

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

**PRINCIPAL BENCH - COURT NO. II**

**Service Tax Appeal No. 50277 of 2022-SM**

(Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-144-21-22 dated 12.10.2021 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.))

**M/s. Dhrubashish Biswas**

Shop No.02, Sona Complex,  
Gulloa Chowk, Garha,  
Jabalpur (M.P.)

**Appellant**

VERSUS

**Commissioner of CGST & Central Excise**

Jabalpur (M.P.)

**Respondent**

**APPEARANCE:**

Shri Abhishek Jaju, Advocate and Shri Uttam Kumar Nag, Consultant for the appellant

Shri Gopi Raman, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.50964/2022**

**DATE OF HEARING/ DECISION :27.09.2022**

**ANIL CHOUDHARY:**

Heard the parties.

2 The issue involved in this appeal is whether tax has been rightly demanded with respect to the abated portion of turnover or incorrect calculation along with penalty.

3. The brief facts are that the appellant is engaged in the works contract/repair and maintenance contract and work has been done for Public Sector Undertakings like Bharat Sanchar Nigam Ltd. (BSNL), Life Insurance Corporation of India (LIC), etc. For the financial years 2014-2015, the appellant had filed its returns for both the half years in time and total admitted tax, as per return for 2014-2015 is Rs.2,73,000/-.

4. The appellant had availed abatement for the material component as permissible under Rule 2 A of Service Tax (Determination of Value) Rules, 2006, wherein it is provided that with respect to original work, the taxable value under Service Tax is 40% of the gross amount charged. Whereas for repair and maintenance works, or re-conditioning or restoring, the taxable value is 70% of the gross amount. It is provided as follows:-

Sl.No.	Categories	Valuation Principle
1.	Original Works	40% of the total amount charged for works contract
2.	Works contract entered for maintenance or repair or reconditioning or restoration or servicing of any goods.	70% of the total amount charged for works contract.
3.	Other work contracts including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tilling, installation of electrical fittings of an immovable property.	60% of the total amount charged for works contract.

5. Thereafter, vide budget 2014-2015, the amendment in Rule 2 A of Service Tax (Determination of Value) Rules, 2006 was made. Whereas the above category 2 and 3 were merged into a single category providing for taxable value as 70% of the gross amount. This was implemented w.e.f. 1.10.2014.

6. Further, vide Notification no.30/2012-ST, it is provided, "where the recipient of service is a corporate entity, service tax is payable at 50% by the provider and 50% by the recipient /corporate entity.

7. Show cause notice dated 11.10.2019 was issued alleging that the appellant has received gross amount of Rs.56,46,859/- as per Form 26 AS (under I.T. Law). Thereafter, Revenue vide letter dated 24.10.2018 called for copy of the records, like balance sheet, profit & loss account, Income Tax Return, details of service provided , copy of the bank statement, copy of the ST-3 Return etc.

8. Further, alleged noticee failed to submit the details called for. It appeared that they have not paid service tax nor filed ST-3 Returns. It was proposed to demand service tax on the gross amount @ 12.36%. Thus, demanding tax of Rs.6,97,957/- along with interest. Further, penalty was proposed under Section 78, 77 (1)(c ) and 77 (1)(d) and further, late fee was proposed under Rule 7 C of with Service Tax Rules read with Section 70 of the Act.

9. The show cause notice was adjudicated on contest and the proposed demand was confirmed along with interest. Further, equal amount of penalty was imposed under Section 78. Penalty of Rs.10,000/- under Section 77(1)(c) and Rs.10,000/- under Section 77 (2) for not filing periodical ST-3 Returns were also imposed.

10. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order-in-appeal was pleased to modify the order-in-original confirming the demand of service tax along with penalty under Section 78. Further, penalty under Section 77(1)(c) was also confirmed observing that the appellant failed to produce the documents as called for. Further, observing that ST-3 Return has also been filed. No penalty is imposable under Section 77(2) of the Act and the penalty under Rule 77(1)(d) was set aside.

11. Being aggrieved, the appellant preferred the appeal before this Tribunal.

12. Ld. Counsel for the appellant urges that the court below has erred in not allowing the abatement for the material component under the admitted fact that the appellant have done work contract and or repair and maintenance work along with material.

13. In the adjudication order, the Asstt. Commissioner in para-9 had recorded the finding that as per Master Agreement with BSNL dated 20.03.2009, the work involved, "Operation and Maintenance of Electro-mechanical services, which involve providing round the clock site caretaking, operation and 'comprehensive maintenance of electromechanical services involving supply of all required material for proper upkeep of equipment among others.' Further, before the Commissioner (Appeals) also, they led evidence as recorded in para-5 of the order-in-appeal, mentioning, *inter alia*, (i) sample work orders for repair and maintenance by BSNL Ltd. and LIC of India Ltd., (ii) photocopy of Notice inviting Tenders issued by BSNL, (iii) copy of the Agreement dated 28.02.2014 with BSNL Electric Division, Bilaspur/Bhopal. Copy of the some R.A. Bills, copy of the bills issued to LIC of India. However, Commissioner (Appeals) have erred in ignoring the facts apparent on the face of the records. He erred in confirming the demand of tax as per the adjudication order along with penalty.

14. Ld. Counsel has taken me through the various documents like work order etc. filed with the paper book. It is evident that nature of work includes use/supply of materials. Thus, I find that rejection of the claim of abatement for material component by the court below is against Valuation Rules and facts on record. I further find that the appellant had provided calculation of their admitted tax at Rs.2,24,763/-, which has been taken notice of, in para 12 of the impugned order-in-appeal. However, calculation has been rejected on flimsy ground. I accept this calculation of tax payable at Rs.2,24,763/-, which has been calculated as per Service Tax (Determination Value) Rules, 2006, as amended from time to time. Further, liability to pay tax has been correctly calculated as per notification no.30/2012-ST, under which the appellant is required to pay only 50% of the service tax liability and the balance 50% is payable by the recipient of

the service being Corporate entity. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law. The ground of limitation is left open. The appeal is allowed.

[Order dictated & pronounced in open court]

( Anil Choudhary)  
Member (Judicial)

Ckp.