

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. III

**Service Tax Appeal No. 41432 of 2015**

(Arising out of Order-in-Original No. CHN-SVTAX-003-COM-10/2014-15 dated 31.03.2015 passed by the Commissioner of Service Tax-III, Newry Towers, No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

**M/s. Ocean Interior Limited,**

MF 1, Industrial Estate,  
CIPET Hostel Road,  
Guindy Industrial Estate,  
Chennai – 600 032

**: Appellant**

**VERSUS**

**The Commissioner of G.S.T. & Central Excise,**

Chennai South Commissionerate,  
No. 692, Anna Salai, MHU Complex,  
Nandanam, Chennai – 600 035

**: Respondent**

**APPEARANCE:**

Shri. G. Natarajan, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**

**HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 41241 / 2019**

DATE OF HEARING: 31.10.2019

DATE OF DECISION: 31.10.2019

**PER SULEKHA BEEVI C.S.:**

Brief facts are that the appellants are registered with the Department for providing taxable services viz. Construction Services in respect of Commercial or Industrial Buildings and Civil Structures, Transport of Goods by Road and Works Contract Services.

1.2 During the course of audit, it was noticed that the appellants had not discharged Service Tax on the gross amount received for completion and finishing services provided to their clients. The Department was of the view that the appellants failed to include the value of materials consumed by them while providing the finishing services. Further, it was seen from the invoices raised by the assessee to their client that they were paying VAT on 79.85% of the value of invoices and Service Tax on 20.15% of the remaining value. The Department was of the view that the appellant has to pay Service Tax on the gross amount received for completion and finishing services.

1.3 Though the appellant claimed that the value for the purposes of levy of Service Tax under Works Contract Service has to include the value pertaining to transfer of property in goods involved in the execution of Works Contract leviable to VAT/ Sales Tax, the Department was of the view that since the works are in the nature of finishing services, it did not involve transfer of proper in goods and was merely consuming the materials for providing the services; that such consumption did not amount to sale and therefore, the appellant is not entitled to exclude the material value.

1.4 After due process of law, the Original Authority confirmed the demand, interest and imposed penalty under Section 78 of the Finance Act, 1994. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 Ld. Counsel Shri. G. Natarajan appeared and argued on behalf of the appellant. He submitted that the appellant has discharged Service Tax for the disputed period from October 2008 to March 2013 as per the provisions of law. The main ground on which the demand has been raised is that there has been no sale of any goods since the appellant is only executing completion and finishing works. The works undertaken by the appellant in the nature of finishing services which is recognized as Works Contract Service for payment of

Service Tax as well as for the purpose of VAT. Therefore, the observation in the Show Cause Notice that there is no sale of any goods is not legally correct. The allegation of the Department that the goods are only being consumed and that there is no transfer of property in goods while executing the finishing works is without any factual and legal basis.

2.2 That the Department has accepted that the works fall under Works Contract Service and then they cannot allege that there is no sale of goods involved. The demand has been raised mainly on the method of arriving at the Service Tax that has to be paid. The appellants have arrived at the value of the transfer of property in goods involved in the Works Contract Service in terms of the relevant provisions of law and paid appropriate VAT on such value. The remaining value is considered as the value of the service and appropriate Service Tax has been paid on such value. This has been disputed by the Department alleging that the value adopted for payment of VAT is not the "actual value", but only a "notional value". He submitted that the manner in which the appellant has arrived at the value of transfer of property in goods is based on the relevant provisions of the Tamil Nadu Value Added Tax Act and therefore, cannot be brushed aside by the Department alleging that it is only a notional value. The value of transfer of property in goods has been arrived at by the appellant on the basis of purchase price of various goods, apportionment of overheads and profit margin. On the remaining value, which represents value of the service, they have paid Service Tax.

2.3.1 For the period up to the introduction of Negative List, the appellant has followed the method of determination of value of materials as per Rule 2A (1) of the Service Tax (Determination of Value) Rules, 2006. As per this provision, the gross amount minus value of transfer of property in goods is to be taken. For the period with effect from 01.07.2012, the method followed

by the appellant is as per Rule 2A (i) of the said Rules. That the Department has sought to confirm the demand by applying the Composition Scheme prior to 01.07.2012 and after 01.07.2012 by applying Rule 2A (ii) of the Rules. That the said calculation by the Department is unsustainable. The appellant has correctly discharged the VAT on the materials portion as per the VAT Law and for the remaining value, they have discharged Service Tax.

2.3.2 Ld. Counsel placed reliance on the decision in the case of ***M/s. Johnson Lifts Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai reported in 2018-TIOL-1142-CESTAT-MAD*** wherein it was held that once VAT is paid on 85% of the gross value as per the Tamil Nadu VAT Rules, 2007, payment of Service Tax on the remaining 15%, which represents the service portion of works contract, is in order.

2.4 He submitted that the demand for the period from October 2008 to March 2013 has been raised in the Show Cause Notice dated 17.04.2014 invoking the extended period of limitation by alleging suppression of facts. That the issue is only with regard to the method that has to be adopted for determining the value of taxable service and is entirely an issue of interpretation. There is no intention to evade payment of Service Tax and appellants had arrived at the value of taxable service in accordance with the provisions of Service Tax Rules, 2006 and the VAT Laws. Therefore, there is no justification for invoking the extended period of limitation and the demand up to March 2012 also cannot sustain on the ground of time-bar.

2.5 He prayed that the appeal may be allowed.

3.1 Ld. Authorized Representative (A.R.) Shri. B. Balamurugan appeared on behalf of the Department. He adverted to clause (c) of Rule 2A as it stood prior to 01.07.2012 and argued that the words used in the said clause is "actual value of property in goods transferred." The appellant has therefore to determine the taxable value for discharging Service Tax after deducting the

actual value of the materials used. In the present case, the appellant has deducted the notional value and therefore, there is short payment of Service Tax.

3.2 He referred to the tables in paragraphs 13 and 14 of the impugned order and submitted that after perusal of the invoices, the Commissioner has rightly observed that the deduction of the value of materials on notional basis is incorrect and that the appellant has to discharge Service Tax by deducting the actual value of the goods involved in the contract. If the appellant is not able to determine the actual value of the goods involved in the Works Contract, the appellant has to pay Service Tax on the gross value under Rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 prior to 01.07.2012 and after 01.07.2012, the appellant would be covered under Rule 2A (ii) (c) of the Service Tax (Determination of Value) Rules, 2006 And will have to pay Service Tax at 60% of the total amount charged for the Works Contract.

3.3 He submitted that the Commissioner has therefore rightly confirmed the demands and that the impugned order requires no interference.

4. Heard both sides.

5. The foremost allegation put forward in the Show Cause Notice is that the appellants have only consumed materials in execution of completion and finishing works and that there is no transfer of property in goods. The second allegation is with regard to the method adopted by the assessee for determining the value for payment of Service Tax under Works Contract Service.

6. It has to be noted that the demand is made under Works Contract Service and therefore, the allegation of the Department that there is no transfer of property in goods and that there is merely consumption of materials while providing the finishing services cannot sustain.

7.1 The second issue is with regard to the method of calculation in arriving at the value of taxable service for payment of Service Tax under Works Contract Service. For better appreciation, the relevant provisions prior to 01.07.2012 are noticed as under :

**"2A. Determination of value of services involved in the execution of a works contract:**

*(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner:-*

*(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.*

*Explanation.- For the purposes of this rule,-*

*(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;*

*(b) value of works contract service shall include,-*

*(i) labour charges for execution of the works;*

*(ii) amount paid to a sub-contractor for labour and services;*

*(iii) charges for planning, designing and architect's fees;*

*(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;*

*(v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;*

*(vi) cost of establishment of the contractor relating to supply of labour and services;*

*(vii) other similar expenses relating to supply of labour and services; and*

*(viii) profit earned by the service provider relating to supply of labour and services;*

*(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i)."*

The relevant provisions after 01.07.2012 are also reproduced as under :

**"2A. Determination of value of service portion in the execution of a works contract : –**

*Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-*

- .
- .
- .
- .

*(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of*

*service portion in the execution of works contract under this clause.*

*(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-*

*(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;*

*(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;*

*(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;”*

7.2 Perusal of these provisions, as shown above, would indicate that Rule 2A continues after 2012 also and the Composition Scheme has been replaced and inbuilt in the Rules itself in a different form whereby the service portion in Works Contract is specified at a percentage of gross value based on the nature of activities on which normal Service Tax rate applies instead of a lower composition rate on the gross value under the erstwhile composition scheme. Thus, the principle of valuation of taxable service under the amended provisions also remains the same.

7.3 The appellant has arrived at the value of service portion of Works Contract Service as per Rule 2A (i) whereas the Department has proceeded to arrive at the



value as per Rule 2A (ii) for the period after 01.07.2012 and under the Composition Scheme for the period prior to 01.07.2012. Rule 2A (ii) would apply only if the value is not determined under clause (i). The appellant in the present case has arrived at the value and also paid VAT as per the VAT Law. The value of transfer of property in goods has to be arrived at on the basis of purchase price of various goods, apportionment of overheads and profit margin. The appellant, being an assessee under the VAT Law, has to abide by the state law for payment of VAT. Thus, he can only arrive at the value of goods used in the Works Contract by applying the VAT Law after deducting the value arrived for payment of VAT; the remaining portion has been subjected to payment of Service Tax. When VAT has already been paid on the value of goods, the same cannot be subjected to levy of Service Tax again.

8.1 The Hon'ble Apex Court in the case of ***M/s. Safety Retreading Co. (P) Ltd. Vs. Commissioner of C.Ex., Salem reported in 2017 (48) S.T.R. 97 (S.C.)*** has held that the assessee is liable to pay Service Tax only on the service component, which under the State Act was quantified at 30%. It was held that the assessee is not liable to pay Service Tax on the total amount for retreading including the value of materials/goods that have been used and sold in execution of the contract.

8.2 The Tribunal in the case of ***M/s. Singh Sales and Services Vs. Commr. of Cus., C.Ex. & S.T., Allahabad reported in 2017 (52) S.T.R. 38 (Tri. – Allahabad)*** has held that value of goods/spare parts supplied and used for providing service are not includible in the taxable value.

8.3 In ***M/s. Sobha Developers Ltd. Vs. Commissioner of C.Ex. & S.Tax, Bangalore reported in 2010 (19) S.T.R. 75 (Tri. – Bang.)*** it was held that the material value sought to be included on the ground that goods are consumed in provision of service and not sold, cannot sustain.

9. After appreciating the facts and following the decisions cited above, we are of the considered opinion that the appellant has correctly discharged Service Tax on the service portion. The demands therefore cannot sustain.

10. The impugned order is set aside.

11. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

Sd/-

**(SULEKHA BEEVI C.S.)**  
MEMBER (JUDICIAL)

Sd/-

**(P. VENKATA SUBBA RAO)**  
MEMBER (TECHNICAL)

Sdd