

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

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 40764 of 2015

(Arising out of Order-in-Appeal No. 14/2015 dated 11.01.2015 passed by Commissioner of Service Tax (Appeals-I), 26/1, M.G.Road, Nungambakkam, Chennai 600 034)

M/s.Heidelberg India Private Limited

.... Appellant

No.333, GST Road,
Chrompet,
Chennai – 600 044.

VERSUS

The Commissioner of CGST & Central Excise

... Respondent

Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Ms. T. Shrayashree, Advocate, for the Appellant
Shri M. Ambe, Authorized Representative for the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.41147/2024

**DATE OF HEARING : 02.08.2024
DATE OF DECISION :27.08.2024**

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is a wholly owned subsidiary of M/s.Heidelberg International, Germany / Denmark and are providing the services of procuring orders, for supply of printing machinery in India to M/s.Heidelberg Germany. The appellant gives quotation / proforma invoice based on which customer opens a Letter of Credit on Heidelberg, Germany. After the sale is effected, the machineries received are cleared at the port and the installation is done by the appellant. The appellant provides warranty services for 12 months. M/s.Heidelberg Germany pays commission to the appellant for all these services provided in India. The appellant installs the machines supplied by the Germany company and are providing maintenance and services during the warranty period. For this purpose, a warranty provision is made in the books of account of the appellant as "warranty income" from the commission received by them from M/s.Heidelberg Germany.

2. According to department, the 'warranty income' for which provision is made in their books of account is a consideration for providing maintenance and repair services as defined under Section 65 (64) of the Finance Act, 1994 as introduced w.e.f. 1.7.2003, amended w.e.f. 16.6.2005 and later amended on 1.5.2006.

3. A combined reading of Section 65 of the Finance Act, 1994 and the Board's Circular No.59/8/2003 dated 20.06.2003 reveals that the service provided by the appellant falls under the category of "Maintenance and Repair Services" and the appellant ought to have paid service tax on the warranty income for which provision is made in their books of account. The appellant did not discharge service tax on this income. Accordingly, show cause notice dt. 12.6.2007 was issued to the appellant proposing to demand service tax for the period 1.7.2003 to 31.12.2006 invoking the extended period. After

due process of law, the original authority vide order dt. 25.6.2008 confirmed the demand of service tax in the SCN along with interest and imposed penalties.

4. Against such order, the appellant preferred an appeal before the Commissioner (Appeals) who vide Order-in-Appeal No.160/2009 dt. 15.12.2009 remanded the matter to the adjudicating authority with a direction to verify whether the appellant has received consideration apart from the commission income.

5. In *de novo* adjudication, the original authority as per OIO dt. 29.6.2011 held that the appellant has paid service tax on the commission income received and that the commission is received for providing maintenance of machinery during the warranty period also. The demand, interest and penalties were confirmed.

6. Against such order, the appellant preferred appeal before the Commissioner (Appeals) who vide impugned order upheld the same. Hence this appeal.

7. The Ld. Counsel Ms. Shrayashree appeared and argued for the appellant. It is submitted that the parent company viz. M/s.Heidelberg Germany is in the business of manufacturing printing machinery. During the relevant period, the appellant was the exclusive distributor of the said machinery in India. The distribution was done in two manners. Firstly, the appellant purchased the machinery and sold it to customers in India. Secondly, the appellant supported the sale, installation and after-sale service, for a commission paid by HIL Germany, where the sale was done directly by HIL Germany to the customers in India.

7.1 It is submitted by the Ld. Counsel that the appellant received commission when the sale was done directly by HIL Germany which was for all the services provided by the appellant towards the sale including installation and after-sales service. In terms of the agreement with the parent company, specifically clause 9 & 12 of the

agreement, the appellant provided warranty services to the customers who purchased the printing machinery. However, as per the agreement, the appellant was not entitled to any separate consideration for providing such warranty services. The appellant has not received any separate income over and above the commission. In fact, clause 9.1 of the agreement clearly provides that the appellant has to bear the expenses for the warranty services. In order to fulfill the obligation of providing warranty services on the machineries sold by the Germany company in India, the appellant created a provision in their books of account in anticipation of the expenses which the appellant may have to incur for providing warranty services. The said provision was created as per Accounting Standards (AS) 29. This provision was made by appropriating some amount from the commission received by the appellant from their parent company.

7.2 The said 'warranty income' has been debited to Profit & Loss Account as provisional expenses under items of expenditure and also disclosed as liability in Balance Sheet. The provisions are utilized and reversed as and when the actual warranty expenses are incurred by the appellant.

7.3 The Department has merely referred to the provision of this anticipated expense maintained in their books of accounts in accordance with AS-29 and alleged that the same is consideration received by the appellant from HIL Germany for providing maintenance and repair services during warranty period. The Ld. Counsel argued that the allegation raised in the SCN is completely baseless and not in accordance with the agreement entered by the appellant and the parent company. In the earlier round, the matter was remanded by the Commissioner (Appeals), with a specific direction to verify whether the appellant has received income over and above the commission income. The adjudicating authority in *de novo* proceedings has not made any finding that the appellant has received income over and above the commission income. It is merely

noted by the adjudicating authority that the appellant is providing warranty services from the provision made in the commission income. Merely because the appellant is obliged to provide warranty services, it has been assumed by the department that the provision made in their books of accounts for incurring the expenses for such warranty service is a consideration received from foreign company for providing maintenance and repair services.

7.4 Ld. Counsel referred to the Interim order No.9/2012 dt. 24.1.2012 passed by the Commissioner (Appeals) in the application for stay filed by the appellant. It was noted in their interim order, that the warranty charges are already included in the commission amount received from the parent company and the entire amount of commission has suffered service tax also. It was noted that there is *prima facie* case made out by the appellant and stay was granted without predeposit.

7.5 However, in the impugned order the commissioner (Appeals) has upheld the order passed by the adjudicating authority holding that the appellant is liable to pay service tax on the provision of warranty income alleging that it is consideration received for providing repair and maintenance during the warranty period.

7.6 It is submitted by the Ld. Counsel that the service tax cannot be levied merely based on entries in the books. The appellant has not received any separate consideration for providing repair and maintenance services during the warranty period. Appellant has discharged service tax on commission received. The Department has not been able to show that the appellant has received any separate consideration .

7.7 The decision in the case of **Hewlett Packard India Sales Private Limited Vs CCE & ST (LTU) Bangalore - 2024 (1) TMI 679 - CESTAT BANGALORE** was relied by the Ld. Counsel to argue that the Tribunal in the said case observed that in the absence of

consideration for providing any service, the demand of service tax cannot sustain.

7.8 The Ld. Counsel argued on the ground of limitation also. It is submitted that the major part of the demand has been raised and confirmed by invoking the extended period alleging that there was suppression of facts with intent to evade payment of service tax on the part of the appellant. There is no suppression as the appellant was not required under any law to disclose to the department as to the warranty provision made by the appellant in their books of account for the warranty services provided by them without receiving any consideration. Whenever the appellant was liable to pay service tax, the appellant has disclosed the same and also paid the service tax. The information of provision of warranty income has been received by the department from the financial statements maintained by the appellant. This would clearly show that the appellant had no intention to suppress any information. It is argued by the Ld. Counsel that there are no ingredients for invoking the extended period. The decision in the case of **Kalya Constructions Private Limited Vs CCE Udaipur** – 2023 (12) TMI 1211 - CESTAT NEW DELHI and **Raghuvar (India) Ltd. Vs CCE Jaipur** – 2023 (1) TMI 932 – CESTAT NEW DELHI were relied by the Ld. Counsel to argue that the demand raised invoking the extended period cannot sustain. Ld. Counsel prayed that the appeal may be allowed.

8. The Ld. A.R Shri M. Ambe appeared and argued for the Department. The appellant has not shown the income received by them for maintenance and repair services in the returns filed before the Department. They are liable to pay service tax on the income received for maintenance and repair services. It is admitted by the appellant that they have to provide repair and maintenance service during the warranty period. For providing such services, the appellant has made a provision in their accounts to incur the expenses. This indicates that the consideration for providing

warranty services. The appellant is therefore liable to pay service tax as demanded. It is prayed that the appeal may be dismissed.

9. Heard both sides.

10. From the facts narrated above, it is brought out that the appellant is providing warranty services to the customers who have purchased the machines directly from HIL Germany. The appellant receives commission for such sale. The appellant has discharged service tax on the commission received and there is no dispute. From the amount received as commission they have made provision in their books of account to incur expenses that is required to provide warranty services. It is very much clear from the SCN itself that the appellant has not received any specific or separate consideration for providing repair and maintenance during the warranty services. The provisions made in their books of account as "warranty income" has been construed by the department as a consideration received by them for providing repair and maintenance during the warranty services.

11. In the earlier round of litigation, the Commissioner (Appeals) vide OIA dated 15.12.2009 had remanded the matter with the direction to verify whether the appellant has received any income over and above the commission income. The relevant part of the order passed by the Commissioner (Appeals) is as under :

"Thus many questions arise, led by the primary one of whether the amount mentioned as warranty income in the book of accounts of the appellant is actually received separately over and above the amount mentioned under the income head 'Commission Income'. If it is not so, as the appellant claims and if it is just an estimate or a provision, tax cannot be collected on estimated figures and not the actual. It is an admitted fact that based on the entry made in the book of accounts of the appellant; the LAA has demanded service tax on the warranty commission. The method, the appellant has adopted for excluding warranty portion from the commission for the period April 06 to March 07 and April 07 to March 08 while applying for refund with the department may be a touchstone to test the veracity of the appellant's claim in the present case and vice versa. It may also be used to ascertain the correctness of the computation adopted for confirming the present demand relating to the earlier period from 1.7.03 to 31. 12.06.

Therefore in the interest of fairness and justice, I remand the case back to the LAA for undertaking an appropriate computational exercise coupled with an analytical study and pass such order as he deems fit on merits, following due process of law and by observing the principles of natural justice. The appeal is disposed of by way of remand to the LAA."

12. Even after remand, the department has not been able to establish that any separate consideration is received by appellant over and above the commission income. From the SCN, it can be seen that the demand has been raised on the basis of entries made in the books of account of the appellant. AS-29 provides for making Provisions, Contingent Liabilities, Contingent Assets. As per 10.1 of this Accounting Standards, *a provision is a liability which can be measured only by using a substantial degree of estimation.* Para 14 deals with a 'Provision'. It states as under :

A provision should be recognized when :

- (a) An enterprise has a present obligation as a result of a past event;*
- (b) It is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*
- (c) A reliable estimate can be made of the amount of the obligation.*

13. Para 24 of the AS speaks about Reliable Estimate of the Obligation which is as under :

"The use of estimates is an essential part of the preparation of financial statements and does not undermine their reliability. This is especially true in the case of provisions, which by their nature involve a greater degree of estimation than most other items. Except in extremely rare cases, an enterprise will be able to determine a range of possible outcomes and can therefore make an estimate of the obligation that is reliable to use in recognizing a provision."

14. On the provision made in the balance sheet as per Accounting Standards to meet future expenses that may be incurred for carrying out the obligation of warranty services the demand of service tax has been raised. The appellant has made such provision from the commission received from the parent company. They have already discharged service tax on the commission. Demand of service tax cannot be raised on mere book entries assuming such figures as consideration. In the facts of case, we are convinced that the appellant has not received any separate consideration for providing maintenance and repair services during the warranty period. The demand therefore cannot sustain and requires to be set aside.

15. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 27.08.2024)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI. C.S)
Member (Judicial)