

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

PRINCIPAL BENCH, COURT NO.-1

Service Tax Appeal No. 52207 of 2018

(Arising out of Order-in-Appeal No. 24(RK)ST/JPR/2018-19 dated 07.05.2018 passed by the Commissioner (Appeals), Jaipur)

M/s Cords Cable Industries Limited
(Unit-II), SP-239, 240 & 241, RIICO Industrial
Area, Chopanki, Bhiwadi,
Dist. Alwar-301019 Rajasthan

...Appellant

versus

Commissioner, Central Excise
Jaipur (Rajasthan)

...Respondent

Appearance

Shri Anupam Goel, Chartered Accountant for the Appellant

Shri Rajeev Kapoor and Shri P.K. Sinha, Authroised Representatives for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 22.12.2022
Date of Decision: 12.04.2023**

FINAL ORDER NO. 50456/2023

Justice Dilip Gupta:

M/s. Cords Cable Industries Ltd., (Unit-II)¹ has filed this appeal to assail the order dated 07.05.2018 passed by the Commissioner (Appeals), by which the order dated 15.03.2017 passed by the Deputy Commissioner has been confirmed to the extent that the demand of service tax has been upheld with interest but penalty imposed has been set aside.

2. The appellant is engaged in the manufacture of instrumentation/power cable and during the period of dispute from July 2012 to August 2014, the appellant paid an amount of Rs.

1. the appellant

2,73,01,852/- towards rent to Naveen Sawhney and D.K. Prashar for the premises let out by them to the appellant. The premises were used by the appellant for its Registered Office/Corporate Office. Naveen Sawhney and D.K. Prashar also happen to be the Directors of the appellant. In the invoices raised by the landlords to the appellant in respect of the properties let out, service tax aggregating to Rs. 27,14,665/- was also charged and deposited as and when it fell due.

3. However, a show cause notice dated 28.01.2016 was issued to the appellant invoking the extended period of limitation alleging that:

- (i) The appellant during July 2012 to August 2014 had paid the rent to the tune of Rs. 2,73,01,852/- to the landlord/owner of the premises and they happened to be, at the relevant time, Director of the appellant and, therefore, service tax of Rs. 33,74,509/- was payable by the appellant on reverse charges basis in accordance with Notification dated 20.06.2012 as amended by Notification dated 07.08.2012; and
- (ii) The appellant had not obtained registration for 'renting of immovable property' services nor filed any ST-3 return for the said services.

4. The appellant submitted a reply to the show cause notice but the Deputy Commissioner, by order dated 14.03.2017, confirmed the demand with interest and penalty. The Commissioner (Appeals) has confirmed the demand with interest but has set aside the penalty demanded from the appellant.

5. Shri Anupam Goel, learned chartered accountant appearing for the appellant submitted that:

- (i)** The taxable service of 'renting of immoveable of property' has been provided by Naveen Sawhney and D.K. Prashar as owners/landlord of the premises and not in the capacity of Directors of the appellant and, therefore, the Commissioner (Appeals) committed an error in holding that the appellant was required to pay service tax under the reverse charge mechanism on the rent paid for the property taken on lease;
- (ii)** As the rent was collected by Naveen Sawhney and D.K. Prashar as the owners/landlord of the premises, the service tax was included in the invoices raised on the appellant and was also deposited; and
- (iii)** In any view of the matter, the extended period of limitation could not have been invoked in the facts and circumstance of the case.

6. Shri Rajeev Kapoor and Shri P.K. Sinha, learned authroised representatives for the department, however, supported the impugned order and submitted that the appellant was required to pay service tax on a reverse charge mechanism since rent was being collected by the Directors of the appellant.

7. The submissions advanced by the learned chartered accountant appearing for the appellant and the learned authorized representative appearing for the department have been considered.

8. The premises which were let out to the appellant are owned by Naveen Sawhney and D.K. Prashar in their individual capacity and it is not the case of the department that the properties were owned by them as Directors of the appellant. In such a situation, rent was

collected by them in their individual capacity and merely because they also happen to be the Directors of the appellant would not mean that they had collected rent as Directors of the appellant.

9. The relevant portion of the Notification dated 20.06.2012, as amended by Notification dated 07.08.2012 relied upon by the department, wherein the description of services, the person liable to pay service tax and the extent of service tax payable by such person under the reverse charge mechanism has been specified is reproduced below:

"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

- A) (i) -----
(ii) -----
(iva) provided or agreed to be provided by a director of a company to the said company"

10. The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the

taxable services specified at paragraph (I), clause (A), sub-clause (iva), to Notification dated 20.06.2012, as amended by Notification dated 07.08.2012, has been specified at serial no. 5A of the Table at paragraph (II) of the said Notification and the relevant portion is reproduced as follows:

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
5A	In respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%”

11. The person liable to pay service tax under the reverse charge mechanism has also been stipulated under rule 2(1)(d) of the Service Tax Rules, 1994, which reads as under:

- “(d) “person liable for paying service tax”, -
- (i) in respect of the taxable services notified under sub-section (2) of the section 68 of the Act, means,-
- (A) -----
- (B) -----
- (EE) in relation to service provided or agreed to be provided by a director of a company or the body corporate to the said company or body corporate, the recipient of such service.”

12. The finding recorded by the Commissioner (Appeals) in the impugned order is as follows:

“Here, in the present case, Shri Naveen Swahney and Shri D. K. Prashar, both Directors are individual providing a service of renting of immovable property and the appellant is a service receiver. Since the condition of the notification is fulfilling, the service is

rightly covered under reverse charge mechanism and therefore, the service tax is payable by the appellant.”

13. The Commissioner (Appeals) assumed that Naveen Sawhney and D.K. Prashar are providing service of renting of immovable property as Directors of the appellant, whereas they are providing the said service in their individual capacity as owners of the premises and not as Directors of the appellant.

14. The appellant, in such a situation, could not have been asked to pay service tax on a reverse charge mechanism. What needs to be further noticed is that service tax had been deposited on the rent received by Naveen Sawhney and D.K. Prashar from the appellant.

15. Thus, for all the reasons stated above, the order dated 07.05.2018 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **12.04.2023**)

**JUSTICE DILIP GUPTA
(PRESIDENT)**

**P.V. SUBBA RAO
MEMBER (TECHNICAL)**