CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO.4

Service Tax Appeal No. 51219 Of 2020

[Arising out of Order-in-Original No. 1/DRPV/GST/DE/20-21 dated 15.09.2020 passed by the Commissioner of Central goods, Service Tax, Delhi East]

Rakesh Maintenance Service **: Appellant**
2nd Floor, Plot No. 169, Patparganj
Industrial Estate, Delhi-110092

Vs

Commissioner of Central Goods, Service Tax, Delhi East **: Respondent**
C R Building, I P Estate Delhi East
New Delhi-110109

APPEARANCE:
Shri Anurag Mishra, Advocate, Ms. Sanya Bhatia, Chartered Accountant for the Appellant
Shri Rajeev Kapoor, Authorised Representative for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. A. K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. 51184/2025

Date of Hearing:08.07.2025

Date of Decision:08.07.2025

DR. RACHNA GUPTA

The appellant, herein is registered under the category of Manpower Recruitment/Supply Agency Services and Maintenance or Repair Services. The Department got an intelligence that the appellant, despite providing taxable services was not registered till 14.08.2013 and has not discharged the service tax liability. The appellant was found to have misdeclared the value of taxable services in ST-3 Returns as were filed for the period April 2014 to September

2014. Subsequent thereto even ST-3 Returns were not filed. The matter was accordingly investigated. Statement of Shri Rakeshdhar Dubey, Proprietor of the appellant was recorded. Based on the said statement and memorandum of understanding between the said Shri Rakeshdhar Dubey and Clear Secured Services Private Limited (CSSPL), the Department observed that the MOU does not clarify about the important parameters of services provided vis-a-vis the number of workers, place of deployment of workers, periodicity of payments, remuneration of Shri Rakesh Dhar Dubey for the services being provided by him and the charges received against the same. However, from the verification of income tax returns, the Form 26AS, Financial Statements, Copy of invoices etc, the Department formed an opinion that the appellant is engaged in the business of housekeeping/caretaking of ATMs of various banks and similar services are being provided by them to CSSPL as well. Based on these observations finding the said MOU as vague, the Department alleged that the appellants were required to pay appropriate service tax on the services provided by them at the rate as specified under Section 66B of the Finance Act, 1994 read with Rule 6(1) of Service Tax Rules, 1994.

2. Accordingly, vide show cause notice No. 12(4)34/2016 dated 21.04.2017, service tax amounting to Rs. 9,31,36,760/- for the period October 2011 to March 2016 was proposed to be recovered from the appellants along with the appropriate interest. An amount of Rs. 1,35,72,589/- as was already deposited by the appellant was proposed to be appropriated against the service tax recoverable from them. The penalty was also proposed to be imposed on M/s Rakesh

Maintenance Services, the appellant and Shri Rakeshdhar Dubey, Proprietor of the appellant under Sections 76, 77 and 78 of the Finance Act, 1994. The said proposal has been confirmed vide the Order-in-original No. 1/2020-2021 dated 15.09.2020. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Anurag Mishra, Advocate assisted by Ms. Sanya Bhatia, Chartered Accountant and Shri Rajeev Kapoor, Authorized Representative for the Department.

4. Learned counsel for the appellant has alleged the show cause notice (SCN) to be vague and being ambiguous. It is submitted that the one single activity of the appellant as mentioned in memorandum of understanding (as relied upon by the Department) has been categorised under 3 different kind of services. At one point of time, it is alleged to be 'Maintenance and Repair Service' and another point of time as 'Supply of Manpower Services' and another point of time, it is alleged to 'cleaning services'. The said allegations are legally not sustainable. The order under Challenge is liable to be set-aside on this ground itself.

5. It is submitted that during the period in dispute as per MOU, CSSPL was providing Manpower Supply Services to their clients. The Proprietor of the appellant i.e. Mr. Rakeshdhar Dubey was contracted for disbursing the salary of the Manpower Supply. Hence, Mr. Rakeshdhar Dubey was acting a pure agent of the service provider i.e. CSSPL. The same is impressed upon as unambiguous intention of the MOU which has wrongly been interpreted by the Department alleging the appellant to be the service provider that too for 3 different kind of

services. Nothing about the alleged services is mentioned in the show cause notice.

6. Learned counsel further submitted that Rule 5 of the Service Tax Determination of Vaulation Rules, 2011 has wrongly been invoked for the period till the year 2015 as the amendment in Section 66 of Finance Act, 1994 for including reimbursable charges came into effect only in the year 2015. Prior this, Rule 5 itself was held ultravirus by the Hon'ble Supreme Court in the case of **UOI vs. Intercontinental Consultants and Technocrats Private Limited** reported as **2018 (10) GSTL 401 (S.C.)**. Hence, no demand under said Rule can be confirmed for the period prior the year 2015.

7. Learned counsel further brought to notice that after the said amendment in Section 66 of the Act, a fresh agreement got entered between CSSPL and the appellant, the said agreement was for providing Manpower Agency Services by the appellant. For the said taxable services, the liability to pay service tax is on the service recipient under reverse charge mechanism in terms of Notification No. 30/2012 dated 20.06.2012. Thus CSSPL, the service recipient had been discharging complete service tax liability on the said amount. Hence, the demand of service tax with effect from April 2015 to March 2016 is liable to be set-aside as it amounts to double taxation.

8. Finally, it is submitted that the entire demand is time barred as the show cause notice for raising the demand for the period November 2011 to March 2016 was issued on 21.04.2017. There is no iota of allegation of fraud suppression or wilful statement. The entire demand, is therefore, beyond the stipulated period for issuing the said show cause notice. It is also submitted that the levy of penalty on the

appellant and its proprietor is also not sustainable. In support of his submissions, learned counsel relied upon the following decisions:-

- Centre for Enterpreneurship Development vs. CCE Bhopal-2017 (4) GSTL 338 (Tri.-Del.)
- Utility Labour Suppliers vs. CCE, Ahmedabad-II on 26 November 2024
- Delhi International Airport Limited vs. Commissioner of CGST, Delhi 2019 (24) GSTL 403 (Tri.-Del.)
- Commissioner of Central Excise, Indore vs. GD Enterprises 2017 (52) STR 61 (Tri.-Del.)

With these submissions, the learned counsel prayed for the order under challenge to be set-aside and for the appeal to be allowed.

9. While rebutting the submissions, the learned DR has mentioned that the adjudicating authority below has concluded based on the legal provisions as applicable in the instant case which pertains to the period prior 30.06.2012 and the period post thereto, hence, the decision is complete and proper in itself. While confirming the tax demand, the adjudicating authority has rightly relied upon the statement of Shri Rakeshdhar Dubey, the proprietor of the appellant as was recorded on 23.03.2017 where he had specifically admitted about being registered for providing taxable services of 'Manpower Recruitment/Supply Agency Services' and that they had discharged the services tax but for the limited period 12.08.2014 to 30.09.2015. From the invoices and profit and loss accounts of the appellant, it has rightly been observed by the adjudicating authority below that the appellant was providing

cleaning/caretaking services to M/s CSSPL and others against the consideration. Learned DR also submitted that there remained no concept of classification of services post 01.07.2012, the negative list concept as was introduced in Section 66D of the Finance Act, 2012. Hence, the submissions made by the appellant challenging the veracity of show cause notice are not acceptable. The appellant cannot be considered as pure agent of M/s CSSPL as admittedly, consideration was received from M/s CSSPL. Resultantly the provision of Rule 5 (2) of Service Tax Rules will be applicable and the appellants are rightly held to have failed to comply with the condition for the said rules. The show cause notice is denied to be barred by time as the element of non-payment of service tax had come to notice only after the investigation of the records of M/s RMS by the Department. The non disclosures thereof had been the sufficient Act of suppression. With respect to the agreement between M/s CSSPL and the appellant dated 01.04.2015, learned DR submitted that such agreement was never placed before the adjudicating authority. The document cannot be relied upon at this stage. With these submissions and impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

10. Having heard the rival contentions of the parties and perusing the entire record, we observe and hold as follows:-

The basic allegation of the appellant is qua the show cause notice that show cause notice is a vague and ambiguous document. Show cause notice is definitely the genesis of the entire dispute. It is apparent from the show cause notice that same has been issued

based upon MOU between M/s CSSPL and the present appellant, the appellant is alleged to be a service provider to M/s CSSPL (service recipient) for providing various kind of services i.e. Maintenance & Repair Service, Manpower Supply and Cleaning Services.

11. We have perused the said MOU, following are the apparent terms and conditions:-

(i) M/s CSSPL had undertaken to provide Manpower of Caretaking and Housekeeping Services to various ATMs and to various Banks. It is for the purpose of handling the cash transactions across the regions and that most of the Manpower deployed is unskilled worker that Mr. Rakeshdhar Dubey, the Proprietor of the present appellant who also one of the Director of M/s CSSPL, was appointed to manage the said operational difficulty of M/s CSSPL.

This perusal makes it clear that the appellant was engaged for handling the cash transaction for CSSPL viz-a-viz remuneration of unskilled workers got deployed by CSSPL at ATM's of various banks. Hence, MOU cannot be considered as an agreement between M/s CSSPL and the appellant to be a contract of providing MMR or Cleaning Services to. Resultantly, we hold that the adjudicating authority has wrongly held that the appellant is the service provider of these services to M/s CSSPL. The appellant at the most was providing facilitation to M/s CSSPL being engaged in disbursing wages to the workers deployed by M/s CSSPL at their clients/recipient location. As apparent from the MOU, there is no other activity which was agreed to be performed by the appellant.

The said activity can fall under the scope of Business Support Service but from no stretch of imagination it can be called as MMR or Cleaning/Caretaking Service. Thus, the show cause notice is wrong. This observation itself is sufficient to hold that the show cause notice has been issued while misclassifying the services. Hence, the demand proposed under such show cause notice is liable to be set-aside.

12. Though most of the period in dispute is beyond the introduction of the concept of negative list where any service rendered other than thus mentioned in negative list (Section 66D of Finance Act) were taxable. We are of the opinion that though the concept of classification was done away but it was still required for the purpose of computations. More so, nothing had stopped the department to raise the demand of service tax under Section 66B (44) of the Finance Act as exists on the statute book for the period post 01.07.2012.

13. Further, we observe that the demand has been confirmed invoking Rule 5 of the Service Tax (Determination of Valuation) Rules as submitted by the learned counsel for the appellant. The said rule was declared ultra virus by the Hon'ble Supreme Court in **Intercontinental Consultants and Technocrats Private Limited (supra)** case wherein it was held that reimbursable amount mentioned in the invoices issued by the service provider are not includable in the gross value for the purpose of paying tax. Rule 5 of the said rules, since made a provision for inclusion of reimbursable expenses, the same was held to be beyond the provisions of Section 66 and 67 of the Finance Act, 1994.

14. In 2015, the said Section 67 got amended to include amount of reimbursable also. But, in the present case, as apparent from MOU and observed above that the appellant was not providing MMR to Banks. Question of receiving any amount of consideration for rendering MMR, by the appellant does not arise. Plea of amount received by the appellant to be an amount of reimbursable gets redundant. There is no evidence produced by the department to show that the appellant was getting anything in addition to the amount wages of the workers. This observation establishes it beyond all reasonable doubts that amount in the hands of Mr. Rakeshdhar Dubey was merely an amount as pure agent to be transferred to the workers on behalf of M/s CSSPL. The appellant has placed on record the CA Certificate with clearly certifies that the amount received by the appellant from M/s CSSPL, for the period of October 2011 to March 2015 is not the subject matter of service tax. The Chartered Accountant Certificate is admissible into evidence. We draw our support from the decision of Hon'ble Supreme Court in the case of **M/s Gyan Chand & Brothers vs. Ratanlal reported as 2013 (3) SCR 601 (S.C.).**

15. The adjudicating authority below has solely relied upon the statement of the proprietor of the appellant but has out rightly ignored the affidavit filed by him during the adjudication proceedings. We do not find any document on record which may support the contents of the said statement which was recorded at the stage of investigation. The said statement was not admissible when the same has been contradicted subsequently in the form of

the affidavit. For this reason also any findings based on the statement holding it to be an admission are liable to be set-aside.

16. Now coming to the issue of the demand confirmed of service tax beyond 01.04.2015 till March 2016. Though the learned DR has mentioned that the agreement dated 01.04.2015 was not before the departmental authorities, however, the perusal of the agreement clarifies that vide the said agreement, the appellant agreed to be the service provider of Manpower Supply Services to M/s CSSPL. The said services being taxable under reverse charge mechanism. M/s CSSPL had undertaken the liability and has also been discharging the same. Nothing on record has been brought by the Department to prove that M/s CSSPL is not discharging the service tax liability. In such circumstances, demanding tax from the appellant shall amount to double taxation. Therefore, the demand for the period post 1.4.2015 is also liable to be set-aside.

17. Finally, coming to the plea of show cause notice being barred by time, we observe that the show cause notice has proposed the demand for the period November 2011 to March 2016. The appellant were admittedly filing returns and the same was filed for the period April 2014 to September 2014 also. These observations are sufficient to hold that the facts were well within the knowledge of the Department. The only plea taken in the order under challenge is that the facts came to the knowledge of the department only pursuant to the impugned investigations but the show cause notice itself falsifies the said observation as the demand was raised based on the scrutiny of appellant’s documents

only. Thus there remains no evidence about any Act of alleged suppression or mis-declaration by the appellant. We hold that the extended period has wrongly been invoked while issuing the show cause notice. The entire demand is, therefore, held to be barred by time. We draw our support from the decision of the Hon'ble Supreme Court in the case of **CCE vs. Chemphar Durgs & Liniments reported as 1989 (40) ELT (S.C.)** wherein the Hon'ble Supreme Court held as follows:-

> "Extended period is applicable only when something positive other than mere inaction or failure on the part of the manufacture is proved conscious and deliberate withholding of the information by manufacturer is necessary for invoking the extended period. If the Department had full knowledge of the had reasonable belief that he is not required to give a particular information, only normal period of limitation i.e. 1 year is applicable."

Further, in the case of **Uniworth Textiles Limited vs. CCE, Raipur reported as 2013 (288) ELT 161 (S.C.)**, it has been held as follows:-

> "Burden to prove malafide of the notice is on Department who makes the allegation. Onus to prove bonafide conduct is not on notice even in terms of Section 28 of the Customs Act.

There is no evidence provided by the department to prove appellant's malafide. Appellant's financial records were in the knowledge of the department. Hence, it is held that extended period of limitation is wrongly invoked. Show cause notice is held to be barred by time.

18. On the sole ground that the entire demand is barred by time, the levy of interest and penalty is also held unsustainable. We draw our support from the decision of this Tribunal Mumbai Bench in the case of **Trans Engineers India Private Limited vs. Commissioner of Central Excise, Pune** reported as **2015 (40) STR 490 (Tri.-Mumbai).** The Delhi Bench also in the case of **Pahwa Chemicals Private Limited vs. Commissioner of Central Excise, Delhi-IV** reported as **2014 (311) ELT 205 (Tri.-Del.)** has held that when there is no justification in confirmation of demand mainly for the reason that the demand is barred by time, nor there is justification in confirmation of the amount of interest. The Hon'ble Suprme Court in the case of **Hindustan Steel vs. State of Orissa** reported as 1978 (2) ELT J159 (SC) has held that the penalty will not ordinarily be imposed unless the party either acted deliberately in defiance of law or was guilty of conduct contentious or dishonest or acted in conscious disregard of its obligation.

19. In the light of above discussion, it is held that the appellant had never provided the services as are alleged in the show cause notice. The Department is held to have wrongly invoked the extended period of limitation. Hence, the show cause notice is held to be barred by time. The order confirming the demand based on such show cause notice is held liable to be set-aside. Resultantly, interest cannot be demanded and the penalty also was not imposable on the appellant. Though the proprietor of the appellant Shri Rakeshdhar Dubey upon who separate penalty was imposed, is not present but in light of the above discussion,

when the entire demand is held to be set-aside, the separate penalty on Mr. Rakeshdhar Dubey also has no basis of sustenance.

20. Consequent to the above conclusion, we hereby set-aside the order under challenge. Resultantly, the appeal is hereby allowed.

(Dictated & pronounced in the open Court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

G.Y.