CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 53585 of 2018

(Arising out of Order-in-Original No. 11/COMMR/ST/JBP/2018 dated 30.07.2018 passed by the Commissioner of CGST, Central Excise and Customs, Jablapur, M.P..)

M/s. BEML Ltd. **...Appellant**
PB No. 5, Jhingurdha Colliery,
Sidhi, Singrauli-486 889 (M.P.)

Versus

Commissioner of CGST, Central Excise & customs **...Respondent**
GST Bhawan, Mission Chowk, Napier Town
Jabalpur-482001 (M.P.)

APPEARANCE:
Shri B.L. Narasimhan, and Shri Ashutosh Choudhary, Advocates for the Appellant
Shri Sangeet Kumar Meena, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: June 07, 2024
Date of Decision: September 13, 2024

FINAL ORDER NO. 58577/2024

JUSTICE DILIP GUPTA

M/s BEML Ltd[1] has sought the quashing of the order dated 30.07.2018 passed by the Commissioner. This order directs for recovery of service tax under section 73 (2) of the Finance Act, 1994[2] read with section 174 of the Central Goods and Service Tax Act, 2017[3] with interest and penalty.

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1 the appellant
2 the Finance Act
3 the 2017 Act

2. The appellant is a public sector undertaking of the Government of India under the Ministry of Defence and is inter alia engaged in maintenance and repair services of Heavy Earth Moving Machinery[4]. The repair and maintenance also entail supply of spare parts and consumables in respect of such Heavy Machinery. For this purpose, the appellant entered into Maintenance and Repair Contracts[5] with its customers to whom Heavy Machinery machines were supplied from its manufacturing units.

3. The appellant entered into Agreement dated 30.12.2009 with M/s. Northern Coalfields Ltd[6] in relation to the Heavy Machinery namely BE1600 Hydraulic Face Shovel of bucket capacity 9.4, CuM for a period of 7 years starting after the completion of warranty period of Heavy Machinery. The aforesaid contract was a composite contract for supply of spare parts and consumables as well as repair and maintenance services, for which the appellant charged 'spares and consumables charges' and 'overhead and supervision charges' at a rate per working hour of the Heavy Machinery.

4. The appellant also undertook rehabilitation and repair services of Heavy Machinery Machines at its service centre pursuant to work orders placed on the appellant by the customers, such as Rajasthan Rajya Vidhyut Utpatan Nigam Limited. The work orders pertain to the supply of spare parts and repair/overhauling services in respect of Heavy Machinery of customers.

5. The appellant raised separate invoices for the supply of spare parts and for the provision of the services and discharged VAT/CST on

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4 Heavy Machinery
5 Repair Contract
6 Northern Coalfields

the entire value of spare parts and consumables supplied to customers. The appellant also paid the applicable service tax for undertaking the repair and maintenance services.

6. Pursuant to the audit proceedings conducted by the Central Excise Department, a show cause notice dated 14.10.2014 was issued to the appellant proposing a service tax demand of Rs. 4,78,75,288/- by invoking the extended period of limitation. The basis for issuing the show cause notice was that the Repair Contracts of the appellant, in their very nature and substance, were pure service contracts for repair work and labour in which spare parts and materials were used incidentally, and so of the amount received by the appellant towards cost of spare parts should form part of the value of repair services.

7. This show cause notice was adjudicated upon by an order dated 30.07.2018. Service tax demand of Rs. 4,78,75,288/- has been confirmed with interest and penalty holding that the contract entered by the appellant with the customers is an instrument to escape the service tax liability by attributing a disproportionate amount to the cost of spares and consumables. Accordingly, service tax has been held to be recoverable on the amount of cost of spare parts.

8. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Shri Ashutosh Choudhary submitted that;

(i) The issue involved in this appeal is covered by various decisions of the Tribunal wherein it has been held that the activity of repair and maintenance, if provided along with material, merits classification under works contract service and the amount on which VAT has been discharged by the

assessee has to be excluded from the value of works contract to ascertain the value of taxable services provided by the assessee; and

(ii) The extended period of limitation could not have been invoked in the facts and circumstances of the case.

9. Shri Sangeet Kumar Meena, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. Learned authorized representative submitted that the Commissioner was justified in confirming the demand of service tax by invoking the extended period of limitation as the appellant had willfully suppressed facts from the department to evade payment of service tax.

10. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

11. As noticed above, the issue that arises for consideration in this appeal is whether the cost of spare parts should form part of the repair and maintenance services provided by the appellant under the composite works contract.

12. This issue was examined by a Division Bench of the Tribunal in **M/s. Samtech Industries And others** vs. **Commissioner of Central Excise, Kanpur and Others**[7] and it was observed:

> "5. We have considered the submissions from both the sides and perused the records. The appellants provided the services of repair of transformers to their customers and in course of repair, they used various parts and consumables like

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7 2014 (4) TMI 995-CESTAT NEW DELHI

> transformers oil, for which separate amounts were shown in the invoices. The invoices issued by them show the value of the goods used and the service charges separately. The amounts charged for various parts like HV/LV oils and transformer oil are as per the rates specified in the contracts. **It is not disputed that in respect of the supply of the goods used for providing the service of repair, Sales Tax/VAT is paid. This fact is clear from the invoices placed on record. In view of this, the appellants contracts with their customers have to be treated as split contracts for supply of goods and rendering the service. When the value of the goods used has been shown separately in the invoices and Sales Tax/VAT has been paid on the same, the supply of the goods would have to be treated as sale and the transactions which are sale, cannot be the part of service transaction. In view of this, we hold that Service Tax would be chargeable only on the Service/Labour charges i.e. on service component and the value of goods used for repair would not be includible in the assessable value of the service.** The learned DR has cited Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 accordingly to which that "where any expenditure or costs are incurred by any service provider in the course of providing a taxable service, all such expenditures or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of the services for the purpose of charging Service Tax on the said service, unless such costs or expenditure have been incurred by the service provider as "Pure Agents" of the service recipient. However, this Rule has been struck down as ultra vires the provisions of Section 66 & Section 67 of the Finance Act, 1994 by Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India & Others Ltd. reported in 2012-TIOL-966-HC-Del.-ST = 2013 (29) S.T.R. 9 (Del.). **In view of this judgment of Hon'ble Delhi High Court, the value of goods used for providing the service, which had been shown by the appellant separately in their invoices and on which Sales Tax/VAT had been paid, cannot be included for assessable value and no Service Tax can be charged on the same.** The impugned orders, therefore, are not sustainable. The same are set aside. The appeals are allowed. Miscellaneous Application No. ST/Misc/60886/2013 for extension of stay in respect of Appeal No.ST/286/2012 also stands disposed of as the appeals itself has been allowed."

13. The aforesaid decision of the Tribunal in **Samtech Industries** clearly holds that when invoices are issued showing the value of the goods used and the service charges separately, service tax would be chargeable only on the service/labour charges and the value of goods

used for repair would not be includable in the assessable value of the service.

14. The same view was also expressed by the Tribunal in **M/s. Voltas Limited vs. Commissioner of CGST & Central Excise, Kolkata North Commissionerate**[8].

15. This issue was also examined by a Division Bench of the Tribunal in **M/s. MG Motors** vs. **Commissioner of Central Excise, Alwar**[9] and it was observed:

> "6. Both the sides have placed reliance upon the Circular dated 23 August 2007. It would be appropriate to reproduce the relevant portion of the circular with spare parts sold during the Service of vehicles and it is as follows:

Reference Code	**Issue**	**Clarification**
(1)	**(2)**	**(3)**
036.03/23-8-07	Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax? Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	Service Tax is not liable on a transaction treated as sale of goods and subjected to levy of sales tax/ VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods. Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the

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		service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles

> 7. A bare perusal of the aforesaid Circular dated 23 August 2007 indicates that Service Tax would not be leviable on a transaction treated as sale of goods and subjected to levy of Sales Tax/VAT and whether a given transaction between the service station and the customers is a sale or not is to be determined taking into account the real nature and material facts of the transaction. The Circular also clarifies also clarifies that payment of VAT or Sales Tax on a transaction indicates that the said transaction is treated as sale of goods.
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> 8. The aforesaid circular was interpreted by the Division Bench in Service Tax Appeal No. 50201 of 2017 and Service Tax Appeal No. 50223 of 2017 decided on 29 June 2017 in the appeals filed by the **M.G. Motors** in the following words:
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> > "The appellants pleads that there is Board's Circular No. 96/2007-ST dated 23 August 2007 stating that service tax is not leviable on the transaction of sale, treated as sale of goods and subjected to levy of Sales Tax/VAT. When the subject transactions involve sale of spare parts on which Sales Tax/VAT has been levied, there is no question of charging service tax on the gross value of the subject spare parts used in servicing of motor vehicles by the authorized service station."

16. In view of the principles laid down by the aforesaid Division Benches of the Tribunal, it has to be held that the Commissioner was not justified in including the value of spare parts in the assessable value of service, as the contract was a composite contract involving supply of goods (spare parts and consumer bills) as well as provision of services (repair and maintenance). It needs to be noted that service tax was not leviable on composite contracts up to 01.07.2012 and the period involved in this appeal is from April 2009 to June 2012. Such being the

position, the impugned order dated 30.07.2018 passed by the Commissioner cannot be sustained.

17. It will, therefore, not be necessary to examine the contention raised by learned counsel for the appellant relating to invocation of the extended period of limitation.

18. The impugned order dated 30.07.2018 is, accordingly, set aside and the appeal is allowed.

(Order pronounced in the Open Court on 13.09.2024)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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