAIR SERVICE	2300	
00440298 – PRIMARY EDUCATION CESS	1768	
00440426 – SECONDARY AND HIGHER EDUCATION CESS	884	
Total	93376	
Major Head	0044 (Service Tax)	
Total Rupees (in words)	Ninety Three Thousand three hundred seventy six only	
By e-payment debit to A/c No.	38580200000245	
Transaction Date & time	05.03.2014 05:18:58	

The appellant has also submitted the copies of the various contracts with the recipient companies, however the terms of the contract do not mention supply of manpower by the appellant. On the contrary, the terms and the various clauses of the contract with Nexus Electro Steel Ltd reveals that the appellant is engaged in the business of manufacturing of accessories related to Transformer Coil Winding Core Coil Assembly, Packing, Loading or Unloading etc for several companies and has the necessary activities, equipments, facilities etc where with all to provide the said services.

From the documents submitted by the appellant, it is clear that the services rendered by them have been rightly classified under the category of "Maintenance and Repair Services". It further says that the appellant company approached, to provide the said service as required expressing the desire to take job of coil winding and Core Coil Assembly of transformers at their factory. The other clauses in the agreement also speaks about management or supervision activities to be carried out by the appellant company.

Similarly, the service agreement with Schneider Electric states that the appellant operates as agency for executing miscellaneous works as a specialist and expertise for scope activities mentioned in the Scope of Work (Point No.2) of the agreement. Under the category of Scope of Work, it is stated that the appellant shall be providing end to end solutions for applicable scope of work to the client which are as follows :

* Core assembly and delivery to CCA
* CCA assembly and delivery to Autoclave
* Winding and clamping of winding and delivery to heating oven
* Transformer Cabling under which
* Marshalling box meter fitting and marshalling box fitting
* Cable tray fitting and cable fitting
* Connection to the equipment
* Conduct wiring as per design

The Point No. 3 of the said agreement sets out the "Service to be Performed " and the primary responsibilities thereof. One of the clauses says the number of Manpower required for the purpose of above scope of work will be the responsibility of the appellant only. This does not denotes that the agreement is for supply of manpower. In order to execute any work or provide any services some sort of manpower is required, however by reason thereof the agreement cannot be construed as one of providing manpower. We are, therefore of the considered view that the authorities below have rightly classified the services rendered by the appellant as one of "Maintenance and Repairs" only rather than for "Supply of Manpower".

10. The next issue arises whether the appellant is entitle to claim the benefit of abatement of duty under Notification No.24/ 2012. The specific case of the revenue is that Notification No. 24 / 2012 is applicable to "Works Contract" and is not applicable to "Maintenance and Repair Services". We have gone through the contents of the said notification and we fined that the revenue is correct in submitting that it applies to works contract. The title of Para 2A of this notification reads as, " Determination of value of service portion in the execution of a works contract." Thereafter the various clauses under Para 2A deals with the issues concerning the works contract. The plea taken by the appellant that they had wrongly mentioned the notification No. 24 /2012 ST 3 dated 6.6.2012 instead of the notification No. 30 / 2012 ST dated 20.06.2012, we find that the appellant had neither issued any bills nor filed the ST 3 Returns showing the category of service as "Manpower Supply". As discussed above, the services rendered by the appellant falls in the category of "Maintenance and Repairs Services" for which no abatement is available under any of the two Notifications. Consequently, the service tax is payable on the whole gross amount received or billed by the appellant for providing the services.

11. The appellant has next contended that under the RCM, the service tax has been paid by the recipient of the service, however perusal of the bills raised, the TDS Certificate of the service recipient does not disclose that the service tax has been paid by the recipient of the service and therefore we do not agree with the submissions made by the appellant.

12. In view of our findings above, we hold that the demand raised under both the show cause notices is recoverable from the appellant along with interest as the entire amount of service tax was not paid by the due date under section 75 of the Finance Act, invoking the extended period of limitation under section 73 as the appellant neither assessed the correct amount of service tax nor revealed the actual amount in the ST 3 returns.

13. We find no reason to differentiate from the impugned order and hence, we confirm the same. The appeal is dismissed accordingly.

[Order pronounced on 09.10.2023]

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Ckp.