CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 2

Service Tax Cross No. 85778 of 2018

in

Service Tax Appeal No. 86143 of 2018

[Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0722/2017-18 dated 28.11.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune.]

Commissioner of CGST & Central Excise … **Appellant**
Pune-I Commissionerate
41/A, Sasson Road
Pune – 411 001.

Versus

Eaton Industrial Systems Private Limited …. **Respondent**
B-33, MIDC, Ranjangaon
Taluk Shirur,
Pune – 412 208.

APPEARANCE:

Shri Dhananjay Dahiwale, Authorized Representative for the Appellant

Shri Jay Chheda, Advocate along with Ms. Foram Cheeda, Chartered Accountant

CORAM:

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

FINAL ORDER NO. A/86076/2026

Date of Hearing: 10.08.2026

Date of Decision: 02.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by the Revenue in pursuance of Order of the Committee of Commissioners dated 22.03.2018, in assailing the Order-in-Appeal No. PUN-EXCUS-001-APP-0722/2017-18 dated 28.11.2017 (herein after referred to as 'the impugned order') passed by the Commissioner of Central Tax (Appeals-I), Pune. The respondent assessee M/s Eaton Industrial Systems Private Limited, Pune has filed cross objection to the said appeal for upholding the impugned order passed in their favour.

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

2.2 The respondent herein *inter alia*, is engaged in manufacture of excisable goods viz., gear transmission system and other automotive components etc., falling under chapter heading 8708 of Central Excise Tariff Act, 1985. For the purpose of discharge of appropriate excise duty on the final products manufactured by them and for compliance with Central Excise statute, the respondent is registered with jurisdiction central excise authorities vide Registration No.AABCA4586BXM001.

2.3 During scrutiny of records maintained by the respondent, the department has observed that during the period 2007-2008 to 2010-2011, that the respondent had received engineers/employees on deputation from its foreign group company M/s Eaton Corporation, USA in terms of Seconding Agreement entered in respect of such individuals. Eaton Corporation, USA paid salaries and statutory employment benefits to such personnel outside India, for administrative convenience and recovered the same amount from the respondent assessee without any markup by raising debit notes. All employment related costs and risk associated with secondment of employees including all costs relating to hiring, relocation, severance, employment related lawsuits and any other costs resulting from employment relationship were also borne by the respondent, by effecting such payment through Eaton Corporation, USA. These expenses were recorded as salaries to employees in the books of accounts maintained by the respondent. Based on such scrutiny of records and debit notes, the department interpreted that the arrangement constituted import of 'manpower recruitment or supply agency' services as defined under Section 65(105) (k) of the Finance Act, 1994. Since the respondent assessee had not paid the service tax on such expenses incurred in foreign currency for such services under the reverse charge mechanism in terms of Section 66A(1) *ibid*, the department initiated show cause proceedings against the respondent.

2.4 Show Cause Notice (SCN) dated 19.04.2013 was adjudicated by the Additional Commissioner vide Order-in-Original No. PUN/ STC/ADC/08/17-18 dated 31.05.2017 in confirmation of service tax demand of Rs.90,43,587/- along with interest, under Section 73 ibid read with rule 2 (1) (d) (iv) of the Service Tax Rules, 1994 by invoking extended period of limitation; besides, he also imposed penalties on the respondent under Section 77 and 78 ibid on the appellants. Feeling aggrieved with the said order of the original authority, the respondent had filed an appeal before the Commissioner (Appeals), who in disposal of the appeal, has set aside the order of original authority and dropped the confirmed demands and penalties imposed on the respondent.

Feeling aggrieved with the impugned order passed by the Commissioner (Appeals), Revenue has filed this appeal. The respondent has also filed cross objection to such appeal filed by Revenue.

3. We have heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper books by Authorised Representative for the Revenue and the Counsel for the respondent.

4. The issue involved in the above appeal is whether the respondent being part of the group company situated in USA, who have seconded their employees to the respondent as recipient entity, would result in provision of "manpower recruitment or supply agency" services taxable at the hands of the respondent in India, under the reverse charge mechanism provided under section 66A of the Finance Act, 1994.

5. Learned AR for Revenue in his submission had submitted that the disputed issue is no more *res integra*, in view of the judgement passed by the Hon'ble Supreme Court in the case of *Commissioner of Customs, Central Excise & Service Tax, Bangalore (Adjudication) Vs. Northern Operating System Private Limited* - 2022 (61) G.S.T.L. 129 (S.C.). On the other hand, learned Counsel for the respondent has submitted that that respondent was of the bonafide belief that the transaction between the same entities is not exigible to service tax. Further, he submitted that the SCN was issued 19.04.2013 in respect of service tax demand for the period 2007-2008 to 2010-2011, which is beyond the normal period of limitation from the due date of filing the half-yearly return. Since the issue involved conflicting views arising on account of interpretation of complex legal provision, it would not provide any scope for invoking extended period of limitation. In this regard, he relied upon the judgement of the Hon'ble Supreme Court in the case of *Continental Foundation Joint Venture Vs. Commissioner of Central Excise, Chandigarh-I* – 2007 (216) E.L.T. 177 (S.C.).

6.1 In the present appeal, department had issued SCN on 19.04.2013 for service tax demands arising for the period 2007-2008 to 2010-2011 by invoking extended period of limitation. Normal period of limitation provided for issue of SCN for demand of service tax under Section 73 of the Finance Act, 2016, for period prior to 28.05.2012 was 'one year'; during 28.05.2012 to 13.05.2016 it was 'eighteen months'; and subsequently with effect from 14.05.2016 it is 'thirty months', and the extended period of limitation is for five years, where there is presence of any ingredient involving fraud, collusion, wilful mis-statement, suppression of facts or contravention of legal provisions, with an intent to evade service tax.

6.2 In the order of the original authority dated 31.05.2017, he had confirmed the service tax demands by invoking extended period of limitation on the ground that the respondent has failed to determine and discharge their service tax liability on the taxable category of service i.e., 'manpower recruitment/supply agency' service; he had stated that even though the respondent had effected payments to their foreign business entity M/s Eaton USA, as a service provider, this fact has come to light only after the same has been pointed out by the departmental officers during the audit and scrutiny of their records. Therefore, he held that non-payment of service tax on the services received from abroad is on account of deliberate and wilful suppression of material facts on the part of the respondent assessee, with an intention to evade payment of service tax. On the other hand, learned Commissioner (Appeals) in the impugned order had dealt with the merits of the case, whether the secondment service provided between group entities does not amount to taxable service.

6.3 Therefore, in order to decide the issue of application of extended time of limitation and on the merits of the issue under dispute, we may refer to the authoritative decisions rendered by the Hon'ble Supreme Court in the case of *Continental Foundation Joint Venture* (supra) *and Northern Operating System Private Limited* (supra). In the case of *Continental Foundation Joint Venture* (supra), the Hon'ble Supreme Court has held as follows:

> *"12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful."*

In the present case, the arrangement of using the services of personnel belonging to the group entity based at USA was engaged by the respondent entity in India in certain specified sectors for enabling their manufacturing activity as per Seconding Agreement entered in each case, and in due compliance with immigration visa, tax deduction at source as per Income-Tax and other statutory compliances. Further, the expenses incurred for such secondment were on actual basis without any addition of markup/margin, to indicate the true nature of such payment being reimbursement expenditure, and did not constitute any element of service being provided by one person to another person, both being under same business entity. Further, these expenses were duly accounted for in their books of accounts and foreign exchange were paid through official banking channels, duly recording each activity in the books of accounts maintained by the respondent. Therefore, we do not find any grounds to substantiate the presence of essential ingredients such as fraud or collusion or wilful mis-statement or suppression of facts or contravention of legal provisions, with an intent to evade service tax, in the present case before us, in respect of the respondent.

6.4 In the case of *Northern Operating System Private Limited* (supra), the issue that arose for decision before the Supreme Court was on identical set of facts involving the disputed issue of whether the overseas group companies, with whom an assessee had entered into agreements, for providing manpower services in discharge of its functions through seconded or deputation of employees, would be liable to payment of service tax as a taxable service. In the said case, the Supreme Court had observed as follows:

> *"2…..Following an audit of the records by the revenue's officials, proceedings were initiated against the assessee alleging non-payment of service tax concerning agreements entered into by it with its group companies located in USA, UK, Dublin (Ireland), Singapore, etc. to provide general back-office and operational support to such group companies.*
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> *3…….As a matter of fact, the assessee issues the prescribed forms to the seconded employees, in terms of the Income-tax Act, 1961 (hereafter "IT Act"). Those individuals too file income-tax returns and contribute to the provident fund. Furthermore, NOS remits the above amounts in foreign exchange, which are reflected in its financial statements. The assessee is reimbursed (by the foreign entity, Northern Trust Company - hereafter described as such) for the amounts it pays as salaries, to these seconded employees. The assessee pays for certain services received from the group companies. The assessee used to discharge service tax on payments for such services in terms of Section 66A of the Act. The appropriate major expense heads were 'Salaries & Allowances', 'Relocation expenses', 'Consultancy Charges', 'Communication Expenses' and 'Computer Maintenance and repairs.'*
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> *4. The revenue issued four show cause notices [dated 23-4-2012; (for the period October, 2006-March, 2011), 19-10-2012 (for the period April, 2011 to March, 2012), 7-5-2014 & 26-11-2015 (for the period April, 2012 to September, 2014)] alleging that the assessee failed to discharge service tax under the category of "manpower recruitment or supply agency service" with regard to certain employees who were seconded to the assessee by the foreign group companies……*
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34. The contemporary global economy has witnessed rapid cross- border arrangements for which dynamic mobile workforces are optimal. To leverage talent within a transnational group, employees are frequently seconded to affiliated or group companies based on business considerations. In a typical secondment arrangement, employees of overseas entities are deputed to the host entity (Indian associate) on the latter's request to meet its specific needs and requirements of the Indian associate. During the arrangement, the secondees work under the control and supervision of the Indian company and in relation to the work responsibilities of the Indian affiliate. Social security laws of the home country (of the secondees) and business considerations result in payroll retention and salary payment by the foreign entity, which is claimed as reimbursement from the host entity. The crux of the issue is the taxability of the cross charge, which is primarily based on who should be reckoned as an employer of the secondee. If the Indian company is treated as an employer, the payment would in effect be reimbursement and not chargeable to tax in the hands of the overseas entity. However, in the event the overseas entity is treated as the employer, the arrangement would be treated as service by the overseas entity and taxed.

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46. From the above discussion, it is evident, that prior to July 2012, what had to be seen was whether a (a) person provided service, (b) directly or indirectly, (c) in any manner for recruitment or supply of manpower, (d) temporarily or otherwise. After the amendment, all activities carried out by one person for another, for a consideration, are deemed services, except certain specified excluded categories. One of the excluded category is the provision of service by an employee to the employer in relation to his employment.

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55. The overall effect of the four agreements entered into by the assessee, at various periods, with NTS or other group companies, clearly points to the fact that the overseas company has a pool of highly skilled employees, who are entitled to a certain salary structure- as well as social security benefits. These employees, having regard to their expertise and specialization, are seconded (a term synonymous with the commonly used term in India, deputation) to the concerned local municipal entity (in this case, the assessee) for the use of their skills. Upon the cessation of the term of secondment, they return to their overseas employer, or are deployed on some other secondment.

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57. Taking a cue from the above observations, while the control (over performance of the seconded employees' work) and the right to ask them to return, if their functioning is not as is desired, is with the assessee, the fact remains that their overseas employer in relation to its business, deploys them to the assessee, on secondment. Secondly, the overseas employer- for whatever reason, pays them their salaries. Their terms of employment - even during the secondment - are in accord with the policy of the overseas company, who is their employer. Upon the end of the period of secondment, they return to their original places, to await deployment or extension of secondment.

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65. It is held, for the foregoing reasons, that the assessee was the service recipient for service (of manpower recruitment and supply services) by the overseas entity, in regard to the employees it seconded to the assessee, for the duration of their deputation or secondment. Furthermore, in view of the above *discussion, the invocation of the extended period of limitation in both cases, by the revenue is not tenable.*

66. In light of the above, the revenue's appeals succeed in part; the assessee is liable to pay service tax for the periods spelt out in the SCNs. However, the invocation of the extended period of limitation, in this court's opinion, was unjustified and unreasonable. Resultantly, the assessee is held liable to discharge its service tax liability for the normal period or periods, covered by the four SCNs issued to it. The consequential demands therefore, shall be recovered from the assessee."

(Emphasis supplied)

6.5 On reading of the aforesaid judgement of the Hon'ble Supreme Court, it would transpire that while the control over the performance of the employees who were seconded and the right to ask them to return was with the assessee, but it was the overseas employer who, in relation to its business, deployed them to the assessee; it was the overseas employer who paid them the salaries; the terms of employment even during the secondment were in accord with the policy of overseas company; and at the end of the period of secondment the employees returned to their original place to await deployment or extension of secondment. The factual matrix of the present case involves similar arrangement. Thus, the assessee would be a service recipient of the overseas group company based in USA, which provided 'manpower supply' service, which would become as a taxable service and the respondent would be required to pay service tax on reverse charge mechanism as per Section 66A ibid.

6.6 Insofar as the invocation of the extended period of limitation in the show cause notice, the Hon'ble Supreme Court in *Northern Operating System Private Limited* (supra), did not agree with the contention of the Department that it was correctly invoked and it was held that the Department was not justified in invoking the extended period of limitation. The relevant paragraphs of the judgment are as follows:-

"62. The revenue's argument that the assessee had indulged in wilful suppression, in this court's considered view, is insubstantial. The view of a previous three judge ruling, in Cosmic Dye Chemical v. Collector of Central Excise [1995] 6 SCC 117 - in the context of section 11A of the Central Excise Act, 1944, which is in identical terms with section 73 of the Finance Act, 1994 was that:

> *Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and*

yet constitute a permissible ground for the purpose of the proviso to section 11-A. Misstatement or suppression of fact must be wilful."

63. This decision was followed in Uniworth Textiles v. Commissioner of Central Excise [2013] 9 SCC 753, where it was observed that "(t)he conclusion that mere non- payment of duties is equivalent to collusion or wilful misstatement or suppression of facts" is "untenable". This view was also followed in Escorts v. Commissioner of Central Excise [2015] 9 SCC 109 Commissioner of Customs v. Magus Metals [2017] 16 SCC 491 and other judgments.

64. The fact that the CESTAT in the present case, relied upon two of its previous orders, which were pressed into service, and also that in the present case itself, the revenue discharged the later two show cause notices, evidences that the view held by the assessee about its liability was neither untenable, nor mala fide. This is sufficient to turn down the revenue's contention about the existence of "wilful suppression" of facts, or deliberate misstatement. For these reasons, the revenue was not justified in invoking the extended period of limitation to fasten liability on the assessee."

6.7 Considering the date of issue of SCN on 19.04.2013 for service tax demands involved in the disputed transactions for the period 2007-2008 to 2010-2011, being beyond eighteen months, it clearly transpires that such demands were issued by invoking extended period of limitation and the entire demand confirmed in the order of the original authority is beyond the normal period of limitation. In view of the aforesaid decision of the Hon'ble Supreme Court in *Northern Operating System Private Limited* (supra), we are of the considered opinion that in the present appeal having similar facts of the case, it has to be held that the demand of service tax confirmed by the original authority for the extended period cannot be sustained. Further, as the entire demand of service tax in the present case is only relating to the extended period of limitation, and the entire demand being held as not sustainable, in our considered opinion, the question of demand of interest, consequential imposition of penalty on the respondent does not arise.

6.8 In view of the above discussions and the settled position of law as held in the case of *Northern Operating System Private Limited* (supra), we are of the considered view that the issue under dispute is no more *res integra*, and this Bench of the Tribunal cannot take a different decision than the one already decided in favour of the respondent. Accordingly, the impugned order in setting aside the adjudged demands, which was confirmed on the respondent assessee by the original authority by invoking extended period of limitation, is not sustainable and the impugned order does not require any interference.

7. In the result, the appeal filed by the Revenue is dismissed. Cross objection filed by the respondent assessee is disposed of.

(Order pronounced in the open court on 02.09.2026)

(Ajay Sharma)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha