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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 18th November, 2025******Date of upload: 21st November, 2025***

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W.P.(C) 16454/2006**SHARP BUSINESS SYSTEMS INDIA L**

.....Petitioner

Through: J. K. Mittal, Ms. Vandana Mittal,
Mr. Mukesh Choudhary, Advs.

versus

UOI & ANR

.....Respondents

Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur, Mr. Jatin Gaur, Mr. Jai
Ahuja, Mr. Akshay Saxena, Advs.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE SHAIL JAIN****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking to quash ***Circular M.F. (D.R) Letter F. No. 233/2/2003-CX.4***, dated 3rd March, 2006 and ***Notification No. 12/2003 - ST***, dated 20th June, 2003.
3. The short question that arises for consideration of the Court is whether under the provisions of the Finance Act, 1994, when any person is providing composite services, service tax is liable to be paid only on the service component or even in respect of material which is consumed or sold while providing the taxable service.
4. This issue has arisen in the context of the ***Notification No. 12/2003-***



ST, dated 20th June, 2003 wherein exemption is granted on the value of goods and materials sold by the service provider. This was thereafter clarified *vide* circular dated 3rd March, 2006 in the following manner:

*“3.The matter has been examined by the Board The intention of the Notification No. 12/2003-ST, dated 20-6-2003 is to provide exemption only to the value of goods and material sold subject to documentary evidence of such sale being available. Therefore in case, the goods are consumed during the provision of service and are not available for sale, the provision of the said notification would not be applicable. **Therefore, in supersession of clarification to contrary, it is clarified that goods consumed during the provision of service, that are not available for sale, by the service provider would not be entitled to benefit under Notification No 12/2003-ST, dated 20-6-2003.**”*

5. The case of the Petitioner herein is that it had received a letter dated 27th March, 2006 from the Office of Commissioner Service Tax, stating as under:

"Parts & consumable when sold as such are not liable to Service Tax but such parts & consumable when provided under a composite maintenance contract service where a lump sum amount is paid towards consumables & service provided, are liable to Service Tax on the entire amount. "

6. Thereafter, sometime in 2006, a Show Cause Notice (SCN) appears to have been issued to the Petitioner by the Directorate General of Central Excise Intelligence, though the same is undated. As per this SCN the allegation against the Petitioner is that there was suppression of the value of taxable services and the Petitioner was called upon to pay service tax to the



tune of Rs.29,66,980/- along with certain other actions which were proposed. The period for which the SCN relates to, was December, 2003 to March, 2005.

7. Thereafter, the present petition was filed by the Petitioner. Notice was issued in this matter initially on 3rd November, 2006, however, no interim order was granted and on 4th October, 2007, the application for interim application was dismissed.

8. On 11th July, 2019, the matter was directed to be listed in due course and was thereafter listed in the regular board. It was taken up for hearing on 2nd July, 2025 and notice was issued to Respondent No.2- Central Board of Excise & Customs (presently, 'Central Board of Indirect Taxes and Customs').

9. The matter was taken up from the Regular Board and on 22nd September, 2025, the Id. Counsel for the parties were heard. After hearing the parties, following directions were issued:

“10. After hearing the Id. Counsel for the parties, there appears to be no clarity as of today as to the status of the SCN and whether any proceedings have in fact been initiated or not. Further, there is also no clarity as to whether after March, 2005, the Petitioner was paying service tax and if so, in what manner.

11. Accordingly, let these facts be ascertained, both by the Petitioner as also by the Respondent No. 2- Department and relevant documents be filed in this regard.

12. If no SCN has been issued, the Department shall also cheek up and state as to whether and in what manner the Petitioner's services are being taxed for the period thereafter, i.e., after March, 2005.”

10. Today, Mr. J. K. Mittal, Id. Counsel for the Petitioner has handed across an additional affidavit on behalf of the Petitioner which reveals that the



SCN which is under challenge in this Petition, though undated, was adjudicated upon by the Department and the Order-In-Original dated 11th August, 2009 was passed (*hereinafter*, 'OIO'). The said affidavit is taken on record.

11. The demand of service tax along with interest and penalty, as made in the SCN was confirmed by the Adjudicating Authority in the OIO. The said OIO was also challenged by the Id. Counsel for the Petitioner by way of an Appeal and *vide* Order dated 24th June, 2011, the Petitioner was given benefit of the cum tax duty and service tax liability was reduced from Rs. 29,66,980/- to Rs. 27,17,330/-.

12. This Order in Appeal dated 24th June, 2011 was again challenged by the Petitioner before Central Board of Excise & Customs (*hereinafter*, 'CESTAT') wherein *vide* final order dated 28th February, 2017, CESTAT has extended the benefit of Notification No. 12/2003-ST dated 20th June, 2003 to the Petitioner. The operative portion of the order of CESTAT dated 28th February, 2017 is set out below:

4. After consideration of the facts on record and the submissions of both sides, we are of the view that the documentary proof was submitted by the appellant to the Revenue, though Revenue in the Impugned order in appeal notes that the benefit was not extendable to the appellant as the appellant had failed to show any documentary proof in respect of value of material and goods sold. The appellant has pointed out that there has been study of the data based on which it was concluded that for their service contracts the percentage value of the goods and material is 50%. Further, appellant has submitted Chartered Accountant Certificate which was based on the examination of returns and books of accounts of the appellant and it confirmed that the service tax was correctly discharged. Further, there has not been any substantial reasons and evidences to counter the contents of



the documentary proof submitted in terms of the Notification No. 12/2003-ST (supra) giving necessary abatement benefit to the appellant. Thus, considering the totality of the facts and circumstances, the appellant is entitled to the benefit of the Notification No. 12/2003-ST (supra).

5. In the result, the appeal is allowed with consequential benefit, if any, to the appellant.”

13. The said Order of CESTAT dated 28th February, 2017 was challenged by the department in ***SERTA 1/2022 titled ‘The Commissioner of Central Tax, Delhi, East v. Sharp Business Systems India Limited’*** which was dismissed by this Court on 10th October, 2023, in the following terms:

“1. The record would reflect that the instant appeal has been preferred with a delay of 506 days. Although, the appellant had been accorded liberty to file an additional affidavit explaining the inordinate delay that was caused in the preferment of the instant appeal, even that additional affidavit fails to disclose reasons or carry a plausible explanation.

2. We note that undisputedly the order of the Customs, Excise and Service Tax Appellate Tribunal [“CESTAT”] was received by the appellant on 26 June 2018. The additional affidavit which has been filed carries no explanation for the period between 26 June 2018 till the time when the appeal was ultimately filed on 31 May 2019. The delay thus caused is not liable to be condoned.

3. We note that even otherwise the question of law which is sought to be addressed on this appeal stands concluded against the appellant in light of the judgment rendered by the Division Bench of the Madras High Court in Ruchika Global Interlinks vs. CESTAT, Chennai [2017 SCC OnLine Mad. 37639]

4. Accordingly, and for all the aforesaid reasons, the prayer for condonation of delay is refused. In view of the above, the appeal shall stand consigned to the record.”

14. The events which have transpired subsequent to the present writ petition would show that the relief of quashing of the SCN which was one of



the prayers of the Petitioner, in effect, stands granted to the Petitioner. In fact, the Petitioner has also been given benefit of the *Notification 12/2003-ST dated 20th June, 2003* by CESTAT.

15. Under these circumstances, no further orders are required to be passed in this writ Petition.

16. The petition accordingly stands disposed of in said terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 18, 2025_{/tg/ss}