

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Service Tax Appeal Nos. 76030 of 2019

(Arising out of Order-in-Original No. 42/Commr/CGST & CX/KOL/NORTH/2018-19 dated 30.11.2018 passed by Commissioner of CGST & CX, Kolkata North.)

Shri Mahendra Kumar Anchalia,
Managing Director of M/s MRT Signals Ltd.,
2, Raja Woodmount, Street, Kolkata, West Bengal-700001.

...Appellant (s)

VERSUS

Commissioner of CGST & CX, Kolkata.
180, Shantipally, Rajdanga, Main Road, Kolkata-700107.

..Respondent(s)

With

Service Tax Appeal Nos. 76032 of 2019

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..Respondent(s)

APPERANCE :

Shri Sushil Goel, Chartered Accountant for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77170-77171/2023

DATE OF HEARING : 20.09.2023

DATE OF PRONOUNCEMENT: 26.09.2023

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PER K. ANPAZHAKAN :

The Appellant, M/s MRT Signals Ltd. are engaged in providing Works Contract Service by way of construction of Railway infrastructure such as Erection and Commissioning of Signaling and Telecommunication system of Railway. They also provided the above Works Contract Service on sub-contracting basis and undertake Maintenance or Repair Service in respect of the above services. Further, they received certain services where liability for payment of service tax has arisen on reverse charge basis.

2. Acting on the intelligence that the Appellant has provided Works Contract Service in respect Railways, Sub-Contract Works under Works Contract Service in respect of Railways and Maintenance or Repair of the above contracts, but not paid appropriate service tax on the same, an investigation was initiated by DGCEI, Kolkata Zonal Unit. On the basis of that investigation, a Show Cause Notice dated 24.10.2017 was issued to the Appellant demanding service tax of Rs.4,91,53,613/- including Cess. The Notice also demanded interest and penalties under sections 77 and 78 of the Finance Act, 1994. The Notice was adjudicated by Commissioner CGST & CX, Kolkata North, vide Order-in-Original dated 30.11.2018, wherein the demand of service tax along with Cess amounting to Rs.4,91,31,087/- was confirmed along with interest and penalty and the remaining demand was dropped. Aggrieved against the impugned order, the Appellant has filed the present appeal. The Director of the Company has filed appeal against imposition of penalty on him under Section 78A of the Finance Act, 1994.

3. In their submissions, the Appellants summarized and tabulated the demands confirmed in the impugned order as under:

Issue	Nature	Tax Demand confirmed in the O-i-O	Tax Paid	Disputed Demand
1	Works Contract Service in	3,43,31,013/-	Nil	3,43,31,013/-

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	respect Railways			
2	Erection Commissioning and Installation	68,80,060/-	Nil	68,80,060/-
3	Maintenance or Repair of Works to Railways	60,21,394/-	45,51,838/-	14,69,556/-
4	Liability under RCM	18,98,620/-	18,22,472/-	76,148/-
	Total	4,91,31,087/-	63,74,310/-	4,27,56,777/-

4. In respect of the Works Contract services including sub-contracts related to Railways, the Appellants stated that the said services are exempted by Notification No.25/2012. The department has erred in interpreting the word "Railways" in the aforesaid Notification and referred the definition of 'Railways' as provided in Section 2(31) of the Railways Act, 1989. The Appellants stated that the Notifications grants exemption to "Railways" is not restricted to "Railways meant for public carriage of passengers or goods". The provision and exemption notification have a wider impact and are sufficient to cover any infrastructure as Railway. As there is no mention of the fact that the structure has to be used for public carriage, a general view should be given in the instant case.

4.1. In support of their contention, the Appellants referred the following decisions:

- (a) *Konkan Railway Corporation Ltd. Versus Commissioner of CGST and Central Excise, Mumbai*
- (b) *Hari Construction & Associates Private Limited Vs. Commissioner of CGST & Excise, Patna II*

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(c) Bridge & Roof Company (India) Limited Vs. Commissioner of CGST & Excise, Kolkata South

5. In respect of the confirmed demand of Rs.60,21,394/- on repair and maintenance service provided to Railways, the Appellants stated that they have paid service tax amounting to Rs.45,51,838/- along with interest thereon. For the balance tax of Rs. 14.69,556/-, the appellants stated that they are not liable to pay the tax, as while determining the tax payable, the abatement benefits as provided under Rule 2A of Service Tax (Determination of Value) Rules, 2006 has not been properly considered in respect of the parties M/s Rites (Haldia) and M/s Rites (Chandrapura) and the abatement has been completely denied on the service provided to M/s Bhushan Steel Limited.

M/s Rites (Haldia) and M/s Rites (Chandrapura)

Works contract service is provided with respect to repair and maintenance of an immovable property, service tax is payable on 60% of the total amount charged for works contract. In case of M/s Rites (Haldia) and M/s Rites (Chandrapura), the Appellant is providing repair and maintenance service of signaling & telecommunication system which is an immovable property. Accordingly, the appellant would be liable to pay tax on 60% of the total amount and not 70% as calculated by the department.

M/s Bhushan Steel Limited

Abatement benefit has been denied completely on the ground that no materials were supplied by the Appellant. The Appellant submits that they have supplied material while providing this service and accordingly, the same would be considered as Works Contract Service. The appellant submits that they are discharging applicable State VAT on such works awarded, which is deducted at source under State VAT Act by the parties. In support of this claim, they have enclosed VAT TDS certificate. Accordingly, they contended that the work in question would be covered under the head 'works contract service' and the appellant

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would be liable to pay tax @ 60% in term of Valuation Rules as per the explanation provided.

M/s DVC Mejia

In this case, Opening Balance shown in Ledger has also been considered, whereas service tax is payable on the service provided or to be provided during the material period. Accordingly, they contended that Opening balance of Rs.51,917/- appearing in each and every financial year 2013-14 to 2015-16 is required to be excluded to arrive at the value of service provided during the financial years.

5.1. The Appellants stated that as and when informed by the investigation team about their liability, they have discharged service tax on the taxable value by considering the benefit of section 67(2) of the Act because service tax was never collected by them.

5.2. The Statement showing tax paid by the Appellants along with interest thereon is summarized and tabulated as below:

Statement showing Service Tax Demanded and Payable for the period 2012-13 to 2016-17 on repair and maintenace service provided in relation to railway
Annexure H

Particulars	As per Department				As per Appellant						
	Gross Amount	Valuation Benefit	Taxable Value	Service Tax	Gross Amount	Opening Balance Considered	Valuation Benefit	Value	Cum Tax Benefit	Taxable Value	Service Tax
Rites Chandrapura	6,07,499	1,82,250	4,25,249	52,561	6,07,499		2,43,000	3,64,499	25,178	3,39,321	41,940
Rites Haldia	84,17,364	25,25,209	58,92,155	7,28,270	84,17,364		33,66,946	50,50,418	3,48,856	47,01,562	5,81,113
Bhusan Steel	170,39,218	-	170,39,218	21,06,047	170,39,218		68,15,687	102,23,531	7,06,187	95,17,344	11,76,344
DVC											
- @12.36%	163,21,871	-	163,21,871	20,17,383	163,21,871	1,03,834	-	162,18,037	17,84,042	144,33,995	17,84,042
- @14.5%	45,03,555	-	45,03,555	6,53,015	45,03,555	51,917	-	44,51,638	5,63,745	38,87,893	5,63,744
Kolkata Port Trust	19,49,081	-	19,49,081	2,82,617	19,49,081		-	19,49,081	2,46,827	17,02,254	2,46,827
Metro Rail	12,10,000	-	12,10,000	1,81,500	12,10,000		-	12,10,000	1,57,826	10,52,174	1,57,826
									-	-	
	500,48,588	27,07,459	473,41,129	60,21,394	500,48,588	1,55,751	104,25,632	394,67,205	38,32,661	356,34,544	45,51,836

Notes:

- 1Cum tax benefit not extended to the appellant whereas it is acknowledge by the department that no service tax is charged and collected by the appellant from the above parties as they were under impression the every service provided in relation to railways are exempted
- 2In case of Rites Chandrapura and Rites Haldia, service portion has been considered 70% of the total amount instead of 60%. As the appellant provided works contract service in relation immovable property, service tax is payable on 60% of the total amount in term of Rule 2A of the Service Tax (Determination of Valuation) Rules, 2006
- 3In case of Bhusan Steel, valuation benefit has been denied on the basis that material is provide. The appellant would like to submit that the material has been provided same can be evident from the work order. Accordingly, the service tax is payable on 60% of the total amount in term of Rule 2A of the Service Tax (Determination of Valuation) Rules, 2006
- 4In case of DVC (Mejia), opening balance shown in ledger has also been considered whereas service tax is payable on teh service provided or to be provided during the material period

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6. Service tax amounting to Rs. 18,98,620/-was confirmed under reverse charge mechanism under the category of "Goods Transport Agency Service", "Legal Consultancy Service", "Repair & Maintenance Service" and Rent a Cab Service". Out of Rs. Rs.18,98,620/-,an amount of Rs. 18,22,472/-along with interest thereon has been paid by the appellant. However, in the SCN only payment of Rs. 17,98,959/-has been considered. The Balance tax of Rs.76,148/-is not payable by them due to the following reasons:

Service	Period	Amount	Difference
Rent a Cab	1.4.2012 to 30.6.2012	(2,33,442/- Less abatement Rs.1,40,065) = 93,377/-	11541/-
Repair and Maintenance	1.4.2012 to 30.6.2012	(45,924/- Less abatement Rs.13,777) = 32,147/-	1,987/-
Goods Transport Agency	2012-13 to 2014-15	(Abatement @75% Rs.51,62,367/- Less @70% Rs.48,18,209/-) = 3,44,158/-	42,538/-
Rate of Service Tax Charged 14.5% in place of 12.36, 14 and 14.5%	2015-16 (Annexure – L1)	Tax Demanded Rs. 4,90,905/- where as it should be 4,74,489/-	16,416/-
Rate of Service Tax Charged 15% in place of 14.5% and 15%	2016-17 (Annexure – L2)	Tax Demanded Rs. 8,75,987/- where as it should be 8,72,088/-	3,899/-
Total			76,381/-

7.1. RCM w.e.f. 1st July 2012

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"Rent a Cab Service" and "Works Contract Service" has been brought under reverse charge mechanism from 01.07.2012 whereas tax on the same has been demanded from 01.04.2012. Amount of Rs.2,33,442/- under the head "Rent a Cab" and "Rs.45,924/-" under the head "Repair & Maintenance" relates to the period prior to 01.07.2012. Hence, the demand confirmed is liable to be reduced to this extent.

7.2.Abatement in GTA

On Goods Transport Agency Service, abatement rate was reduced from 75% to 70% from 01.04.2015 vide Notification No. 8/2015 dated 01.03.2015. However, the department had straight away calculated the demand by providing abatement of 70% from 01.04.2012 instead of 75% result in excess tax demand of Rs.42,538/- which is liable to be reduced from the confirmed demand.

7.3.Service Tax Rate

Service Tax Rate of 12.36% was increased to 14% from 01.06.2015 and then Swachh Bharat Cess at 0.5% was added to the Service Tax from 15.11.2015, making effective rate 14.5%. Thereafter, Krishi Kalyan Cess at 0.5% was also imposed from 01.06.2016, making effective rate 15%. However, the department for the period 2015-16 and 2016-17 had straight away calculated demand @ 14.5% and 15% respectively without applying the rate as applicable during the material period. Rs. 16,416/- and Rs.3,899/- is liable to be reduced on account of this.

8. In view of the above submissions, the Appellant prayed for setting aside the demands as discussed above and allow their appeal.

9. The Ld. A.R. reiterated the findings in the impugned order.

10. We observe that service tax including Cess has been confirmed under the following categories in the impugned order.

(i) Work Contract Service - Rs. 3,43,31,013

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(ii) Erection, Installation and Commissioning Service - Rs.68,80,060

(iii) Repair and Maintenance Service - Rs.60,21,394/-

(iv) As recipient of service under RCM - Rs.18,98,620/-

11. In respect of the demands confirmed under Works Contract services including sub-contracts in respect of Railways, mentioned at SI No. (i) and (ii) in Para 10 above, we observe that the said services are exempted by Notification No.25/2012. The department has interpreted the word "Railways" in the aforesaid notification and restricted its meaning to cover only "Railways meant for public carriage of passengers or goods". We observe that there is no such restriction available in the Notification. A plain reading of the Notification reveals that the exemption is available to all Railways whether it is run by Government or the tracks are laid at private Firms. The exemption notification has a wider impact and it is sufficient to cover any infrastructure as Railway. As there is no mention of the fact that the structure has to be used for public carriage, we hold that the exemption is available to all Railway infrastructure.

11.1. We find that this view is supported by the decision of the Tribunal in the following cases.

(a) Hari Construction & Associates Private Limited Vs. Commissioner of CGST & Excise, Patna II

(b) Bridge & Roof Company (India) Limited Vs. Commissioner of CGST & Excise, Kolkata South

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11.2 In the case of Konkan Railway Corporation Ltd., Versus Commissioner of CGST and Central Excise, Mumbai, the Tribunal has held as under:-

“It is thus, clear that the proposition of strict construction of intent of exemption notification must also go hand in hand with strict construction on every word/phrase therein. The exemption from tax is available to ‘railways’, excluding mono rail or metro, by notification no. 25/2012-ST dated 20th June, 2012 after 1st July 2012 and, as conceded by the adjudicating authority, there being no definition of ‘railway’, either therein or in Finance Act, 1994, the distinction between railway for private purpose and railway for public service cannot be artificially contrived to suit tax administration; neither can the definition in another statute be drawn upon for the purported purpose of illumination. The Railways Act, 1989 was enacted to authorize Government of India to operate the railway network of the country: it also affords a framework for administration of the railway service and jurisdictional monopoly. The ‘taxable service’ in Finance Act, 1994 excluding ‘railways’ from the ambit of the service did not place any restriction on benefit going to private railways. The statute, too, did not consider it necessary to fall back on the definition of ‘railways’ in another statute for determination of taxability and it is not open to the adjudicating authority to arrogate that privilege in an executive capacity. The intent of exclusion prior to 1st July 2012, and exemption for the period, therefore, is abundantly clear. “

11.3 Following the decisions cited above, we hold that the exemption is available to all Railway infrastructures. Accordingly, the demands confirmed and mentioned at Sl. No (i) and (ii) supra in Para 10 are not sustainable.

12. In respect of the confirmed demand of Rs.60,21,394/- on repair and maintenance service provided to Railways, we observe that the Appellant has already paid service tax amounting to Rs.45,51,838/- along with interest thereon. For the balance tax of Rs. 14.69,556/-, they stated that they are not liable to pay the tax, as the abatement benefits as provided under Rule 2A of Service Tax (Determination of Value) Rules, 2006 has not been properly considered in respect of the parties M/s Rites (Haldia) and M/s Rites (Chandrapura). The abatement

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has been completely denied on the service provided to M/s Bhushan Steel Limited.

12.1. M/s Rites (Haldia) and M/s Rites (Chandrapura)

We observe that in this case, the Appellant has provided Works contract service with respect to repair and maintenance of an immovable property. In such cases, service tax is payable on 60% of the total amount charged for works contract. In case of M/s Rites (Haldia) and M/s Rites (Chandrapura), the appellant is providing repair and maintenance service of signaling & telecommunication system which is an immovable property. Accordingly, we hold that the appellant would be liable to pay service tax on 60% of the total amount and not 70% as calculated by the department.

12.2.M/s Bhushan Steel Limited

In this case abatement benefit has been denied completely on the ground that no materials were supplied by the Appellant. We observe that the Appellant has supplied material also while providing this service. To substantiate their claim, they have submitted copy of VAT TDS certificate . On the basis of documentary evidence submitted by the Appellant, we hold that the work in question is 'works contract service' and the appellant are liable to pay service tax @ 60% in term of Valuation Rules as per the explanation provided.

12.3.M/s DVC Mejia

In this case, we observe that Opening Balance shown in Ledger has also been considered, whereas service tax is payable on the service provided or to be provided during the material period. Accordingly, the Opening balance of Rs.51,917/- appearing in each and every financial year 2013-14 to 2015-16 is required to be excluded to arrive at the value of service provided during the financial years.

12.4. We also find that the Appellant has discharged service tax on the taxable value by considering the benefit of section 67(2) of the Act because service tax was never collected by them. Accordingly, we hold

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that the cum-duty benefit taken by the Appellant to arrive at their service tax liability is legal and proper.

12.5 In view of the above, we find that the statement showing tax paid by the Appellant along with interest as summarized and tabulated in Para 5.2 supra is right. Accordingly, we hold that the balance demand of service tax of Rs. 14.69,556/-, is not sustainable and therefore, we set aside the same.

13. Service tax amounting to Rs. 18,98,620/- was confirmed under reverse charge mechanism under the category of "Goods Transport Agency Service", "Legal Consultancy Service", "Repair & Maintenance Service" and Rent a Cab Service". Out of Rs. Rs.18,98,620/-, an amount of Rs. 18,22,472/- along with interest thereon has already been paid by the appellant. However, in the SCN only payment of Rs. 17,98,959/- has been considered. The appellant stated that the balance tax of Rs.76,148/- is not payable by them. The Appellant explained the reasons for the same which are detailed in their submissions mentioned in Paras 6, 7.1, 7.2 and 7.3 supra. The reasons for the difference is mainly due to wrong adoption of effective rate of RCM, incorrect abatement given to GTA service and incorrect adoption of rate of service tax. We agree with the calculation submitted by the Appellant mentioned in Paras 6, 7.1, 7.2 and 7.3 supra. Accordingly, we hold that the balance tax of Rs.76,148/- is not sustainable and therefore, we set aside the same.

14. In respect of the demands confirmed, we observe that the Appellant has already paid the service tax along with interest and the same has been appropriated in the impugned order. There is no evidence brought on record to establish suppression of fact with an intention to evade payment of tax. Accordingly, we hold that no penalty imposable under section 78 of the Finance Act, 1994 and we set aside the same. No penalty imposable under Section 77(1)(a) of the Finance Act, 1994 and we set aside the same. There is no evidence available to implicate the Director of the Firm in non payment of service tax. As all the demands confirmed in this order has already been paid along with interest and the same has already been appropriated in the impugned order, the penalty imposed on the Director under section 78A of the Finance Act, 1994 is set aside.

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15. In view of the above discussion, we pass the following order.

(i) The demand of service tax of Rs. 3,43,31,013, on work contract service confirmed in the impugned order is set aside.

(ii) The demand of service tax of Rs.68,80,060 on Erection, Installation and Commissioning Service is set aside.

(iii) Out of the demand of Rs.60,21,394/-confirmed on Repair and Maintenance Service , Rs.45,51,838/-along with interest is confirmed. The balance demand of Rs. 14.69,556/- confirmed in the impugned order is set aside.

(iv) Out of the demand of Rs.18,98,620/- as Recipient of service under RCM, Rs.76,148/- is set aside and upheld the balance amount confirmed in the impugned order.

(v) Penalties imposed under sections 77(1)(a), 78 on the Appellant Company and penalty imposed on the Director under section 78A of the Finance Act are set aside..

(vi) The appeals are disposed on the above terms.

(Pronounced in the open court on. 26.09.2023....)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar