

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**STA No.8 of 2017 (O&M)
Date of decision: 21.02.2019**

Commissioner of Central Excise and Service Tax, Panchkula

.....Appellant

Vs.

M/s Lone Star Engineers

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Amit Goyal, Sr. Panel Counsel for the appellant-revenue.
Mr. Jagmohan Bansal, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.
2. The appellant-revenue has filed the instant appeal under Section 35G of the Central Excise Act, 1944 (in short, "the Act") as made applicable to service tax matters vide Section 83 of the Finance Act, 1994 for setting aside the final order dated 13.7.2016, Annexure A.3, passed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh Bench, claiming following substantial questions of law:-

“i) Whether the CESTAT is right in holding that the service tax paid by the main contractor on behalf of the party can be treated as payment made by the party when the service tax law in the instant case, provides for assessment and payment of the due tax by the service provider?

- ii) Whether the CESTAT is right in passing an order by not discussing all the facts present before it?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee was engaged in providing the taxable services of site preparation and mining services under the Finance Act, 1994. The assessee got registered with the department vide registration dated 27.7.2009 under "Site Preparation and Clearance Service" as a partnership firm. However, the assessee surrendered the said registration on 29.10.2009 and again got registered with the department as a proprietorship firm. Vide dissolution deed executed on 12.10.2009, M/s Harpreet Kaur Proprietor of the firm took over all the liabilities of erstwhile partnership including its demand and debts etc. On inquiry, it was found that the assessee was providing the taxable services of "Site Formation Service, Mining Services and Management, Maintenance or Repair Services" during the period 2007-08 to 2011-12 and was not paying the service tax. Therefore, the party was issued a show cause notice proposing demand of service tax amounting to ₹1,39,22,109/- after invoking extended period of limitation. Interest under Section 75 and penalty under Sections 76, 77 and 78 of the Act were also proposed. The Adjudicating Authority vide order dated 22.9.2014, Annexure A.2 confirmed the proposals made in the said show cause notice and the demand of service tax amounting to ₹1,39,22,109/- including interest. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated 13.7.2016, Annexure A.3, it was held that the assessee was providing the site formation services and mining services and thus was liable to pay service tax on these services. However, it was opined that the payment of service tax by the main contractor on behalf of the assessee shall be treated as payment made by it. It

assessee was not liable to pay service tax on the activity of maintenance and repair of roads and thus, demand on this account was set aside. Accordingly, the Tribunal remanded the matter back to the adjudicating authority for verification purpose whether the assessee paid service tax for the remaining part of the demand and if the same was found to be paid, no demand shall be sustainable against it. Hence the instant appeal by the appellant-revenue.

4. We have heard learned counsel for the parties.

5. It has been categorically recorded by the Tribunal after examining the matter that the assessee was engaged in the activity of site formation service and mining service. Thus, it was liable to pay service tax but on its activity, the main contractor had paid service tax on its behalf. Since the payment made by the main contractor had not been disputed by the revenue, it was treated as payment made by the assessee. Further, in view of Section 97 of the Finance Act, 2012, it was recorded that the assessee was not liable to pay service tax on the activity of maintenance and repair roads and demand on this account was set aside. As a result, the matter was remanded back to the adjudicating authority for verification purposes whether the assessee paid service tax for the remaining part of the demand. The relevant findings recorded by the Tribunal in this regard read thus:-

“6. On careful consideration of the submissions made by both the sides and peruse the record, we find that the appellant is engaged in the activity of site formation service and mining service. We also find that the appellant is liable to pay service tax but on the activity of appellant, the main contractor has paid service on behalf of the appellant. We further find that the issue whether payment made by the main contractor can be considered payment on behalf of the appellant had come up

before this Tribunal in the case of *Vijay Sharma & Co.* (Supra) has observed as under:-

10. In all the three references before us, it would be proper to send the matter back to the original authority, without being sent to the concerned benches, to verify as to whether the stock brokers have paid service tax on behalf of the sub-brokers and if so, reduce the demand of sub-brokers to that extent and pass fresh orders, granting fair opportunity of hearing to the sub-brokers. All the appeals are allowed by way of remand.
7. Further, we find that in the case of *Hindustan Coca Cola Beverage P. Ltd.* (Supra) in the case of income tax wherein the office incharge was required to deduct TDS from the payments made to the deductee/assessee and the deductor failed to deduct the TDS but the deductee/assessee paid the income tax. In that circumstances, the Hon'ble Apex Court has observed as under:-
 10. Be that as it may, the Circular No. 275/201/95-IT(B), dated 29.01.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares "no demand visualized under Section 201(1) of the Income Tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the deductee-assessee. However, this will not alter the liability to charge interest under Section 201(1A) of the Act till the date of payment of taxes by the deductee-assessee or the liability for penalty under Section 271C of the Income Tax Act."
8. Relying on the above cited decisions, we hold that the payment made by main contractor on the activity conducted by the appellant is considered as discharge of service tax liability by the appellant. Further we find that the payment made by the main contractor has not been disputed by Revenue. In that

circumstances, we hold that the payment of main contractor on behalf of the appellant shall be treated as payment made by the appellant.

- 9. We further hold that in the light of the Section 97 of the Finance Act, 2012, the appellant is not liable to pay service tax on the activity of maintenance & repair roads, therefore, demand on this account is also set aside.
- 10. The matter is remanded back to the adjudicated authority for verification purposes whether the appellant paid service tax for the remaining part of the services tax demand. If the same is found to be correct, no demand shall be sustainable against the appellant.”

6. Learned counsel for the appellant-revenue had referred to the decision of the Mumbai Tribunal in *Sunil Hi-Tech Engineers Limited Vs. Commissioner of C. Ex., Nagpur*, 2014 (36) S.T.R. 408 (Tri. Mumbai), in support of his submission. Suffice it to notice even the decision of the said Tribunal is of no assistance to the revenue as it was based on individual fact situation involved therein.

7. Learned counsel for the appellant revenue has not been able to point out any error or illegality in the findings recorded by the Tribunal, warranting interference by this Court. No substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

February 21, 2019
‘gs’

(Manjari Nehru Kaul)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No