CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 3

SERVICE TAX APPEAL NO. 52868 OF 2018

[Arising out of Order-in-Original No. DL/GST-WEST/COM/15/KAM/2017-18 dated 31.05.2018 passed by the Commissioner, Central Tax, Delhi West Commissionerate.]

M/s. United Fabricators and Technical Services Pvt Ltd. ..... **Appellant**
B-15, Suvidha Apartments,
Sector-13, Rohini Complex,
New Delhi-110085

Versus

The Commissioner, Central Tax,
Delhi West Commissionerate ..... **Respondent**

APPEARANCE:

None for the Appellant
Shri Anand Narayan, Authorized Representative for the Department

CORAM :
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:07.05.2025
Date of Decision:26.06.2025

FINAL ORDER NO.50935/2025

Hemambika R. Priya:

The present appeal is filed by M/s. United Fabricators & Technical Service Pvt. Ltd.[1] against the impugned Order-in-Original No. DL/GST-WEST/COM/15KAM/2017-18 dated 31.05.2018 passed by the Commissioner, Central Tax, Delhi West Commissionerate,

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1. the Appellant

wherein demand of Rs.2,97,53,909/- + Rs.2,02,64,469/- was confirmed and equivalent penalty was imposed on the appellant.

2. Brief facts are that the appellant was registered with the Service Tax Commissionerate, Delhi vide Registration No.AAACU8101FST001 dated 17.03.2006 for the taxable services 'Erection, Commissioning or Installation Services' specified under Section 65(105) (zzd) of the Finance Act, 1994. An audit of the records was conducted on 12.09.2011 & 13.09.2011 for the period from 2006-2007(H2) to 2010-2011 under Rule 5A of the Service Tax Rules, 1994. During audit, the department noted that the appellant was claiming abatement under Notification No.1/2006-ST & paying service tax on 33% of taxable value for the financial years- 2006-2007 to 2010-2011. The department further noted that the appellant had filed the ST-3 returns under 'Erection, Commissioning or Installation Services' classifying the services provided by them under Section 65(105) (zzd) of the Finance Act, 1994 whereas, from the ST-3 returns, it appeared that in the respective columns specified in the ST-3 returns, the appellant had neither claimed any exemption Notification, nor they had shown in the ST-3 returns that they were claiming exemption under Notification No. 1/2006-ST dated 1.03.2006.

3. After scrutiny of records, a show cause notice 37/audit/2012-13 dated 24.04.2012 for the period 2008-09 to 2010-11 was issued to the appellant wherein service tax of Rs.2,97,53,909/- was demanded including cess under section 73(1), interest under

section 75, proposed penalty under section 76, 77, 78 of the Finance Act 1994. For the subsequent period of 2011-12, another show cause notice 965/Div-l/2012-13 dated 16.10.2012 was issued to the appellant demanding service tax of Rs.2,02,64,469/- including cess under section 73(1) of the Finance Act, 1994, interest under section 75, alongwith penalty under section 76 of the Finance Act. Both these show cause notices was adjudicated by the Commissioner vide his order in original no. DL/GST-WEST/COM/15/KAM/2017-18 dated 31.05.2018 and the demands were confirmed. The present appeal has been filed before us against the impugned order.

4. When the case was called out, no one appeared. Hence we have considered the grounds submitted in the appeal memo.

5. In the said grounds of appeal, the appellant has agitated the impugned order on the following grounds:

- The appellant's services are most appropriately classifiable under "work contract services.
- There is no estoppel and res-judicata in the matter of classification. Denial of classification under works contract services on the basis that appellant has not intimated the department or amended their registration certificate is un-justified.
- It is settled law that in case of wrong classification, the entire demand is liable to be dropped.

- The appellant is eligible for benefit of abatement under Notification No.01/2006-ST dated 01.03.2006, in case it is held that services are classifiable under "Erection, Commissioner or Installation Services".

- The appellant is eligible for benefit of abatement under Notification No. 12/2003, if benefit of abatement under Notification No. 01/2006-ST dated 01.03.2006 is denied to the appellant.

- For the year 2011-12, the gross value charged has been incorrectly computed by following best judgment assessment section 72 of Finance Act, 1994.

- As per Board’s Circular, sub-contractors were not liable for payment of service tax.

- In all cases, the appellant has worked as sub-contractor for main contractors and in case the appellant had paid tax, the entire amount so paid would have been available as credit to main contractors. Therefore, there is no loss of revenue.

- The appellant is eligible to avail benefit of cum-duty under section, 67(2) of the Finance Act, 1994,

- The extended period of limitation is not invokable. Demand for the period 2008-09 to 2010-11 is time barred.

- Penalty under section 78 of the Finance Act, 1994 is not imposable on the appellant for the period 2008-09 to 2010-11.

- Penalty under section 76 of the Finance Act, 1994 is not imposable on the appellant for the period 2011-12.

- Penalty under section 76 of the Finance Act, 1994 is not impossible.

6. Learned Authorised Representative at the outset reiterated the findings of the impugned order. He further submitted that the issue of liability of service tax on sub-contractor was no more *res-integra.*

7. We have considered the submissions advanced in the ground of appeal of the Appeal Memo and the learned Authorised Representative of the Department. We find that it is an admitted fact that the appellant was a sub-contractor. The appellant himself has stated that as per Board's Circular, sub-contractor were not liable to pay service tax.

8. We find that this issue has been considered by the Larger Bench of this Tribunal in the decision of **Commissioner of Service Tax, New Delhi** vs. **M/s. Melange Developers Pvt Ltd[2].** The relevant paras of the decision is reproduced hereinafter:

> "**xxx xxx xxx**
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> 7. We have considered the submissions advanced by the learned Authorised Representative of the Department and the learned Chartered Accountant and learned Counsel for the Respondent.
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> 8. It is w.e.f. 01 June, 2007 that sub-section (zzzza) was inserted in Section 65(105)of the Act in relation to execution of "Works Contract". Taxable Service under Section 65 (105) (zzzza) is defined as:

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2. Service Tax Appeal No.50399 of 2014 decided on 23.05.2019

"65(105)(zzzza)-to any person, by any other person in relation to the execution of a works contract, excluding works Contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c);or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

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.

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

11. In the face of these provisions, it may not be open to a sub-contractor to contend that he should not be subjected to discharge the Service Tax liability in respect of a taxable service when the main contractor has paid Service Tax on the gross amount, more particularly when there is no provision granting exemption to him from payment of Service Tax.

12. It is true that prior to 2007, various Service Tax, Trade Notices/Instructions/Circulars/Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/ Instructions/ Circulars/ Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of

India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below:

999.03/ 23.08.07	A taxable service provider outsources a part of the work by engaging another Service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub- contractor. Services provided by sub- contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a sub-contractor is required to pay Service Tax, it may amount to "Double Taxation", but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent

amendment made on 14May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by CENVAT Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as "CENVAT Credit") of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that CENVAT Credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

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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26. At this stage, it would also be useful to refer to a larger Bench decision of the Tribunal in ***Vijay Sharma & Company vs CCE, Chandigarh*** reported in ***2010 (20) STR 309 (Tri.-LB)***. The issue that arose before the larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a sub-contractor is liable to pay Service Tax, the larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the CENVAT Credit Rules. The relevant paragraph 9 is reproduced below:

> "9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law

> suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub- broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."

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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 sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. 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."

9. In view of the above decision, we uphold the impugned order. Consequently, the appeal is dismissed.

(Pronounced in the open court on **26.06.2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana