

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 52895 Of 2018

[Arising out of Order-in-Appeal No. 528(CRM)/ST/JDR/2018 dated 04.06.2018 passed by the Commissioner (Appeals) of Central Excise & Central Goods and Service Tax-Jodhpur]

M/s Gainwell Commosales Private Limited : Appellant

(Formerly Known as M/s Tractor Waterside, 705
7th Floor, Tower-II, Plot No. 5, Block DP, Sector-V
Salt Lake Kolkata-West Bangal-700091

Vs

Commissioner of CGST & Central Excise : Respondent
-Jaipur-I

NCR Building Statute Circle, C-Scheme, Jaipur
Rajasthan-302005

With

Service Tax Appeal No. 53326 Of 2018

[Arising out of Order-in-Appeal No. 46-47(AK)/ST/JPR/2017 dated 07.02.2017 passed by the Commissioner (Appeals) of Central Excise & Central Goods and Service Tax-Jodhpur]

M/s Gainwell Commosales Private Limited : Appellant

(Formerly Known as M/s Tractor Waterside, 705
7th Floor, Tower-II, Plot No. 5, Block DP, Sector-V
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Commissioner of CGST & Central Excise : Respondent
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Service Tax Appeal No. 53327 Of 2018

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M/s Gainwell Commosales Private Limited : Appellant

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Salt Lake Kolkata-West Bangal-700091

Vs

Commissioner of CGST & Central Excise : **Respondent**
-Jaipur-I
NCR Building Statute Circle, C-Scheme, Jaipur
Rajasthan-302005

With

Service Tax Appeal No. 51196 Of 2020

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-005-006/2020-21 dated 21.07.2020 passed by the Commissioner of Central Goods, Service Tax, Udaipur]

M/s Gainwell Commosales Private Limited : **Appellant**
(Formerly Known as M/s Tractor Waterside, 705
7th Floor, Tower-II, Plot No. 5, Block DP, Sector-V
Salt Lake Kolkata-West Bangal-700091

Vs

Commissioner of CGST & Central Excise : **Respondent**
-Jaipur-I
NCR Building Statute Circle, C-Scheme, Jaipur
Rajasthan-302005

APPEARANCE:
Shri B. L. Narsimhan & Ms. Sukriti Das, Advocates for the Appellant
Ms. Jaya Kumari, Authorized Representative for the Respondent

CORAM :

HON’BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON’BLE Ms. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50522-50525/2025

Date of Hearing:16.04.2025

Date of Decision:25.04.2025

DR. RACHNA GUPTA

The present order disposes of 4 appeals pertaining to the same appellant and involving the same issue, however, for the different periods. The details of the appeals are as follows:-

Appeal Nos.	ST/52895/2018	ST/53326-27/2018	ST/51196/2020
Impugned	No. 528 /2018	No. 46-47/2017 dated	

Order-in-Appeal	dated 4.6.2018 passed by the Commissioner (Appeals), CGST & CE Jaipur	07.02.2017 passed by Ld. Commissioner (Appeals), CGST & CE, Jaipur			
Order-in-Original	No. 58/2014 dated 22.08.2014	No. 11/2013 dt. 12.02.2013	No. 157/2013 dated 30.09.2013	No. 005-006/2020-21 dated 21.07.2020 passed by Ld. Commissioner, CGST & Central Excise, Udaipur in remand proceedings	
Show Cause Notice dated	3.9.2013	14.9.2011	7.8.2012	23.10.2007	22.10.2010
Period in dispute	April 2012 to March 2013	April 2010 to March 2011	April 2011 to March 2012	1.8.2004 to 30.09.2007	1.4.2009 to 31.3.2010
Service Tax	Rs. 13,97,264/-	Rs. 44,34,322/-	Rs. 26,48,329/-	Rs. 1,72,96,652/- [94,97,964 + 77,98,688]	

2. The facts which culminated into the impugned orders are as follows:-

The appellant, herein, Gainwell Commosales Private Limited was earlier known as M/s Tractors India Private Limited. The appellants had obtained the service tax registration for rendering services under the category of Maintenance and Repair Services, Goods Transportation Agency Services and erection and Commissioning Services. During the audit of the records of the appellant, it was observed that the appellants had entered into contract with M/s Hindustan Zinc for maintenance and repair of their heavy dumpers and were collecting charges under the name of operation and maintenance charges per hour basis (M & R Charges) which were collected on the basis of running are per dumper, per day, per rate and per year. Department observed that the appellant was not paying service tax on the entire charges collected from M/s Hindustan Zinc. No tax was being paid on the spare parts charges on the ground that they were

paying VAT on the same. The Department observed that the spare parts charges were also collected from M/s Hindustan Zinc on the basis of running hour per dumper irrespective of actual uses of the dumper.

Department formed the opinion that the impugned spare parts charges were the integral part of the taxable value and thus the appellants were required to pay service tax on the entire value of M & R Charges. With these observations, Show Cause Notice No. 285/2013 dated 30.09.2013 was served upon the appellant proposing the recovery of service tax as mentioned in the above table in respective appeals along with interest and appropriate penalties. The said proposals were initially confirmed vide four respective orders-in-original as mentioned in the above table. The order-in-original dated 22.08.2014 is common two show cause notices as indicated in the above table. The appeals against three of these orders-in-original have been rejected vide two order-in-appeals as indicated in the table above. Being aggrieved of said two order-in-appeals dated 4.06.2018 and 7.02.2017 and of order-in-original dated 21.07.2020, the appellant is before this Tribunal, with four of the present appeals.

3. We have heard Shri B. L. Narisimhan and Ms. Sukriti Das, Advocates appearing on behalf of the Appellants and Ms. Jaya Kumari, Authorized Representative appearing for the Department.

4. Learned counsel for the appellant has mentioned that the appellant had entered into several long term comprehensive Maintenance and Repair Contract with M/s Hindustan Zinc Limited in relation to the heavy earthmoving machineries. These were the composite contracts for supply of spare parts as well as for repair and

maintenance job. In view thereof, the appellants were getting following three consideration:-

- i). R & M Spare Parts charges on which Appellant admittedly paid VAT/sales tax, since this was for supply of spares of machines only.
- ii). Manpower fees on which the Appellant paid service tax, since this was for pure labour charges.
- iii). Logistics fee on which the Appellant paid service tax, since this was for recovery of overheads on the site of provision of services.

It is further submitted that the impugned show cause notices had reached this Tribunal earlier in form of Service Tax Appeal No. 66/2009 and Service Tax Appeal No. 449/2012. Both those appeals were disposed of by this Tribunal vide common Final Order No. 54655-54656/2016 dt. 4.10.2016 with directions for remanding the matter to the Commissioner for re-adjudication after considering the pleas/grounds raised by the appellant. In remand proceedings, the appellant filed the written synopsis on 11.10.2019 but the Commissioner again has confirmed the demand of service tax amounting to Rs. 1,72,96,652/- on the differential value of consideration under sub-clause 1 and 2 as mentioned above, despite that charges under clause 1 are such on which the VAT was paid by the appellant. The said order has been challenged in Service Tax Appeal No. 51196/2020. The remaining three appeals are with respect to the subsequent show cause notices where the demand has been confirmed under Maintenance and Repair Service observing that the present transaction do not fall under Works Contract Service.

4. Learned counsel has impressed upon that in the said composite contracts, the value of the service element and the value of the parts

were indicated separately. Hence, the contracts were in the nature of works contract service. However, at the relevant time i.e. prior to year 2012, the definition of works contract service did not include Maintenance and Repair Services but the issues stands decided in terms of the decision of the Hon'ble Supreme Court in the case of **Commissioner vs. Larsen and Toubro Limited reported as 2015 (39) STR 913 (S.C.)**. Hence, the demand for the period prior 01.07.2012 has wrongly been confirmed.

5. With respect to the demand for the subsequent period under show cause notice dated 03.09.2013 in order-in-appeal No. 528/2018 dated 04.06.2018. Though, the works contract service was also the taxable service but the show cause notice despite that the provisions were amended, post July, 2012 have not raised the demand under the new/appropriate provisions. Resultantly, the show cause notice is a vague notice and the demand cannot be sustained on such show cause notice. With these submissions, three of the orders under challenge (both the orders-in-appeal and one order-in-original as indicated in the table above) are prayed to be set-aside and four of the appeals are prayed to be allowed.

5. Learned DR while making the submissions on behalf of the Department has fairly conceded that the issue with respect to the liability vis-à-vis 'Works Contract Service' stands settled to the effect that there is no service tax liability for services which qualify to be called as 'Works Contract Service' which were rendered prior the concept of Works Contract Service came into statute books i.e. in the

year 2007. However, the findings in the orders-under-challenge are reiterated and the appeals are prayed to be dismissed.

6. Having heard both the parties, we observe that there is no denial about the activity of the appellant to be of the nature, namely, 'Maintenance & Repair Services' (M & R) along with the supply of spare parts i.e. the activity is Composite Service/Works Contract Service instead of service simpliciter/MML. In the light of the facts, the issue to be decided is: Whether the appellant is liable to pay service tax on the differential amount of consideration and actual value of spare parts for the period prior to 01.07.2012 or not?

7. We find that it is a fact on record that maintenance and repair contracts as were entered between appellant and M/s Hindustan Zinc Limited are the composite contracts involving supply of goods as well as for providing the service. Such Contracts where there is a contract of supply of goods as well as of providing services, are termed as 'Works Contracts' and the same were made taxable w.e.f. 01.06.2007 under the category of 'Works Contract Services' as held by the Hon'ble Apex Court in the case of **Commissioner v. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]**. The Hon'ble Supreme Court in **Larsen & Toubro (supra)** in paragraph 24 drew a distinction between the service contracts simpliciter and a composite works contracts which would involve both services and goods and held that it is only w.e.f. June 01, 2007 that composite contracts can be subjected to levy of service tax and not before this date. The relevant portions of the judgment are reproduced below:

"24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines -taxable service as -any service provided. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract."

The Hon'ble Court followed its earlier decision in Gannon Dunkerley, reported as 1959 SCR 379, wherein the court recognized works contracts as a separate species of contract while holding as follows:-

"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned. and will stand untouched by the present judgment."

Therefore, prior to 01.06.2007 also the nature of activity undertaken by the appellant is works contract services but for the period prior to 01.06.2007 covered by the decision of **Larsen & Toubro Ltd. (supra)** this was not liable to pay Service Tax at all. W.e.f. 01.06.2007.

8. We find that similar issue has come up before this Tribunal in the case of Xerox India Ltd. reported as 2019 (20) GSTL 96 (Tri.-Chand.) wherein this Tribunal has held that if service has been provided along

with material and the value of material supplied cannot be vivisected, in that circumstances, appropriate classification of the service shall be works contract service and same is not taxable prior to 01.06.2007. Hence, prior to 1.6.2007, even the service portion of a composite contract was outside the ambit of service tax net. Accordingly, the repair and maintenance services under clause (zzg) of Section 65(105) refers only to contracts for service simpliciter and not composite contracts like the present ones. Therefore, no service tax is leviable on such composite contracts upto 1.6.2007. Similar proposition has been reiterated in the following cases:

- **Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes, 2022 (63) GSTL 257(SC)**
- **SEW Infrastructure Limited (Formerly Known As "M/S Sew Constructions Ltd.) vs. Commissioner Of Central Excise, Raipur, 2023 (5) TMI 764-CESTAT NEW DELHI**

9. We further observe that with effect from 1.6.2007, service portion of composite works contract was levied to service tax only in respect of the following five categories of contracts as mentioned under definition of 'works contract' under Explanation to clause (zzzza) of Section 65(105) of the Finance Act, 1994:

- contracts relating to erection and commissioning of plant and equipment;
- construction of immovable property and civil structures
- construction of a new residential complex or a part thereof
- turnkey projects; and

- repair services only for immovable property, civil structures and residential complex

Hence, repair and maintenance contracts for movable properties was not covered in the scope of works contract services even w.e.f. 1.6.2007. It is only w.e.f. 1.7.2012, with the introduction of the Negative List Regime, that the definition of 'works contract' was expanded to include repair and maintenance services of movable properties. Hence, the composite contracts for repair and maintenance of movable properties are not leviable to service tax for the period upto 1.7.2012.

10. This Tribunal in subsequent decision in the case of **BEML Limited vs. Commissioner of CGST & Customs, Central Excise vide Final Order No. 58577 of 2024 dated 13.09.2024** has considered the contracts of similar nature of providing Maintenance and Repair Services along with the spare parts for the heavy machinery along with these spare parts. The Bench after considering the Tribunal's earlier decision in the case of **M/s Voltas Limited vs. Commissioner of CGST & Central Excise, Kolkata reported as 2023 (9) TMI 1255-CESTAT KOLKATA** and in the decision passed by the Principal Bench in the case of **M/s M. G. Motors vs. Commissioner of Central Excise, Alwar reported as 2020 (4) TMI 380 CESTAT NEW DELHI** has held as follows:-

"In view of the principles laid down by the aforesaid Division Benches of the Tribunal, it has to be held that the Commissioner was not justified in including the value of spare parts in the assessable value of service, as the contract was a composite contract involving supply of goods (spare parts and

consumer bills) as well as provision of services (repair and maintenance). It needs to be noted that service tax was not leviable on composite contracts up to 01.07.2012 and the period involved in this appeal is from April 2009 to June 2012. Such being the position, the impugned order dated 30.07.2018 passed by the Commissioner cannot be sustained."

11. In the appellant's own case titled as **M/s Gainwell Commosales Private Limited vs. Commissioner of Central Excise and Service Tax, Ranchi reported as 2023 VIL 600 CESTAT KOLKATA**, this Tribunal has set-aside the similar demands on merits as well as grounds of limitation. Resultantly, we hold that the confirmation of demand for the period till 01.07.2012 is not sustainable. The contracts in question were not for the service simpliciter of Maintenance & Repair but were in the nature of Works Contract Service.

12. Coming to the impugned demand for the period post 01.07.2012, we observe from the show cause notice dated 03.09.2013 as issued for the post July 2007 amendment but the amended provisions have not been mentioned in the said show cause notice. It is utmost mandatory for the Department to first establish that the nature of the services subsequently and the respective charging provisions and the heavy burden is cast upon the department to prove that the demand is sustainable under the said charging provisions but as already observed above. The show cause notice has no proper and correct charging provisions. The show cause notice is nothing but a vague show cause notice. The demand on such show cause notice is not sustainable. We draw our support from the decision of Hon'ble Supreme Court in the case of **Commissioner vs. Dilip Kumar &**

Company 2018 (361) ELT 577 (S.C) wherein the Hon'ble Supreme Court held as follows:-

"43. There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously Impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view."

The said decision has been followed by this Tribunal in the case M/s **Frisco Food Private Limited vs. Commissioner of Customs, Customs and Central Excise, Dehradun reported as 2021 (11) TMI 428-CESTAT NEW DELHI** wherein it was held as follows:-

"13. It is undisputed that the charging section under which the Department sought to demand service tax under reverse charge mechanism post 1st July, 2012 in this case is Section 66A read with Section 65(105)(zzb). These sections did not exist after 1 July 2012 and, therefore, we find that any reference to any other legal provisions which may have existed during the relevant period and which could have been invoked is irrelevant. It is a well-settled legal principle that the charging section in any

taxing statute must be strictly construed and in case of any ambiguity it should be interpreted in favour of the assessee.

14. In the present case, the charging section which has been invoked for the period post 2012 does not exist at all and, therefore, there is no question of any ambiguity. Even if there is an ambiguity, it should go in favour of the assessee."

In the present case also, the charging section which has been invoked for the period post 2012 does not exist at all, and therefore, the benefit of such omission and of the show cause notice being vague has to go in favour of the appellants. We draw our support from another decision of this Tribunal in the case of **Indian Association and Tour Operators vs. Union of India reported as 2017 (5) GSTL 4 (Delhi)**, hence, we hold that the demand even for the period beyond July 2012 is liable to be set-aside.

13. In view of the entire above observation with respect to four of the show cause notices and two impugned orders-in-appeal, we hold that the demand has been wrongly confirmed. Hence, the orders under challenge are hereby set-aside. Consequent thereto, four of the appeals are hereby allowed.

(Order pronounced in the open Court on 25.04.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.