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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ SERTA 19/2024

SHARMA DECORATORS .....Appellant

Through: Mr. Jitin Singhal, Advocate.

versus

COMMISSIONER OF SERVICE TAX, DELHI .....Respondent

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Mr. Jatin Kumar Gaur, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**O R D E R**

% **23.09.2024**

**CM APPL. 55528/2024 (Ex.)**

Allowed, subject to all just exceptions.

This application stands disposed of.

**SERTA 19/2024 & CM APPL. 55527/2024 (Stay)**

1. The appellant questions the judgment rendered by **Customs Excise and Service Tax Appellate Tribunal**[1] on its service tax appeal and which had impugned the order in appeal dated 01 February 2017 confirming a demand of INR 19,48,077/- along with interest as applicable in terms of Section 75 of the **Finance Act, 1994**[2]. In terms of the original adjudication, the appellant had also been visited with penalties under Sections 77 and 78 of the Act.

2. The appellant was stated to be engaged in providing construction services and was duly registered with the Department of

[1] CESTAT
[2] Act

Service Tax under the head of “construction services”. For the period in question, it had worked as a subcontractor under three principal contractors being M/s Chawla Techno Construction Ltd., M/s Raj Furnitures and M/s Tirath Ram Ahuja Pvt. Ltd.

3. The record would reflect that during the course of a service tax audit conducted on M/s Tirath Ram Ahuja Pvt. Ltd., the Department noticed the rendition of construction services by the appellant to the aforenoted entity in the capacity of a subcontractor. It had, however, failed to discharge a service tax liability.

4. Basis the aforesaid information, a Show Cause Notice came to be issued on 16 October 2012 raising the following demands:-

| **Period** | **Taxable Value (Rs)** | **Rate of Service Tax** | **Service Tax Amount (Rs)** |
|---|---|---|---|
| 2007-08 | 2,193,750 | 12.36% | 271,148 |
| 2008-09 | 3,183,105 | 12.36% | 393,432 |
| 2009-10 | 2,085,618 | 10.30% | 214,819 |
| 2010-11 | 4,398,990 | 10.30% | 453,096 |
| 2011-12 | 5,976,524 | 10.30% | 615,582 |
| Total | 17,837,987 | | 19,48,077 |

5. The show cause notice proceedings culminated in an Order-in-Original being framed on 08 February 2013. The aforesaid order was ultimately affirmed by the Commissioner (Appeals) leading to the institution of proceedings before CESTAT.

6. Before CESTAT, it appears to have been principally argued that once the principal contractor had discharged the service tax liability, the subcontractor stood absolved and consequently the demands were liable to be annulled. The CESTAT, however, has based its decision

on the judgment rendered by its Larger Bench in **Commissioner of Service Tax, New Delhi vs. Melange Developers Private Limited**[3], and which had answered this question in the following terms:-

> "9. It is not in dispute that the activity undertaken by the sub-contractor falls under the category of 'Works Contract' service. What is sought to be contended is that the main contractors, who had given sub-contracts to the sub-contractor through various work orders, had already discharged the Service Tax liability on the entire contract amount and, therefore, the sub-contractor was not required to pay any Service Tax.
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> 10. Section 66, as substituted by the Finance Act, 2007, provides that there shall be levied a tax (hereinafter referred to as the 'Service Tax') @ 12% of the value of taxable services of various sub-clauses of clause (105) of section 65 and collected in such a manner as may be prescribed. Section 68 of the Act provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in section 66 in such a manner and within such a period as may be prescribed. Section 94 of the Act deals with power to make Rules, Sub-section (1) provides that the Central Government may, by Notification in the official gazette, make Rules for carrying out the provisions of Chapter V of the Act. Sub-section (2)(a) provides that such Rules may provide for collection and recovery of Service Tax under sections 66 and 68 of the Act. In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 and section 94 of the Act and in supersession of the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002, the Central Government framed the CENVAT Credit Rules, 2004. It is, therefore, clear that every person (which would include a sub-contractor) providing taxable service to any person (which will include a main contractor) shall pay Service Tax at the rate specified in section 66 in the manner provided for. The manner has been provided for in the CENVAT Credit Rules of 2004. 'Input Service' has been defined to mean, any service used by a provider of output service for providing an output service. 'Output Service' has been defined to mean any service provided by a provider of service located in the taxable territory. Rule 3 stipulates that a provider of output service shall be allowed CENVAT Credit of the Service Tax leviable under Section 66, 66A and 67B of the Act, Thus, in the scheme of Service Tax, the concept of CENVAT Credit enables every service provider in a supply chain to take input credit of the tax paid by him which can be utilized for the purpose of discharge of taxes on his output service. The conditions for allowing CENVAT Credit have been provided for in Rule 4. The mechanism under the

[3] 2022(33) G.S.T.L. 116 (Tri-LB)

CENVAT Credit Rules also ensures that there is no scope for double taxation.

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15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e, the main contractor can, however, avail the benefit of the provisions of the CENVAT Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the CENVAT Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

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29. The submission of the learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the CENVAT Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the learned Counsel for the Respondent that a subcontractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the subcontractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms:

> **"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract**."

7. The aforesaid view taken by the Larger Bench of CESTAT appears to have been consistently followed as would be evident from a reading of Para 9 of the order impugned before us and which is extracted hereinbelow:-

"9. We note that the learned counsel for the appellant has argued on the ground of limitation also. It is noted that during 'the relevant period, the issue as to whether a sub-contractor has to pay service tax separately even when the main contractor had discharged service tax on the very same services was subject matter of litigation before several appellate fora. The Tribunal in its decisions in the case of M/s. Semac Pvt. Ltd. Vs Commissioner M/s. Shivhare Roadlines Vs Commissioner' and M/s. Urvi Construction Vs Commissioner', had held that sub-contractors are not liable to pay service tax. As there were conflicting views, the issue was referred to Larger Bench. In M/s. Max Logistics Ltd. v. Commissioner of Central Excise, Jaipur, the question as to whether extended period of limitation can be invoked on the above issue was decided as below:

> "11. Considering the above discussions and analysis, the service tax liability on the appellant cannot be contested as invalid. We uphold the findings in the impugned order regarding tax liability. However, the appellants contested the demand on the question of time bar also. It is their case that the full amount collected by RSIC from the importers and exports has been subjected to service tax. Even if the appellant is held liable on their share of Revenue received from RSIC the said tax is eligible for credit to RSIC. Further, the issue involved is interpretation of law and there is no intend to evade payment of duty in such situation, The appellants relied on various case laws to reiterate their views. We find that the appellant is having a strong ground regarding the question of time-bar. It is to be noted that all invoices, for full consideration, have been raised by RSIC and the amount collected from the clients [importers and exports] were subjected to service tax which was deposited to the Government. RSIC in turn are paying certain amount to the appellants to get the services in these ICDs. In such situation, there is a clear possibility for a bona fide belief that as the whole amount has been subjected to service tax the amount received by the appellant may not be liable to service tax"

8. We are in agreement with the view as expressed in *Melange Developers*, and which, in our opinion, has correctly construed the provisions of the Act and which envisages a service tax liability arising at every stage of the contractual chain. As is manifest from a conjoint reading of Section 66, 66A, 67B and 68 of the Act, every

service provider is liable to discharge a liability in respect of service rendered and consequently claim input credit of the tax paid by it. Undisputedly, a subcontractor too renders taxable service to the principal. In the absence of any statutory exemption, a subcontractor is in law liable to discharge the liability which thus stands attracted. The fact that the appellant had rendered taxable service was not questioned before us.

9. We consequently find no justification to interfere with the view expressed by the CESTAT.

10. The appeal fails and shall stand dismissed.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**SEPTEMBER 23, 2024/***neha*