

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10662 of 2017 - DB

(Arising out of OIA-VAD-EXCUS-003-APP-417-2016-17 dated 09/11/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-III(Appeal))

Jsl Industries Ltd

Mogar,
Taluka Anand
Anand, Gujarat

.....Appellant

VERSUS

Commissioner of C.E. & C.-Anand

Office of the Commissioner,
Central Excise, Customs & Service Tax,
Central Excise Building, Nr. Juna Dadar,
Behind Old Bus Depot Anand
Gujarat- 388001

.....Respondent

APPEARANCE:

Shri Abhay Y Desai, Advocate for the Appellant

Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

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

Final Order No. 12154/2024

DATE OF HEARING: 13.06.2024
DATE OF DECISION: 24.09.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay Service Tax under reverse charge mechanism on the Directors remuneration paid to the whole time Director who are employed with the company and also non employed Directors to whom the sitting fees is paid.

2. Shri Abhay Y Desai, Learned Counsel appearing on behalf of the appellant submits that as regard the payment made to the whole time Director who is employed with the company, the said remuneration was paid as salary to the director and the same was treated as salary for the purpose of income tax, deducting TDS, also it is clear from the IT return of

the director. Therefore, in the case of Mrs. T R Amin who is the whole time director, the remuneration paid being salary paid to the director is not liable to service tax. He relied upon this Tribunal's decision in the case of Ratnamani Metals and Tubes Ltd Vs. CCE & ST vide final order No. 10486/2024 dated 26.02.2024.

2.1 As regard the other director who are non employed director sitting fees is paid, he submits that the appellant is not disputing the tax liability of these directors. Accordingly, the appellants have discharged the service tax on the remuneration paid to the non employed directors. He submits that the lower authorities have not considered the same on the ground that there is no proper co-relation. He submits that now the appellant have submitted the Annexure-C to his synopsis which clearly show that the appellant have paid Service Tax in respect of the Director remuneration paid to the non employed director.

3. Shri Anoop Kumar Mudvel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

4. We have carefully considered the submission made by both the sides and perused the records. We find that as regard the issue that the salary paid to the whole time director whether liable to service tax or otherwise, this issue has been considered time and again by this Tribunal and came to the conclusion that when any remuneration is paid to the Director which is in the form of the salary the same is not liable to service tax. The issue is covered by the decision of Ratnamani Metals and Tubes Ltd (Supra) wherein relying on various judgments, this Tribunal has passed following order:-

"4. We have carefully considered the submissions made by both the parties and perused the records. We find that the issue involved in the present appeal is whether service tax should be levied on the remuneration paid by the Appellant to its directors under reverse charge mechanism or not. In the light of the records submitted by the Appellants, in terms of Board Resolution and Income tax returns submitted under Form – 16, we are of the considered view that the Directors have been appointed as employees of the Appellant's Company. We find that the matter is no longer res- integra as the same has already been deliberated upon and decided by this Tribunal. The issue has been squarely covered by this Tribunal under similar facts and circumstances. For the said purposes relevant portion of the judgements have been extracted below:-

- *In the case of Bengal Beverages Pvt. Ltd. v CGST & Excise, Howrah 2020 (11) TMI 633*

"8. In the instant case, the only dispute herein is for payment of remuneration in the nature and form of commission based on percentage of profit to whole time directors, which is a fact on record. Section 2(94) of Companies Act, 2013, duly defines 'whole-time director' to include a director in the whole-time employment of the company. A whole-time Director refers to a Director who has been in employment of the company on a full-time basis and is also entitled to receive remuneration. The certificate issued by the company secretary states that the remuneration is given in various form as allowed under the Companies act, 2013. We further find that the position of a whole-time director is a position of significance under the Companies Act. Moreover, a whole-time director is considered and recognized as 'key managerial personnel' under Section 2(51) of the Companies Act. Further, he is an officer in default [as defined in clause (60) of Section 2] for any violation or non-compliance of the provisions of Companies Act. Thus, in our view, the whole-time Director is essentially an employee of the Company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, is pursuant to employer-employee relationship and the mere fact that the whole-time Director is compensated by way of variable pay will not in any manner alter or dilute the position of employer-employee status between the company assessee and the whole-time Director. We are thoroughly convinced that when the very provisions of the Companies Act make whole-time director (as also in capacity of key managerial personnel) responsible for any default/offences, it leads to the conclusion that those directors are employees of the assessee company.

9. Further, the judgment of this Tribunal in the case of MAITHAN ALLOYS LTD Versus COMMISSIONER OF C. EX. & S.T., BOLPUR (supra) is squarely applicable to the facts of the case. Further, the Ld. Adjudicating authority has also allowed part of the demand on

the ground that there exists an employer-employee relationship between the whole time Directors and the appellant assessee, then the ground of confirming the balance demand that the directors have provided service to the company becomes infructuous and hence cannot survive before the eyes of the law. Since demand of service tax is set aside, penalty and interest are also not sustainable.”

- *In the case of Allied Blenders and Distillers Pvt. Limited vs. CCE&ST, Aurangabad reported at 2019 (24) GSTL 207 (Tri. Mumbai), the Mumbai Bench of this Tribunal has made the following observations:-*

“5. The short issue involved in the present appeal for determination is whether remuneration paid to the Directors by the appellant is chargeable to Service Tax and the appellants are required to discharge Service Tax under reverse charge mechanism in accordance with Notifications No. 45/2012-S.T., dated 7-8-2012 and 46/2012-S.T., dated 7-8-2012. Revenue’s allegation is that the Directors namely, Shri K.R. Chhabria, Shri U.K. Ganguli, Shri Deepak Roy and Shri Jitendra Hemdev, who were paid remuneration during the period July, 2012 to March, 2015 amounting to Rs. 1,01,02,55,057/- by the appellant, Service Tax of Rs. 12,48,67,525/- was required to be discharged by the appellant. Opposing the said contention of the Revenue, the appellant has argued that the amount paid to the said Directors are in the nature of the salary paid to them, since the said Directors are whole time directors and employees of the company, accordingly, it is not a ‘service’ within the definition of ‘service’ prescribed under Section 65B(44) of the Finance Act, 1994.

....16. Also, from the documents produced by the appellant it is crystal clear that the Directors who are concerned with the management of the company, were declared to all statutory authorities as employees of the company and complied with the provisions of the respective Acts, Rules and Regulations indicating the Director as an employee of the company. No contrary evidence has been brought on record by the Revenue to show that the Directors, who were employee of the appellant received amount which cannot be said as ‘salary’ but fees paid for being Director of the company. The Income Tax authorities also assessed the remuneration paid to the said directors as salary, a fact cannot be ignored. The judgments cited by the revenue cannot be applied to the present case as the facts are different and the finding of Income tax authorities accordingly also different in the said case.”

- *In the case of Supreme Treon Pvt. Limited v Commissioner of Central Excise, CESTAT – Ahmedabad this Tribunal under identical facts and circumstances has passed the following order:-*

“Since the facts of the matter in hand are similar to the one as decided by the above-mentioned decision of this Tribunal. Following the judicial discipline, we follow the same and hold that

impugned order-in-original is without any merit. The appeals are allowed"

We also consider the submissions made by the Learned Counsel with regards to clarification issued by the Central Board of Excise and Customs vide Circular No. 115/09/2009 – ST dated 31.07.2009 that states that the remunerations paid to such Directors would not be considered "commission" as envisaged under Service tax category. The relevant portion has been produced below:

"it is clarified that remunerations paid to Managing Director / Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.

05. In view of the aforesaid discussions and findings, we are of the considered view that the directors of the Appellant are employees of the Appellant Company and following the judicial discipline on the similar issue, we hold that the impugned order is not sustainable, hence the same is set aside as it is without any merit. The appeal is allowed."

In view of the above decision, in case of whole time Director Mrs. T R Amin remuneration paid to her is not liable to service tax. Hence the service tax related to the remuneration paid to Mrs. T R Amin is set aside.

4.1 As regard the payment made to non-employed director as a director sitting fees since the same is not in the nature of salary, the director fees is liable to levy of Service tax. The appellant has not disputed the Service Tax liability in respect of the remuneration paid to such directors. However, there was a confusion about proper co-relation regarding payment of service tax the appellant have produced reconciliation chart which is scanned below:-

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Annexure C			
Month	Taxable value (amounts paid to non- employee directors)	Service tax (including cess) payable thereon	Page no of the appeal paper book indicating the list with challan evidencing the payment of the service tax
Jul-12	80,000	9,888	118
Aug-12	80,000	9,888	116 & 117
Sep-12	80,000	9,888	114 & 115
Oct-12	80,000	9,888	111 & 113
Nov-12	80,000	9,888	109 & 110
Dec-12	80,000	9,888	104 & 106
Jan-13	80,000	9,888	102 & 103
Feb-13	80,000	9,888	100 & 101
Mar-13	80,000	9,888	97 & 98
Apr-13	80,000	9,888	169 & 170
May-13	80,000	9,888	164 & 165
Jun-13	80,000	9,888	159 & 160
Jul-13	80,000	9,888	154 & 155
Aug-13	80,000	9,888	146 & 147
Sep-13	80,000	9,888	141 & 142
Oct-13	80,000	9,888	141 & 142
Nov-13	80,000	9,888	139
Dec-13	80,000	9,888	137 & 138
Jan-14	80,000	9,888	128 & 129
Feb-14	80,000	9,888	124 & 125
Mar-14	80,000	9,888	121 & 122
Apr-14	70,000	8,652	203 & 204
May-14	70,000	8,652	199 & 200
Jun-14	70,000	8,652	194 & 195
Jul-14	70,000	8,652	189 & 191
Aug-14	70,000	8,652	185 & 186
Sep-14	70,000	8,652	178 & 179
Oct-14	70,000	8,652	174 & 175
Nov-14	80,000	9,888	235 & 236
Dec-14	80,000	9,888	231 & 232
Jan-15	80,000	9,888	228 & 229
Feb-15	80,000	9,888	225 & 226
Mar-15	80,000	9,888	225 & 226
Apr-15	80,000	9,888	222
May-15	80,000	9,888	222
Jun-15	80,000	11,200	218
Jul-15	80,000	11,200	215
Aug-15	82,500	11,550	215 & 213
Sep-15	80,000	11,200	211

4.2 As per the above reconciliation chart, it prima facie appears that the appellant have discharged the Service Tax. However the same need to be verified by the Adjudicating authority. Therefore, the matter related to the service tax demand on the remuneration paid to the non-employed

directors, the matter needs to be remanded to check the correctness of reconciliation given in the Annexure-C above.

5. Accordingly, the impugned order is modified to the above extent. Appeal is allowed in the above terms.

(Pronounced in the open court on 24.09.2024)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**

Raksha