

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 55233 of 2023

(Arising out of Order-in-Appeal No. 109/AK/ST/JDR/2023 dated 03.05.2023 passed by the Commissioner, Central Excise & CGST, Jodhpur)

M/s Shri Mohmd. Shafik Contractor

Appellant

210, Behind Dalley Khan Petrol Pump,
Barkat Colony, Akhaliya Chouraha, Jodhpur

Versus

Commissioner of CGST-Jodhpur

Respondent

G-105, New Industrial Area,
Opp. Diesel Shed, Basni, Jodhpur

Appearance:

Present for the Appellant: Shri Om P. Agarwal, Chartered Accountant

Present for the Respondent: Shri Rohit Issar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing : 15/09/2025

Date of Decision : 12/11/2025

Final Order No. 51706/2025

Dr. Rachna Gupta:

M/s Shri Mohd. Shafik, Contractor¹ is engaged in providing the "Works Contract Service" are registered under Section 69 of the Finance Act, 1994. The Central Government in exercise of such power has issued Notification No. 30/2012-ST dated 20.06.2012 notifying the nature of services and the person liable to pay service

1 the appellant

tax. According to Sl. No. 9 of Notification No. 30/2012-ST dated 20.06.2012, the service tax in respect of execution of works contract service to the extent of 50% is payable by the service recipient and balance 50% by service provider if, service provider is an individual or partnership firm and the recipient is a body corporate. However, it was observed that for the period from April 2015 to September 2015, the appellant has filed Nil service tax return and after that, the appellant has not filed ST-3 returns for the period October 2015 to June 2017. Accordingly, it was alleged that the appellant has not paid/short paid service tax amounting to Rs. 4,16,572/- (inclusive of cesses) on work contract services provided to M/s Rajasthan Vidyut Prasaran Nigam Limited². Since the appellant has failed to file return, thereby has contravened the provision on Section 68 and 70 of the Finance Act, 1994 read with Rule 6 and 7 of the Service Tax Rule, 1994.

1.2 With these observations, Show Cause Notice No. 70/2020 dated 29.12.2020 was served upon the appellant proposing recovery of service tax amounting to Rs. 4,16,572/- (inclusive of cesses) along with interest. Penalty under Section 78 of Finance Act, 1994 and under Section 77 of the Act. The proposal was initially confirmed vide Order-in-Original No. 59/2022 dated 31.03.2022. Appeal against the said order has been rejected vide Order-in-Appeal No. 109/2023 dated 03.05.2023. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Om P. Agarwal, learned counsel for the appellant and Shri Rohit Issar, learned Authorized Representative for Revenue.

3. Learned counsel for the appellant submitted that the appellant has provided all the services to M/s Rajashtan Vidyut Prasaran Nigam Ltd. involving both goods and services. The activity, therefore, amounts to works contract service. It is submitted that issue of taxability of works contract services/composite contracts was in dispute and it finally got settled by Hon'ble Supreme Court in the case of **Commissioner of C.Ex. & Cus., Kerala Vs. Larsen & Toubro Ltd.**³ Learned counsel impressed upon that due to said confusion the appellant was not aware about the tax liability. The department has, therefore, wrongly alleged the suppression of facts. The show cause notice since has invoked extended period of limitation is alleged to be barred by time for the simple reason that the appellant had no intention to evade payment of tax.

3.1 It is being repeatedly held by the Hon'ble Supreme Court that something positive other than mere inaction on the part of the manufacturer or conscious or deliberate withholding of information when the manufacturer knew otherwise is required for covering extended period. Reliance is placed on the decision in the case of **Cosmic Dye Chemicals Vs.**⁴, **CCE Vs. Chemphar Drugs & Laminates**⁵, **Padmini Products Vs. CCE**⁶, **Tamil Nadu Housing**

3 2015 (39) STR 913 (SC)

4 1995 (75) ELT 721 (SC)

5 1989 (40) ELT 276 (SC)

6 1989 (43) ELT 159 (SC)

Board Vs. CCE⁷ and T.N. Dadha Pharmaceuticals Vs. CCE⁸.

Hon'ble Delhi High Court has held in the case of **Infinity Infotech Parks Ltd. Vs. UOI⁹** in a case involving demand of service tax for the extended period that 'it is settled law that mere failure to declare would not amount to willful suppression and that there must be some positive act from the side of the appellant to find willful suppression'. In the present case, Revenue has not produced any evidence that the appellant had suppressed the facts willfully.

3.2 It is also held that all transactions were duly reflected in the books of account and in the balance sheet. It was the department's duty to verify the same at the appropriate time. Invocation of extended period is not permissible where there is a failure on this duty of the department. Learned counsel has relied upon the decision of this Tribunal in the case of **Hindalco Industries Ltd. Vs. CCE¹⁰**. Tax was also not deposited under the bona fide belief that the services are being provided to the Government department engaged in distribution of power which was exempted from whole of tax liability vide Notification NO.11/2010 dated 27.01.2010. The decision in the case of **Noida Power Co. Ltd. Vs. CCE¹¹** has been relied upon. With these submissions, learned counsel has prayed for show cause notice to be held barred by time and for the impugned demand to be set aside. Appeal is prayed to be allowed

7 1994 (74) ELT 9 (SC)
8 2003 (55) ELT 20 (SC)
9 2012-TIOL-987-HC-DEL-ST
10 2003 (161) ELT 346 (Tr.)
11 20w14 (33) STR 383 (Tri.)

4. While rebutting these submissions, learned DR submitted that the period in dispute is 2015-16 to 2017-18. The decision of Hon'ble apex court in **L&T** (supra) decision was of the year 2015. Hence the entire plea taken by appellant about the prevalent confusion with respect to tax liability on WCS/composite contracts, is not applicable to the given facts. The works contract provided by the appellant otherwise does not include the materials supplied by RVPNL. Hence no question arises for deduction of material used in the works contract services. The works which were performed with the material, the appellant is already held entitled for the abatement.

4.1 Further, it is observed that the impugned period was otherwise the period of self-assessment and it was the statutory requirement for assessee to file their correct returns. Since the appellant had made a wrong assessment and the only outcome thereof is the short payment/non-payment of tax. The act has rightly been held to be the deliberate act resulting into evasion of tax. The department has rightly invoked the extended period of limitation. Otherwise also, the non-payment of service tax would have remained unnoticed had there been no audit which again clarifies the intention of the assessee. Hence department has rightly invoked the extended period of limitation. Learned Departmental Representative relying upon the following decisions:

(i) Rajesh Vs. Assistant Commissioner of CGST & Central Excise, Chennai¹²;

(ii) Hakim Singh Contractor Vs. Commissioner of GGST, CCE, Jaipur¹³;

(iii) Warsi Buildcon Vs. Principal Commissioner, CCE & ST¹⁴

12 (2023) 11 Centax 62 (Mad.)

13 Final Order No. 51645/2023 dated 16.11.2023

has prayed for the dismissal of the appeal.

5. Having heard the rival contentions and perusing the record, it is observed that the adjudicating authority has discussed the Notification No. 24/2012 dated 06.06.2012 based whereupon the appellant had claimed the exemption. The authority has also observed the activity of the appellant to be in the nature of works contract services and after meticulously examining all the work order, the original adjudicating authority has held as follows:

"24 Accordingly to above re-calculation, I find that demand of duty during the period 2015-16 to 2017-18 (upto June 2017) is Rs. (22570+48891+74569+35965)= 181995/- payable by the assessee instead of Rs. 416572/- and I dropped the demand of Rs. 234577/- reasons for various benefit/exemption as discussed above under work contract services viz. (Notification No. 24/2012-ST dated 06.06.2012 and Notification No. 30/2012-ST dated 20.06.2012 etc.). I further observed from the Work Orders during the above periods which shows that the assessee provided the labour oriented work in which material supplied by the RVPNL is not included therefore no question arises for deduction of material used in the works contract services. It is also observed that some of the work have been performed with material therefore the assessee is entitled for the abatement"

5.1 As discussed in the said order, Notification No. 24/2012 does not extend any exemption except that in case of works contract services involving original order the tax is payable @ 40% of the amount. The tax liability is accordingly, calculated.

6. In the light of these observations, I do not find any infirmity in the order in original as well as in the impugned order which has upheld the order in original to the extent of confirming service tax liability of the appellant.

7. Coming to the plea of invocation of extended period of limitation, it is observed that the appellant has claimed the benefit of prevalent confusion about tax liability vis-à-vis works contract services. It is an acknowledged fact that the said confusion was put to rest by hon'ble apex court in **L&T** (supra) decision passed in the year 2015. The period in dispute is subsequent to the said decision. Ignorance of law is not permissible, hence the appellant is denied to claim the benefit of any confusion and also to plead the bona fide belief. These observations are sufficient for me to hold that the department has not committed any error while extended period of limitation has been invoked. I draw my support from the decision relied upon by learned Departmental Representative in the case of **Warsi Buildcon** (supra).

8. In totality of entire above discussion, the order under challenge is hereby upheld. Consequent thereto, the appeal stands dismissed.

(Pronounced in open Court on 12.11.2025)

(Dr. Rachna Gupta)
Member (Judicial)

RM