

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 11490 of 2014-DB**

[Arising out of Order-in-Original/Appeal No RJT-EXCUS-000-APP-707-13-14 dated 18.02.2014 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

**Thakarshi J Likhiya**

Post Virpar, Taluka : Takara,  
RAJKOT, GUJARAT

**.... Appellant**

VERSUS

**Commissioner of Central Excise & ST, Rajkot**

Central Excise Bhavan, Race Course Ring Road,  
Income Tax Office, Rajkot, Gujarat-360001

**.... Respondent**

**APPEARANCE :**

Shri Amal Presh Dave, Advocate for the Appellant  
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 05.06.2023

DATE OF DECISION: 19.06.2023

**FINAL ORDER NO. 11279/2023**

**RAMESH NAIR :**

The issue involved in the present case is that whether the appellant is liable to pay service tax as sub-contractor when the main contractor discharged the liability on the full contract value and if yes, whether the extended period of limitation can be invoked.

2. Shri Amal Dave, learned Counsel appearing on behalf of the appellant submits that demand is not sustainable on limitation as the entire demand is beyond the normal period. He submits that appellant had bonafide belief on the basis of various circulars issued by the Board and the matter was not free from doubt as it was in litigation in many cases and finally the issue was decided by the Larger Bench in the case of *M/s. Melange Developers Pvt. Limited – 2020 (33) GSTL 116 (Tri.)*. Therefore, the extended period cannot

be invoked in the present matter. He further submits that there is no Revenue loss to the exchequer as on the total contract value, the main contractor has discharged the service tax. For this reason also the appellant had bonafide belief that there is no liability to pay service tax accordingly, the extended period cannot be invoked. He placed reliance on the following judgments:-

- (a) Laxmi Engineering P. Limited – 2023 (4) TMI 348-CESTAT AHMENDABAD
- (b) Sharma Decorators – 2023 (4) TMI 351 – CESTAT New Delhi
- (c) Shanti Construction Co – 2023 (3) TMI 14 – CESTAT Ahmedabad
- (d) Heena Enterprises and MK Enterprise – 2022 (7) TMI 1182 CESTAT Ahmedabad
- (e) CESTAT Ahmedabad order No. M/16066/2014 dated 04.12.2014 in the case of M/s. Thakarshi J Likhiya

3. On the other hand, Shri Ajay Kumar Samota, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that appellant did not obtain service tax registration during the relevant period that itself shows that the appellant had malafide intention of not to discharge the service tax liability therefore, extended period is rightly invoked.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that there cannot be any malafide in the facts of the present case for the reason that the main contractor discharged the entire service tax liability on the total value of the contract which includes the value of the service provided by the sub-contractor also. If the appellant being a sub-contractor would have discharged the service tax liability, then to that extent the liability of service tax on the main contractor would have reduced therefore, it is clearly a case of Revenue neutral. Moreover, on this issue the board had issued Circular No. 23/3/97-ST dated

13.10.1997, TRU letter F.No. 341/18/2004-TRU (Pt.) dated 17.12.2004 whereby the Board had clarified that when the main contractor has discharged the service tax on the total value of the contract, the sub-contractor need not to pay service tax. However, subsequently the board has reversed their view and by Circular No. 96/7/2007-ST dated 23.08.2007 clarified that sub-contractor is required to pay service tax. Besides this contradictory Circular, the matter was also under litigation before various forums and finally the Larger Bench of the Tribunal in the case of *Melange Developers Pvt. Limited (supra)* held that sub-contractor is required to pay service tax. The said judgment was delivered in 2020. Accordingly, the appellant had bonafide belief that there is no liability to pay service tax being a sub-contractor. The decision cited by the learned Counsel directly on the point of limitation in case of liability of service tax on the sub-contractor. The ratio of the decisions cited supra is directly applicable in the present appeal. Accordingly, we are of the considered view that the demand though on merit is sustainable but it is clearly hit by limitation and hence not sustainable. As a result, the impugned order is set-aside and the appeal is allowed.

*(Pronounced in the open court on 19.06.2023)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**