

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

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.60176 of 2023 [SM]**

[Arising out of Order-in-Appeal No.68/ST/CGST-APPEAL-GURUGRAM dated 11.01.2023 passed by the Commissioner (Appeals), Central Excise & CGST, Gurugram]

**M/s Sarvatra Integrated Management  
Service Pvt. Ltd.**

SCO 86, 1<sup>st</sup> Floor, Sector-22, Gurugram,  
Haryana-122015

**: Appellant**

*VERSUS*

**The Commissioner of CGST & Central  
Excise, Gurgaon**

Division Gurgaon, HSIDC, Vanijya Nikunj, Udyog  
Vihar, Phase-V, Gurugram, Haryana-122001

**: Respondent**

**APPEARANCE:**

Shri R.S. Sharma and Shri Vivek Kumar, Advocates for the Appellant  
Shri Harish Kapoor and Shri Aniram Meena, Authorised Representatives  
for the Respondent

**CORAM: HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60527/2024**

DATE OF HEARING: 02.09.2024  
DATE OF DECISION: 17.09.2024

**PER: P. ANJANI KUMAR**

M/s Sarvatra Integrated Management Pvt. Ltd., the appellants, are engaged in providing Security/ Manpower Supply Service, Cleaning Service, Works Contract Service, Horticulture Service, Management and Business Consultant Service. Revenue issues summons to the appellant in 2018 and called for certain documents like balance sheet, ST-3 Returns, 26AS etc; a Show Cause Notice dated 03.08.2021 was issued to the appellants demanding service tax of Rs.13,70,683/-, covering the period April 2016 to June 2017; the recovery sought was on account of difference between balance sheet and ST-3 Returns, service

provided to SEZ and other operating income; the Show Cause Notice was adjudicated by the Assistant Commissioner, Central Tax, Gurugram vide Order dated 25.03.2022 confirming the demand proposed in the Show Cause Notice along with equal penalty; Commissioner (Appeals) vide impugned order dated 11.01.2023 upheld the demand of Rs.9,71,695/- and confirmed the impugned order and partly remanded the matter to the lower authority on the issue of availability of exemption on service provided to SEZ developer and service tax on other operating income. Hence, this appeal.

2. Shri R. S Sharma, assisted by Shri Vivek Kumar, learned Counsels for the appellant, submits that there are four issues involved in the case (i) whether the SCN is time-barred? (ii) whether the demand of service tax of Rs.9,71,695/- on the basis of difference in the figures in ST-3 Returns and balance sheet is maintainable ? (iii) whether the demand of Service tax of Rs.67,998/- raised denying the exemption of service rendered to SEZ even though Form A-2 is submitted? and (iv) whether the demand of service tax of Rs.3,30,990/- is sustainable on other operating income?

3. Learned Counsel for the appellants submits that the dispute pertains to the period April 2016 to June 2017 and the Show Cause Notice issued beyond the permissible period of 30 months; all the documents called for by the Department have been submitted in 2018 itself; it is not a case of fraud, collusion, willful mis-statement, suppression of facts or contravention of the provisions of the law with intent to evade payment of duty; it was held in Hindalco Industries Ltd. –

2003 (161) ELT 346 (Tri. Del.); Kirloskar Oil Engines Ltd. – 2004 (178) ELT 998 (Tri. Mum.); M/s J M Manpower & Security Pvt. Ltd. – Service Tax Appeal No.70394 of 2023 that since the Appellant was filing ST-3 Returns regularly, the Department's stand that it could examine the correct facts only on going through the Balance Sheet cannot be sustained as CBEC Circular No.113/7/2009-S.T., dated 23-4- 2009 vide F.No.137/158/2008-CX. 4 and CBEC Circular No.185/4/2015-ST dated 30.6.2015 vide F.No.137/314/2012, which categorically puts duty on the assessing officer to effectively scrutinize the returns at the preliminary stage, as held in Gannon Dunkerley & Co Ltd (supra); therefore, extended period of limitation cannot be invoked. He also relies on the following cases:

- Rajasthan State Road Transport Corporation – Final Order No.55363/2024 dated 19.03.2024.
- M/s TVS Motors India Pvt. Ltd. – Final Order No. 70112/2022 dated 17.06.2022 (CESTAT Allahabad)
- M/s GD Goenka Pvt. Ltd. – Final Order No.51088/2023 dated 21.08.2023.
- Pushpam Pharmaceuticals Company – 1995 (78) ELT 401 (SC).
- M/s Chemphar Drugs and Liniments, Hyderabad- (1989) 2 SCC 127.
- Cosmic Dye Chemical – 1995 (75) ELT 721 (SC).
- H.M.M. Ltd. – 1995 (76) ELT 497 (SC).
- Uniworth Textiles Ltd. – 2013 (288) ELT 161 (SC).
- Easland Combines, Coimbatore – (2003) 3 SCC 410 (SC)
- Gammon India Ltd. – 2002 (146) ELT 173.

4. Learned Counsel submits, as regards the issue of demand of service tax on the mis-match in figures between balance sheets and ST-3 Returns, that the reason for mis-match is due to an invoice dated 31.03.2016 issued in the name of M/s Bechtel India Pvt. Ltd. which was

cancelled but was mistakenly taken into account in ST-3 Returns; another invoice dated 28.04.2016 was issued subsequently and the bill was reflected in the books of accounts in the month of April 2016; however, the service tax was already paid in March 2016; accordingly, the bill was not considered for the in the ST-3 Returns; the appellants have filed an affidavit and a Chartered Accountant certificate in this regard.

5. Learned Counsel submits, as regards the levy of service tax on the service rendered to SEZ developers, that as the A-2 certificate was issued common to four service providers, the original could not be handed over by the SEZ authorities; accordingly, the appellant has submitted a copy of the same; they have also filed an affidavit in this regard and therefore, the demand of service tax on this count is not sustainable. As far as the last issue of levy of service tax on other "operating income" is concerned, the learned Counsel submits that it was due to the recovery of bad debts during the period November 2017 to February 2018 against bills raised during 2014-15 on which service tax has already been paid.

6. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

7. Heard both sides and perused the records of the case. I find that the case is made by the Department on the ground that there is discrepancy between the figures reflected in balance sheets etc. and the service tax Returns. No effort to co-relate the income/ receipt shown in the balance sheet to any particular service rendered by the appellants to any particular entity appears to have been made. It is not open for the Department to allege evasion of service tax on this count. The onus to

prove the nexus between consideration and the service is on the Department who have made the allegations and issued the Show Cause Notice. Moreover, it is not open for the Revenue to invoke extended period under such circumstances. When no positive act, with intent to evade payment of duty, on the part of the appellant has been shown, has been evidenced. It has been held in a catena of judgments that under such circumstances, extended period cannot be invoked. By following the ratio of such decision, I am of the considered opinion that the Revenue has not made out any case for invocation of extended period. Moreover, the Department also does not have any case on merits on other issues. Learned Commissioner (Appeals) could have easily seen that the appellants have satisfactorily explained their stand and have displayed that no service tax is payable by them in respect of the issues raised in the Show Cause Notice. The appellants have also submitted copies of necessary certificates, affidavits, Chartered Accountant certificates. It was not proper on the part of Commissioner (Appeals) to brush aside the glaring evidence in favour of the appellants. In view of the same, I find that neither the Show Cause Notice nor the impugned order can be sustained.

8. Accordingly, the appeal is allowed.

(Order pronounced in the open court on 17/09/2024)

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**