CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86936 OF 2023

[Arising out of Order-in-Original No: 43/RB/Commissioner/Belapur/2023-24 dated 31st May 2023 passed by the Commissioner of CGST & Central Excise, Belapur.]

Maxval Technologies Pvt Ltd
T-251, 5th Floor, Belapur Station Complex
CBD Belapur, Navi Mumbai – 400 614 … ***Appellant***

versus

Commissioner of CGST &Central Excise
Belapur
CGO Complex, CBD Belapur Navi Mumbai – 400 614 ***…Respondent***

APPEARANCE:

Shri Suresh Navalkar, Advocate for the appellant

Shri Manish Mohan, Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86291/2025

DATE OF HEARING: 20/02/2025
DATE OF DECISION: 19/08/2025

PER: C J MATHEW

Aggrieved by order[1] of Commissioner of CGST and Central

[1] [order-in-original no. 43/RB/Commissioner/Belapur/2023-24 dated 31st May 2023]

Excise, Belapur, fastening tax liability of ₹ 6,70,34,992 for the period from April 2015 to June 2017 under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994 besides imposition of penalty of like amount under section 78 of Finance Act, 1994 along with other penalties and late fees, M/s Maxval Technologies Pvt Ltd is in appeal before us. To appreciate the context of the dispute, it appears necessary to delve into the facts.

2. In accordance with what appears to be a practice in vogue at some time, service tax authorities issued notice[2] for recovery of ₹ 7,19,54,820 erected upon information received from income tax authorities that return for 2015-16 reported receipt of ₹ 18,98,54,606 that was not reflected in the corresponding returns filed in accordance with Service Tax Rules, 1994. For the subsequent years, and by recourse to section 72 of Finance Act, 1994, determined enhancement of 20% 'year to year' to arrive at the taxable value on which appropriate tax rate was applied. The show cause notice, after such computation and examination of several provisions of Finance Act, 1994, proposed that

> *'9. From the foregoing legal provisions, it appears that the noticee is providing taxable services. That as per Para 8(i) above, the noticee is liable to pay Service Tax to the extent of Rs.71954820/-(Seven Crore Nineteen Lakhs fifty-four*

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[2] [show cause notice no. COMMR./Bel/SHOW CAUSE NOTICE/Maxval/68/20-21 dated 18th December 2020]

> *thousand eight hundred twenty Only) for the period 2015-16 to 2017-18 (upto June2017). The liability is recoverable along with appropriate interest under section 75 of Finance Act, 1994.'*

with no details of activity on which such liability allegedly arose.

3. In their response to the show cause notice, the appellant herein contended that they were a unit holding Letter of Permission (LoP) issued by the jurisdictional Director, Software Technologies Parks of India (STPI), in terms of the eponymous scheme as notified in the relevant Foreign Trade Policy (FTP), and that the income were receipts from exports of 'information technology/information technology enabled service (IT/ITeS)' which was then latched on to by the adjudicating authority to subject the claim to the test of section 65B(44) of Finance Act, 1994 and, having determined that the activity was that of 'secondment of personnel' as well as 'provision of space', applied Place of Provision of Service Rules, 2011 to conclude that these were not exports and consequently liable to tax for having been provided in the taxable territory.

4. According to Learned Counsel for the appellant, scope for provision of space to any entity, let alone an overseas entity, was not tenable under the scheme of Software Technologies Parks of India (STPI) scheme, as enunciated in the Foreign Trade Policy (FTP) and the consideration, being determined on costing of employees deployed

in the software support system for the overseas client could not be basis for presuming that the activity amounted to secondment of employees. According to him the combination of mis-interpretation without going into the facts and without examination of circumstances had led to the outcome of tax fastened on an entity that was patently carrying out exports in accordance with the obligation stipulated in export promotion scheme in the Foreign Trade Policy (FTP). It was contended that invoking extended period was in excess of authority inasmuch as reporting systems under the Foreign Trade Policy included not only filing of returns which were available to the tax authorities but subjecting their performance to annual review by the competent committee which included jurisdictional central excise authorities.

5. According to Learned Authorized Representative, it was clear from the supplier agreement that the contract with overseas entity, *viz.*, M/s RunMy Business LLC, was for supply of human resources and that the fees thereon was in the nature of payment for the personnel.

6. We find from a perusal of the show cause notice that the entire proceeding rested upon information obtained for one year 2015-16 from the income-tax authorities. The authority issuing the show cause notice has not assailed the nature of activities for the income so received and has merely proceeded to presume a higher income for the subsequent period with the information available for 2015-16 as a base

which is surprising as, akin to information obtained for 2015-16, the reported income for the subsequent period could also have been sought for clothing the demand with integrity and certainty. Recourse to section 72 of Finance Act, 1994, intended for assessment in the normal course, is independent of section 73 of Finance Act, 1994. The certainty that was expected in determination of tax not paid/short paid under section 73 of Finance Act, 1994 is lacking in the computation for 2015-16 to 2016-17. Several decisions of the Tribunal have held that show cause notice issued solely on the proposal to tax the difference between the returns under Income-tax Act, 1961 and the value of the taxable service in Finance Act, 1994 are not sustainable and, in *Sarosh Homi Forbs v. Commissioner of Central Goods and Service Tax, Mumbai* in final order[3] disposing off appeal[4] against order[5] of Commissioner of CGST and Central Excise (Appeals), Mumbai, it was observed that

> *'4. ………. From the records it is not coming out whether before issuing the show cause notice any independent enquiry had been conducted by the department to ascertain the receipt of amount in issue towards rendering any taxable service. In the absence of any specific allegation about the nature of service provided or the service recipient, it is not justified to held appellant liable for service tax. In order to fasten any duty liability on the appellant the department, in the first place, has to identify the nature of taxable service and the recipient of such service as well. Section 72 ibid cannot be applied merely*

[3] [no. 85324/2025 dated 13th March 2025]
[4] [ST/85287/2024]
[5] [order-in-appeal no.SK/CGST-A-I/MUM/267/23-24 dated 30th October 2023]

> *on the basis of income-tax return without identifying the specific taxable service and the service recipients. By way of various decisions, it is settled legal position that a show cause notice issued on the basis of presumption and third-party information without examining the books of account and records of an assessee is not sustainable. Reference can be made to the decisions of the Hon'ble Supreme Court in the matter of Oudh Sugar Mills vs. UOI; 1978(2) ELT (J172) (S.C.) and also of the co-ordinate bench of the Tribunal in the matter of Sharma Fabricators & Erectors Pvt. Ltd. vs. Commissioner.; 2017(5) GSTL 96 (Tri.-All.), later on confirmed by the Hon'ble High Court of Judicature at Allahabad by dismissing the appeal of the department against the said order as reported in 2019 (22) G.S.T.L. J166 (All.); Commissioner vs. Sharma Fabricators & Erectors Pvt. Ltd. Therefore, in the present case also, the demand cannot sustain.'*

7. It is also seen that the demand was certainly fastened on evaluation of the response given of the noticee. For all practical purposes, an entirely new proceedings came into being during adjudication of a sketchy and tentative notice and without having placed the appellant on notice of intention to levy tax by discard of the activity as exports. This is clear breach of principles of natural justice inasmuch the detriment to the assesse was effected behind its back. Furthermore, the adjudicating authority though made cognizant of the operation of the assessee under an export promotion scheme in the Foreign Trade Policy (FTP) which permits certain activities entitling holder of the 'letter of permission (LoP)'to the privileges of export and

continuation of privileges contingent upon periodical review of prescribed returns carried out by the ‘unit approval committee (UAC)’ which also includes the jurisdictional central excise authorities, chose to ignore the implication thereof. It cannot be, therefore, be taken that factum of exports, adherence to the obligation and the receipts on account of such exports were unknown to the jurisdictional authority. The adjudicating authority had failed to subject the claim of the appellant all these aspects and has proceeded to fasten the tax liability without acknowledging consequence of the compliance of the scheme of the Foreign Trade Policy.

8. In the light of above, the proceedings themselves are deficient from lack of adequate notice for having been determined on the basis of response of the noticee and non-acknowledging of exports, as accepted by the competent authority, which renders the demand to be untenable.

9. For the above reasons we set aside the impugned order to allow the appeal.

(Order pronounced in the open court on 19/08/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*