

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85635 OF 2017

[Arising out of Order-in-Original No: 07/ST/2016/PC/NGP-I dated 23rd November 2016 passed by the Principal Commissioner of Central Excise & Customs, Nagpur – I.]

Synergy Geotech Pvt Ltd

Margashish, Plot No. 51, Panchen Nagar
Wardha Road, Nagpur - 440025

... Appellant

versus

**Principal Commissioner of Central Excise
Customs & Service Tax**

Kendriya Utpad Shulk Bhavan, Telangkhedi Road
Civil Lines, Nagpur - 440001

...Respondent

APPEARANCE:

Shri Hemant A Rajenderkar, Chartered Accountant for the appellant

Shri Dhanjay Dahiwal, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86293/2025

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

PER: C J MATHEW

M/s Geo Tech India, a proprietary concern of one Shri SP

Didolkar, had been engaged by M/s Indu Project CMPDI JV and the former, in turn, entrusted the contracted activity to M/s Synergy Geotech India Pvt Ltd, the appellant herein, for 2010-2012 in connection with 'diamond core drilling and survey and exploration of minerals' that was allegedly taxable in terms of section 65(105)(zzb) of Finance Act, 1994 owing to which demand of tax on billed value of ₹7,05,31,097 for 2010-11 to 2014-15 was raised for recovery of ₹73,39,528 under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, and for imposition of penalty under section 78 of Finance Act, 1994. Appellant herein, on receipt of notice, had claimed that the agreement was in fact entered into between their principal contractor M/s Geo Tech India and the recipient of the service and full liability under Finance Act, 1994 thereof discharged on the same value that the notice had been charging the principal contractor. It was claimed that tax liability would not arise in circumstances in which principal contractor discharged the levy in order to ensure that double taxation did not occur. That their claim was not allowed, owing to which the tax liability came to be confirmed along with all the other detriments, is the focus of the appeal before us.

2. According to Learned Chartered Account appearing for the appellant, discharge of tax liability by the principal manufacturer precludes any liability on sub-contractors and relied upon the decision

of the Tribunal in *DNS Contractor v. Commissioner of Central Excise, Delhi – I* [(2015) 58 taxmann.com 154 (New Delhi – CESTAT)]. It was further contended that neither was any tax charged in the bill raised on the principal contractor nor did the principal contractor charge any enhanced value towards consideration for service. It was also contended that, in any case, the entire exercise was ‘revenue neutral’ owing to which the tax liability would not devolve on the appellant.

3. According to Learned Authorized Representative, several decisions of the Tribunal, including that of the Larger Bench in *Commissioner of Service Tax v. Melange Developers Private Ltd* in miscellaneous order¹ disposing off reference to Larger Bench in appeal² against order³ of Commissioner of Service Tax, Delhi, had settled the issue of independent liability devolving on sub-contractor for discharge of tax liability as well the principal contractor to do the same in its turn. Reliance was also placed on the decisions of the Tribunal in *Om Sai Fabricators v. Commissioner of Central Excise and Service Tax, Raigad* [(2023) 6 Centax 208 (Tri.-Bom)] and in *Anju Engineering Works v. Commissioner of Central Excise, Nagpur* [2018 (3) TMI 356 – CESTAT MUMBAI]. It was also contended that the claim of revenue neutrality was not tenable as the two entities were independent of each other. It was also contended that the entire exercise had been so crafted

¹ [miscellaneous order no. 50388/2019 dated 23rd May 2019]

² [service tax appeal no. 50299 of 2014]

³ [order-in-original no. 125/GB/2013 dated 27th September, 2013]

as to create illusion of independent activity without any additional consideration to evade service tax devolving on the sub-contractor while discharging liability thereon at the level of sub-contractor.

4. The issue of separate liability of sub-contractor even in circumstances of ‘principal contractor’ discharging tax liability in its turn came up for consideration before the Larger Bench of the Tribunal in *re Melange Developers Private Ltd* and it was held that

‘9. It is not in dispute that the activity undertaken by the sub-contractor falls under the category of ‘Works Contract’ service. What is sought to be contended is that the main contractors, who had given sub-contracts to the sub-contractor through various work orders, had already discharged the Service Tax liability on the entire contract amount and, therefore, the subcontractor was not required to pay any Service Tax.

10. Section 66, as substituted by the Finance Act, 2007, provides that there shall be levied a tax (hereinafter referred to as the ‘Service Tax’) @ 12% of the value of taxable services of various sub-clauses of clause (105) of section 65 and collected in such a manner as may be prescribed. Section 68 of the Act provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in section 66 in such a manner and within such a period as may be prescribed. Section 94 of the Act deals with power to make Rules. Sub-section (1) provides that the Central Government may, by Notification in the official gazette, make Rules for carrying out the provisions of Chapter V of the Act. Sub-section (2)(a) provides that such Rules may provide for collection and recovery of Service Tax under sections 66 and 68 of the Act. In

exercise of the powers conferred by section 37 of the Central Excise Act, 1944 and section 94 of the Act and in supersession of the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002, the Central Government framed the CENVAT Credit Rules, 2004. It is, therefore, clear that every person (which would include a sub-contractor) providing taxable service to any person (which will include a main contractor) shall pay Service Tax at the rate specified in section 66 in the manner provided for. The manner has been provided for in the CENVAT Credit Rules of 2004. 'Input Service' has been defined to mean, any service used by a provider of output service for providing an output service. 'Output Service' has been defined to mean any service provided by a provider of service located in the taxable territory. Rule 3 stipulates that a provider of output service shall be allowed CENVAT Credit of the Service Tax leviable under Section 66, 66A and 67B of the Act. Thus, in the scheme of Service Tax, the concept of CENVAT Credit enables every service provider in a supply chain to take input credit of the tax paid by him which can be utilized for the purpose of discharge of taxes on his output service. The conditions for allowing CENVAT Credit have been provided for in Rule 4. The mechanism under the CENVAT Credit Rules also ensures that there is no scope for double taxation.

11. In the face of these provisions, it may not be open to a sub-contractor to contend that he should not be subjected to discharge the Service Tax liability in respect of a taxable service when the main contractor has paid Service Tax on the gross amount, more particularly when there is no provision granting exemption to him from payment of Service Tax.'

5. It was also held that the approach taken prior to 2007 was no longer valid for continuation in view of

‘13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a subcontractor is required to pay Service Tax, it may amount to ‘Double Taxation’, but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by CENVAT Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as ‘CENVAT Credit’) of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that CENVAT Credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act

provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the CENVAT Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the CENVAT Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.'

6. The aspect of double taxation was also considered by the Larger Bench to hold that

'16. It is in this light that the main contention of learned Counsel for the Respondent that if a sub-contractor is required to pay Service Tax when the main contractor has actually discharged Service Tax liability, it would amount to Double Taxation', has to be examined. For this contention, reliance has been placed by the learned Counsel for the Respondent on the following decisions of this Tribunal :

- (i) Urvi Construction vs Commissioner of Service Tax, Ahmedabad, reported in 2010 (17) STR 302 (Tri.-Ahmd.);*
- (ii) BCC Developers and Promoters Pvt. Ltd. vs Commissioner of Central Excise, Jaipur, reported in 2017 (52) STR 22 (Tri.-Del.);*

- (iii) *M/s Dhaneshra Engineering Works vs Commissioner of Central Excise, Allahabad, reported in 2018 (2) TMI 788 – CESTAT – Allahabad;*
- (iv) *Power Mech Projects Ltd. vs Commissioner of Customs, Guntur, reported in 2017 (48) STR 165 (Tri.- Hyd.); and*
- (v) *M/s Edac Engg. Ltd. vs CST, Chennai, reported in 2017 (6) TMI 685 CESTAT Chennai.*

xxxxx

26. *At this stage, it would also be useful to refer to a larger Bench decision of the Tribunal in Vijay Sharma & Company vs CCE, Chandigarh, reported in 2010 (20) STR 309 (Tri.-LB). The issue that arose before the larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a sub-contractor is liable to pay Service Tax, the larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the CENVAT Credit Rules. The relevant paragraph 9 is reproduced below :*

“9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on

such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a subbroker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period.

xxxx

29. *The submission of the learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the CENVAT Credit Rules of 2004.*

30. *Thus, for all the reasons stated above, it is not possible to accept the contention of the learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.'*

7. In view of the settled law *supra* and that decision of the Tribunal in *re DNS Contractor* relied upon certain precedent decisions thus

'4. Without going into the detailed arguments, I find that as per various pronouncements of the Tribunal, if the Service Tax liability stand discharged on the full and complete value, the sub-contractor cannot be taxed again in respect of same services, on that part value in the services provided by them.

Admittedly it would amount to double taxation in respect of same services, Tribunal in the case of M/s. Anand Sales Corpn. and Others v. C.C.E, Kanpur Final Order Nos. 50337-50344/2014, dated 29-1-2014 has done a detailed discussion in the manner and has held that inasmuch as during the relevant period, the practice of payment of Service Tax on the full value was the general practice being adopted, the separate confirmation of Service Tax against the sub-contractor would not be justified, though the Cenvat credit Rules, as rightly argued by learned Jt. CDR requires separate payment of Service Tax on separate activities, which Service Tax would be available as credit to the main contractor. Learned Jt. CDR relies on the Tribunal's decision in the case of Safe and Sure Marine Services Pvt. Ltd. v. CST, Mumbai reported as 2012 (28) S.T.R. 30 (Tri.-Mumbai) laying down that it is the responsibility of the sub-contractor to pay Service Tax. But keeping in view the other decisions referred supra, and keeping in view that when the principle contractor has paid the Service Tax on the entire value, and keeping in view that exchequer cannot be enriched on account of double taxation and keeping in view that the Revenue has already earned its share of Service Tax whether coming from the pocket of main contractor or from the pocket of sub-contractor and keeping in view the earlier Boards' clarifications which were relevant during the period which stand relied upon the case of JAC Air Services and keeping in view that concept of Service Tax are still not clear and keeping in view that there was a pattern in the industry for payment of Service Tax by the main contractor and keeping in view that entire situation is revenue neutral, I deem it fit to set aside the impugned order and allow all the appeals with consequential relief.'

which were considered by the Larger Bench of the Tribunal, the claim

of appellant on non-leviability is not tenable.

8. The claim of revenue neutrality has been founded upon the proposition that discharge of tax liability on the part of the appellant would not add to the revenue of the government. If that be so, tax would not be leviable on any activity that is required for rendering service that is taxable which, doubtlessly, is unacceptable.

9. It is also clear that the arrangement between the ‘sub-contractor’ and ‘principal contractor’ was not a part of the agreement with the recipient of the service and, consequently, being between connected entities does not support the proposition of tax liability not having been discharged out of ignorance.

10. The Hon'ble Supreme Court in *Union of India v. Intercontinental Consultants and Technocrats Pvt Ltd* [2018 (10) GSTL 401 (SC)] had held that, for the purpose of taxation under Finance Act, 1994, only the ‘taxable value’ of the service so rendered was to be subjected to levy. This would imply that every activity is taxable separately. The carving out of ‘input service’ for exclusion from the principles governing taxability of ‘bundled service’, as in section 66F of Finance Act, 1994, is clear enough indication that any service used for providing ‘main service’ is not be considered as part and parcel of the latter.

11. In the light of the above judicial rulings, and in the absence of

any tenable submission that the ingredients for invoking the extended period under section 73 of Finance Act, 1994 did not exist, we find no reason to interfere in the adjudication order and, accordingly, dismiss the appeal.

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

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*