CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 51289 OF 2017

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-715-16-17 dated 27/02/2017 passed by The Principal Commissioner of Customs, Central Excise and Service Tax, Bhopal.]

M/s Sipani Enterprises **Appellant**
Plot No. 48-D, Sector – A,
Industrial Area, Mandideep,
District Raisen (M.P.).

VERSUS

Principal Commissioner of Customs, Central Excise & Service Tax, **Respondent**
Bhagya Bhawan, M.P. Zone – II,
Bhopal.

APPEARANCE
Shri A.K. Prasad, Advocate, Ms. Surabhi Sinha, Advocate – for the appellant.
Shri Manoj Kumar, Authorized Representative for the Department.

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51658/2023

DATE OF HEARING : 20.11.2023.
DATE OF DECISION : 18.12.2023.

RACHNA GUPTA

The appellant is engaged in rendering taxable service of 'Packaging Activity'. Their major client has been M/s HEG. Initially, the appellants were discharging their service tax liability on full amount of consideration, as used to be received by them from M/s HEG. However, during the audit of appellant's unit, department noted that the appellants started paying tax on only

50% of said amount of consideration received by them in lieu of services provided. On being enquired the appellant informed about an agreement with M/s HEG dated May 02, 2014 as was executed after introduction of Work Contract Service[1] wherein their services were considered as the Works Contract Service. Hence the appellants started taking benefit of Notification No. 30/2012-ST dated June 20, 2012, according to which the service provider of WCS was liable to pay 50% of the leviable tax and remaining 50% of the leviable tax was the liability of recipient of the said service.

2. The department formed an opinion that the services rendered by the appellants are not in the nature of works contract service and thus it was alleged that the appellants have deliberately claimed inadmissible abatement and exemption thereby filing the incorrect service tax returns. Based on the said alleged mis-representation that a show cause notice No. 2550 dated 14.07.2015 was served upon the appellants, invoking the extended period of limitation, proposing the demand of service tax amounting to Rs. 17,25,757/- along with the interest and the appropriate penalties. The proposal was initially confirmed vide the order-in-original No. 08/ADC/2016 dated 25.02.2016 the appeal against the said order has been dismissed vide order-in-appeal bearing No. 981 dated 27.02.2017. Being aggrieved, the appellant is before this Tribunal.

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[1] **WCS**

3. We have heard Shri A.K. Prasad, learned counsel for the appellant assisted by Ms. Surabhi Sinha and Shri Manoj Kumar, learned Departmental Representative for the Revenue.

4. Learned counsel for the appellant has mentioned that the period involved for the impugned demand is 01.07.2012 to 31.03.2015 i.e. the post negative list period, wherein the concept of classification of services was done away. The Notification No. 30/2012 entry No. 9 thereof has rightly been invoked because the appellant itself is the manufacturer of wooden crates which were being used by the appellants for packing of electrodes manufactured by M/s HEG Ltd. The packing was done at the premises M/s HEG itself. The packaging activity involved element of goods as well as the element of service. Hence, it was the works contract service to which the Notification No. 30/2012 was applicable. In accordance with entry No. 9 therein 50% of the tax liability was to be discharged by the service provider which has been discharged by the appellant and remaining 50% by the service recipient, the same has been duly discharged by M/s HEG who has also issued the certificate to this effect. It is submitted that the Adjudicating Authority below have failed to consider these things. It is further impressed upon that exercise otherwise is revenue neutral as M/s HEG were eligible for Cenvat credit for the 50% amount of service tax paid by them. They have already availed the same. If 50% more of service tax is demanded by the appellant M/s HEG shall again be eligible for Cenvat credit or in alternative, they shall be eligible for the refund. In such

circumstances, the allegations of suppression and mis-representation have wrongly been alleged by the department. The demand confirmed is liable to be set aside for these reasons. Appeal is accordingly prayed to be allowed. Learned counsel for the appellant has relied upon the decision in **M/s Aadarsh Sri Sai Manpower Solution (P) Ltd. versus Commissioner, Customs, Central Excise & Service Tax, Dehradun, Uttrakhand** by Final Order No. 50953-50955 of 2023 dated 21.07.2023 and **Incredible Indian Moments Pvt. Ltd. versus Commissioner (Appeals) and Additional Director General, DGGSTI, Jaipur** by Final Order No. 51295 of 2023 dated 15.09.2023.

5. To rebut these submissions, learned Departmental Representative has mentioned that the abatement of Notification No. 30/2012 was not available to the appellant, the inadmissible abatement claim has resulted in short payment of service tax amounting to Rs. 17,25,757/- during the impugned period. Hence, the demand along with the interest has rightly been confirmed. Learned Departmental Representative has relied upon findings in paragraph 14 of the order-in-original and the findings at internal page 4-5 of the order-in-appeal. Impressing upon no infirmity in those findings, the appeal is prayed to be dismissed.

6. Having heard the rival contentions and pursuing the entire record. The issue to be decided is observed as follows :

Whether the payment of 50% tax by the appellant and remaining 50% by recipient of its service resulted into short payment of duty, as alleged?

7. We observe from the order under challenge, it to be the admitted fact that 100% tax liability towards the amount of consideration received by the appellant (the service provider) for providing services of 'Packaging activity' to M/s HEG (service recipient) stands discharged by the provider as well as the recipient to the extent of 50% each. There is also no denial to the fact that appellant itself is the manufacturer of the wooden crates i.e. the packing material used while providing the said service to M/s HEG is also manufactured by appellant the service provider and that the service is provided in M/s HEG premises itself.

8. These admissions are sufficient for us to hold that the activity rendered by the appellant involves the element of goods i.e. wooden crates as well as the element of service i.e. the packing activity. With effect from 01.07.2012, it has been statutorily defined in Section 65B (54) of Finance Act, 1994 that any contract wherein transfer of property in goods is involved in the execution of such contract it is leviable to tax as sale of goods it shall be called as Works Contract Service to which applies the Notification No. 30/2012. This is sufficient for us to hold that the appellant was eligible for the abatement given under Notification No. 30/2012 dated 20.06.2012 vide entry No. 9 therein. Said entry requires that in respect of services provided

or agreed to be provided in service portion in execution of works contract, the service tax payable by the person providing services shall be 50% and remaining 50% shall be provided by the person receiving the service.

9. As already observed above, that 100% tax has already been paid w.r.t. the impugned taxable service of packaging in terms of the Notification No. 30/2012. Then notification applies to WCS and apparently the activity rendered by appellant is WCS. Hence we hold that payment of 50% of tax by appellant, the service provider is wrongly alleged as short payment when admittedly remaining 50% of the liability stands discharged by the recipient of the service (M/s HEG). We draw support from the decision of Karnataka High Court in the case of **Zyeta Interiors Pvt. Ltd. versus Vice Chairman Settlement Commissioner, Chennai**[2]. This decision has emphasized that where the Government received the entire amount of tax, an assessee cannot be called upon to make the payment even if it had deposited some portion of the tax dues and the remaining portion deposited by the service provider. This Tribunal also in the case of **M/s Aadarsh Sri Sai Manpower Solution (P) Ltd.** (supra), while relying upon case laws as relied upon by the Tribunal are :

(i) **Reliance Securities Ltd. versus Commissioner of Service Tax, Mumbai – II**[3] **;**

(ii) **Angiplast Pvt. Ltd. versus Commissioner of Service Tax, Ahmedabad**[4] **;**

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[2] **2022 (58) G.S.T.L. 151 (Kar.)**
[3] **2019 (20) G.S.T.L. 265 (Tri. – Mumbai)**
[4] **2013 (32) S.T.R. 628 (Tri. – Ahmd.)**

(iii) **India Gateway Terminal (P) Ltd. versus Commissioner of Central Excise, Cochin**[5] ; and

(iv) **Commissioner of Service Tax, Meerut – II versus Geeta Industries P. Ltd.**[6]

has also held that when entire tax dues have been deposited in the account of Central Government though not entirely by the appellant as a service provider, but also by the service recipient, it will not be possible to sustain the demand. In view of this discussion, we hold that demand has wrongly been confirmed by the department. The order is, therefore, liable to be set aside.

10. Coming to the aspect of invocation of extended period and imposition of penalty, we observe from the above discussion that present is not the case of tax evasion, the returns were regularly been filed by the appellants, we are of the opinion that the extended period should not have been invoked. We draw our support of the decision of Hon'ble Supreme Court in the case of **Pahwa Chemicals Private Limited versus Commissioner of Central Excise, Delhi**[7]. In such circumstances, the allegations of suppression of facts or mis-representation cannot sustain. We draw our support from decision of Hon'ble Supreme court in the case of **Cosmic Dye Chemical versus Collector of Central Excise, Bombay**[8]. Above all charging of service tax again from the appellant the service provider when the liability has been

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5 **2010 (20) S.T.R. 338 (Tri. – Bang.)**
6 **2011 (22) S.T.R. 293 (Tri. – Del.)**
7 **2005 (189) E.L.T. 257 (S.C.)**
8 **1995 (75) E.L.T. 721 (S.C.)**

discharged by him under forward mechanism and by the service recipient under the reverse charge mechanism to the extent of 50% each in terms of relevant notification, will amount to the double taxation on the same service, question of alleging an intent to evade payment of service is absolutely in irrelevant. The department is held to have wrongly invoked the extended period of limitation. We also draw support from **Incredible Indian Moments Pvt. Ltd.** (supra).

11. With these observations, the order under challenge is hereby set aside. Consequent thereto appeal stands allowed.

(Order pronounced in open court on 18/12/2023.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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