

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1**

Service Tax Appeal No.75671 of 2016

(Arising out of Order-in-Original No.36/COMMR/ST-I/DE-NOVO/KOL/2015-16 dated 15.02.2016 passed by Principal Commissioner of Service Tax-I, Kolkata.)

M/s. Unicon (India)

(167/4, Lenin Sarani, 3rd Floor, Kolkata-700072.)

...Appellant

VERSUS

Pr. Commissioner of Service Tax-I, Kolkata

.....Respondent

(Kendriya Utpad Shulk Bhavan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

WITH

Service Tax Appeal No.75994 of 2017

(Arising out of Order-in-Appeal No.68/ST-I/KOL/2017 dated 28.02.2017 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s. Unicon (India)

(167/4, Lenin Sarani, 3rd Floor, Kolkata-700072.)

...Appellant

VERSUS

Pr. Commissioner of Service Tax-I, Kolkata

.....Respondent

(Kendriya Utpad Shulk Bhavan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri P.Das, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)
FINAL ORDER NO. 77586-77587/2025**

DATE OF HEARING : 28.10.2025
DATE OF DECISION : 28.10.2025

ASHOK JINDAL :

Both the appeals are having common issue, therefore, both are disposed of by a common order.

2. The facts of the case are that the appellant was engaged in supply of Aluminium Doors, Windows, Partition Walls and fixing the same in the building as per order placed by their clients and the principal contractor. The appellant was also supplying the materials as well as rendering the services. They were working mainly for the principal contractor M/s. Gannon Dunkerley & Co. Ltd. and also worked for the private parties. The appellant is paying Sales Tax, which comes approximately 70% of the total contract value. The appellant did not pay Service Tax during the period 2005-06 and 2006-07 and obtained registration on 19.06.2007 under 'Commercial or Industrial Construction Service' and they were paying Service Tax from 01.04.2007 availing the benefit of Notification No.01/2006-ST dated 01.03.2006. The first show cause notice was issued to the appellant demanding Service Tax under the category of 'Commercial or Industrial Construction Service' by denying the benefit of Notification No.18/2005-ST dated 07.06.2005 and Notification No.01/2006-ST dated 01.03.2006 and adjudication took place and demand of Service Tax was confirmed for the period 2005-06 to 2009-10 under the category of 'Commercial or Industrial Construction Service'. Another show cause notice was issued for the period April 2011 to September 2011 on the same activity demanding Service Tax under 'Commercial or Industrial Construction Services'/'works Contract Services' by denying the benefit of exemption Notifications. The matter was adjudicated, demand of Service Tax was confirmed. Against those orders, the appellant preferred appeal before this Tribunal and this Tribunal vide Final Order No.A/234/KOL/2013 dated 31.07.2013 passed the following order :-

"5. We find that the issue involved in the present case is liability of service tax on the services viz. commercial and industrial construction services rendered by the applicant. We find that the applicants are engaged in providing services under the category of commercial or industrial service. Undisputedly, the services rendered by the applicants included in the scope of the work are viz. supplying, fabricating and

Service Tax Appeal No.75671 of 2016
AND
Service Tax Appeal No.75994 of 2017

erecting, including assembling fitting and fixing of Aluminium doors and windows and installation of sun control film on glass etc. The appellant claimed that they are entitled to the benefit of Notification No.1/2006-ST dated 1/03/2006 and accordingly discharged service tax after availing abatement of 67% of the value. Further, we find that the said services are rightly held by the Ld.Commissioner as finishing services and accordingly fall outside the purview of the said notification No.1/2006-ST dated-1/3/2006. The alternative plea of the appellant, however, is that they have paid VAT on the materials supplied in rendering the said service and the value of the material should be excluded from the total value of the services in view of Notification No.12/2003-ST dated 20/6/2003. It is fairly accepted that this plea has not been made before the adjudicating authority and accordingly not considered. We find that this Tribunal in similar circumstances has remanded the case to the lower authority to consider the benefit of Notification No.12/2003-ST dated 20/6/2003. We find that the applicant had also claimed that from the total liability of Rs.59.41 Lakhs, the main contractor, M/s. Gannon Dunkerly had already discharged service tax to the tune of Rs.28.84 Lakhs (approx.). This fact thought claimed before the adjudicating authority, the same has not been considered. We find that the principal contractor has categorically stated that they have discharged the service tax against five projects allotted to the present appellant. We agree with the Ld.A.R. for the Revenue that these facts need verification. However, we also agree with the submission of the Ld.A.R. for the Revenue that the appellant be directed to deposit the admitted liability before remanding the case to the lower adjudicating authority for determination of the issues. Accordingly, the Appellant are directed to deposit Rs.4,32,345/- within a period of Six weeks from today and report compliance directly to the Commissioner. Consequently, we remand the case to the adjudicating authority for consideration of their alternate plea of eligibility of Notification No.12/2003 ST dt.20.06.2003 and also their claim that Service Tax of Rs.28.84 (approx.) paid by their principal contractor M/s. Ganon Dunkerley. Both sides are at liberty to adduce evidences in their favour. Needless to mention that the appellant be

given reasonable opportunity of hearing. The Ld.Commissioner would proceed with the adjudication after noting the compliance. The Appeal is allowed by way of remand on the above terms. S.P. disposed off."

3. In remand proceedings, it was the direction of the Tribunal for consideration of their plea that Notification No.12/2003-ST dated 20.03.2003 is also applicable to them and giving the benefit of that Notification adjudication is to be done. In compliance of that order benefit was denied to the appellant saying that appellant has produced only Sales Tax Returns and has not submitted other documents to ascertain that the appellant have supplied the goods or not and passed the impugned orders. Against those orders, the appellant is before us.

4. The Ld.Counsel for the appellant submits that it is an admitted fact that appellant is filing Sales Tax Returns and showing that they are paying VAT on the part of the value of their contract and for remaining part they are paying Service Tax. In that circumstances, they are entitled for the benefit of Notification No.12/2003-ST dated 20.06.2003. Therefore, the impugned demand is not sustainable against the appellant. To support this contention he relies on the following decisions :

- (a) Commissioner of Service Tax-V, Mumbai v. UFO Moviez India Ltd.
[2022 (61) GSTL 4 (SC)]
- (b) Imagic Creative Pvt.Ltd. v. Commissioner of Commercial Taxes
[2008 (9) STR 337 (SC)]
- (c) Kingmakers IAS Academy v. Commissioner of GST & C.Ex., Chennai
[2022 (61) GSTL 599 (Tri.-Chennai)]
- (d) Sai Consulting Engineers Pvt.Ltd. v. CCE & ST, Ahmedabad
[2018 (9) GSTL 102 (Tri.-Ahmd.)]

5. On the other hand, the Ld.AR for the Department submitted that the appellant has not produced other evidence to show that they have supplied the goods along with services, therefore, the demand is rightly confirmed.

6. Heard the parties, considered the submissions.

7. In this case it is admitted fact that the appellant is supplying the goods along with services. In that circumstances, the appropriate classification of the activity undertaken by the appellant is 'Works Contract Service', which was applicable from 01.06.2007 and no demand has been raised against the appellant under 'Works Contract Service'. In remand proceedings, this Tribunal has directed that as per Notification No.12/2003-ST dated 20.06.2003 the benefit to be extended to the appellant. As per the said Notification, if assessee has not taken Cenvat credit on the material which has been sold by the appellant while providing services, the appellant is not liable to pay Service Tax on the value of supply of goods. Admittedly, there is no allegation of availment of Cenvat credit by the appellant, in that circumstances, the appellant is entitled to take benefit of the Notification No.12/2003-ST dated 20.06.2003 as materials are supplied, while providing the service and on rest of the amount the appellant is liable to pay Service Tax which the appellant has already paid. In that circumstances, we hold that the demand of Service Tax is not sustainable against the appellant. Consequently, no penalty is imposable.

8. In view of the above, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)