CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85921 of 2021

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/01/2021-22 dated 15.04.2021 passed by the Commissioner (Appeals-III), GST & CX, Mumbai)

Shree Samarth Vision **.... Appellants**
C/o Shri Vijay Bhau Sawant,
Shree Brahama Chaytanya C.S.
Plot No.BD77, MHADA, S.V. Patel Nagar
Versoa, Amboli, Andheri (West)
Mumbai – 400 053.

VERSUS

Commissioner of CGST, **.... Respondent**
Mumbai West Commissionerate
Mahavir Jain Vidyalaya, C.D. Burfiwala Marg,
Juhu Lane, Andheri (West)
Mumbai – 400058.

Shri Sunil Vaidya, Advocate for the Appellants

Shri Aditya Pratap Singh Parihar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85151/2025

Date of Hearing: 16.10.2024

Date of Decision: 11.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Shree Samarth Vision, Mumbai (herein after, for short, referred to as 'the appellants') against the Order-in-Appeal No.NA/GST/A-III/MUM/01/2021-22 dated 15.04.2021 (referred to, as 'the impugned order') passed by the Commissioner (Appeals-III), GST & CX, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, *inter alia*, are engaged in providing "Cable Network Service" and their operation being in the nature of a local Cable Operator, they merely act as an Intermediary between the MSO (Multi System Operator) and the ultimate consumer i.e. the subscriber, who enjoy the benefit of cable connection for entertainment. The appellants submitted that they pay pre-decided amount, out of the charges collected from subscribers, to the MSO for getting channel signals. The appellants were under *bona fide* belief that they are not required to pay service tax on the subscription charges paid to the MSO. However, the Department during the verification of the data received from the Income Tax Department vide 26AS statement for the financial year 2014-2015 and the service tax return ST-3 filed by the appellants, observed that they had not declared the turnover of services to the extent of Rs.47,99,960/- and demanded service tax from the appellants.

2.3 The Department issued Show Cause Notice (SCN) dated 18.10.2019 to the appellants and proceeded to adjudicate a case. The original authority i.e., Assistant Commissioner, Division-III, Mumbai West Commissionerate in adjudication of the case had confirmed the demand of service tax amounting to Rs.5,32,686/- under Section 73(1) of the Finance Act, 1994 along with imposition of penalty under Sections 77, 78 *ibid* vide Order-in-Original dated 06.11.2020. Being aggrieved with the aforesaid order dated 06.11.2020, the appellants had filed an appeal before the Commissioner (Appeals), who in deciding the issue vide impugned order dated 15.04.2021 upheld the order of the original authority by dismissing the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused carefully.

4.1 In examination of the disputed issues in adjudication, the Original authority had decided the liability of service tax to be paid by the appellants vide Order-in-Original dated 06.11.2020. The relevant findings and conclusions arrived in passing such an order are extracted and given below:

"7. The noticee have not paid the service tax amounting to Rs.5,32,686/- (@12.36%) by wilfully suppressing the facts from the Department with the intent to evade payment of service tax, by not disclosing the value of such services provided by them in the Service Tax Returns in Form S.T.-3...
10. There are no written submissions as the noticee has not filed reply either manually or online. Also, there are no oral submission as no one appeared for the Personal Hearing in spite of having been granted the opportunity of Personal Hearing three times on 28.08.2010, 14.09.2020 and 30.09.2020.

DISCUSSION & FINDINGS

11. (i) I have been through the case records and observed that turnover of the Services as Rs.47,99,960/- as per Income Tax Return (ITR) / Tax Deducted at Source (TDS) i.e., 26AS for the FY 2014-15, however, as per ST-3 returns the declared turnover is Rs.4,90,204/-. The noticee has not included the above said value of service in their ST-3 returns, and, not discharged/declare their service tax liability of Rs.5,32,686/- (12.36%) on the amount of Rs. 43,09,756/- during the F.Y.2014-15.

(ii) There are no written submissions as the noticee has not filed reply in spite of having been granted P.H. three times on 28.08.2010, 14.09.2020 and 30.09.2020. Nobody appeared at the time of P.H. and hence there are no oral submission as well. Since, the noticee has not replied to the allegations made in the show cause notice and neither appeared at the time of P.H. the contention of the party is not known. Hence, the case may be decided on merits.

ORDER

On going through the above stated facts, i.e., hereby pass the following order:

(i) I confirm the amount of Service Tax of Rs.5,32,686/- (12.32%) (Five Lakhs Thirty-two Thousand Six Hundred Eighty-Six Only) for the period April 2014 to March 2015 and order recovery under the proviso to Section 73 (1) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act,2017).

(ii) I order recovery of Interest under the provisions of Section 75 of the Finance Act, 1994;

(iii) I impose penalty of Rs.5,32,686/- (Five Lakhs Thirty-two Thousand Six Hundred Eighty Six Only) under Section 78 of the Finance Act, 1994;

(iv) I impose penalty of Rs.10,000/- (Ten Thousand Only) under Section 77 of the Finance Act, 1994 for the failure to declare the value of taxable service in their periodical ST-3 Returns and for failure to Pay the Service Tax electronically as prescribed."

4.2 In the appeal preferred by the appellants against the above Order-in-Original dated 06.11.2020, the learned Commissioner (Appeals) vide impugned order dated 15.04.2021, had rejected such appeal by upholding the order of the original authority as follows:

> *"11. In the submission before me appellants have admitted the Service Tax liability of Rs,3,17,256/- and have contended the under mentioned calculation of liability .....*
>
> *12. … I would also like to rely on the decision of Tribunal in the Case of UCN Cable Network Pvt. Ltd. Versus Commissioner of C.Ex &Cus., Nagpur [2016 (45) S.T.T. 565 (Tri.-Mumbai)] wherein it has been held that set top boxes are integral part of the services provided by the appellant as the same enhanced the receipt of the signals by the customers of the appellant. Hence, the amount received by the appellant is liable to be taxed under the said services. I, therefore, am not inclined to follow the deduction towards set top boxes as Service Tax has to be worked out on the gross amount received for the said services.*
>
> *13. As regards deduction for entertainment tax appellants have relied upon the decision of the Tribunal .... In the instant case, except for the entry in the Profit and Loss Account evidence of payment of Entertainment Tax has been produced. Therefore, the appellants claim for Deduction does not stand on sound footing.*
>
> *14. Appellants have sought to be given cum-tax benefit. But their claim is not backed by documentary evidences ……….. in view of the above in the absence of any documentary evidence either under time appellants plea as it severely lacks merit.*
>
> *…*
>
> *21. In view of the foregoing, I am of the considered view that the impugned Order-in-Original is legal and proper and does not warrant any interference."*

5. The short issue for determination before the Tribunal is whether the appellants are liable to pay service tax, in respect of the value of turnover towards cable network service charges and sale of Set Top Box (STB) at Rs. 47,99,960/- as shown in the Profit & Loss account enclosed with ITR-V Income Tax Return for the Financial Year 2014-2015 in terms of the Finance Act, 1994?

6. On perusal of the records of the case, I find that the show cause proceedings were initiated and the impugned order confirming the original order in demanding service tax on the appellants was issued on the presumption that the entire value of 'cable network service charges' and 'sale of Set Top Box (STB)' totaling to Rs. 47,99,960/- are liable to service tax and such tax has not been paid by the appellants. This is apparent from the findings given by the authorities below in adjudication of the case, as given in paragraphs 4.1 and 4.2 above.

7. In this regard, I find that Central Board of Indirect Taxes and Customs (CBIC) had considered the appropriate action to be taken by the filed formations, in similar situation as the one referred in this case and issued instructions dated 26.10.2021, which is extracted and given below:

> *"Government of India*
> *Ministry of Finance*
> *(Department of Revenue)*
> *Central Board of Indirect Taxes & Customs*
> ***
>
> *New Delhi dated 26.10.2021*
>
> *Subject : Indiscreet Show Cause Notices (SCNs) issued by Service Tax Authorities - Reg.*
>
> *Representations have been received from various trade bodies and associations regarding instances of indiscriminate issuance of demand notices by the field formations on the basis of ITR-TDS data received from Income Tax Department.*
>
> *2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 1-4-2021 and 23-4-2021 issued vide F.No. 137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*
>
> *3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns* ***only after proper verification of facts, may be followed diligently.*** *Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention* ***that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee****."*
>
> (emphasis supplied)

I find that though the SCN was issued in the present case prior to the issue of the above instructions dated 26.10.2021, the crux of the above instructions squarely apply to the present case. Firstly, the original authority did not discuss the issues under consideration for coming to a conclusion and for confirming the demands raised in show-cause notice, and the learned Commissioner (Appeals) had upheld such order, on the basis of the decision taken by the Tribunal in the case of *UCN Cable Network Pvt. Ltd. (supra)* without discussing how the present facts of the case fits in to such relied upon decision.

8.1 I find that the issue of supply of Set Top Box (STB) by the MSO to their customer, whether it would amenable to levy of service tax or not, was examined by the Co-ordinate Bench of this Tribunal in the case of *Dish TV India Limited Vs. Commissioner of Central Excise and Service Tax, Aurangabad* - (2024) 14 Centax 377 (Tri.-Bom), wherein it was held that supply of STBs by the appellants is not a service, rather it is a deemed sale, leviable to VAT under the State legislature. The relevant paragraphs of the said Order is extracted and given below:

> *"8…(ii) what is nature of activity undertaken by the appellants in supply/provision of Set top Boxes (STBs) to their customers/subscribers?*
>
> *(a) In order to appreciate the various issues referred above in respect of STBs, we would like to refer the background for introduction of Conditional Access System, various legal provisions concerning the telecommunication broadcasting and cable services, Direct to Home (DTH) services under the statute governing Telecom policy, relevant rules & regulations, orders issued by the Telecom Regulatory Authority of India (TRAI) as well as under the Finance Act, 1994 for determining the levy of tax on the services and the relevant rules and regulations framed thereunder.*
>
> *(b) It is seen that prior to the introduction of DTH services, the only source of distribution of TV Channels was through cable. To have an alternative to Cable and provide better services to the consumers, the Government of India rolled out the DTH License in the Year 2003 subsequent to which, DTH License was issued to eligible persons including the appellants who are one of such DTH license holder and DTH service provider to the subscribers. In India, DTH service was a recent entrant as compared to cable transmission. It has certain technical advantages over cable operations. DTH is an addressable system and covers the entire country. The authority to issue DTH license vests with the Government of India, Ministry of Information & Broadcasting.*
>
> *(c) Earlier, the Government had legislated the Cable Television Networks (Regulation) Act, 1995 in order to regulate the cable television networks in the country and to protect the interest of the consumers. The need for provision of STBs arose from the statutory requirements brought out by the Government under the said Act, by inserting a new Section 4A of Act of 1995 (supra), which envisaged "Transmission of programmes through addressable system" [popularly referred to as Conditional Access System (CAS)] to be implemented with effect from a specified date. In simple words, the introduction of this change made it obligatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form through a digital addressable system.*

(d)Similarly, in respect of DTH services, in terms of Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007 issued by TRAI placed a legal obligation on the part of every DTH operator to give on non-discriminatory basis, the direct to home service to every person making request for the same, subject to technical and operational feasibility. The meaning of the term DTH service and DTH Customer Premises Equipment (DTH CPE) have been given in the said Regulations, 2007 (ibid), which are extracted below:

> *'2(h) "direct to home service" means distribution of multi channel TV programmes by using a satellite system by providing TV signals directly to subscriber's premises without passing through an intermediary such as cable operator or any other distributor of TV channels;*
>
> *2(f) "Direct to Home Customer Premises Equipment" means the components and accessories installed at the premises of the subscriber to enable the reception of a direct to home service and includes Direct to Home Set Top Box, the remote control for set top box and the dish antenna;'*

(e)The phrase "digital addressable system" in the above context means, an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of cable television/DTH network can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the 'Conditional Access System' and the 'subscriber management system', on the explicit choice and request of such subscriber;

(f) We find from the plain reading of the above statutory provisions that every DTH operator is required to provide STBs to their subscribers in order to provide DTH service, inasmuch as STB is a necessary equipment to receive the DTH signals sent in encrypted form, to be received through the dish antenna, and which can be decoded and displayed on the television of the subscriber. From the above, we thus come to the conclusion that STB is a part of Customer Premises Equipment which is necessary for providing DTH service to a subscriber. It may be seen that STB is used as an equipment, being part of CPE, and that whenever the television channels are viewed by a subscriber, the said STB along with antenna are used for receiving and decoding the signals as a part of conditional access system. In other words, the broadcasting of signals by the appellants for viewing television channels are distinct by themselves from the STBs and other equipment. Thus, we conclude that the nature of activity undertaken by the DTH operator in providing STB to a subscriber, is provision of an equipment, which is one-time activity, and it is not a part of DTH service in providing television channels for viewing by the subscriber.

8…..(iii) whether provision of STBs by the appellants to the subscribers would amount to rendition of service?

On reading of Regulation 10 of the *DTH Regulations* (*supra*), it would transpire that a subscriber may or may not pay for his

> subscription charges. However, as a provider of DTH service, the appellants herein are entitled, even when no broadcasting signals go to the subscriber, to collect lease rental amounts for such period when the STBs remain with the subscriber. Hence, it can be concluded that the subscriber had control over the STBs during the time when he pays for the lease rental for the same and he can exercise the right of control by viewing free to air channels like Doordarshan etc., even if does not able to view the other channels for non-payment of requisite charges. Thus, we have no hesitation, but to conclude that supply of STBs by the appellants is not a service, rather it is a deemed sale, leviable to VAT under the State legislature, inasmuch as the right to use of STB has not been retained by the appellants and the same was transferred to the subscriber for viewing the channels etc. according to his own choice and will…"

8.2 The above decision of the Tribunal was subsequently appealed before the Hon'ble Supreme Court by the department in Civil Appeal Nos. 503-504 of 2024. The said case was finally decided vide judgement dated 12.01.2024, wherein the Hon'ble Supreme Court by agreeing with the views of the Tribunal, had dismissed the Civil Appeals filed by the department.

9. Further, I find that the appellants have submitted a detailed breakup of their turnover figures for the financial year 2014-2015 duly certified by the Chartered Accountant, on the basis of the which the service tax demands were raised in the SCN dated 18.10.2019, which was also recorded in the impugned order by the learned Commissioner (Appeals). The details of the total turnover as per their financial records and as was declared to the Income Tax authorities under ITR-V and Service Tax authorities under ST-3 Returns, subsequent reconciliation and payment of additional tax along with interest and penalty are given below:

S. No.	Particulars	Value in Rs.
1	Value of turnover in P&L account given for ITR-V	47,99,960
2	Less: (i) Value of Sale towards STBs which are leviable to Sales Tax and not chargeable to Service Tax	9,85,800
	(ii)Entertainment tax collected and paid to the State Government	3,79,305
3	Gross amount of receipts excluding the Turnover value not taxable under service tax [(1) – (2)]	34,34,855
4	Taxable value for levy of service tax treating (3) as gross amount received for services i.e., 112.36% including service tax @ 12.36%	30,57,008
5	Less Turnover declared in ST-3 returns on which service tax already paid by appellants	4,90,204

S. No.	Particulars	Value in Rs.
6	Value of Turnover attributable to services provided by appellants as intermediary between MSO and subscribers for viewing channels	25,66,804
7	Service tax payable at 12.36% on (6) above	3,17,256
8	Interest on the service tax payable at (7)	3,23,549
9	100% Penalty paid on service tax amount in (6)	3,17,256
10	Total amount paid towards additional service tax along with interest, penalty through challans dated 06.02.2021,14.02.2021 & 02.03.2021.	**9,58,061**

10. In the above backdrop of the factual matrix of the present case, I find that the appellants themselves have correctly determined the service tax payable by them, from their financial records duly certified by the Chartered Accountant, and thus have fulfilled all the requirements for discharge of service tax liability along with applicable interest and penalty voluntarily, before filing this appeal before the Tribunal on 28.06.2021. In the above circumstances and on the basis of the discussions as above at paragraphs at 7 to 9, I find there are no strong grounds to hold that the appellants did not pay service tax in respect of the differential amount demanded in the show cause proceedings, owing to the reason that the service tax on the taxable value of turnover relating to the financial year 2014-2015 as detailed in table at paragraph 9 above, have been duly paid by the appellants and the same has been accepted by the Department.

11. In the result, the impugned order dated 15.04.2021 is set aside and the appeal filed by the appellants is allowed on the basis of their voluntary payment of differential service tax amount to the Government exchequer as per law as indicated in paragraph 9 above.

(Order pronounced in the open court on 11.02.2025)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha