IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75537 of 2014

(Arising out of Order-in-Original No. 04/Commissioner/CE/Haldia/Adjn/2014 dated 30.01.2014 passed by the Commissioner of Central Excise & Service Tax, Haldia Commissionerate, 25, Princep Street, Kolkata – 700 072)

M/s. M.A. Enterprise **: Appellant**
Chandipur, Malancha,
P.O. Rakhajungle, Kharagpur – 721 301
District: Paschim Medinipur (W.B.)

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Haldia Commissionerate,
25, Princep Street, Kolkata – 700 072

APPEARANCE:

Shri J.K. Mittal, Advocate for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75729 / 2024

DATE OF HEARING: 20.03.2024

DATE OF DECISION: 22.04.2024

Order : [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. M.A. Enterprise aggrieved against the impugned Order-in-Original No. 04/Commissioner/CE/Haldia/Adjn/2014 dated 30.01.2014 passed by the Ld. Commissioner of Central Excise & Service Tax, Haldia Commissionerate, wherein the demand of Service Tax of Rs.50,49,848/- (including Education Cess) was confirmed. The impugned order also imposed penalty of Rs.5,000/- each under Section 77(b) and Section 77(e) of the Finance Act, 1994 and also imposed equal amount of tax as penalty under Section 78 of the Act.

2. The brief facts of the case are that the appellant is a proprietorship firm engaged in the business of commercial construction, transportation of goods by road, clearing and forwarding agency service and supply of tangible goods. They are duly registered with the Department with effect from 03.03.2006 and have been filing Service Tax returns regularly. The appellant has been awarded a contract as 'sub-contractor' by M/s. Naresh Kumar & Co. Private Limited [hereinafter referred to as 'NKCPL'] vide letter dated 10.03.2007 for unloading of raw materials from rake at TATA Metaliks Ltd. Rly Sidings.

2.1 The appellant raised invoices to the main contractor viz. NKCPL without charging Service Tax and the appellant intimated the same to the Department vide their letter dated 21.11.2011.

3. A Show Cause Notice dated 08.10.2012 came to be issued to the appellant *inter alia* demanding Service Tax of Rs.50,49,848/-.

4. The said Notice was adjudicated vide the impugned order wherein the demand of Service Tax was confirmed along with interest and penalty. Aggrieved against the impugned order, the appellant is before us.

5. The appellant submits that they were under the *bona fide* belief that the main contractor having paid the Service Tax on the entire value of the transaction including the value of services rendered by the sub-contractor and hence they were not liable to pay Service Tax. It is their contention that there is no revenue loss to the Government as the main contractor has paid the Service Tax on the full value.

5.1. The appellant also submits that the entire issue is barred by limitation of time. They submit that the demand has been confirmed in the impugned order for the period from 2007-08 to 2011-12 and the Show Cause Notice in this case has been issued on 08.10.2012; during the relevant period, it is submitted that the Show Cause Notice for the normal period of limitation has to be issued within one year; that since there is no suppression of fact involved in the present case, the extended period of limitation cannot be invoked. The appellant thus submitted that the entire demand is barred by limitation.

5.2. Further, it is submitted that if the extended period of limitation cannot be invoked, the demand cannot be confirmed for the normal period as well.

5.3. In view of the above, the appellant prayed for setting aside the impugned order.

6. The Ld. Departmental Representative for the Revenue submits that the Master Circular No. 96/7/2007-S.T. dated 23.08.2007 has categorically stated that a sub-contractor is also liable to pay Service Tax even if the main contractor discharges tax on the gross value. Accordingly, he supported the impugned order.

7. Heard both sides and perused the appeal documents.

8. We observe that the appellant has rendered clearing and forwarding service to the main contractor viz. NKCPL without charging Service Tax and not paid Service Tax on the services rendered by them to the main contractor/NKCPL. The appellant contends that they were under the *bona fide* belief that they need not pay Service Tax on the value of services provided

to NKCPL since the main contractor had paid Service Tax on the entire value.

8.1. We find that the issue has been clarified vide Circular No. 96/7/2007-S.T. dated 23.08.2007 wherein it has been categorically stated as under: -

> "A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.
>
> Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided."

8.2. From the above, we observe that after issue of the Circular mentioned above, there is no ambiguity regarding the liability of a sub-contractor to pay Service Tax even in cases where the main contractor pays Service Tax on the gross value. The demand involved in this Notice pertains to the period from 2007-08 to 2011-12 i.e., after the issue of the Circular mentioned hereinabove. Thus, we do not agree with the submission of the appellant that they were not aware of the liability to Service Tax as a sub-contractor.

8.3. We observe that the Larger Bench of the Tribunal in the case of *Commissioner of Service Tax v. M/s. Melange Developers Pvt. Ltd. [2019 (9) TMI 518 - CESTAT, New Delhi]* has decided that even when the main contractor has discharged Service Tax, the sub-contractor is required to pay Service Tax. We also find that in the case of *M/s. Akash Engineering v. Commissioner of Central Excise, Visakhapatnam-I [Service Tax Appeal No. 1186 of 2012 - CESTAT, Hyderabad]* on the issue whether the sub-contractor is liable to pay Service Tax when the main contractor paid Service Tax on the whole contract value, it has been decided as under: -

> *"5.7 The Tribunal in very recent decisions as pointed by the Department has followed the decision in the case of Melange Developers Ltd., to hold that the sub-contractor is liable to pay service tax even if the main contractor has discharged service tax on the contract value. Judicial propriety makes it binding to follow the Larger Bench decision in order to reduce conflict of decisions.*
>
> *5.8 In my view, the decision of Larger Bench in the case of Melange Developers & Co. would apply. I therefore agree with the view taken by brother Member (Technical) and hold that the Appellant is liable to pay service tax on the value of sub-contract/work done inspite of the fact that the main contractor has discharged the service tax on the whole contract value.*
>
> *5.9 The reference is answered and the difference of opinion stands resolved as above. The papers may be placed before the Division Bench for deciding the appeal."*

In view of the above, we hold that after issuance of the Master Circular No. 96/7/2007-S.T. dated 23.08.2007, the Tribunals have consistently taken the view that a sub-contractor is liable to pay Service Tax even if the main contractor has discharged Service Tax on the gross contract value.

8.4. In view of the decision of the Larger Bench cited above and by relying on the Board Circular (*supra*), we hold that the sub-contractor is liable to pay Service Tax even if the main contractor pays Service Tax on the gross value of the services.

9. In their submission, the appellant contends that the entire demand raised is barred by limitation of time. We observe that the demand has been raised in this Notice for the period from 2007-08 to 2011-12 vide Show Cause Notice issued on 08.10.2012 which is beyond the normal period of limitation of one year. We find that the appellant has raised the invoices to their main contractor viz. NKCPL without charging Service Tax and the same was intimated to the Department vide letter dated 21.11.2011. Thus, we observe that the appellant has no *mala fide* intention to evade payment of Service Tax. We also observe that the Department has not adduced any evidence to the effect that the appellant has suppressed any information from the Department.

9.1. We observe that the appellant has been filing their returns regularly, thereby intimating the liability to Service Tax. Thus, we observe that no suppression of facts with intention to evade payment of tax exists in this case.

9.2. Accordingly, we hold that the extended period of limitation cannot be invoked against the appellant. For the same reason, the penalties imposed on the appellant are set aside.

10. In their submission, the appellant has also stated that once it is held that the extended period of limitation is not invokable, the demand cannot be confirmed for the shorter period also. We do not agree

with the submission of the appellant. As the Circular No. 96/7/2007-S.T. (*supra*) issued by the Board is very categorical about the liability of the appellant, as a sub-contractor, the liability of the appellant to pay Service Tax is not in dispute after issuance of the above Circular. Hence, we hold that the appellant is liable to pay Service Tax, if any, for the normal period, along with interest.

11. In view of the above, we pass the following order: -

(1) The demand of Service Tax raised by invoking the extended period of limitation against the appellant is set aside. The appellant is liable to pay the Service Tax for the normal period, along with interest.

(2) Penalty imposed against the appellant is set aside.

12. The appeal is disposed of on the above terms.

(Order pronounced in the open court on **22.04.2024**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd