

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75161 of 2024

(Arising out of Order-in-Appeal No. 174/ST-Kol/ST/2023-24 dated 23.11.2023 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Neelamber Catterers Private Limited : **Appellant**
5B Judges Court Road, Alipore,
Kolkata – 700 027

VERSUS

Commissioner of C.G.S.T. and Central Excise : **Respondent**
G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Rishi Raju, Advocate, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77402 / 2025

DATE OF HEARING / DECISION: 10.09.2025

ORDER:

The present appeal has been filed against the Order-in-Appeal No. 174/ST-Kol/ST/2023-24 dated 23.11.2023 whereby the Ld. Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate has upheld the demands confirmed in the Order-in-Original No. 01/Supdt/ST/ADJN/BHWN/CGST & CX/Kol-South/2020-21 dated 24.03.2021.

2. The issues involved in the present appeal are summarized in the following table: -

Sl. No.	Particulars	Amount (in Rs.)	Ground
1.	Service Tax on Manpower Supply Services from M/s. Sonu Services under RCM	1,35,000/-	Service provider had already charged and paid service tax, but department demands again under RCM
2.	Service Tax on Director's Remuneration (Mr. Dipak Kumar Singh) under RCM	1,49,411/-	Alleged that director not full-time employee as having income from other sources.
Total Service tax demand		2,84,411/-	
3.	Reversal of CENVAT Credit M/s. Sonu on Services invoices	1,44,431/-	Credit denied on ground that service tax should have been paid under RCM by recipient
Total CENVAT Credit reversal		1,44,431/-	

3. The Ld. Counsel appearing on behalf of the appellant submits that the very same issues have been dealt with by this Tribunal in the appellant's own case for an earlier period, vide *Final Order No. 76989 of 2025 dated 22.07.2025 in Service Tax Appeal No. 75445 of 2020* wherein this Tribunal has allowed the appeal filed by the appellant. Accordingly, the appellant submits that the issues are no longer res integra and thus prays for allowing the present appeal.

4. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

5. Heard both sides and perused the records.

6. I find that the issues involved in the present appeal have already been dealt with by this Tribunal in the appellant's own case vide *Final Order No. 76989 of 2025 dated 22.07.2025 in Service Tax Appeal No. 75445 of 2020* wherein this Tribunal has allowed the appeal filed, with the following observations with respect to each of the issues involved in the present appeal: -

"12. Regarding the demand of service tax of Rs. 2,94,808/- confirmed under the category of Manpower supply services received from various providers, I find that the impugned order has confirmed the demand of service tax in respect of the services received from M/s Sonu Services. In this regard, the appellant submitted that M/s Sonu Services has already collected service tax in the invoices raised by them and deposited the same with the Government exchequer. From the evidences submitted by the appellant, I find that service tax has been collected and paid by the service provider M/s. Sonu Services, even though legally service receiver is liable to pay service tax on RCM basis. On such services. However, I observe that demanding service tax again from the recipient under RCM would amount to double taxation. This view has been held by Tribunal Bangalore in the case of Kerala Ceramics Ltd. v. CCE 2024 (5) TMI 868 CESTAT Bangalore. The relevant portion of the said decision is reproduced below:

6. We find that as per the letter furnished by M/s. Devi Transporters, they have certified that they have not availed any credit under Cenvat Credit Rules for providing the Goods Transport Service to the appellant and no deduction is claimed for cost of goods used in the rendering services. Similarly as evidenced from letter issued by M/s. Ayoob & Co., they also have not availed any Cenvat Credit and

no deduction was claimed for cost of goods used in rendering the services.

7. We find that the claim of the appellant is that once the transporter had paid some amount of service tax, it can be adjusted towards the tax liability of the appellant. The issue was considered by the Tribunal in the matter Navyug Alloys Pvt. Ltd. Vs. Commr. of C.Ex. & Cus., Vadodara-II 2009 (13) S.T.R.421 (Tri.-Ahmd.), where on similar facts and circumstances, the Tribunal held that once tax is already paid on the service, it is not open to the department to confirm the same against the appellant Similarly in the matter of M/s. Agniplast Pvt. Ltd., 2013 (32) S.T.R.628 (Tri.-Ahmd) where it is held that:-

8. On perusal of the records, I find that there is no dispute that the amount of Service Tax liability which is contested before the Bench is in respect of the services rendered by M/s. Naranji Peraj Transport Co., M/s. Pathik Roadlines and Transport Corporation of India Ltd. On perusal of the certificates issued by these transport companies, as annexed page Nos. 36, 37 & 38, I find that these transporters have categorically stated that the Service Tax liability for the invoices raised on the appellant has been discharged by them and they had also mentioned their Service Tax registration number and PAN number in their certificates. As against such documentary evidences, the first appellate authority's findings as to no authentic documentary evidence has been produced, seems to be incorrect. Since the certificates clearly indicate the Service Tax registration number, the least that could have been expected from the Revenue, was to call for the details from the concerned jurisdictional Service Tax authorities. Having not done, the lower authorities cannot shift the entire blame on the appellants for having not produced any authentic documentary evidence.

9. I find that the decision of this Bench in the cases Navyug Alloys Pvt. Ltd. (supra), Mandev Tubes (supra) and Geeta Industries Pvt. Ltd. (supra) will squarely cover the issue in favour of the assessee. I also find that

CBEC vide Circular dated 17-12-2004, specifically in para 5.7 stated that; "If Service Tax due on transportation of a consignment has been paid or is payable by a person liable to pay Service Tax, Service Tax should not be charged for the same amount from any other person, to avoid double taxation."

8. Considering the facts and circumstances of the case, and the decisions of the Tribunal the appeal is allowed with consequential relief, if any in accordance with law."

12.1. Thus, by relying on the decision cited supra, I hold that service tax cannot be demanded again from the appellant under RCM, as the service tax in this case has already been paid by the service provider M/s. Sonu Services. Thus, I hold that the demand of service tax confirmed in the impugned order on this count is not sustainable and hence I set aside the same.

13. Regarding the demand of service tax of Rs 19,08,000/- confirmed on the remuneration paid to Four directors, the remuneration has been paid to the directors as salary and on such amount TDS was also deducted under the salary head under section 192 of the Income Tax Act, 1961& Form 16 was being issued to such directors. I observe that the service provided by Director as an employee to the employer is not liable to pay service tax as per Section 65B (44) of the Finance Act, 1994. As per the sub clause (b) of sub-Section (44) of Section 65 of Finance Act, 1994, it is clear that provision of any service by an employee to the employer during the course of his employment does not fall under the definition of service. In the present case, I find that the Directors to whom the salary was paid by the appellant are employees of the Company. Thus, I find that the Directors, in the capacity of employees provided service to the employer i.e. present appellant Company. Therefore, I hold that the service provided by the Directors to the appellant Company, is in the course of their employment is out of the purview of service in terms of Section 65B(44) (b) of the Finance Act, 1994.

13.1. I also find that CBEC has clarified the issue vide Circular No. 115/9/2009-ST dated 31.07.2009, wherein it has been clarified that any salary paid to the Directors of the Company is outside the scope of

service. For ready reference, the relevant clarification issued by Board is reproduced below:

"Below mentioned issues have been referred to the Board seeking clarifications,

(I) applicability of service tax under 'Business Auxiliary service' on commission paid to Managing Director / Directors (whole time, or Independent) by the company,

(ii) applicability of service tax on Independent Directors who are part of the Board of Directors under 'Management Consultant service.

2. Both the matters have been examined by the Board and the clarifications are as under,-

(i) Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as 'Commissions'. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.

(ii) The Managing Director / Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

3. In view of the above, it is clarified that remunerations paid to Managing Director / Directors of companies whether whole-time or Independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.

Pending issues may be resolved in line with the above."

13.2. In view of the above, I observe that any salary paid to the Directors of the Company for the service rendered by him as an employee of the company, is outside the scope of service, Hence, I hold that no service tax would be leviable on such amount. This issue has also been clarified by the Board Circular dated 31.07.2009, which is binding on the departmental authorities. Therefore, I hold that the demand of service tax on this count is not sustainable and hence I set aside the same.

....

14.1. Regarding the demand for reversal of Cenvat credit of Rs.2,94,809/-, **I find that the impugned order has disallowed the credit on the ground that service tax was not paid by M/s Sonu Services under RCM. In this regard, I find that the stand of the department is not sustainable. Once service tax is paid and the appellant has received it proper invoice evidencing payment of the tax, CENVAT credit is available whether service tax is paid by service provider or recipient. In support of this view, I rely on the decision in the case of Srimi Link v. Commissioner [Final Order No. A/ 11246/2022 dated 19.10.2022] - CESTAT Ahmedabad."**

(Emphasis supplied)

6.1. I find that the ratio of the decision cited supra in the appellant's own case is squarely applicable to the facts of the instant case before me. Therefore, by following the same, I hold that the demands of Service Tax confirmed in the impugned order, as indicated under paragraph 2 supra of this Order, are not legally sustainable and consequently, the same are set aside.

6.2. Since the above demands itself are not sustainable, the question of charging interest or imposing penalties does not arise.

7. In the result, I set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd