CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 86163 of 2023
(on behalf of Appellant)

In

Service Tax Appeal No. 87320 of 2016

(Arising out of Order-in-Original No. NSK-EXCUS-001-COM -002-16-17 dated 14.07.2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik-I)

M/s Hindustan Aeronautics Ltd. **.... Appellant**
Aircraft Division, Ojhar, Tal. – Niphad,
Nashik – 422 207

Versus

Commissioner of Central Excise, Customs & .... Respondent
Service Tax, Nashik-I
Plot No. 155, Sector P-34, NH "Jaishtha & Vaishakh"
CIDCO, Nashik – 422 008

WITH

Service Tax Miscellaneous Application No. 86160 of 2023
(on behalf of Appellant)

In

Service Tax Appeal No. 85007 of 2017

(Arising out of Order-in-Original No. NSK-EXCUS-001-COM-009-16-17 dated 30.09.2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik-I)

M/s Hindustan Aeronautics Ltd. **.... Appellant**
Aircraft Division, Ojhar, Tal. – Niphad,
Nashik – 422 207

Versus

Commissioner of Central Excise, Customs & .... Respondent
Service Tax, Nashik-I
Plot No. 155, Sector P-34, NH "Jaishtha & Vaishakh"
CIDCO, Nashik – 422 008

AND

Service Tax Miscellaneous Application No. 86161 of 2023
(on behalf of Appellant)

In

Service Tax Appeal No. 86124 of 2019

(Arising out of Order-in-Original No. NSL/CGST-ST/002/COM/15/2018-19 dated 12.12.2018 passed by the Commissioner of CGST & Central Excise, Nashik-I)

M/s Hindustan Aeronautics Ltd. **.... Appellant**
Aircraft Division, Ojhar, Tal. – Niphad,
Nashik – 422 207

Versus

Commissioner of Central Excise, Customs & .... Respondent
Service Tax, Nashik-I
Plot No. 155, Sector P-34, NH "Jaishtha & Vaishakh"
CIDCO, Nashik – 422 008

AND

Service Tax Miscellaneous Application No. 86162 of 2023
(on behalf of Appellant)

In

Service Tax Appeal No. 86412 of 2022

(Arising out of Order-in-Original No. NSL/CGST-ST/002/COM/05/2020-21 dated 02.12.2020 passed by the Commissioner of CGST & Central Excise, Nashik-I)

M/s Hindustan Aeronautics Ltd. **.... Appellant**
Aircraft Division, Ojhar, Tal. – Niphad,
Nashik – 422 207

Versus

Commissioner of Central Excise, Customs & .... Respondent
Service Tax, Nashik-I
Plot No. 155, Sector P-34, NH "Jaishtha & Vaishakh"
CIDCO, Nashik – 422 008

Appearance:

Shri Rajan Mishra a/w Shri Mihir Deshmukh & Suryakant Singh, Advocates for the Appellants

Shri Piyush Bade, Auth. Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87456-87459/2023

Date of Hearing: 21.11.2023
Date of Decision: 21.11.2023

Per: S.K. Mohanty

The applicants/appellants have filed these miscellaneous applications under Rule 23 of CESTAT (Procedure) Rules, 1982 for submission of the additional evidences, which are to the effect that the exemption benefit provided under Notification No.12/2003-S.T. dated 20.06.2003 should be made available to them. Through these applications, the applicants/

appellants have prayed for consideration of the documents such as sample invoices, fixed price quotation for the corresponding invoices etc., for consideration of the appeals by the Tribunal. On perusal of those additional evidences/ documents submitted by the applicants/appellants through these miscellaneous applications, we find that such evidences/documents had already been considered by the department in the Show Cause Notices (SCNs) and the adjudication orders already passed. On a query from the Bench regarding consideration of the miscellaneous applications, learned Advocate appearing for the applicants/appellants fairly concedes that those documents have already been dealt with by the department and accordingly, prayed for withdrawal of such applications. Prayer made by the learned Advocate is considered and therefore, the miscellaneous applications are dismissed as withdrawn.

2.1 Briefly stated, the facts of the case are that the appellants herein M/s Hindustan Aeronautics Limited, Air Craft Division is engaged in the manufacture, repair and overhaul of various aircrafts operated by Indian Air Force, Indian Navy, Indian Army, Coast Guard, Border Security Force. The activities undertaken by the appellants is considered as a taxable service and for that purpose, the appellants got themselves registered with the jurisdictional Service Tax authorities, having registration certificate No. AAA CH 3641RST014. During the course of rendering of repair and overhaul services, the appellant also replaces worn out and damaged/repaired parts and components. The cost of such parts and components is identified, based on the records maintained by the appellants. The value of parts and components replaced during the course of the repair activity is recovered by the appellant as 'reimbursement' from the recipient of such service. For claiming reimbursement of such amount, the appellant raises a common invoice on periodic basis for recovery of the value of parts/spares, and service charges. The appellants had duly discharged the service tax liability on the service portion (labour charges) and profit related to such labour charges. During the course of audit of the records maintained by the appellant, the department had observed that the appellants did not include the cost of parts and spares replaced and the profit element involved in supplying the goods for determining the taxable value, for the purpose of payment of service tax thereon. Accordingly, it was alleged by the department that the appellants had short paid the service tax amount during the disputed period. On the basis of audit objection, the department had initiated show cause proceedings against the appellants, which culminated into various adjudication orders (for short, referred to as 'the impugned orders'), wherein service tax demand along with interest were confirmed and penalties were imposed on the appellants under various provisions of the Finance Act, 1994. The details of the adjudged demands confirmed on the appellants for different periods are summarized herein below:

Sl. No.	Appeal No.	Period	Issue	Amount of Service Tax demand & Penalty
1	87320/ 2016	April, 2013 to March,2014	Levy of service tax on material component used for providing the taxable services under the category of 'Management, maintenance or repair service'	Service Tax Rs. 20,81,36,591/- & Penalty Rs. 2,08,13,659/-
2	85007/ 2017	April, 2014 to March,2015	-Do-	Service Tax Rs. 28,63,56,480/- & Penalty Rs. 2,86,35,648/-
3	86124/ 2019	April, 2015 to June, 2017	-Do-	Service Tax Rs. 199,94.02 lakhs & Penalty Rs. 199.94 lakhs
4.	86412/ 2022	October, 2011 to March,2013	-Do-	Service Tax Rs. 1,65,96,906/- & Penalty Rs. 83,18,453/-

2.2 Feeling aggrieved with the impugned orders, the appellants had preferred these appeals before the Tribunal.

3. Learned Advocate appearing for the appellant submitted that the value of goods and materials supplied by the appellant during repair and maintenance should not be added to the taxable value of the service for the purpose of levy of service tax thereon. In this context, he has relied upon various orders passed by this Tribunal in the case of appellant itself, reported in 2010 (17) S.T.R. 249 (Tri.-Bang.), 2014 (34) S.T.R. 874 (Tri.-Bang.) and Final Order No. A/86655/2018 dated 01.03.2018 passed in Appeal No. ST/86342/2013.

4. On the other hand, learned AR appearing for Revenue reiterated the findings recorded in the impugned order, in support of confirmation of the adjudged demands on the appellants.

5. Heard both sides and examined the case records.

6. For carrying out the activities of repair/overhaul of the aircrafts, and for determination of the price thereof, the Government of India had constituted the 'Pricing Policy Review Committee' (PPRC), having representation from the Department of Defence Production in the Ministry of Defence (MoD), Finance Wing of MoD and the appellant. Upon detailed verification of various data available in different divisions of the appellants, which are involved in provision of such activities, the PPRC adopts the pricing mechanism, known as 'Fixed Price Quotation' (FPQ).The FPQ comprise of various elements such as, material cost, labour cost (including SMH and MHR), other costs related to the product viz. Sundry Direct Charges (SDC), Deferred Revenue Expenditure (DRE) etc., warranty for the workman ship (i.e., material and labour cost) based on the percentage approved by PPRC and applicable profit at the rate of 10% on the material and conversion cost, as per the pricing policy. The said pricing data is accepted by the PPRC and thereafter approved by the Ministry of Defence, in the Government of India.

7. On perusal of the break-up of FPQ prepared for the relevant period, we find that the appellant had bifurcated the service element and the profit component thereon for consideration of value of the services for payment of service tax. Since, the value of taxable services was arrived at after deducting the value of replaceable parts/spares, the appellants had entertained the belief that the cost towards supply of such parts/spares shall not be subjected to levy of service tax and accordingly, did not pay service tax attributable to such cost of parts/spares. However, the department had countered the views of the appellants, contending *inter-alia,* that there is no transfer of goods or materials by the appellants to the service recipient and that since the goods and materials are actually used for provisioning of the service under the category of 'management, maintenance or repair service', the same should appropriately be termed as 'service', in terms of Section 65B(44) of Chapter V of the Finance Act, 1994.

8. The phrase 'service' has been defined in Section 65B(44) ibid, as under:

" *'service' means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; ……."

8.1 On reading of the above definition clause, it makes the position clear that supply of goods is specifically excluded from the definition of service and as such, the value of goods is not subject to levy of service tax. On perusal of the FPQ, we find that the appellants had clearly demonstrated the material cost as well as the labour costs including the profit element thereon, and other expenses in order to arrive at the contractual price fixed as per the FPQ. Thus, it is evident that the appellant had maintained adequate records to show the actual cost of materials used for carrying out the repair/overhaul of the aircrafts and get the same reimbursed from the service recipients.

8.2 Section 66B ibid contains the charging provision for levy of service tax at the specified rate on the value of the services, other than those specified in the negative list. However, the Central Government in exercise of the powers conferred by Section 93 ibid, had issued the Notification No.12/2003-S.T. dated 20.06.2003, in exempting the goods and materials sold by a service provider to the recipient of service. The exemption provided under the said notification is to the effect that the value of the goods and materials sold during the course of provision of service, should not be exigible to levy of service tax. Availment of the benefit of service tax exemption as per the said notification, is subject to fulfilment of the condition that there is documentary proof, specifically indicating the value of the such goods and materials used for provision of such service.

8.3 We find that based on the FPQ prepared by the appellant for the relevant period, the department had verified the invoices issued by the appellant, indicating split-up figures for various components of value and accordingly, issued the show cause notice, proposing for recovery of service tax demand on the appellant. The annexure to the SCNs have captured the details of invoices issued by the appellant for different periods. For illustration, we may refer to such annexure prepared for the period April, 2013 to March, 2014, which is as under:

Annexure-A to the SCN of M/s. HAL F. No. V(ST)15-01/Comm. Adj./HAL/2015-16 dtd. [illegible]

Details of invoices for the period April-2013 to March-2014

(Rs. in lakhs)

Sr.No.	Year	Invoice No.	Type of Repair	Total FPQ Value (Rs. in lakhs)	Labour cost plus profit	Total value of material supplied by HAL including profit	Value of material of HAL	Profit on material of HAL	SDC Sundry Direct charges	Value of Material supplied by IAF	insurance on material supplied by IAF	Profit received by HAL on mateial supplied by	Rate of Service Tax	Unpaid Service Amt.
1	2	3	5	6	7	8	9	10	11	12	13	14	15	16
1	2013-14	CU2248	Repair/Overhaul/servicing	1138.65	829.74	214.17	194.7	19.47	94.74	0	0	0	12.36%	26.47
		CU2285		1169.03	811.56	262.19	238.35	23.84	95.28	0	0	0	12.36%	32.41
		CU2794		1138.14	817.11	226.3	205.72	20.57	94.73	0	0	0	12.36%	27.97
		CU2779		1062.13	765.46	203.3	184.82	18.48	93.37	0	0	0	12.36%	25.13
		CU2328		1050.24	734.44	222.64	202.4	20.24	93.16	0	0	0	12.36%	27.52
		CU2126		1032.84	747.08	192.91	175.37	17.54	92.85	0	0	0	12.36%	23.84
2	2013-14	TU656		144.74	31.32	113.42	103.11	10.31	0	0	0	0	12.36%	14.02
3	2013-14	C1678		245.45	182.7	20.34	18.49	1.85	42.4	0	0	0	12.36%	2.51
4	2013-14	Rotables		14008.25	5093.93	8664.18	7876.52	787.65	250.15	0	0	0	12.36%	1070.89
5	2013-14	Site Repairs		1214.86	1214.86	0	0	0	0	0	0	0	12.36%	0.00
6	2013-14	Mirage Overhaul		173.82	52.74	91.14	80.99	10.15	29.94	0	0	0	12.36%	11.26
7	2013-14	21 MIGDL/M(77/96)-ERV		106.01					106.01	0	0	0	12.36%	0.00
		21 MIG BIS/TR (75/69)-ERV		106.01					106.01	0	0	0	12.36%	0.00
8	2013-14	BIS UPGRADE SDC		126.30					126.3	0	0	0	12.36%	0.00
		SU 30 ROH SDC		902.63					902.63	0	0	0	12.36%	0.00
9	2013-14	ROH Sales		23703.03	17074.09	6628.94	6026.31	602.63	0	0	0	0	12.36%	819.34
		GRAND TOTAL		47322.13	28355.03	16839.53	15306.78	1532.73	2127.57	0	0	0		2081.37
			(Amt in actual)	4732213000	2835503000	1683953000	1530673000	153273000	212757000					208136590.8

20,81,36,591/-

Checked

(A.G. Ganvir)
Inspector
Central Excise & Service Tax,
Manmad Range, Manmad
T&R Division, Nashik

Verified

(H.P. [illegible])
Superintendent
Central Excise & Service Tax,
Manmad Range, Manmad
T&R Division, Nashik

8.4 On examination of the above computation made by the department, we find that on the 'total value of material component including profit', as at column (8) in the above chart/annexure, the department had computed the service tax liability for confirmation of demands on the appellant. For arriving at such figure, the department had verified the details of invoices submitted by the appellant. Thus, it can be said that the appellant had submitted adequate records for verification by the department so as to exactly identify the amount of labour/other element and the element of value of material including the profit thereon. Hence, in our considered opinion, the benefit of exemption provided under Notification dated 20.06.2003 (supra) should be available to the appellants.

8.5 Further, we also find that the issue arising out of present dispute is no more *res integra*, in view of the decisions referred (supra), relied upon by the appellants. Upon analysis of the notification dated 20.03.2003 (supra), the Co-ordinate Bench of this Tribunal in the case of appellant by Final Order No. 1221/2009 date 10.09.2009 in Appeal No. ST/271/2008 reported in *2010 (17) STR 249 (Tri-Bang.)* has held that the benefit provided thereunder should be available. The relevant paragraphs in the said order are extracted below:

> ***"5.*** *We have considered the submissions made at length by both sides and perused the records. It is undisputed that the issue involved in this case is regarding the Service Tax liability and the benefit of Notification No. 12/2003-S.T., dated 20-6-2003 as regards the reduction of value of goods and materials sold by service provider from the gross value of taxable services. It is also undisputed that the appellant is entering fixed price quotation for doing the work of Ministry of Defence. On the perusal of the records and the invoices produced by the ld. Jt.CDR, we find that the appellant is specifically showing in the invoices cost of the materials and cost of labour, separately. The only contention of the ld. Jt.CDR is that they are not paying sales tax. On the specific query from the Bench, the ld. Consultant produces copies of returns and documents for the sales tax paid. It is his submission that the appellant M/s. HAL as an entity pays sales tax for all the divisions and he produces copy of the same.*
>
> ***6.*** *On further scrutiny of the records before us, we find that the appellant while raising the invoices clearly indicates that fixed price quotation and cost of the materials and the activity of repairs as considered by them as services rendered and it is seen that they are discharging the Service Tax liability on the amount shown as labour cost. We are convinced that the appellant has correctly availed the benefit of the Notification No. 12/2003-S.T. and the said benefit of Notification cannot be denied to them. It is the condition of the notification that there should be documentary proof specifically indicating the value of the goods and materials, which in the case before is on record. We also find that the decision of this Bench in the case of the appellants' Helicopter Division will squarely cover the issue in favour of the appellant. We reproduce the relevant paragraphs which are as under:-*
>
> > *"6. We have considered the submissions made at length by both the sides and perused the records. First and the foremost issue to be decided in this case is whether the value of the parts/materials consumed by the appellant needs to be included for arriving at the Service Tax liability of the appellant. On the factual matrix we find that the invoices which were produced before us clearly indicate materials charges and labour charges differently and we also find that in the very same invoices clearly indicate the discharge of Central Sales Tax*

as the amount of material cost. The invoices produced before us are not disputed by the Revenue. On perusal of the invoices, we find that the contention of the ld. Counsel for the appellant that they are charging for parts/materials separately and paying sales tax is correct. If that be so, we find that the decision of the Hon'ble Supreme Court in the case of M/s. BSNL (supra) will directly cover the issue in favour of the appellant as regard the non-includability of the value of the parts/materials for arriving at the correct Service Tax liability. We also find that the Principal Bench of the Tribunal in the case of M/s. Delux Colour Lab Pvt. Ltd. And ors. (supra) were dealing with similar issue, wherein it was held that sale cannot be treated as service and vice versa.

7. In the case before us, the appellant has produced invoices which would clearly indicate that there is a sale of the parts/ materials and there is also an element of labour charges charged separately. In view of this when there is a clear distinction available between the sales of the materials/parts and the labour charges, we are of the opinion that the impugned order which confirms the demand on the amount of the materials/parts sold and used for rendering of repair and maintenance service is incorrect and the impugned order to that extent is liable to be set aside and we do so."

7. Accordingly, respectfully following our own decision and in view of the facts and circumstances, we set aside the impugned order and allow the appeal with consequential relief, if any."

9. In view of the foregoing discussions, we do not find any merits in the impugned orders listed at paragraph No. 2.1, insofar as the adjudged demands were confirmed against the appellants. Therefore, by setting aside the said impugned orders, the appeals are allowed in favour of the appellants.

(Operative portion of the order pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha