

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

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50610 OF 2017

(Arising out of Order-in-Original No. DDN-EXCUS-COM-000-53-2016 dated 08.12.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttarakhand)

**M/s. Aadarsh Sri Sai Manpower
Solution (p) Ltd.,** **...Appellant**
L-49A, Shivalik Nagar,
BHEL, Hardwar

Versus

**Commissioner, Customs, Central
Excise & Service Tax,** **...Respondent**
E Block, Nehru Nagar, Hardwar Road,
Dehradun, Uttarakhand

WITH

SERVICE TAX APPEAL NO. 50612 OF 2017

(Arising out of Order-in-Original No. DDN-EXCUS-COM-000-53-2016 dated 08.12.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttarakhand)

Shri Madan Singh Rawat, Director **...Appellant**
M/s. Aadarsh Sri Sai Manpower
Solution (p) Ltd.,
Rishikesh

Versus

**Commissioner, Customs, Central
Excise & Service Tax,** **...Respondent**
E Block, Nehru Nagar, Hardwar Road,
Dehradun, Uttarakhand

AND

SERVICE TAX APPEAL NO. 51454 OF 2017

(Arising out of Order-in-Original No. DDN-EXCUS-COM-000-53-2016 dated 08.12.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttarakhand)

Shri Trilok Singh Rawat, Director **...Appellant**
M/s. Aadarsh Sri Sai Manpower
Solution Private Limited,
Roorkee, Distt Haridwar, Uttarakhand

Versus

Commissioner, Customs, Central **...Respondent**

Excise & Service Tax,
E Block, Nehru Nagar, Hardwar Road,
Dehradun, Uttarakhand

APPEARANCE:

Shri R M Saxena, Advocate for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 13.04.2023
Date of Decision: 21.07.2023

FINAL ORDER NO. 50953-50955/2023

JUSTICE DILIP GUPTA:

Service Tax Appeal No. 50610 of 2017 has been filed by M/s. Aadarsh Sri Sai Manpower Solution (P) Ltd.¹ to assail the order dated 08.12.2016 passed by the Commissioner, Central Excise and Service Tax, Commissionerate, Dehradun², confirming the demand of service tax with interest and penalty. It also seeks to appropriate an amount of Rs. 12,02,304/- deposited by the appellant and drops the demand of Rs. 4,47,71,585/-. The order also imposes penalty of Rs. one lakh each upon Madan Singh Rawat and Trilok Singh Rawat, Directors of the appellant under section 78A of the Finance Act 1994³.

2. **Service Tax Appeal No. 50612 of 2017** has been filed by Madan Singh Rawat to assail the imposition of penalty of Rs. one lakh.

3. **Service Tax Appeal No. 51454 of 2017** has been filed by Trilok Singh Rawat to assail the imposition of penalty of Rs. one lakh.

1. the Appellant
2. the Commissioner
3. the Finance Act

4. The office premises of the appellant and the residential premises of the two directors of the appellant were searched by the Central Excise officers on 27.02.2014 and after investigation, a show cause notice dated 15.10.2015 alleging short payment of service tax, was issued demanding service tax amounting to Rs. 5,20,16,634/- along with interest. Penalties on the appellant and its directors were also proposed. The show cause notice alleged that though the appellant was required to pay service tax on the taxable amount received from the clients on account of manpower recruitment or supply agency service provided by them to their clients, and the reverse charge mechanism introduced by notification dated 20.06.2012 would not be applicable to the appellant since it was a private limited company, the appellant had short paid service tax. The show cause notice also proposed to impose penalty upon the two directors.

5. The appellant filed a detailed reply and contested the allegations made in the show cause notice. The Commissioner, by the aforesaid order dated 08.12.2016, confirmed the demand of service tax and the relevant findings are as follows:

"56. I find that the period involved in the demand in 2011-12 to 2013-14. **For the period upto 30.06.2012 the provider of recruitment or supply of manpower alone was to discharge the service tax liability.** Thus, there is no dispute for this period and the party is liable to pay the service tax leviable on the taxable service rendered by them.

57. **I further find that w.e.f. 01.07.2012, under Section 68(2) of the Act certain services were notified where the service tax was required to be paid party or wholly by the recipient of the service.** Vide Notification 30/2012-ST dated 20.06.2012, issued under Section 68(2) of the Act, the taxable services provided or agreed to be provided by

way of supply of manpower for any purpose by any individual, Hindu Undivided Family or partnership firm were notified. **It is noteworthy that the services of manpower supply per se were not notified but only in cases where the provider of this service was an individual, Hindu Undivided Family or partnership firm, the section 68(2) of the Act was attracted. It is not disputed that M/s. Aadarsh Sri Sai is a private limited concern and therefore notification 30/2012-ST dated 20.06.2012 will not apply to the party and as provided** in Rule-2(d)(ii) of the Rules, 'the person liable to pay the tax' would be the provider of the services i.e. M/s. Aadarsh Sri Sai. Thus, I find that even during the period 01.07.2012 onwards, only the party was required to discharge the entire service tax liability.

xxxxxxxxxxxx

60. **In view of the aforesaid discussion, I hold that it was the legal responsibility of the party to discharge the complete service tax liability on the manpower supply services rendered by them during the period 2011-12 to 2013-14.** As already observed by me the total differential service tax required to be paid by the party during this period comes to Rs. 72,4,949/- and the same is liable to be recovered from them along with interest in term of section 73(1) and Section 75 of the Act. I however, note that the party has deposited Rs. 26,52,888/- towards their service tax liability and Rs. 12,02,304/- towards interest thereupon, vide challan dated 06.10.2016 and hold that the same is liable to be appropriated towards the demand of service tax and interest, respectively, confirmed hereunder.

xxxxxxxxxxxx

65. **As regards to imposition of the personal penalty Shri Madan Singh Rawat and Shri Trilok Singh Rawat have taken the stand that as no service tax was payable by them, there was no case for levy of any personal penalty under Section 78A of the Act.** I find that, in the light of the findings given by me in the preceding paras, the party was liable to pay service tax amounting to Rs.

72,44,949/-. **I have also observed that it was in the knowledge of the party that the entire tax was to be discharged by them, however, inspite of this knowledge the tax was not paid in terms of this provision of law.** I also find that both, Shri Madan Singh Rawat – in his reply and Shri Trilok Singh Rawat- in his statement, have stated that the service tax liability was theirs’ but the tax was only paid to the extent of 25% as the balance 75% was paid by their clients. I find that Shri Madan Singh Rawat and Shri Trilok Singh Rawat, both directors of M/s. Aadarsh Sri Sai, had abetted in evasion of the service tax in contravention of the provisions of the Act, as observed in the preceding paras. Accordingly, I hold that they are liable for penalty under Section 78A of the Act.”

(emphasis supplied)

6. Shri R M Saxena, learned counsel appearing for the appellant submitted that the concept of reverse charge mechanism under notification dated 20.06.2012 to manpower supply would not be applicable to a private limited company, but as this provision was new, there was lot of confusion in the trade and the clients of the appellant, who were body corporates and were receiving manpower supply service from the other service providers also who were proprietary/partnership firms in which case they would be paying 75% of the total tax leviable, insisted that they would be pay 75% of the tax liability themselves in the case of the appellant also. Learned counsel pointed out that for fear of losing business, the appellant acceded to the request, but in all cases even when they deposited 75% of the tax, the remaining liability was deposited by the appellant and as such in all cases 100% of the tax liability was paid to the government. Learned counsel pointed out that some of the clients of the appellant have provided details of the 75% tax paid by them. In fact learned counsel pointed out that out of the service tax demand of Rs. 72,44,949/- confirmed by the impugned

order, the appellant had collected proof of payment of tax amounting to Rs. 45,73,816/- and the balance amount of Rs. 26,52,888/- with interest amounting to Rs. 12,02,304/- had been paid by the appellant by challan dated 06.10.2016.

7. Shri Rajeev Kapoor, learned authorised representative appearing for the department, however, supported the impugned order and contended that it does not call for any interference in this appeal.

8. The issue that requires consideration in this appeal is as to whether payment of 75% tax by the recipient of service, when the service provider (the appellant) was required to deposit 100% tax but paid only 25% tax could be treated as discharge of service tax liability by the appellant.

9. This issue was examined by the Karnataka High Court in **Zyeta Interiors Pvt. Ltd. vs. Vice Chairman Settlement Commissioner, Chennai**⁴ and the relevant observations are as follows:

"4. Having heard the Learned Counsel for the parties and having perused the Petition Papers, this Court is inclined to grant a limited indulgence in the matter as under and for the following reasons:

(a) xxxxxxxxx

(b) There is also some force in the contention of the assessee that the entire amount due by way of tax having already reached the Exchequer, the assessee could not have been called to make the payment once over; petitioners had availed manpower services and in terms of Section 68(2) of the Finance Act, 1994, 50% of the tax due was paid by the assessee and the remaining 50% was remitted by the service provider; however, w.e.f. 20-6-2012 vide Notification No. 30/2012-S.T., this ratio was altered to 75:25 upto 1-4-2015 between the consumer & the service provider; further, it was changed to 100% qua the consumer

4. **2022 (58) G.S.T.L. 151 (Kar.)**

w.e.f. 1-4-2015; however, inadvertently, the Assessee continued to pay 50% and the service provider paid the remaining 50%; thus, whatever is due to ceaser has reached his hands, is true; in fact, the C.B.E. & C. vide Circular No. 341/18/2004 had clarified that the reverse charge mechanism should not lead to double taxation; in other words, once the tax liability is discharged regardless of the persons who discharge, the assessee cannot be asked to pay the tax again.

(c) xxxxxxxxxxxx”

10. The aforesaid decision of the Karnataka High Court in **Zyeta Interiors** emphasises that where the government received the entire amount of tax an assessee cannot be called upon to make payment even if it had deposited some portion of the tax dues and the remaining portion was deposited by the service provider. The Karnataka High Court also observed that once the tax liability has been discharged, regardless of the person who has discharged, an assessee cannot be asked to pay the tax again.

11. The Tribunal in **Reliance Securities Ltd. vs. Commissioner of Service Tax, Mumbai-II**⁵, **Angiplast Pvt. Ltd. vs. Commissioner of Service Tax, Ahmedabad**⁶, **India Gateway Terminal (P) Ltd. vs. Commissioner of C. Ex., Cochin**⁷ and **Commissioner of Service Tax, Meerut-II vs. Geeta Industries P. Ltd.**⁸ made the same observations.

12. In this view of the matter, when the entire tax due has been deposited in the account of the Central Government though not entirely by the appellant as a service provider but also by the service recipients, it will not be possible to sustain the demand.

5. 2019 (20) G.S.T.L. 265 (Tri.-Mumbai)
 6. 2013 (32) S.T.R. 628 (Tri.- Ahmd.)
 7. 2010 (20) S.T.R. 338 (Tri.-Bang.)
 8. 2011 (22) S.T.R. 293 (Tri.-Del.)

13. The penalties could also not, for this reason, be imposed upon the directors of the appellant.

14. The impugned order dated 08.12.2016 passed by the Commissioner is, set aside. Service Tax Appeal No. 50610 of 2017, Service Tax Appeal No. 50612 of 2017 and Service Tax Appeal No. 51454 of 2017 are, accordingly, allowed.

(Order pronounced on **21.07.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

JB

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

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50610 OF 2017

(Arising out of Order-in-Original No. DDN-EXCUS-COM-000-53-2016 dated 08.12.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttarakhand)

**M/s. Aadarsh Sri Sai Manpower
Solution (p) Ltd.,**
L-49A, Shivalik Nagar,
BHEL, Hardwar

...Appellant

Versus

**Commissioner, Customs, Central
Excise & Service Tax,**
E Block, Nehru Nagar, Hardwar Road,
Dehradun, Uttarakhand

...Respondent

WITH

SERVICE TAX APPEAL NO. 50612 OF 2017

(Arising out of Order-in-Original No. DDN-EXCUS-COM-000-53-2016 dated 08.12.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttarakhand)

Shri Madan Singh Rawat, Director
M/s. Aadarsh Sri Sai Manpower
Solution (p) Ltd.,
Rishikesh

...Appellant

Versus

**Commissioner, Customs, Central
Excise & Service Tax,**
E Block, Nehru Nagar, Hardwar Road,
Dehradun, Uttarakhand

...Respondent

AND

SERVICE TAX APPEAL NO. 51454 OF 2017

(Arising out of Order-in-Original No. DDN-EXCUS-COM-000-53-2016 dated 08.12.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttarakhand)

Shri Trilok Singh Rawat, Director
M/s. Aadarsh Sri Sai Manpower
Solution Private Limited,
Roorkee, Distt Haridwar, Uttarakhand

...Appellant

Versus

**Commissioner, Customs, Central
Excise & Service Tax,**

...Respondent

E Block, Nehru Nagar, Hardwar Road,
Dehradun, Uttarakhand

APPEARANCE:

Shri R M Saxena, Advocate for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 13.04.2023
Date of Decision: 21.07.2023

ORDER

Order pronounced on 21.07.2023.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

JB