CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51015 of 2021

[Arising out of Order-in-Appeal No. RPR/EXCUS/000/COM/CEX/60/2019 dated 27.02.2020 passed by the Principal Commissioner of CGST, Raipur]

Shri Naveen Kumar **...Appellant**
Qtr No.1-C, Street 27,
Sector-5, Bhilai, Dhurg,
Chandigarh-490006

VERSUS

Principal Commissioner of CGST,
Raipur **...Respondent**
Central GST Building,
Dhamtari Road, Tikrapara,
Raipur, Chhattisgarh - 492001

APPEARANCE:
Shri Ashok Nawal, CA for the Appellant
Ms. Jaya Kumari and Shashank Yadav, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 30.04.2026
DATE OF DECISION: **25.08.2026**

FINAL ORDER NO. 51406/2026

DR. RACHNA GUPTA

M/s. Naveen Kumar, the appellant herein, obtained service tax registration dated 15.09.2009 under the categories of:

(a) Construction Services in respect of commercial or industrial building and civil structures.

(b) Maintenance or Repair Services.

(c) Man Power Recruitment Agency Services.

1.1 On the basis of an intelligence that the appellants were liable to pay service tax, an enquiry was initiated against the appellant by the Preventive Officers of the Central Excise and Service Tax, Division-I, Bhilai. It was found that the appellant, admittedly, had provided taxable services to M/s. HSCL during the period prior to October' 2009 i.e. during the Financial Year 2007-08 and 2008-09 (up to Sept' 2009) but did not get themselves registered with the department prior to 15th Sept. 2009; they have not paid the due service tax on the value of taxable services on amount/consideration i.e., gross value received as per Section 67 of the Finance Act, 1994 from service receivers. The appellant's contention that the balance of service tax has been paid by M/s. HSCL, Bhilai was not supported by any material facts.

1.2 It was felt that the appellants had collected service tax amounting to Rs.10,52,022/- from M/s. HSCL against 'Commercial or Industrial Construction Services', 'Management, Maintenance or Repair Service' & 'Manpower Recruitment or Supply Agency' against services rendered to M/s. HSCL, during the period 2009-10 to 2010-11, worth taxable value Rs.1,02,21,707/-, but did not deposit the same in government treasury in time as prescribed under Rule 6 of Service Tax Rules, 1994.

1.3 Thus, it was felt that though they were aware of their statutory obligation to discharge service tax liability, with intention to evade the tax, they did not deposit the same in the government treasury. Based on these observations, Show Cause Notice No. 15-309/2012 dated 18/19.10.2012 was served upon the appellant proposing to recover service tax of Rs.86,52,256/- along with interest for the period in question. Penalty was also proposed to be imposed. The proposals were confirmed in Order-in-Original bearing No. 01/2014 dated 27.01.2014. In an appeal against the said order, this Tribunal, by Final Order bearing No.51738/2018 dated 07.05.2018, remanded the matter for *de novo* adjudication after verification of the claim of appellant that tax stands already paid by the main contractor, M/s. HSCL. Pursuant thereto that the Order-in-Original bearing No. 60/2019 dated 27.02.2020 has been passed again confirming the proposal of the show cause notice. Being aggrieved of the said order, the appellant is before this Tribunal.

2. We have heard Shri Ashok Nawal, learned CA for the appellant and Ms. Jaya Kumari and Shri Shashank Yadav, learned Authorized Representative for the department.

3. Learned CA for the appellant has submitted that the lower authorities cannot disregard or exceed the directions given in remand orders by higher forums and relied upon the decisions of this Tribunal in the case of **Nizam Sugars Ltd. Vs. Commissioner of Central Excise, Visakhapatnam reported as 2006 (202) ELT 326 (Tri.-Bang.)** and **Raj Kumar Mundra Vs. Commissioner of Customs, Kandla reported as 2014 (314) ELT 236 (Tri.-Ahmd.).**

3.1 He submitted that service tax was not payable again by the appellant when the main contractor had already paid the service tax for the disputed period before issuance of the show cause notice and relied upon the following decisions of this Tribunal:

(i) Evergreen suppliers Vs. Commissioner of C.Ex., Mangalore reported as 2008 (9) STR 467 (Tri.-Bang.)

(ii) Urvi Construction Vs. Commissioner of Service Tax, Ahmedabad reported as 2010 (17) STR 302 (Tri.-Ahmd.)

(iii) Commissioner of Customs & Central Excise, Indore Vs. Shivhare Roadlines reported as 2009 (16) STR 335 (Tri.-Del.)

3.2 Learned counsel has also submitted that extended period of limitation is not invokable in the present case. He relied upon the decisions of this Tribunal in the case of **Kirloskar Oil Engines Ltd. Vs. Commissioner of Central Excise, Nasik reported as 2004 (178) ELT 998 (Tri. – Mumbai)** and in **Re: Shree Datta SSK Ltd. reported as 2010 (261) 792 (Commr. Appl.)**

3.3 Learned counsel further submitted that interest and penalty under Sections 76, 77 and 78 of the Finance Act, 1994 are not imposable on the appellant and relied upon the following decisions:

(i) Pawnar Satellite Vs. Commissioner of Cus. & C.Ex., Jaipur reported as 2011 (22) STR 14 (Tri.-Del.)

(ii) Hindustan Steel Vs. State of Orissa reported as 1978 ELT (J.159)

(iii) Pratibha Processors Vs. Union of India reported as 1996 (88) ELT 12 (SC)

With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, Learned Departmental Representative has submitted that the adjudicating authority has completely followed the directions of remand in the final order of this Tribunal dated 07.05.2018. The appellant is seeking relief merely relying on the basis of copy of the Certificate issued by M/s. HSCL on 28.11.2013. The uncorroborated Certificate issued by M/s. HSCL on 28.11.2013 was neither brought to the notice of the department nor it was relied upon by the appellant during the proceedings before the first adjudicating authority at the time of issuance of the first Order-in-Original dated 27.01.2014. The appellant has admitted having not billed/charged service tax from M/s. HSCL during the period prior to 15.09.2009. It is not understood and explained by M/s. HSCL or by the appellant, as to how M/s HSCL calculated, sanctioned and paid the said service tax of Rs.62,41,862/- before the appellant obtained service tax registration for rendering Maintenance or Repair Services, Man Power Recruitment Agency Services & Construction (Industrial) Service by the appellant.

4.1 M/s. HSCL have also not submitted copies of relevant challans and their ST-3 returns to prove that the service tax liability, corresponding to the liability on appellant for rendering Maintenance or Repair Services, Man Power Recruitment Agency Services & Construction (industrial) Service, has been fulfilled by them as service recipient (main contractor) during the period prior to obtaining registration by the appellant. They also failed to prove their claim even during the second adjudication proceedings. Thus, appellant and for that matter M/s. HSCL have failed to prove the authenticity of the contents of the impugned certificate and hence it cannot be accepted as a fact in the present case.

4.2 The appellant was able to prove payment of Rs.14,97,201/- made by them as service tax for the services rendered by them in their letter dated 12.07.2019, as they produced the copies of challans before the adjudicating authority. The same is liable for appropriation against their service tax liabilities. Further, every person (including persons providing service as sub-contractor), who renders taxable service is individually liable to pay tax, notwithstanding the fact that the main contractor discharged service tax on the entire amount. Thus, even assuming but not admitting that M/s HSCL had discharged its service tax liability, it cannot have any bearing on the statutory liability of the appellant. The payment of service tax by the appellant would not lead to double taxation as the main contractor i.e. M/s. HSCL would be entitled to CENVAT credit of such service tax paid. The appellant was thus liable to discharge the service tax on the services provided by them to M/s. HSCL which was not discharged by them in the instant case. Learned Departmental Representative has relied upon the decision of Larger Bench of this Tribunal in the case of Commissioner of Service Tax, New Delhi Vs. Melange Developers Private Limited in Miscellaneous Order No. ST/A/50388/2019 dated 23.05.2019 in Appeal No. ST/50399/2014. The present appeal is accordingly prayed to be dismissed.

5. Having heard both the parties and perusing the entire records, foremost we have perused the directions of final order of this Tribunal dated 07.05.2018. It reads as follows:

> *2. The appellants are engaged in providing of construction services falling under 'Commercial or Industrial Construction Service' (CICS). The Department investigated into the activities of the appellant and formed the view that the appellant was liable to payment of service tax for the period 2009-2010 to 2010-2011 in respect of the activities carried out by them. Accordingly, the show cause notice dated 18.10.2012 was issued to the appellant. Upon conclusion of the proceedings, the adjudicating authority passed the impugned order in which the demand of service tax totally amounting to Rs. 86,52,256/- was confirmed against the appellant alongwith order for payment of interest as well as various penalties under Finance Act, 1994. Aggrieved by the decision the present appeal has been filed.*
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> *4. It is the submission of the ld. Advocate for the appellant that the activities were undertaken by the appellant as a sub-contractor for M/s HSCL. He further submitted that M/s HSCL has already made payment of service tax on behalf of the appellant. Hence, he submitted that the Revenue was not justified in making the demand of service tax once again on the appellant. He submitted that the copies of the challans can be produced for verification in this regard. He also submitted that in respect of another case – M/s Farhat Construction vs. CCE&ST, Raipur vide Final Order No. 55615/2017 dated 21.07.2017, in respect of another sub-contractor of M/s HSCL, the issue has been remanded for verification of the payment of service tax by M/s HSCL.*
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> *6. After considering the submissions made by both sides and on perusal of record, we find that the claim of the appellant is that for the activities undertaken by the appellant, the Service Tax liability has been discharged by the main contractor M/s HSCL, on behalf of the appellant, but the same needs to be verified. We have also perused the decision of the Tribunal in respect of M/s Farhat Construction (supra) and find that the Tribunal, in identical circumstances, in respect of another sub-contractor of M/s HSCL has also remanded the matter for verification to the adjudicating authority. By following the same, we consider it appropriate to set aside the impugned order and remand the matter to the adjudicating authority for denovo decision after giving due consideration to the claim made by the appellant. The appellant will be at liberty to produce documentary evidence to establish his claim before the adjudicating authority who will give an effective hearing to the appellant, before passing the order in denovo proceedings.*

In the result, appeal filed by the appellant is allowed by way of remand.

6. We observe that in the impugned order, it has been observed as follows:

4.6 From the above text, it is observed that M/s HSCL has claimed to have deposited Service Tax of Rs.62,41,862/- during 2007-08 to 2011-12. However, I find another letter No. HSCL/BH/Fin/ST/2012-13/214 dated 24.09.2012 issued by M/s HSCL, which is placed on record. The contents of Para – 'b' of their letter dated 24.09.2012 is reproduced below:-

"As regards for FY. 2007-08 & 2008-09, no tax has been collected by M/s Naveen Kumar. Details of Service Tax collected by Naveen Kumar is given below:

2009-10	*-*	*Rs.*	*714745.00*
2010-11	*-*	*Rs.*	*337277.00*
Total	*-*	*Rs.*	*10,52,022.00*

4.7 From above, it is observed that M/s HSCL have clearly stated that they have paid only Rs.10,52,022/- as Service Tax to the Noticee. Thu, it is evident that M/s HSCL has not claimed that they have deposited the balance Service Tax liability "on behalf of the Noticee". It is pertinent to mention here that, prior to issuance of Show Cause Notice dated 18/19.10.2012, during the course of investigation when M/s HSCL was asked to provide break-up of service tax paid in respect of various sub-contractors, M/s HSCL vide its letter dated 24.09.2012, expressed their inability to submit agency-wise bifurcation of Service Tax deposited by them.

7. We have also perused the Larger Bench decision in the case of **Melange Developers Private Limited (supra).** The same is about sub contractor's liability. It is held as follows:

Master Circular No. 96/7/2007-S.T., dated 23.08.2007 issued superseding all earlier Circulars, Clarifications and Communications providing that services provided by sub-contractors in nature of input services and since sub-contractor essentially taxable service provider, Service Tax would be leviable on the taxable services provided – Also been clarified that even if taxable service intended for use as input service by another service provider, it would still continue to be taxable service – In absence of any exemption granted, sub-contractor to discharge tax liability – Service recipient i.e. main contractor can avail benefit of provisions of Cenvat Credit

> *Rules, 2004 and there would be no double taxation – Sub-Contractor liable to pay Service Tax even if main contractor has discharged Service Tax liability on activity undertaken by sub-contractor in pursuance of contract.*

8. In view of the same and the observation that there are no challans to prove that the main contractor had discharged the tax liability, we do not find any infirmity in the findings of the impugned order. The same is hereby upheld. Consequently, the appeal is dismissed.

[Order pronounced in the open court on **25.08.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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