

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 2931 OF 2015

COMMISSIONER OF SERVICE TAX, BANGALORE

Appellant(s)

VERSUS

SPL DEVELOPERS PVT. LTD.

Respondent(s)

O R D E R

1. Feeling aggrieved and dissatisfied with the impugned order dated 17.12.2013 passed by the Customs, Excise & Service Tax Appellate Tribunal, Bangalore (hereinafter referred to as the "Tribunal") by which the learned Tribunal has allowed the said appeal preferred by the respondent - assessee and has set aside the demand of service tax and also the demand of CENVAT credit irregularly availing/ wrongly utilizing, the Revenue has preferred the present appeal.

2. That the respondent - assessee is engaged in the activity of construction of Residential Apartment classified under the taxable category of "Construction of Residential Complex" service defined under Section 65(30a) of the Finance Act, 1994 (hereinafter referred to as the "Act, 1994"). The same is registered with the Service Tax Department under the category of "Construction of Residential Complex Service". Investigation was carried out on the

intelligence gathered by the officers of the Anti-Evasion Unit of the Service Tax Commissionerate, Bangalore that the assessee though providing a taxable service classified under the category of "Construction of Residential Complex Service", they have not obtained registration and were not discharging the service tax liability. During the course of investigation statement of the Director of the assessee company was recorded. During the course of the investigation, it was found that service tax for the period from November, 2008 to August, 2009 worked out to Rs. 33,01,122/- on the taxable value of Rs. 8,01,24,328/- and the same was being paid through CENVAT Credit only. During the course of investigation, it was found as under:-

- they have failed to declare the full taxable value in ST-3 returns;
- they have failed to discharge the service tax on the gross receipts value;
- they have regularly and habitually retained the service tax collected from their clients and failed to remit it to the government exchequer within the prescribed due dates;
- they failed to file the Half Yearly ST-3 returns within the prescribed due dates;
- they have failed to apply correct service tax in the ST-3 returns;
- they have failed to furnish the CENVAT Credit availed details and copies of Invoices/bills on the strength of which they availed CENVAT Credit.

3. A show-cause notice dated 05.05.2011 was issued upon the assessee by the Adjudicating Authority and the assessee was called upon to show cause why:-

"i. the Service Tax (including Education Cess) amount of Rs. 5,56,15,882/- [Rupees Five Crore Fifty Six Lakh Fifteen Thousand Eight Hundred and Eighty Two only] for the period November 2006 to September 2010, as detailed in the Annexure-1 enclosed, should not be demanded and recovered from them under the proviso to Section 73(1) of the Act.

ii. The CENVAT Credit of Rs. 1,73,85,377/- (Rupees One Crore Seventy Three Lakh Eighty Five Thousand Three Hundred and Seventy Seven Only) irregularly availed by M/s SPLDEV, as detailed in Annexure - III, during the period November 2006 to September 2010, should not be disallowed in terms of proviso to Section 73(1) read with Rule 14 of CENVAT Credit Rules, 2004;

iii. The CENVAT Credit of Rs. 1,22,53,815/- (Rupees One Crore Twenty Two Lakh Fifty Three Thousand Eight Hundred and Fifteen Only) wrongly utilized by M/s SPLDEV, as detailed in Annexure III, during the period November 2006 to September 2010, should not be demanded and recovered from them in cash under proviso to Section 73(1) of the Act;

iv. An amount of Rs. 48,84,111/- [Rupees Forty Eight Lakh Eighty Four Thousand One Hundred and Eleven only], as detailed in Annexure--II, paid by M/s. SPLDEV subsequent to detection of their non payment of service tax, should not be appropriated towards the demand made at Sl. No. (i) above,

v. Interest should not be charged/demanded and recovered from them on the demands made at Sl. No. (i) & (ii) above, under the provisions of Section 75 of the Act, for their failure to pay the service tax within the period prescribed under Section 68 of the Act, read with Rule 6 of the Rules,

vi. Penalty should not be imposed on them under the provisions of Section 76 of the Act, for their failure to pay service tax in accordance with the provisions of Section 68 of the Act and the Rules made thereunder,

vii. Penalty should not be imposed on them under the provisions of Section 77 of the Act for their failure to file the prescribed ST-3 return within prescribed due dates, in accordance with the provisions of Section 70 of the Act and the Rules made thereunder.

viii. Penalty should not be imposed on them under Section 78 of the Act for their failure to intimate the Department the fact of having provided taxable service and the receipt of the taxable value thereof, mis-

declaring the taxable value in the ST-3 returns or failed to otherwise declare to the department the correct taxable value received thereof, service tax charged and collected during the relevant period and thus have willfully suppressed the fact of having rendered the taxable services and receipt of the value thereof, with intent to evade payment of Service Tax."

4. Thereafter after giving opportunity to the assessee, the Adjudicating Authority confirmed the demand of service tax amount of Rs.5,56,15,882/- under Section 73(2) read with proviso to Section 73(1) of the Act, 1994, the Adjudicating Authority also disallowed the CENVAT credit irregularly availed and wrongly utilized. The Adjudicating Authority passed the following order:-

(i) I confirm the demand of Service Tax (including Education Cess) amount of Rs. 5,56,15,882/- [Rupees Five Crore Fifty Six Lakh Fifteen Thousand Eight Hundred and Eighty Two only] under section 73(2) read with the proviso to Section 73(1) of the Act.

(ii) I disallow the CENVAT Credit of Rs. 1,73,85,377/- [Rupees One Crore Seventy Three Lakh Eighty Five Thousand Three Hundred and Seventy Seven only] irregularly availed under section 73(2) read with the proviso to Section 73(1) and Rule 14 of CENVAT Credit Rules, 2004;

(iii) I confirm the demand of the CENVAT Credit of Rs. 1,22,53,815/- (Rupees One Crore Twenty Two Lakh Fifty Three Thousand Eight Hundred and Fifteen only) wrongly utilized and order recovery in cash under section 73(2) read with proviso to Section 73(1) of the Act;

(iv) I appropriate an amount of Rs. 48,84,111/- [Rupees Forty Eight Lakh Eighty Four Thousand One Hundred and Eleven only], paid subsequent to detection of non-payment of service tax towards the demand confirmed at Sl. No. (i) above.

(v) confirm the demand of interest on the demands confirmed at Sl. No. (i) & (ii) above, under the provisions of Section 75 of the Act, for their failure to pay the service tax within the period prescribed under Section 68 of the Act, read with Rule 6 of the Rules,

(vi) I impose Penalty of Rs.200/- (Rupees two hundred only) per day or @ 2% of the service tax, per month, whichever is higher from 18.04.2006, under section 76. However this penalty will be Rs. applicable for the period till 10.05.2008 in view of the the amendment to Section 78 incorporated vide Finance Bill 2008, for their failure to pay service tax to in accordance with the provisions of Section 68 of the Act and the Rules made thereunder,

(vii) I impose Penalty of Rs.5000/-(Rupees Five Thousand only) under the provisions of Section 77 of the Act for their failure to file the prescribed ST-3 return within prescribed due dates, in accordance with the provisions of Section 70 of the Act and the Rules made thereunder.

(viii) I also impose a penalty of Rs.7,30,01,259/- (Rupees Seven Crores Thirty Lakhs One Thousand Two Hundred and Fifty Nine Only) under Section 78 of the Finance Act 1994 for their failure to intimate the Department the fact of having provided taxable service and the receipt of the taxable value thereof, mis-declaring the taxable value in the ST-3 returns or failed to otherwise declare to the department the correct taxable value received thereof, service tax charged and collected during the relevant period and thus have willfully suppressed the fact of having rendered the taxable services and receipt of the value thereof, with intent to evade payment of Service Tax, which shall be reduced to 25% of the service tax confirmed, provided the entire amount of service tax along with interest and reduced penalty are paid within THIRTY days of the receipt of this order."

5. Feeling aggrieved and dissatisfied with the order passed by the Adjudicating Authority, the assessee preferred the appeal before the learned Central Excise & Service Tax Appellate Tribunal. By the impugned order, the learned Tribunal has set aside the order passed by the Adjudicating Authority, which is the subject matter of present appeal.

6. We have heard Shri Vishesh Kalra, learned counsel appearing on behalf of the Revenue and Ms. Charanya Lakshmikumar, learned

counsel, appearing for the respondent-assessee.

7. At the outset, it is required to be noted that the dispute is primarily/mainly for the period post 2007. It is not disputed by the assessee that the services rendered by the assessee and the contract entered into by the assessee be treated as Works Contract and therefore, the assessee is liable to pay the service tax.

8. Having heard learned counsel appearing for the respective parties and considering the Order-in-original and even the impugned order passed by the learned Tribunal, it appears that the dispute was also with respect to irregular availment/wrong utilization of the CENVAT credit by the assessee. From the impugned order passed by the Tribunal, it appears that though the learned Tribunal has touched the aspect of wrong/irregular availment/utilization of CENVAT credit while narrating the facts, however, thereafter there is no further discussion at all on irregular/wrong utilization/availment of the CENVAT credit. It was the specific case on behalf of the Revenue that, without producing any invoices and/or other documentary evidences, the assessee was not justified in utilizing and/or availing the CENVAT credit. When a specific plea was raised and even the Adjudicating Authority specifically disallowed the availment or utilization of CENVAT credit, the learned Tribunal ought to have decided the said issue, which, as such, was the main controversy and even when a specific finding was given by the Adjudicating Authority while passing the Order-in-original.

9. In view of the above and for the reasons stated above, we allow the present Appeal. Set aside the impugned order passed by the learned Tribunal setting aside the demand of service tax amount as well as the CENVAT credit utilized/availed and remand the matter to the learned Tribunal to decide the appeal afresh, more particularly, with respect to the CENVAT credit utilized/availed by the respondent-assessee. On remand, the learned Tribunal to pass a fresh order in accordance with law and on its own merits and after giving an opportunity to the assessee as well as the Revenue, and thereafter pass a speaking order on all the issues including the issue of availment/utilization of CENVAT credit by the assessee, which according to the Revenue, was availed/utilized illegally/irregularly. The aforesaid exercise be completed within a period of six months from the date of receipt of the present order.

The present Appeal is allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

..... J.  
(M.R. SHAH)

..... J.  
(B.V. NAGARATHNA)

New Delhi;  
August 10, 2022.



Arguments concluded.

Order reserved.

C.A. No. 2931/2015:

The present Appeal is allowed to the extent as indicated in the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)  
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)