

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

E-HEARING

SERVICE TAX APPEAL NO. 50325 OF 2019

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-041-18-19 dated 20.4.2018 passed by Commissioner (Appeals), CGST & Central Excise, Bhopal.]

M/s. Ashutosh Upadhyay,
2014, Near Joy School, Vijay Nagar,
Jabalpur.

...Appellant

Versus

Commissioner, CGST,
GST Bhawan, Napher Town,
Jabalpur.

....Respondent

APPEARANCE:

Shri Himanshu Khemuka, Advocate for the appellant
Shri Rajeev Kapoor, authorised representative for the
department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 59416/2024

**DATE OF HEARING : 10.10.2024
DATE OF DECISION: 07.11.2024**

P.V. SUBBA RAO

M/s. Ashutosh Upadhyay, Jabalpur¹ filed this appeal to
assail the order-in-appeal² dated 20.4.2018 passed by the
Commissioner (Appeals), Bhopal in which he upheld the order-

**1 the appellant
2 the impugned order**

in-original dated 30.01.2018 passed by the Assistant Commissioner and dismissed appeal filed by the appellant.

2. We have heard Shri Himanshu Khemuka, learned counsel for the appellant and Shri Rajeev Kapoor, learned authorized representative appearing for the revenue and perused the records.

3. The facts of the case, in brief, are that the appellant is registered with the central excise department for providing Works Contract Services. The officers of the Preventive Branch of the Jabalpur Commissionerate gathered information that the appellant had provided Works Contract Services to M/s Jabalpur Garment & Fashion Design Cluster Association, Jabalpur³, but had not paid service tax on the services so rendered. Letters dated 08.03.2016, 05.04.2016 and 09.05.2016 and subsequently summons dated 10.06.2016, 29.06.2016 and 13.07.2016 were issued to the appellant seeking information of the services provided by it. The appellant did not reply to any of the letters, but in response to the summons, sent a reply dated 28.07.2016 enclosing documents related to the work done by it. The documents and information supplied by the appellant were scrutinized and it was found that it had received an amount of Rs. 3,21,93,467/- during the period 2012-2013 to 2015-2016 for works contract provided by it. It was also intimated by service recipient that it

3. service recipient

had paid 50% of the service tax under reverse charge mechanism as it was required to pay under law.

4. It needs to be pointed out that the liability to pay service tax is on the service provider in the normal course except where, by a notification, the Government requires the service recipient to either fully or partly pay the service tax under reverse charge mechanism. The relevant notification in this case is Notification No. 30/2012-ST dated 20.06.2012, as amended by Notification No. 45/2012-ST dated 07.08.2012. This notification provided that in case of Work Contract Services 50% of the service tax should be paid by the service recipient and the remaining 50% should be paid by the service provider. In this case, the appellant was the service provider to M/s Jabalpur Garment and Fashion Design Cluster Association. Therefore, the appellant and the service recipient were each required to pay 50% of the total service tax payable for the service. The service recipient paid its 50% of the service tax but the appellant had not paid its share of 50% of the service tax. During the period 2012-2013 to 2015-2016 not only had the appellant not paid the service tax due but it had also not filed any service tax returns.

5. After investigation, a show cause notice dated 26.12.2016 was issued to the appellant demanding service tax amounting to Rs. 7,57,520/- (including cesses) under the proviso to section 73 (1) of the Finance Act, 1994⁴ for the

4. the Finance Act

period 2012-2013, being the 50% of the service tax payable by the appellant which it had not paid. Interest was demanded under section 75 of the Finance Act, 1994 and penalties were proposed under section 76, 77 and 78 of the Finance Act.

6. These proposals were confirmed by the Assistant Commissioner in his order-in-original dated 30.01.2018 which was upheld by the Commissioner (Appeals) through the impugned order.

7. Learned counsel for the appellant submitted that the Commissioner (Appeals) had erred in upholding the order-in-original because he had not taken into consideration that the appellant was eligible to claim credit of service tax deducted by the service recipient, as 100% of service tax amount was deducted by the service recipient from the invoices but credit of 50% was being extended to the appellant and the demand of remaining 50% is being raised against the appellant, without taking into consideration that the appellant had never received the 50% amount of service tax from the service recipient. The amount was deducted "by them from all the bills". It was responsibility of the service recipient to pay the entire amount of service tax and the appellant is not liable at all. The appellant had not received service tax amount from the service recipient. Learned counsel, therefore, submitted that order may set aside and the appeal be allowed.

8. Learned authorized representative appearing for the revenue supported the impugned order and asserted that it calls for no interference.

9. We find that the submission of the learned counsel for the appellant is based on mis-understanding of the service tax provisions. Service tax has to be paid by the person responsible to pay it. In the normal course the service provider has to pay the service tax. If a notification is issued shifting fully or partly the responsibility of paying service tax to the service recipient, the service recipient is responsible to pay the service tax to that extent.

10. The undisputed legal position is that in respect of the services rendered by the appellant 50% of the service tax had to be paid by the service recipient, which it did. The appellant, as service provider, was required to pay the remaining 50% of the service tax, which it had not. If service tax is paid on a service which is an input service for a taxable service rendered or a dutiable good manufactured the service recipient or manufacturer can take CENVAT credit of the service tax paid. It does not matter whether the service provider paid the service tax or the service recipient paid the service tax under reverse charge mechanism. So long as the service tax is paid on a taxable service and such taxable service is an input service, the service recipient can take credit. There is no provision for the service provider to take credit of the service tax paid on its output service. Even if service tax was paid

under reverse charge mechanism by the service recipient, it is the service recipient who can take credit of the tax so paid and not the service provider. Learned counsel has completely misconstrued the legal provisions in claiming that "the appellant is eligible to claim credit of the service tax deducted by the service recipient". It has been correctly observed by the Commissioner (Appeals) that the service tax liability does not get extinguished simply because the service recipient had not reimbursed the service tax component to the appellant.

11. Learned counsel for the appellant submitted that certain amounts were withheld by the service recipient in the bills of the appellant. Payment for the services rendered is a matter between the appellant and its service recipient. Whether the bills were fully paid or partly paid or any amounts were withheld for any reason is a matter to be settled between the appellant and the service recipient. So long as a taxable service is rendered, service tax has to be paid as per law. In this case, the liability of the service recipient was to the extent of 50% only and the department cannot charge anything more from the service recipient. The service recipient paid its 50% of the service tax. The appellant, as service provider, was required to pay 50% of the service tax which it had not paid. A show cause notice was, therefore, issued and the demands were confirmed with interest and penalty. Not only had the appellant not paid the service tax but it had also not filed any returns.

12. Such being the case, we find no infirmity in the order of the Commissioner (Appeals). The impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court on 07/11/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

PK