CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87179 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-001-PR.COM-005-16-17 dated 06.06.2016 passed by the Principal Commissioner, Central Excise, Pune-I, Commissionerate)

Perfect Facility Services **.... Appellant**
Flat No. 13, Nandanvan Housing Society,
Building No. 55, Yamunagar, Nigdi, Pune- 411 044.

Versus

Commissioner of Service Tax-I, Pune **.... Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune- 411 001.

APPEARANCE:

Shri Bharat Raichandani, Advocate for the Appellant

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85894/2025

Date of Hearing: 09.06.2025

Date of Decision: 09.06.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants herein are engaged in providing the taxable service under the category of 'Manpower Recruitment Agency and Supply Service'. For providing such taxable service, the appellants got themselves registered with the service tax department. During the disputed period, the service tax department had compared the figures/data reflected in the TDS certificate(s)/Form No. 26AS vis-à-vis those reflected in the ST-3 Returns filed by the appellants. On comparison between the figures reflected in the said documents, it was observed

by the department that as per Form No. 26AS, the appellants had short-paid service tax and accordingly, proceedings were initiated against the appellants, seeking for confirmation of the service tax demand. The matter arising out of the Show Cause Notice (SCN) dated 16.10.2015 was adjudicated vide the impugned order dated 08.06.2016, wherein the learned Principal Commissioner of Central Excise and Service Tax, Pune-I Commissionerate, has confirmed service tax demand of Rs. 1,90,16,916/- along with interest and also imposed penalties on the appellants. Out of such confirmed demand of Rs.1,90,16,916/-, an amount of Rs. 1,18,52,594/- deposited by the appellants during the course of investigation was appropriated in the said impugned order. Feeling aggrieved with the impugned order dated 08.06.2016, the appellants have preferred this appeal before the Tribunal.

3. The contention of the appellants are that in respect of the taxable service viz., Manpower Recruitment Agency and Supply Service provided by them, they had appropriately discharged the service tax liability on 25% of the gross value and on the remaining 75% of the value, the service receiver had deposited the service tax amount into the Central Government account. Thus, it was contended by the appellants that the service tax demand cannot be fastened on the appellants inasmuch as, the statute mandates the part payment of service tax to be made on requisite percentage of the gross value, by both the service provider as well as the service receiver, respectively. Further, it has also been stated that the appellants had paid the entire service tax liability in respect of the taxable service provided by them and thus, the benefit provided under Sub-section (3) of Section 73 of the Finance Act, 1994 should be available to the appellants for non-prosecution in respect of the dispute arising out of the present case. On merits, the appellants have contended that the activity provided by the appellants to their clients should appropriately be classifiable under the Manpower Recruitment Agency and Supply Service and demands confirmed in the impugned order, holding such service as 'Storage and Warehousing' and 'Cleaning Service' should not be the defensible ground for confirmation of the adjudged demands.

4. On reading of the reply to the SCN dated 08.03.2016 annexed to the appeal memorandum, we find that the appellants had claimed that they had already paid the service tax amounting to Rs.1,26,42,082/- before issuance of the SCN in respect of the Manpower Supply Service provided by them. However, on reading of the order portion in the impugned order, we find that only an amount of Rs. 1,18,52,594/- has been appropriated therein. Further, the appellants had also stated before the adjudicating authority that they had already deposited the entire tax liability in respect of the taxable service of manpower provided by them. However, such submissions of the appellant have not been properly addressed to by the original authority.

5. In view of the fact that the show cause proceedings were issued only on the basis of the figure reflected in the Form 26AS vis-à-vis the ST-3 Returns filed by the appellants, we are of the considered opinion that the proper tax liability cannot be determined only based on the comparison between the two statements, without referring to the factual aspect regarding actual provision of the taxable service, whether should be classifiable under 'manpower recruitment', as claimed by the appellants or, under the taxable category of Storage and Warehousing' and 'Cleaning Service', as asserted by the department in the impugned proceedings. We find that the department had not specifically addressed to the issue, as to why, the disputed service shall not be categorized under manpower recruitment service, as claimed by the appellants. Furthermore, the submissions made by the appellants that they had already discharged the service tax liability has also not been properly addressed to by the original authority inasmuch as only an amount of Rs. 1,18,52,594/- was appropriated as against the demand confirmed in the impugned order. Assuming that the appellants contention is correct that they had already deposited the entire service tax amount, then in our view, the benefit of sub-section (3) of Section 73 of the Act of 1994 should be available, for non-initiation of any proceedings for recovery of the tax, interest as well as the penalty amount confirmed in the impugned order. Therefore, we are of the considered opinion that the matter is required to be again looked into by the original authority in its proper perspective, to find out whether the adjudged demand can be confirmed on the appellants or otherwise.

6. In view of the foregoing discussions, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for deciding the matter afresh in line with our observations made hereinabove. Needless to say, that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh.

7. In the result, the appeal is allowed by way of remand. The other issues raised by the appellants in the appeal memorandum and grounds of appeal are kept open, which should be addressed to by the original authority at the time of passing of the *denovo* adjudication order.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM