CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 3

SERVICE TAX APPEAL NO. 50395 OF 2019

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-228-18-19 dated 28.09.2018 passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal (M.P)]

Shri Rahul Agarwal ..... **Appellant**
Ward No.7, Solomom Complex, Damoh,
M.P.-470661

Versus

Commissioner CGST, Customs &
Central Excise, Jabalpur .....**Respondent**

AND

SERVICE TAX APPEAL NO. 50396 OF 2019

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-229-18-19 dated 28.09.2018 passed by the Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal (M.P)]

Shri Sandeep Jain ..... **Appellant**
Asati Ward No.2, Damoh,
M.P.

Versus

Commissioner CGST, Customs &
Central Excise, Jabalpur .....**Respondent**

APPEARANCE:

Shri Pradumna Singh, Advocate for the Appellant
Shri Anand Narayan, Authorized Representative for the Department

CORAM :
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:07.05.2025
Date of Decision:26.06.2025

FINAL ORDER NOs.50936-50937/2025

Hemambika R. Priya:

The present two appeals arise out of the common Order-in-Appeal No. BHO-EXCUS-001-APP-228-229-18-19 dated 28.09.2018 passed by the Commissioner (Appeals), GST, Customs & Central Excise, Bhopal (M.P)against Shri Rahul Agarwal[1] confirming a demand of service tax Rs.12,03,538/- under section 75 of the Finance Act alongwith equal amount of penalty under section 78 of and a penalty of Rs.20,000/- under section 77, and demand against Shri Sandeep Jain[2] of Rs.14,15,826/- under section 75 alongwith equal amount of penalty under section 78 and a penalty of Rs.20,000/- under section 77 of the Finance Act, 1994.

ST/50395/2019:

2. The facts in brief involves the liability of M/s Rahul Agrawal, Damoh to pay service tax for providing construction services to M/s Agrawal Builders & Developers, Damoh. The issue arose when the department identified that the appellant no.1, a sub-contractor, had not registered for service tax and had failed to pay the applicable service tax on payments received during the period from Financial Year 2012-13 to 2016-17.The Appellant was engaged in providing construction of residential complex services, a taxable

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1. **the Appellant no.1**
2. **the Appellant no.2**

service under Section 66E(b) of the Finance Act, but had not registered under service tax. A Show Cause Notice was issued, citing that payments received by the Appellant for services provided to the main contractor were liable to service tax, as these payments fell under Section 66B of the Finance Act, and service tax of Rs.17,83,596/- was due for this period. Furthermore, the show cause notice invoked the extended period of limitation owing to suppression of facts, along with penalties under Section 78 and Section 77 of the Act.

3. The adjudicating authority dropped the service tax demand of Rs.17,79,363/- holding that the main contractor had paid service tax. The adjudicating authority held that the Appellant had failed to pay service tax on Rs.4,233/- for GTA service and confirmed the demand. As the Appellant had not registered under service tax and had not filed statutory returns, the extended period of limitation was invoked, and the penalties under Section 78 of the Finance Act, 1994 for willful suppression and non-declaration of taxable services was imposed. Additionally, interest was chargeable on the delayed payment of service tax under Section 75 of the Act.

4. The department challenged the aforesaid order-in-original. The Commissioner (Appeals) vide the impugned order set aside the order-in-original and upheld the demand of Rs.12,03,538/- alongwith equal penalty under section 78 and Rs.20,000/- under

section 77 of the Finance Act, 1994. The present appeal is against the said impugned order.

ST/50396/2019:

5. M/s Sandeep Jain, appellant no.2 was engaged in providing construction of Residential Complex Services, a declared service falling under clause (b) of section 66E of Finance Act 1994. The Appellant no.2 was not registered with the service tax department. During the scrutiny of documents, of M/s Agarwal Builders & Developers, Damoh M.P., the department noted that M/s Agarwal Builders had made payment to their sub-contractors towards providing construction of residential complex service. The appellant no.2 was one of such contractor.

6. During the period of 2012-13 to 2016-17, the appellant no.2 had received Rs.1,07,53,180/- for providing taxable service but had not paid service tax. Hence a show cause notice no.IV(09)41/Adj/ST/Sandeep/SGR-II/2017/4522-4523 dated 16.10.2017 was issued to the appellant for recovery of Service Tax Rs.14,15,826/- during the period 2012-13 to 2016-17 alongwith interest and penalties. The said show cause notice adjudicated vide order in original no. 08/ST/AC/DAMOH/2018 dated 24.04.2018 wherein the demand of Rs. 14,15,826/- was dropped. Aggrieved by the order-in-original, the Department filed an appeal

before Commissioner (Appeals) who vide the impugned order set aside the order-in-original and allowed the Departmental appeal.

7. Learned counsel for the appellant no.1 and 2 submitted that the Commissioner (Appeals) had committed a grave error in holding that, the sub-contractor was liable to pay service tax, in view of the clarification of Board Circular No. 96/7/2007-ST dated 23.08.2007,whichhad clarified that the services provided by sub-contractors are in the nature of input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided. In the present matter of dispute, the period involved is 2012-13 to 2016-17 i.e. after the issue of said Board's clarification. The said clarification pertained to the services related to the period prior to 01.07.2012 wherein the Board has clarified the taxability of said service vide the above master circular.

8. Learned counsel further submitted that the Commissioner (Appeals) had failed to note that the present case related to the period post the introduction of Declared Services (Section 66E), and negative list of services (section 66D). The services of the appellant was exempted from payment of Service Tax under Notification no. 25/2012 dated 20.06.2012. Therefore, the services after 01.07.2012 were not taxable. Learned counsel further contended that the main contractor entered into contact with its customers for building duplexes, and in turn sub-contracted these

duplex building contracts on back to back basis to the sub contractors.

9. Learned counsel for the appellant no.1 submitted that he was engaged in providing construction of Residential Complex Service being the capacity of Sub-Contractor in terms of the agreement made with M/s. Agarwal Builders & Developers, Damoh (hereinafter referred to as the "Main Contractor).

10. In addition to the above services, the appellant was also providing services to the Governmental Authorities such as construction of road repair work and minor repair works which were exempt from payment of service tax under serial No. 13 of Mega Notification No.25/2012-ST dated 20-06-2012. The Department on collection of information and based on the consideration value of the amounts appearing in Form 26AS for the period of 2012-13 to 2015, had issued the instant Show Cause Notice dated 16-10-2017. A corrigendum dated 17-11-2017 was further issued for the period 2016-17 and the demand of Service Tax was enhanced to Rs.17,83,596/- for the period 2012-13 to 2016-17. Learned counsel stated that the adjudicating authority vide Order-in-Original No.08/ST/AC/Damoh/2018 dated 24-04-2018 had dropped the demand of Rs.17,79,363/- holding that, the entire service tax amount has been paid by the main contractor M/s. Agarwal Builders & Developers, Damoh and therefore the appellant was not liable to pay service tax. As regards the other services provided to the Government, the order-in-original had

held that the service tax was exempted as per Mega Exemption Notification No.25/2012-ST dt.26-06-2012. However, the demand of Rs.4,233/- on the GTA Services was confirmed along with interest and penalty of Rs.4,233/- imposed under Section 78 (1) of the Finance Act, 1994. However, the Commissioner (Appeals) had reversed the said order and allowed the departmental appeal.

11. Learned counsel further submitted that the impugned order was patently against the law, contrary to the facts on record, unjust, erroneous and passed with complete non application of mind. He submitted that the adjudicating authority had already considered each and every submission of the appellant in the Order-in-Original dated 24-04-2018 and had correctly dropped the demand of Service Tax amounting to Rs.17,79,363/- and Rs.14,15,826/- after examination of documentary evidences produced by the appellants before him. Learned counsel submitted that, the finding of the adjudicating authority may be treated as part and parcel of their present submissions.

12. Learned counsel further submitted that the Commissioner (Appeals) had committed a grave error in holding that, the sub-contractor is liable to pay service tax, which was contrary to the clarification of Board Circular No.96/7/2007-ST dated 23-08-2007. The said clarification of the Board clarified that the services provided by sub-contractors are in the nature of input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of

the service provided. In the present matter of dispute, the period involved is 2012-13 to 2016-17 i.e. after the issue of said Board clarification. The said clarification pertained to the services related to the period prior to 01-07-2012. Learned Counsel contended that the Commissioner (Appeals) had failed to note that the period involved in the present case was after introduction of declared services (Section66E), Negative list of services (Section 66D) and the services of the appellant exempted from payment of service tax under Mega Exemption Notification No.25/2012-ST dated 20-06-2012. Therefore, the reliance of the said Board Circular dated 23-08-2007 exclusively relied upon by the department is not applicable to the services for the period after 01-07-2012 and therefore not sustainable.

13. The Commissioner (Appeals) had failed to note that, the firm M/s. Agrawal Builders & Developers, Damoh was engaged in construction of residential duplexes. The said firm entered into contract with its customers for building duplexes & in turn sub contracted these duplex building contracts on back to back basis to the sub-contractors. There was a explicit agreement between the main contractor and the appellants that the main contractor will pay service tax on the full contract value (i.e. on 100% of the contract value with customers including margin of the main contractor) & that the sub-contractors will not pay any service tax on the said contract amount. Accordingly, in compliance to the said agreement the main contractor had discharged service tax on the entire contract value under the works contract service. Since the

main contractor had discharged service tax liability on the entire contract value with the customers & that the sub-contracting was not for a part of a work but for the entire duplexes on back to back basis. Learned counsel also contended that the Commissioner (Appeals) had failed to note that, the contract work of construction of duplexes fell under the Works Contract Service & the same has also been upheld by the Hon'ble Supreme Court of India in the case of M/s. Larsen & Toubro Limited. Learned counsel contended that the sub-contractors were only agents of the contractor and the property in goods passed directly from the sub-contractors to the employer and therefore there can only be one Sale which is recognized by the legal fiction created under Sub-article (29A) of Article 366. Hence, learned counsel stated that this would lead to the conclusion that there is only one taxable event of sale of goods in such a transaction.

14. He relied on the following judgments:-

(i) **DNS Contractor** vs. **Commissioner of Central Excise, Delhi-1[3].**

(ii) **Urvi Construction** vs. **Commissioner of Service Tax, Ahmedabad[4]**.

(iii) **OIKOS** vs. **Commissioner of C. Excise, Bangalore-II[5]**.

(iv) **Visesh Engineering Co.** vs. **Commissioner of Customs, Ex., & S.T. Guntur[6]**.

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3. 2015 (37) S.T.R 848 (Tri. Del.)
4. 2010 (17) S.T.R. 302 (Tri. Ahmd.)
5. 2007 (5) S.T.R. 229 (Tri.-Bang)
6. 2016 (43) S.T.R. 232 (Tri. Hyd.)

(v) **Thadi Satya Ramalinga Reddy** vs. **CCE, S.T. & Cus, Visakhapatnam- II[7].**

15. Learned Authorised Representative at the outset reiterated the findings of the impugned order. He further submitted that the issue of liability of service tax on sub-contractor was no more *res-integra* in view of the Larger Bench decision in **Melange Developers Pvt Ltd**.

16. We have considered the submissions advanced by the learned counsel and the learned Authorised Representative of the Department. We find that it is an admitted fact that the appellant was a sub-contractor. The appellants have themselves stated that they are sub-contractors as per Board's Circular, sub-contractors were not liable to pay service tax.

17. We find that the issue relating to liability of sub-contractor to pay service tax was considered by the Larger Bench of this Tribunal in the decision of **Commissioner of Service Tax, New Delhi** vs. **M/s. Melange Developers Pvt Ltd[8].** The relevant paras of the decision is reproduced hereinafter:

> "**xxx xxx xxx**
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> 7. We have considered the submissions advanced by the learned Authorised Representative of the Department and the learned Chartered Accountant and learned Counsel for the Respondent.
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> 8. It is w.e.f. 01 June, 2007 that sub-section (zzzza) was inserted in Section 65(105)of the Act in relation to execution of "Works Contract". Taxable Service under Section 65 (105) (zzzza) is defined as:

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7. 2017 (4) G.S.T.L. 421 (Tri. Hyd.)
8. Service Tax Appeal No.50399 of 2014 decided on 23.05.2019

"65(105)(zzzza)-to any person, by any other person in relation to the execution of a works contract, excluding works Contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c);or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

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 sub- contractor 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.

12. It is true that prior to 2007, various Service Tax, Trade Notices/Instructions/Circulars/Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/ Instructions/ Circulars/ Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when

Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below:

999.03/ 23.08.07	A taxable service provider outsources a part of the work by engaging another Serviceprovider, generally known as sub- contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub- contractor. Services provided by sub- contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

13. 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 sub-contractor 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 14May, 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.

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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 sub- broker 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."

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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.

31. The reference is, accordingly, answered in the following terms:

> "A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

18. As regards the period from 01.07.2012, it has been submitted before us that the appellants were eligible for exemption under Notification no. 25/2012-ST dated 20.06.2012. In this context, we note that after 1.7. 2012, the

services provided by Sub-contractor was exempted only if the services provided by the main contractor were exempted. If main contractor was liable to Service Tax, sub-contractor was also liable to Service Tax. In the instant case, we note that construction of residential complexes was not exempt from service tax duty. Hence, the sub-contractors, viz., Appellant no. 1 and appellant no. 2 were liable to discharge their service tax liability on such services provided by them to the main contractor viz., M/s Agarwal Builder and Developers, Damoh.

19. In view of the above discussions, we find no infirmity in the impugned order and uphold the same. Consequently, the appeals stand dismissed.

(Order pronounced on 26.06.2025)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana