

C.M.A.No.2608 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved On: 15.06.2026

Delivered On:23.06.2026

CORAM

**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MRS. JUSTICE N. MALA**

C.M.A.No.2608 of 2018

Computer Access Pvt. Ltd.,
No.1, Dr. Ranga Road, 2nd Street,
Alwarpet, Chennai – 600 018.

... Appellant

vs.

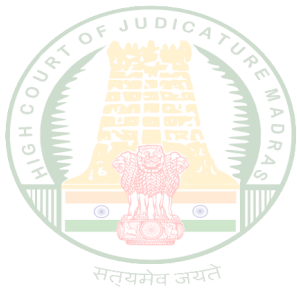
The Commissioner of Central, Excise and Service Tax,
MHU Complex, Nandanam,
Chennai.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, as made applicable under Section 83 of Finance Act, 1994, pleaded to answer the substantial questions of law raised in favour of the appellant and consequently set aside the Final order No.40232/2018, dated 25.01.2018 passed by the Tribunal and consequently allow the present Civil Miscellaneous Appeal.

For Appellant : Mr.K.Jayachandran

For Respondent : Mr.S.R.Sundar,
Senior Standing Counsel



C.M.A.No.2608 of 2018

J U D G M E N T

WEB COPY Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act is directed against the final order passed by the CESTAT, South Zone, in Appeal S.T.No.28/2011.

2. The appellant, pursuant to work contract with WIPRO Limited, provided the following services to WIPRO Limited.

(i) Repair and maintenance of modems and networking equipment.

(ii) Maintenance/facilitation of leased lines; upgrading of existing lines, obtaining approval for WAN (Wide Area Networks)

3. In respect of maintenance/facilitation of leased lines, the appellant claims that, as the System Integrators, WIPRO had entrusted work to the appellant to liaising with BSNL, which alone carried out the repair work of the leased lines. Therefore, the appellant has no liability under the Service Tax Act and accordingly did not collect service tax from WIPRO. Consequently, the System Integrator, namely WIPRO had included the consideration paid to the appellant in the total taxable turnover and paid the service tax. When the appellant had no direct leased lines with customers, a demand of service tax



C.M.A.No.2608 of 2018

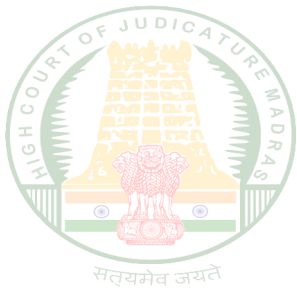
through a show cause notice dated 13.04.2009 was erroneously issued and objected by the appellant. However, in spite of detailed reply, the adjudicating authority, by Order-in-Original No.17 of 2010 dated 03.11.2010, confirmed the proposal of the Commissioner of Service Tax, claiming Rs.2,14,65,932.00 as service tax payable for the period from July 2004 to March 2008.

4. In the First Appeal preferred by the Assessee/Appellant before the Tribunal, the demand of service tax was confirmed; however, the penalty was set aside. The order of the Tribunal dated 25.01.2018 is hereby challenged in this Civil Miscellaneous Appeal.

5. On considering the grounds of appeal, this Court admitted the appeal to answer the following substantial questions of law:

(i) Whether, in the facts and circumstances of the case, the Tribunal is justified in holding that extended period of limitation to demand service tax is sustainable especially when the Tribunal waived the penalty accepting the plea of 'reasonable cause' for failure to pay the service tax by the appellant?

(ii) Whether the extended period of limitation can be invoked to demand service tax when there is no revenue neutrality? And



WEB COPY



C.M.A.No.2608 of 2018

(iii) Whether the burden of proof lies primarily on the respondent – Revenue to prove the case against the petitioner through the show cause or on the appellant as sub-contractor even though the main contractor had discharged the service tax liability?

6. The Learned Counsel appearing for the appellant contended that the appellant carries out the facilitation, internal cabling and modem maintenance. The work order given by WIPRO which includes leased line testing, line commissioning and submission of documents for the lines but confines to identify, zero-in the possible fault locations and convey the system integrator (BSNL) to carry out the maintenance or repair work on the basis of such inputs given by the appellant. It is argued that the Department had misinterpreted the role of the appellant and assumed that the appellant was providing 'Management, Maintenance and Repair Services.' The assessee is only as a sub-contractor to system integrator, who are responsible for managing the leased lines network and they have discharged the services tax liability. Therefore, the services tax demanded based on the erroneous interpretation of Finance Act, 1994. He further contended that having found there is no suppression of facts to set aside the penalty, the extended period of limitation under Section 73(1) of the Finance Act cannot be applicable to the facts of the



C.M.A.No.2608 of 2018

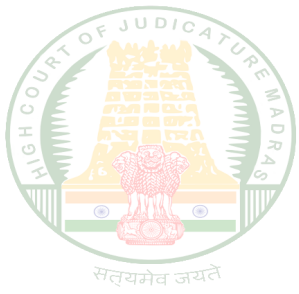
case. The payment of the service tax by WIPRO was substantiated by the certificate issued by the system integrator. Accordingly, there is no independent tax liability on the appellant.

7. Per contra, the Learned Counsel appearing for the department submitted that, the appellant is merely a facilitator but actively engaged in maintenance and management of leased circuits under contract with the system Integrator. Further contended that, even if the WIPRO and other integrators have discharged their service tax liability independently, the appellant is liable to pay service tax for providing maintenance and repair services as sub-contractor.

8. In support of his submissions, the Learned Counsel appearing for the Department relied on the following judgments:

1. *Commissioner of S.T., New Delhi vs. Melange Developers Pvt Ltd* reported in *2020 (33) G.S.T.L 116 (Tri.LB)*.

2. *Vinoth Shipping Services vs. Commissioner of Central Excise & S.T., Tirunelveli* reported *2021 (55) G.S.T.L 313 (Tri-Chennai)*.



C.M.A.No.2608 of 2018

3. *Akash Engineering Services vs. Commissioner of Central Tax*

WEB *Visakhapatnam- I*, reported (2024) 20 Centax 262 (Tri.Hyd).

4. *Max Logistics Ltd vs. Commissioner of Central Excise, Jaipur*

reported in **2017 (47) S.T.R 41 (Tri.Del).**

9. Heard Mr.K.Jayachandran, Learned Counsel for the appellant and Mr.S.R.Sundar, Learned Senior Standing Counsel for the respondent. Records perused.

10. The specific contention of the appellant is that, as a sub-contractor to system integrator for the maintenance of leased lines, they were provided only an insignificant portion of the work when compared to the overall contract work of the Management, Maintenance or Repair services undertaken by the system integrators from the customers. Hence, there is no privity of contract between the customers and the appellant to render the appellant as a service provider to the customers for the purposes of the Finance Act, 1994.

11. The appellant has no direct access to the leased lines provided by the line providers in the name of the customers. Therefore, the question of the appellant providing Management, Maintenance or repair services in respect of



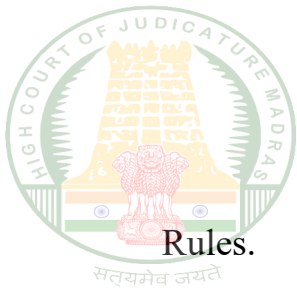
C.M.A.No.2608 of 2018

leased line of the customers by the assessee would not at all arise.

WEB COPY

12. Per contra, the contention of the Department's Counsel is that WIPRO limited had authorised the assessee to carry out the Maintenance, Management and repair services of the equipments i.e., Modems and cabling. This cannot be considered as an insignificant portion of the work to evade payment of service tax. The nature of work carried by the assessee clearly show that they have been providing Maintenance, Management and Repair Services in respect of the leased lines as well as the equipments used in relation to leased lines.

13. On reading of Section 65(64) with Section 65(105)(zzg) of the Finance Act, as it stood from July 2004 to March 2008, there can be no doubt that the appellant had been effectively carrying on taxable service to WIPRO. The order-in-original passed by the Commissioner has clearly narrated that the issue is revenue neutral, since the system integrator could avail of CENVAT credit of the service tax paid by the assessee, it is only appropriate that the assessee discharged the service tax demand in the show cause notice and facilitate M/s.WIPRO Limited and others to avail the CENVAT credit as per the



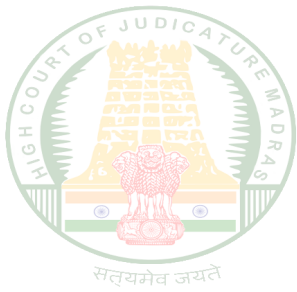
C.M.A.No.2608 of 2018

Rules.

WEB COPY **14.** Regarding waiver of penalty by the Appellate Authority, the Learned Counsel for the Department submitted that the imposition of penalty is at the discretion of the authority. Mere waiver of penalty will not exonerate the assessee from suppression and the tax liability demanded during the extended period. He further contended that the order from WIPRO given to the assessee/appellant is the work order for Maintenance, Management and Repair services of the leased line and the equipment used in relation to the leased line.

15. Though it is contended by the appellant that the contract is only a general contract and not for Maintenance, Management and Repair Services, there is no evidence to show that the appellant did not receive remuneration for the services of line Maintenance, modem repair and cabling to the department. These receipts have come to light only during the visit of the Internal Audit Units of the Service Tax Department.

16. The Tribunal, on examining the terms of the work order given by the WIPRO, found that the assessee was to manage and maintain the leased lines for a consideration identified on per-circuit, per-year basis.



C.M.A.No.2608 of 2018

17. On a plain reading of the work order as well as the tax entry under

Section 65(105)(zzg), it is clear that “Management, Maintenance and Repair service” falls within the ambit of levy of service tax. Thus, the activity of the assessee is clearly covered by the tax entry, as they are involved in management, maintenance and repair services. Having held so, the Tribunal had declined to accept the plea of the appellant that, as a sub-contractor, they were not liable for any service tax since the customers had paid tax. WIPRO and other clients of the appellant are engaged in multifarious services to their clients. In order to render such services, they have given some work orders to the appellant/assessee, who in turn rendered the service to execute the work of the system integrator.

18. In such circumstances, the Tribunal has rightly held that the appellant cannot be considered as a sub-contractor and having failed to pay the tax for the disputed activity, the extended period for demand is sustainable. The Tribunal, exercising its discretion under Section 80 of the Finance Act, 1994, had waived the penalty imposed on the assessee under Section 78 of the Finance Act, 1994. For granting such waiver, the Tribunal relied upon the certificate of payment of service tax on the entire consideration, which is inclusive of



C.M.A.No.2608 of 2018

consideration paid to the appellant.

WEB COPY

19. This Court to know the breakup of the service tax paid by WIPRO and to ascertain whether it covers the service tax payable by the assessee gave time to the Learned Counsel for the appellant to produce the break up of service tax paid. However, the break up from WIPRO was not produced despite sufficient opportunity and time. Therefore, the benefit of extending waiver of penalty can by no stretch of imagination lead to automatically quashing of the demand raised during the extended period. Since the non-payment of service tax for the Maintenance, Management and Repair services came to light only during the course of audit of account of the assessee by the Officers of the Internal Audit Units of the Service Tax Department, suppression is proved.

20. In fine,

The first and second substantial questions of law framed regarding the extended period of limitation for demand of service tax, are answered in positive in favour of the department. The waiver of penalty in exercise of the discretionary power by assigning reasons in no way affects the levy of service tax on the suppressed receipt. In the Appellate Authority's order, availability of



C.M.A.No.2608 of 2018

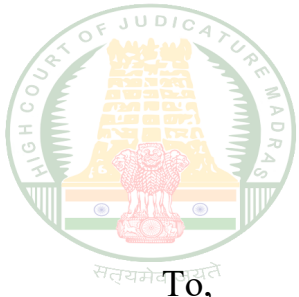
revenue neutrality is well explained. When part of receipt admittedly for services rendered on Maintenance, Management and leased lines, the plea of the appellant that no revenue neutrality exist in the transaction is factually incorrect.

Insofar as the third substantial question of law, regarding the payment of service tax by the main contractor. We find in the absence of breakup in respect of the receipt of service charges for maintenance being reflected in the documents, it is proved that the assessee has received consideration which is liable to be taxed under Service Tax Act. Hence, the third substantial question of law is held against the assessee.

21. For the aforesaid reasons, this Court upholds the order of the Tribunal dated 25.01.2018. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

(Dr. G.JAYACHANDRAN, J.) & (N. MALA, J.)
23-06-2026

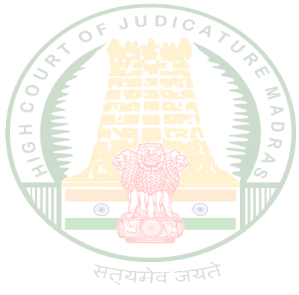
Index	:Yes/No.
Neutral Citation	:Yes/No.
bsm	



C.M.A.No.2608 of 2018

To,

1. The Commissioner of Central, Excise and Service Tax,
MHU Complex, Nandanam, Chennai.



WEB COPY



C.M.A.No.2608 of 2018

Dr. G.JAYACHANDRAN, J.
&
N. MALA, J.
bsm

Pre-Delivery judgment made in
C.M.A.No.2608 of 2018

Judgment delivered on
23-06-2026