

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

**PRINCIPAL BENCH,
COURT NO. IV**

SERVICE TAX APPEAL NO. 54887 OF 2023 (SM)

[Arising out of the Order-in-Appeal No. 242 (RLM) ST/JPR/2022 dated 25/11/2022 passed by The Commissioner (Appeals), Central Excise & CGST, Jaipur.]

**Shri Vikas Singh,
(Prop. of Chambal Motor),**
Near Jagdeesh Tiraha, Bari Road,
Dholpur -328 001.

Appellant

VERSUS

**The Commissioner (Appeals),
Central Excise & CGST,**
NCR Building, Statue Circle, C-Scheme,
Jaipur.

Respondent

APPEARANCE

Shri Bipin Garg, Advocate, Ms. Jwaria Kainaat, Advocate – for the appellant.

Shri Arun Sheoran, Authorized Representative for the Department.

CORAM: HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 55776/2024

DATE OF HEARING : 01.03.2024.

DATE OF HEARING : 17.05.2024.

RACHNA GUPTA

The present appeal has been filed to assail the order-in-appeal No. 242/2022 dated 25.11.2022.

2. The facts relevant for the purpose are that the appellant is having service tax registration and is engaged in providing taxable services namely 'Management, Maintenance or Repair

Service'. From third party information as was received from Income Tax department, revenue came to know that during financial year 2012-2013, the appellant had received total payment of Rs. 34,43,895/- during period 01.07.2012 to 31.03.2013 on which TDS was deducted under Section 194C and Section 194H of Income Tax Act, 1961. Whereas, w.e.f. 01.07.2012 all the services have become taxable except the services mentioned in the Negative list under Section 66D. The services as mentioned above provided by the assessee are neither mentioned under the negative list under Section 66D of the Finance Act, 1994 nor exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 or by any other Notification issued by Government of India under the Finance Act, 1994. The appellant was required to submit documents viz. Income Tax Returns, Balance Sheets, Form 26AS, VAT Returns, Work Orders, Invoices etc. for financial year 2012-2013. But the appellant failed. Therefore service tax liability has been calculated on whole amount received by the assessee, as per third party TDS data for the period financial year 2012-2013. Service Tax of Rs. 4,25,665/- is proposed to be recovered with interest and penalties. Show cause notice (SCN) No. 120/2017-18/362 dated 19.04.2018. The SCN is issued invoking extended period of limitation as the appellant is alleged to have suppressed facts from department with intent to evade payment of service tax.

3. No reply to show cause notice was filed nor appellant appeared before original adjudicating authority except a letter dated 05.12.2018 was submitted based whereupon order-in-original No. 72/2018-2019 dated 06.02.2019 was passed confirming the aforesaid proposal. In an appeal against the said order Commissioner (Appeals) vide order-in-appeal No. 25/2020 dated 05.02.2020 remanded the matter directing fresh decision based on requisite documents to be provided by the appellant. The appellant gave written submission vide letter dated 01.09.2020. The order-in-original No. 42/2020-2021 dated 31.03.2021 was passed again confirming the demand. However, Rs. 56,010/- as already paid by appellant on 30.04.2014 was ordered to be appropriated and balance amount of Rs. 3,69,655/- was ordered to be recovered with interest and penalties. Show cause notice was denied to be barred by time. In an appeal against said order Commissioner (Appeals) has upheld the same vide order No. 242/2022 dated 25.11.2022. Being aggrieved of this order, appellant is before this Tribunal.

4. I have heard Shri Bipin Garg, learned counsel for the appellant assisted by Ms. Jwaria Kainaat and Shri Arun Sheoran, learned departmental representative for the revenue.

5. Learned counsel for the appellant has mentioned that appellant had submitted the defence reply on 1st September 2020 denial all the allegations and explaining the facts that total tax liability can at the most be Rs. 56,010/- which was deposited on

30 April 2014. The said submission was not accepted by the adjudicating authorities below. The findings of Commissioner (Appeals) are alleged to be mere presumption without any evidence. All the details of receipt during the period April to June 2012 of Rs. 25,03,711/- for the period July, 2012 to March 2013 were provided by the appellant to the authorities. The amount received in July 2012 to March 2013 is clearly shown as Rs. 9,40,148/- but still the adjudicating authorities have added the amount of Rs. 25,03,711/- which was received for the period April to June 2012, which is prior to impugned period. This has not been considered by the adjudicating authority below. Order is therefore liable to be set aside. Finally, the demand is objected to be barred by time. Department has not produced any evidence to show that the appellant has suppressed any fact. Thus extended period while issuing the show cause notice in the year 2018 has wrongly been invoked. With these submissions learned counsel has prayed for the order under challenge to be set aside and appeal to be allowed.

6. While rebutting the submissions at the outset, learned departmental representative has reiterated the discussion and findings in the order under challenge as well as in the order-in-original. It is mentioned that despite several opportunities of personal hearing were given to the appellant, but the appellant neither appeared nor provided any relevant and requisite documents before the issuance of the show cause notice. No

written submission was tendered even before the adjudicating authority. The matter was remanded given directions to the appellant to submit all the documents and to make averments. Post remand also several opportunities of personal hearing were given to the appellant, but he did not attend the same except that reply to show cause notice was submitted on 01.09.2020 and once appearance was marked on 20 February 2021. The order under challenge is thus passed due to non-submission of relevant document like payment ledger, Form 26AS, invoices etc.

7. It is mentioned that whatever invoices have been submitted there is apparent over-writing in the dates of the invoices. The said cutting is sufficient act of mis-representation as well as suppression. Hence, extended period has rightly been invoked. The service tax of Rs. 56,010/- which has been already paid by the appellant has duly been appropriated by the adjudicating authority due to which the demand of Rs. 4,25,665/- has been reduced to Rs. 3,69,655/-. The decision in **M/s Kalya Constructions Private Limited versus The Commissioner, Central Excise Commissionerate, Udaipur** vide Final order No. 51550-51551 of 2023 dated 15.11.2023 is not applicable because period involved therein was pre-negative list regime, which is not true for present appeal. With these submissions, the appeal is prayed to be dismissed.

8. Having heard the rival contentions and perusing the entire record, I observe that the impugned show cause notice was

issued based upon the third party information received from the Income Tax Department. The adjudicating authorities have confirmed the proposed demand for want of the requisite documents like invoices and ledgers, Form 26AS etc. No doubt the appellant was given several effective opportunities to appear before the adjudicating authority along with the requisite documents, but it is observed that vide a letter dated 1st September 2020 the appellant had responded to the allegations in the show cause notice. Following documents were annexed with the said letter :-

- (i) The service circular details, the basic framework and methodology of work by the appellant as M/s Tata Motors, authorized service station ;
- (ii) Agreement dated 15.09.2011 between appellant and Tata Motors Ltd. ;
- (iii) Form 26AS for April 2012 to March 2013 ;
- (iv) Invoices of free service from July, 2012 which are liable to service tax on full value ;
- (v) Invoices for warranty, repair from July, 2012 being work contract service, 50% service tax was to be paid by the service recipient ;
- (vi) The value of the goods/the tax as were replaced while rendering services during the impugned period ;
- (vii) The deposit challan dated 30 April 2014 for paying service tax of Rs. 56,010/- ;

(viii) ST-3 returns for the period April – June 2012, July – September 2012. ST-3 return for October 2012 to March 2013 as was filed on 06.05.2014.

9. The order under challenge is also perused. The only dispute in the case is observed to be one in respect of period and amount of income. The case has been adjudicated twice, but with the same findings that all requisite documents were never produced by the appellant despite ample effective opportunities and accordingly the demand, as was proposed in the impugned show cause notice dated 19.04.2018, after adjusting the tax already deposited, has been confirmed for the period 1st July 2012 to 31 March 2013. I further observe that in the said show cause notice demand was proposed based on the information received from Income Tax Department.

10. The appellant vide their reply dated 1st September, 2020 i.e. prior the passing of the impugned order had already supplied the detailed Form 26AS statement/record of Income Tax Department along with the requisite invoices and the documents showing the value of sale of goods while rendering the service. The perusal reveal that the amount received for rendering taxable service for the period w.e.f. July 2012 to March 2013 is Rs. 9,40,184/- only as contrary to Rs. 34,43,895/- as has been mentioned in the show cause notice. This observation itself is sufficient to falsify the above findings in the impugned order-in-appeal. The Form 26AS and related documents as relied upon by

the department are for the period April 2012 to March 2013. The period in dispute is from July 2012 to March 2013. Hence the amount shown received for period April – July 2012 need to be deducted from the total amount shown in the documents relied upon by the department to calculate the amount received by appellant for rendering taxable service during the disputed period.

11. The invoices produced by the appellant reflects that amount of Rs. 4,29,771/- is the value of the parts of vehicle, which were replaced while rendering maintenance services to the vehicles. Though the department has relied upon department clarification Circular No. 96/7/2007 dated 23.08.2007 but the parts replaced cannot be considered as the inputs in providing the service. The transfer of parts of vehicle while rendering service was purely the transfer of property in goods, hence, cannot form the value of the service provided. Thus the appellant activity amounts to works contract service whereupon appellant was entitled for the abatement as has already been claimed by the appellant while depositing the tax liability for the impugned period.

12. The contention of learned departmental representation about intentional cutting in the dates of the invoices on record is also held not relevant for the present purpose as the show cause notice apparently has included the receipts for at longer period than the impugned period of July 2012 to March 2013. This

discussion is sufficient to hold that the appellant had produced sufficient evidence to falsify the contentions raised in the show cause notice. Above all, the demand has been raised merely on the basis of Form 26AS as was supplied by Income Tax Department which records altered dates as mentioned on the invoice. Apparently and admittedly no further investigation has been conducted in this case at the end of appellant by the adjudicating authority. Appellant being a registered service provider is filing the ST-3 returns, demand cannot be raised on the basis of Form 26AS. I draw my support from the decision of this Tribunal in the case of **Piyush Sharma versus Commissioner, CGST & CX, Patna – I** vide Final order No. 77332 of 2023 dated 17 October, 2023.

13. The difference in figures reflected in ST-3 returns and Form 26AS filed under Income Tax Act can also not be the basis for raising service tax demand without examining the reasons for such difference and without examining as to whether the amount which is reflected in income tax return was the consideration for providing any taxable services or the difference was due to any exemption or abatement. The demand cannot be confirmed. I draw my support from the decision of this Tribunal in the case of **Kush Constructions versus CGST Nacin, ZTI, Kanpur** reported as **2019 (24) G.S.T.L. 606 (Tri. – All.)**. The appellant has also shown his eligibility to avail the SSI exemption. In the

light of Notification No. 33/2012-ST dated 20 June 2012, I find no reason to deny the the said contention.

14. Finally it is observed that the original adjudicating authority has acknowledged receiving ST-3 returns filed by the appellant and the deposit of service tax as was self-assessed by the appellant, the same is sufficient to falsify the alleged suppression, on the part of the appellant. I draw my support from the decision of Hon'ble apex Court in the case of **Anand Nishikawa Co. Ltd. versus CCE, Meerut** reported as **2005 (188) E.L.T. 149 (S.C.)** where it has been held and is followed till date that :

"Suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both parties, the omission by one to do what he might have done not that he must have done would not render it suppression". It has been clarified by Hon'ble Supreme court that there must be some positive act from the side of assessee brought on record by department to find willful suppress. In the present case, appellant was regularly filing returns and there is no evidence of any such positive act of appellant as may reveal the malafide intention of appellant to evade tax.

The extended period is, therefore, held to have been wrongly invoked. Decision in **M/s Kalya Constructions Pvt. Ltd.** is held to cover the impugned issue.

15. In the light of entire above discussion, I hereby set aside the order under challenge. Consequent thereto the appeal is allowed.

(Order pronounced in open court on 17/05/2024.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)