

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

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 52181 of 2016

(Arising out of Order-in-Original No. 08/2016-ST dated 22.04.2016 passed by the Additional Director General (Adjudication), Directorate General of Central Excise Intelligence (Adjudication Cell), New Delhi)

M/s Redington India Limited

Appellant

SPL, Guindy House, 95, Mount Road,
Guindy, Chennai-600032.

Versus

**Directorate General of Central Excise &
Intelligence (Adjudication Cell)**

Respondent

West Block VIII, Wing No. 6, 2nd Floor,
R.K. Puram, New Delhi-110066

Appearance:

Present for the Appellant: Dr. C. Manickam, Shri Alok Agarwal, &
Shri Prachit Mahajan, Advocates

Present for the Respondent: Ms. Jaya Kumari, Authorized
Representative

AND

Service Tax Appeal No. 52472 of 2016

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**Directorate General of Central Excise &
Intelligence (Adjudication Cell)**

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Appearance:

Present for the Appellant: Ms. Jaya Kumari, Authorized
Representative

Present for the Respondent: Dr. C. Manickam, Shri Alok Agarwal, &
Shri Prachit Mahajan, Advocates

CORAM:**Hon'ble Dr. Rachna Gupta, Member (Judicial)****Hon'ble Ms. Hemambika R. Priya, Member (Technical)****Date of Hearing : 29/08/2025****Date of Decision :30/10/2025****Final Order Nos. 51632-51633/2025****Dr. Rachna Gupta:**

The present order disposes of two cross appeals filed assailing the Order-in-Original bearing No. 08/2016-ST dated 22.04.2016 vide which the demand of service tax of Rs. 12,59,54,171/- has been confirmed along with the interest and imposition of penalty under Section 77 and 78 of Finance Act. However, penalty under Section 76 of the Act has not been imposed. The appellant is in appeal against the confirmation of the demand and imposition of penalty whereas the department is aggrieved of non-imposition of penalty of Section 76 of the Act. The facts which culminated into the said order, succinctly are as follows:

2. M/s Redington India Pvt. Ltd.¹ are the authorized distributor of M/s Hawlett Packard India (P) Ltd.². The appellants are registered with the service tax department for providing services under the category of Management, Maintenance or Repair services³. DGCEI, unit received an information that M/s Redington India Ltd. was not discharging their service tax liability

1 the appellant herein

2 M/s HP India, in short

3 MMRS

correctly on the value of services provided to their clients for after sale service of HP Indigo Printers. Department found that the package of service included free supply of spares and consumables for operational maintenance of the printers sold to their clients. But the appellant, with an intent to evade service tax, deliberately divided the said package of service into two different agreements and were not paying service tax on the consideration received against the services provided under consumables and part support agreement. The two different agreements are:

- (i) Service level Agreement;
- (ii) Consumables and Parts Support Agreement.

Based on the said information search was conducted at the appellant's premises and two documents (agreements) were seized. Statements of all concerned were recorded. The statement of Tax Manager Shri Dhiraj Bindal of M/s HP was also recorded. From the perusal of the said two documents/agreements, department formed the opinion that the appellant's under the name of MMRS were actually providing Works Contract Services⁴, since they had agreed to provide maintenance support to their customers after expiry of re-warranted period of machines sold by the appellant. The reimbursement of spare parts found defective or faulty was the part of said service which was done against a fixed monthly fee. Alleging two agreements to be an eye wash to render a composite service of works contract, the department alleged that the value received against the

4 WCS

consumables and spare parts is includible in the gross value of rendering the said composite taxable service.

3. With these observations a Show Cause Notice bearing No. 325/2013/1697 dated 23.04.2015 was served upon the appellant invoking Rule 2A of the Service Tax (Determination of Value) Rules, 2006. Service tax amounting to Rs. 12,59,54,171/- was proposed to be recovered along with the proportionate interest and the appropriate penalties. An amount of Rs. 4 crore vide Challan No. 50458 dated 08.01.2024 (Rs. 3 crores), and Challan No. 52271 dated 21.03.2024 (Rs. One Crore) was deposited by the appellant during investigations. The said amount was proposed to be appropriated. Penalties under Section 76, 77 and 78 of the Finance Act, 1994 were proposed to be imposed on the appellant. The said proposal has been confirmed vide the impugned order except that the penalty under Section 76 of Finance Act has not been imposed. Being aggrieved of the order both the parties are before this Tribunal.

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

5. Learned counsel for the appellant submitted that the appellant is an authorized distributor of M/s HP India and thus is engaged in the sale in the domestic market of the printers imported by M/s HP India as well as the printers which are directly imported by the appellant. Appellant is also engaged in sale of consumables and spares to those to whom the printers are sold in the domestic market. For the purpose, the appellant has entered

into an agreement dated 01.12.2003 with M/s HP India for the purpose of reselling of goods. There were two subsequent addendums to this agreement. Perusal whereof reveals that the appellant is engaged in reselling the commercial printers and also the consumables imported by M/s HP India Ltd. The said transaction of sale of printers is purely and exclusively in the nature of sale which is liable for payment of VAT. The applicable amount of VAT stands already paid by the appellant to authorized State VAT authorities. It is impressed upon that there is no element of service between the appellant and M/s HP India Ltd. Learned counsel further submitted that after purchasing the printers from M/s HP India Ltd., the appellants sell the same to the end customers in authorized State of India by virtue of two agreements.

- (i) Service level Agreement;
- (ii) Consumables and Parts Support Agreement.

It is submitted that both the agreements are separate and independent between the appellant and its end customers. It is submitted that the appellant is discharging the service tax liability with respect to the consideration received in terms of service level agreement and is discharging the VAT liability with respect to consumable and parts support agreement. Thus, the allegation leveled in the show cause notice are based on the false and incorrect assessment that the spare and consumables are supplied on free of cost basis. The proposal of show cause notice to add value of such spares and consumables in the value of service under the heading and support and maintenance service up to 30th June

2012 and under the head Works Contract Service with effect from 1st July 2012 is absolutely an erroneous proposal. Confirmation thereof is liable to be set aside on this score itself.

6. Learned counsel further submitted that the definition of service in Section 65B (44) of Finance Act, 1994 specifically excludes transfer of property in goods. It is submitted that element of service and element of sale are otherwise mutually exclusive. Learned counsel has placed reliance upon the following decisions:

- (i) **BSNL Vs. Union of India⁵;**
- (ii) **Imagic Creative (P) Ltd. Vs. Commissioner of Central Tax⁶;**
- (iii) **M/s Technocrate Transformers Vs. CCE, Kanpur⁷**
- (iv) **Balaji Tirupati Enterprises Vs. CCE, Meerut⁸;**
- (v) **M/s Deluxe Colour Lab (P) Ltd. Vs. CCE, Jaipur⁹**

7. Learned counsel further submitted that this is the second round of litigation. At the first round of litigation, this Tribunal vide Final Order bearing No. 51692–51693/2018 dated 20.04.2018 had allowed the appeal holding that the appellant is an authorized distributor of sale of HP and is also providing after sales service and consumables and spare parts supply to their customers. Two separate agreements for the purpose were acknowledged by the Tribunal. Accordingly, while relying upon the decision of Hon'ble High Court of Allahabad in the case of **Commissioner of Customs**

5 2006 (2) STR 161

6 2009 (9) STR 337

7 2015 (39) STR 996

8 2014 (2) TMI 1137

9 2009 (13) STR 605

Vs. J.P. Transformers¹⁰. The Tribunal held that service tax cannot be demanded on the component representing the value of goods and materials used for carrying out repairs. Department filed an appeal before Hon'ble Supreme Court against the said order. The Hon'ble Supreme Court vide order dated 11.09.2024 has remanded back the matter to the Tribunal. It is submitted that the decision of **J.P. Transformers** (supra) was rightly relied upon by the Tribunal in which it was held that when the agreements and invoices reflecting the cost of material and labour separately and that the assessee had duly paid VAT/Excise duty on goods sold. No service tax would be leviable on the value of materials. Relying upon the said decision and the decisions as already mentioned above, learned counsel has prayed for setting aside the order confirming demand and imposition of penalty upon the appellant.

8. While submitting with respect to the cross appeal of the department, it is submitted that customers of the appellant are located in different states of the country. Resultantly, the appellant had registered itself with the VAT department of respective State Governments and has duly paid the amount of VAT on the consumables and spare parts sold by the appellant to its end customers. It is impressed upon that during the material period of time, rate of VAT paid was @ 12.5% which was more than the then rate of service tax which was 10.3%/12.36%. The relationship of appellant with M/s HP India was on principle to principle basis. Pursuant to the separate agreements entered by the appellant with the end customers the appellant had raised separate invoices one

10 2014 (36) STR 961

for supply of consumables another for supply of spares and the third one for rendering the services. The question of any alleged mis-representation or suppression of fact on the part of the appellant does not at all arise. It is submitted that the penalty under Section 76 has rightly been denied. The other penalties imposed are also liable to be set aside. Reiterating that the activity of the appellant vide two separate agreements is wrongly held to be a composite activity of works contract that the impugned order is prayed to be set aside. Appeal filed by the appellant assessee is prayed to be allowed whereas one filed by the department is prayed to be dismissed.

9. Learned Departmental Representative submitted that the buyers of the appellant entered into a comprehensive maintenance contract and "service level agreement" and "consumables and parts support agreement" were part thereof. Hence the two contracts cannot be said to be independent of each other. They were interlined and not distinct. The appellant has wrongly split them into goods and service transactions. The services were actually classifiable as 'maintenance or repair service' for the period 01.10.2009 till 30.06.2012 and as 'works contract service' for the period 01.07.2012 to 30.09.2014. Benefit of Notification No. 12/2003-ST dated 20.06.2003 for the earlier period and of service tax (Determination of Value) Rules, 2006 for the later period when the services get classified as works contract had been duly extended while making the assessment. Learned Departmental Representative further submitted that the combined reading of both the 'Service Level Agreement' and 'Consumable & Part Support

Agreement', makes it clear that the said agreements were in fact an arrangement for comprehensive maintenance and operation of HP Indigo Printers. It is undisputed that the appellant did not maintain any record customer-wise and year-wise supply of Consumables and Spares sent to individual customers, under the said agreement. The appellant's own remarks on the invoices/challans were to the effect that the parts were not for sale and that they were against maintenance contract and hence without any commercial value, the plea of sale is not sustainable. In the circumstances, it was very much clear that the amounts on which, VAT had been paid, does not represent the value of Consumables and Parts supplied, and hence, their claim of deduction of the whole of the said amount while computing the value of taxable services was not sustainable. Therefore, the said contention has rightly been rejected and thus for the period from 01.07.2012 to 30.09.2014 Service Tax (including Cess) amounting to Rs. 11,76,43,916/- is rightly held recoverable from them.

10. Learned Departmental Representative emphasized that in the instant case an ingeniously crafted modus operandi of cleverly splitting the transaction was adopted. The contracts do not reflect the true state of affairs. It was thus a case of misrepresentation and suppression of the material facts from the department. Thus extended period rightly invoked in this case and appellants were also liable for penal action under Section 78 of the Act. Further the appellant had failed to issue invoice, indicating the correct amount and description of Services rendered and also failed to maintain proper records, therefore, have rightly been penalized rendering

them liable to penalty under Section 77 of the Finance Act. The appellant is liable to be penalized under Section 76 also. With these submissions, the appeal filed by the assessee is prayed to be dismissed and appeal filed by the department is prayed to be allowed.

11. Having heard both the parties, the rival contentions and perusing the entire record, it is observed that the appellant initially entered into an agreement dated 01.12.2003 with M/s HP India Ltd. for purchasing HP Indigo Digital Printers for the purpose of reselling the same. The appellant also agreed for purchasing consumables imported by M/s HP India Ltd. While selling these printers to the end customers in India located in different States, the appellant subsequently entered into two agreements :

- (i) Service level agreement;
- (ii) Consumables and part support agreement.

It has been alleged by the department that the spares and consumables are supplied by the appellant to its end customers on free of cost basis without any consideration towards the supply of spares and consumables. Accordingly, the Department added the value of those spares and consumables into the value of Support and Maintenance services rendered by the appellants to their end customers. Department alleged the services to be taxable as Maintenance, Management and Repair services up to 30th June 2012 and for the period subsequent thereto as works contract services. From these observations, the issue to be adjudicated is:

"Whether the two agreements are two distinct and independent contracts or both are the part of one composite contract being intentionally splitted by the appellant to evade the payment of service tax."

12. Foremost, we need to look into the effect of the indivisible contracts vis-à-vis work contract. This issue came up for consideration before Hon'ble Supreme Court in the case of **State of Madras Vs. Gannon Dunkerley & Co. (Madras) Ltd.**¹¹ wherein it was clearly held:

"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts can assume are set out in Hudson on Building Contracts. It is possible that the parties might enter into distinct and for money consideration, and the other for payment of remuneration for services and for work done."

13. After the said decision, the Parliament amended the Constitution to insert clause 29-A in Article 366 of the Constitution of India, sub-clauses (a) to (f) whereof read thus:

"(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by installments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not

intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made”

14 Clause (a) covers a situation where the consensual element is lacking. This normally takes place in an involuntary sale. Clause (b) covers cases relating to works contracts. This was the particular fact situation which the Court was faced with in **Gannon Dunkerley** and which the Court had held was not a sale. The effect in law of a transfer of property in goods involved in the execution of the works contract was by this amendment deemed to be a sale. To that extent the decision in **Gannon Dunkerley** was directly overcome. Clause (c) deals with hire purchase where the title to the goods is not transferred. Yet by fiction of law, it is treated as a sale. Similarly the title to the goods under Clause (d) remains with the transferor who only transfers the right to use the goods to the purchaser. In other words, contrary to **A.V. Melyappan's** decision a lease of a negative print of a picture would be a sale. Clause (e) covers cases which in law may not have amounted to sale because the member of an incorporated association would have in a sense begun both the supplier and the recipient of the supply of goods. Now such transactions deemed sales. Clause (f) pertains to contracts which had been held not to amount to sale in **State of Punjab v. M/s, Associated Hotels of India Ltd**, (supra). That decision has by this clause been effectively legislatively invalidated.

15. All the clauses of Article 366(29A) serve to bring transactions where one or more of the essential ingredients of a sale as defined

in the Sale of Goods Act, 1930 are absent, within the ambit of purchase and sales for the purposes of levy of sales tax. To this extent only is the principle enunciated in **Gannon Dunkerly Limited**. The amendment especially allows specific composite contracts viz. works contracts [Clause (b)], hire purchase contracts [Clause (c)], catering contracts [Clause (e)] by legal fiction to be divisible contracts where the sale element could be isolated and be subjected to sales tax.

16. **Gannon Dunkerley** survived the 46th Constitutional Amendment in two respects. First with regard to the definition of 'sale' for the purposes of the Constitution in general and for the purposes of Entry 54 of List II in particular except to the extent that the clauses in Art. 366(29A) operate. By introducing separate categories of 'deemed sales', the meaning of the word 'goods' was not altered. Thus the definitions of the composite elements of a sale such as intention of the parties, goods, delivery etc. would continue to be defined according to known legal connotations. This does not mean that the content of the concepts remain static. Courts must move with the times. But the 46th Amendment does not give a licence for example to assume that a transaction is a sale and then to look around for what could be the goods. The word "goods" has not been altered by the 46th Amendment. That ingredient of a sale continues to have the same definition. The second respect in which **Gannon Dunkerley** has survived is with reference to the dominant nature test to be applied to a composite transaction not covered by Article 366(29A). Transactions which are mutant sales are limited to the clauses of Article 366(29A). All other

transactions would have to qualify as sales within the meaning of Sales of Goods Act 1930 for the purpose of levy of sales tax."

17. While appreciating the above interpretation of the provision hon'ble Supreme Court in the case of **BSNL Vs. UOI**¹² has held:

"48. What are the "goods" in a sales transaction, therefore, remains primarily a matter of contract and intention. The seller and such purchaser would have to be *ad idem* as to the subject matter of sale or purchase. The Court would have to arrive at the conclusion as to what the parties had intended when they entered into a particular transaction of sale, as being the subject matter of sale or purchase. In arriving at a conclusion the Court would have to approach the matter from the point of view of a reasonable person of average intelligence.

Thus it becomes clear that by reason of the said provision, therefore, a legal fiction was created so as to make the supply of goods involved in a works contract, subject to tax.

18. The question came for consideration again in **Builders' Association of India & Ors. Vs. Union of India & Ors.**¹³ And **M/s Gannon Dunkerley** (supra). It has expressly been laid down therein that the effect of amendment by introduction of clause 29A in Article 366 is that by legal fiction, certain indivisible contracts are deemed to be divisional into contract of sale of goods and contract of service. In **Gannon Dunkerley** (supra), it had been held:

"Keeping in view the legal fiction introduced by the Forty-sixth Amendment whereby the works contract which was entire and indivisible has been altered into a contract which is divisible into one for sale of goods and other for supply of labor and services, the value of the goods involved in the execution of a works contract on which tax is leviable must exclude the charges which appertain to the contract for supply of labour and services."

12 2000 (2) STR 161 (SC)

13 (1989) 2 SCC 645

19. We further observe that Section 67 of the Finance Act, 1994 itself recognizes the fact that goods and materials would indeed be sold during the course of the maintenance or repair. Further, the Hon'ble High Court of Karnataka in the case of **Modi Xerox Ltd. Vs. State of Karnataka**¹⁴ has held that during the course of providing maintenance service in Annual Maintenance Contract the supply of materials can be considered as sale and this position has been affirmed by Supreme Court in 2005-ST3-GJX-0143-SC. Therefore, it is now settled law that even during the course of rendering maintenance service there is the element of sale of goods.

20. Our attention was also invited to the Notification No. 12/2003, dated 20.06.2003 issued by the Government which recognizes the fact and exempts the value of materials sold during provision of a service. We also rely on the decision of this Bench in the case of **Shilpa Colour Lab Vs. CCE**¹⁵ which passed the order after considering Section 67, Notification No. 12/2003-ST and the Circular dated 03.03.2006 issued by the Board. It has been held that service tax is not payable on the amount on which sales tax is paid. A similar view has also been expressed in the case of **Kone Elevators India (P) Ltd. Vs. CST**¹⁶.

21. Hon'ble Supreme Court in the case titled as **Imagic Creative (P) Ltd.** (supra) has also held that the payment of service tax and VAT are mutually exclusive. Hon'ble Supreme Court in the case of

14 1999 (114) STC 424

15 (2007) 8 STT 102 (Bang.-CESTAT)

16 (2007) 10 STT 133 (Chennai-CESTAT)

State of Karnataka Vs. Pro Lab & Ors¹⁷ while dealing with the State VAT Act with regard to imposition of sales tax on processing and supplying photographs, Photoprints & Photonegatives, held that while going into this exercise of the divisibility, dominant intention behind the contract, remains primary. The State legislature is held empowered to segregate the goods part of the works contract and to impose sales tax thereupon.

22. Hon'ble Supreme Court in another case of **Xerox Modicrop Ltd. Vs. State of Karnataka**¹⁸ dealt with the contention of the assessee that in the case of maintenance and service contract, the costs of toners and developers are not deemed to be sold and accordingly not taxable to VAT. It was held by the Apex Court that toners and developers get consumed after the same are put in the machine. But the moment, the toner & developer are put in the Xerox machine, they are not consumed and are tangible goods in which property can pass and accordingly it was held that toners and developers are supplied by the assessee in the maintenance contract and are exigible to Sales Tax/VAT. Hon'ble Allahabad High Court in the case of **CCE and CE Vs. Balaji Tirupati Enterprises**¹⁹ wherein under the repair and maintenance service, goods used were held as deemed to be sold. It was held that the same are not in the purview of levy/service tax. As such, goods are deemed to be sold under the contract.

17 2015-TIOL-08-SC-CT-LB

18 (2005) 7 SCC 380

19 2013 (32) STR 530 (All.)

23. This Tribunal Bangalore Bench in the case of Wipro **GE Medical Systems Pvt. Ltd. Vs. Commissioner of Service Tax**²⁰, dealt with the issue; whether cost of material is includible in gross value, taxable to service tax. It was held that spare parts used in the course of maintenance service under Annual Maintenance Contract are considered to be sold and no demand is sustainable on the value of spare parts and materials. The said decision of the Tribunal have been upheld by the Apex Court reported at 2012 (28) STR J44 (SC)

24. As brought to our notice the Education Guide to Service Tax also dealt with the subject of works contract also involved:

“Point 2.6.3: – “If the transaction represents two distinct and separate contracts and is discernible as such then contract of service in such transaction would be segregated and chargeable to service tax if other elements of taxability are present. This would apply even if a single invoice is issued

Point 2.6.4: “Therefore if, in the course of providing a service, goods are also being sold by a service provider for which there is such documentary proofs as to make the sale a distinct and a separate transaction, then the activity of sale of goods gets excluded from the definition of service itself. The essence and intent of notification 12/2013 has, therefore, been fully captured in the definition of service itself.

The above clarification confirms the position that there is no change in the treatment in providing deduction of value of goods from the gross value even after 1.7.2012 and the position applicable in terms of Notification No. 12/2013 would need to be equally applied after 1.7.2012 also”.

25. Reverting to the facts of the present case, it is observed that the two contracts involved in the present case are about two distinct purpose, one is for providing consumables and spare parts and another is for providing Maintenance Service of the printers sold to the end consumers not the composite works contracts but

the independent contracts of service and sale but are the independent contracts of sale of consumables and spare parts and another for support and maintenance service. There is no dispute to the fact that the value of consumables used in providing the service has also been separately indicated. One of these agreements is purely for sale of goods as discussed above the same cannot be the subject matter of service tax. In service contract also the value of consumables has separately been indicated. The value of both the contracts is distinctly defined. The intention of parties is clear to keep separated the service part from the goods which are to be provided to the consumers while maintaining the printer purchased by them. There is no denial of the department that VAT is paid by the appellant. Department has not produced any evidence that the VAT paid was with reference to some other goods. The confirmation of demand on the value of goods also treating both the contracts as one composite contract is thus held to be the result of presumption and assumption of the adjudicating authority.

26. We also observe that statement of Shri Dhiraj Bindal, has mainly been relied upon by the department while proposing confirmation of the impugned demand. But vide his statement dated 16.07.2014 he had categorically stated that the Revenue received from sale of spare parts and samples arrived at by click method is booked in their financial accounts, under the accounting head "Trading of Goods" and that they have not claimed SAD refund on imported spare parts and consumables. It has also been clearly stated by him that M/s HP Machines to M/s Redington India Ltd. -

the appellant work on principle to principle basis and M/s Redington India Ltd. further sell the printers and spare parts to the end customers with the responsibility of installing those machines at the premises of the customers. The mere fact that M/s HP does not sell spare and consumables in the open market and M/s Redington India Ltd. are also not authorize to sell the same in open market, the same cannot be the ground to hold that sale of such consumable and spare parts to the buyers of the respective machines and cannot be an agreement of sale of goods.

27. As already held above that the distinct activity, distinctable values and the intention of the parties to the contract are the prime concern, the two agreements are held to be two distinct agreements; one being of service simpliciter of MMR and another being the sale of goods. For the period post 01.07.2012, the service is WCS but the value of goods involved, if seggregable, is to be included in the taxable value for service rendered. The two agreements in question are wrongly held to be one composite agreement of rendering taxable service. We have also perused the decision of this Tribunal Delhi Bench in the case of **M/s J.P. Transformers Vs. CCE** (supra) based whereupon the impugned order under challenge was set aside by this Tribunal at first round of litigation vide Final Order No. 51692-51693/2018 dated 20.04.2018, it is observed that M/s J.P. Transformers (supra) has held as follows:

"On payment of Excise duty and Sales Tax/VAT on goods used transaction to be treated as deemed sale of goods. Agreement and invoices showing cost of material and labour separately and establishing fact of payment of Excise duty, VAT/CST on sold goods. Service tax not leviable in light of declaration of law."

28. In totality of entire above discussion, we hereby answer the aforesaid question in favour of the appellant holding that out of two separate agreements the agreement which pertains to the sale of goods is absolutely distinct from the another service agreement. The VAT has admittedly been paid on viz-a-viz sale agreement which is exclusive to service tax. Hence the value of goods is not to be included in the gross value of taxable service. We hold that service tax demand has wrongly been confirmed against the appellant. Resultantly, we hereby set aside the order under challenge. Consequent thereto, the appeal (ST/52181/2016) stands allowed. The appeal (ST/52472/2016) filed by the Revenue is dismissed.

(Pronounced in open Court on 30.10.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

RM