

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

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 52108 of 2019

(Arising out of Order-in-Original No. RPR/EXCUS/000/COM/024/2019 dated 16.05.2019 passed by the Principal Commissioner, Central Tax & Central Excise, Raipur)

Bridge & Roof Co. (India) Ltd.

Appellant

Kankaria Centre, 5th Floor,
2/1 Russel Street, Kolkata-700071.

Versus

**Commissioner, Central Tax & Central Excise, Respondent
Raipur**

Central GST Building, Dhamtari Road,
Tikrapara, Raipur

Appearance:

Present for the Appellant: Shri Tarun Chatterjee & Shri Sourav Basu, Advocates

Present for the Respondent: Shri Manoj Kumar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble Mr. A.K. Jyotishi, Member (Technical)

Date of Hearing: 07/07/2025

Date of Decision: 24/09/2025

Final Order No. 51353/2025

Dr. Rachna Gupta:

The present is an appeal against the Order-in-Original bearing No. 024/2019 dated 22.5.2019. The facts in brief, which culminated into the said order are that M/s Bridge & Roof Co. India Ltd.¹ are registered with service tax department for providing taxable services in the nature of 'Works Contract Services' and 'Commercial or Industrial Construction Services'. They are engaged in providing services to various PSUs. The appellants are

¹ The appellant herein

also recipient of services as that of 'Goods Transport Agency Service', 'Rent-a-Cab Service' and 'Manpower Recruitment or Supply Agency Service' on which they are liable to pay service tax under Reverse Charge Mechanism with effect from 01.07.2012.

1.1 During the course of their audit difference in the value of services as per RA bills issued and the one declared by the appellant in their ST-3 returns was observed. On the analysis of the documents, it was observed that while providing services to the PSUs like BHEL, BGR and CSPGL (at Marwa site), the appellant failed to declare the true value of taxable services in their periodical ST-3 returns in respect of Work Contract Services provided between the period from 2012-13 to 2017-18. It was observed that Rs. 80,01,601/- amount of service tax has been short paid by the appellants under forward charge mechanism and an amount of Rs. 1,43,31,345/- was observed to have been short paid under Reverse Charge Mechanism. Accordingly, the total amount of service tax of Rs. 2,23,32,946/- was proposed to be recovered from the appellants along with proportionate interest and appropriate penalties vide show cause notice No. 15-12/2017 dated 21.11.2017. The said proposal has been confirmed vide the aforesaid order in original. Being aggrieved, the appellant is before this Tribunal.

2. We have heard learned counsels for the appellant and learned Authorized Representative for Revenue.

3. Learned counsel for the appellant mentioned that appellant is a Central Public Sector Undertaking engaged in execution of

construction projects on turnkey basis for PSUs. It is further submitted that the service tax under forward charge mechanism has been demanded on the amount of which is inclusive of 'free issue material'. Similar show cause notice dated 21.01.2017 was earlier served upon the appellant on the basis of audit alleging non-payment of service tax on free issue of material. The said show cause notice was adjudicated vide order in original No. 145/2012 31.12.2012. Thus, the activity of the appellant including the receipt of free material was well within the knowledge of the department since 2012. Thus the present show cause has wrongly invoked the extended period of limitation. The appellant has relied upon the decision in the case of **Nizam Sugar Vs. Collector of Central Excise**². The demand confirmed toward forward charge is liable to be set aside on this single score.

3.1 while submitting on merits with respect to service tax confirmed under Reverse Charge Mechanism, it is mentioned that the appellant had already paid tax during the financial year 2016-17 and 2017-18 (up to June 2017). However, department has not considered the said payment. In fact, appellant had paid more tax than what was payable as the figures for both the financial years are in negative. Otherwise also, the whole exercise is mentioned to be revenue neutral. As the tax, if at all payable under Reverse Charge Mechanism, the same amount is available Cenvat on the very same day. Demand is not sustainable on this ground also. Decision in the case of **Jet Airways (India) Ltd. Vs.**

2 2006 (197) ELT 464 (SC)

Commissioner³ is relied upon. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has reiterated the findings arrived at in the order in original. It is submitted that demand on both the counts has meticulously being dealt with by the original adjudicating authority. With regard to invocation of extended period of limitation, it is submitted that appellant had deliberately not assessed their tax liability. It is only after audit that the short payment/non-payment of service tax got revealed, hence the extended period had rightly been invoked. Finally relying upon the decision in the case of:

(i) **UG Sugar & Industries Ltd. Vs. Commissioner of C. Ex., Meerut-II**⁴;

(ii) **Warsi Buildcon Vs. Pr. Commissioner, Indore**⁵

the appeal is prayed to be dismissed.

5. Having heard both the parties, the rival contentions and perusing the entire record, we observe that following two issues need to be adjudicated:

(i) Whether there is short payment of service tax on account of difference in the amount shown in RA bills and taxable value declared in the corresponding ST-3 returns?

(ii) Whether there is non-payment of service tax under Reverse Charge Mechanism on services like GTA,

³ 2017 (7) GSTL J35 (SC)

⁴ 2011 (266) ELT 399 (Tri.-Del.)

⁵ (2024) 17 Centax 37 (Tr.-Del.)

Manpower Recruitment Agency and Rent-a-Cab service,
the appellant being the recipient thereof?

Issue wise findings are as follows:

Issue No 1

6. It is an admitted fact that the demand of service tax on this issue has been raised merely on the basis of difference between the taxable value of RA bills and ST-3 returns. There is no denial also to the fact that the gross taxable value shown in the show cause notice is inclusive of value of free issue of material as is also apparent from para 5 of the show cause notice. Department has not produced any evidence to the contrary that service tax amounting to Rs. 91204965/- (Rs.34008908 by cash & 57196057 by Cenvat credit) stands paid by the appellant is proportionate to gross value excluding the value of free issue material. In absence thereof demand of service tax amounting to Rs. 80,01,601/- is nothing but the outcome of assumptions. The appellant has placed Chartered Accountant certificate to the effect that the service tax paid at instance of audit includes the value of the free issue material which is refundable. The appellant has established from the documents that the gross value shown in the ST-3 returns for the period 2012-13 to 2017-18 is without including the value of free issue material. Hence the value of ST-3 returns was different from value of RA bills.

It has been the settled position that no service tax is payable on free issue of materials as has been held by Hon'ble Supreme Court in **Commissioner of Service Tax Vs. Bhyana Builders (P)**

Ltd.⁶ wherein Hon'ble Supreme Court held that the hon'ble Supreme Court in para 16 held that 'the definition of 'gross amount charged' given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider. Thus in view of the above ruling of the hon'ble Apex court, demand of service tax on 'free issue material' is bad in law and is not sustainable. In view of these observations, we hold that service tax demand under Forward Charge Mechanism for rendering Works Contract Services has wrongly been confirmed against the appellant.

Issue No. 2

7. The demand under this issue has been confirmed for want of the documentary evidence to counter the allegations. As submitted by the appellant, the alleged payment of service tax under Reverse Charge Mechanism stands already settled in the audit report. This fact stands confirmed vide the department's own letter dated 27.11.2013. Hence demand is liable to be set aside. The demand beyond this period is already held unsustainable by the original adjudicating authority itself.

Finally coming to the plea of show cause notice being barred by time, it is an apparent fact on record that earlier also there were raised similar audit objections by the department which stand decided in the year 2012 itself. The facts as observed in the present proceedings were already in the knowledge of the department since the year 2012. For present show cause notice issued subsequently, invocation of extended period is not available to the department. We draw our support from the decision of hon'ble Supreme Court in the case of **P&B Phamaceuticals (P) Ltd. vs. Collector of Central Excise**⁷ has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the

7 (2003) 3 SCC 599 = 2003 (153) ELT 14 (SC)

knowledge of the department. It was observed in para 14 as follows:

"14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the in notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

This judgment was followed by this Court in the case of **ECE Industries Limited v. Commissioner of Central Excise. New Delhi**⁸. In para 4, it was observed:

"4. In the case of M/s. P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise⁹ the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked."

8. As already observed above, that the demand has been proposed based on appellant's own documents that too at the stage of subsequent show cause notice, we hold that the suppression of

8 (2004) 13 SCC 719 = 2004 (164) ELT 236 (SC)

9 2003 (2) SCALE 390

facts/mis-representation has wrongly been alleged against the appellant. Department is not entitled to invoke the proviso of Section 73(1) of Finance Act 1994. Thus the show cause notice gets hit by the period of limitation. Confirmation of such time barred demand is liable to be set aside. Since there is no iota of evidence to prove that the appellant got deliberately in defiance of law or was guilty of conduct contagious or dishonest or acted in conscious disregard its obligation, we hold that the penalty has also been wrongly imposed upon the appellant. We draw our support from the decision of Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. Vs. State of Orissa**¹⁰ .

9. In the light of entire above discussion on both the issues framed and decided in favour of the appellants, we hereby set aside the order under challenge. Consequent thereto, the appeal is allowed.

(Pronounced in open Court on 24.09.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(A.K. Jyotishi)
Member (Technical)

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