

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.50426 of 2019

[Arising out of Order-in-Appeal No.1318(CRM)ST/JDR/2018 dated 30.11.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

M/s. Bansal Classes Pvt. Ltd.,
2-K-15, Vigyan Nagar,
Kota-324 005 (Rajasthan).

Appellant

VERSUS

Commissioner of Central Excise &
Goods and Service Tax,
G-105, New Industrial Area,
Opposite Diesel Shed, Basni,
Jodhpur-302 004 (Rajasthan).

Respondent

APPEARANCE:

Ms. Neha Somani, Chartered Accountant for the appellant.
Shri Prashant Sinha, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.58574/2024

DATE OF HEARING:05.09.2024
DATE OF DECISION:12.09.2024

BINU TAMTA:

1. M/s. Bansal Classes Pvt. Ltd.¹ has challenged the order-in-appeal no.1318(CRM)ST/JDR/2018 dated 30.11.2018 confirming the service tax leviable on the rent of immovable property paid to its directors along with interest and penalty and on the reversal of cenvat credit amount on the input service attributed to the

¹ The Appellant

exempted service provided by them in the state of Jammu & Kashmir with penalty and interest.

2. The appellant is a coaching institute having centralized registration under "Commercial Coaching" and "Renting of Immovable Property" Service. On the basis of internal audit of the records conducted for the financial years 2012-13 and 2013-14, it was found that the appellant has wrongly availed the cenvat credit of Rs.3,95,072/- as the same related to the exempted services provided by the appellant in the state of Jammu & Kashmir. The appellant vide journal voucher dated 18.05.2016 during the course of audit itself reversed the cenvat credit amount in their input credit register.

3. Show cause notice dated 06.01.2017 was issued for recovery of cenvat credit amount of Rs.3,95,072/- and also for demanding service tax of Rs.85,200/- on the rent of immovable property along with interest and penalty under Section 75 and 78 of the Finance Act, 1994.² The show cause notice was adjudicated vide order dated 11.10.2017 confirming the demand under the show cause notice. On appeal filed by the appellant,

² The FA, 1994.

the Commissioner (Appeals) confirmed the demand by the impugned order. Challenging the said order, the present appeal has been filed before this Tribunal.

4. We have heard Ms. Neha Somani, Chartered Accountant, learned counsel for the appellant and Shri Prashant Sinha, Authorised Representative for the respondent.

5. The challenge in the present appeal is now limited to the levy of service tax on the rental amount paid to the directors of the company on account of "renting of immovable property" and the levy of penalty under Section 78 of the Act. The submission of the learned counsel for the appellant is that the provisions of Entry 5A of Notification No.30/2012-ST dated 20.06.2012, as amended, by Notification No.45/2012-ST dated 07.08.2012 has been mis-interpreted. According to the learned counsel for the appellant, "renting of immovable property" service provided by the Director of the company is not in his capacity as a director but such service has been provided in his individual capacity, which is not covered under the provisions of Reverse Charge

Mechanism³ in terms of Notification No.30/2012-ST dated 20.06.2012. The RCM provided under Section 68(2) of Finance Act, 1994 read with Notification No.30/2012-ST only covers services provided by directors of the company in such capacity only. The service tax, if any, payable is to be paid by the director only and not by the appellant.

6. Payment to directors under dispute is actually towards 'office rent' in the audited Profit & Loss account evidencing the correct nature of expense. Building given on rent cannot be a director's service but a renting service provided by a person, who also happens to be a director. Hence, liability to pay service tax shall arise on the director himself and not on company.

7. The learned counsel pointed out the provisions of the Circular No.201/13/2013-GST dated 01.08.2013 (relevant for GST), which clarifies that services supplied by directors to the company in their personal capacity, like "renting of immovable property" are not taxable under RCM. Only services supplied by directors in their capacity as company directors are taxable under

³ RCM

RCM, though the Circular is of GST regime but the nature of services are exactly the same.

8. Reliance is placed on the decision in **Cable Cords Industries Ltd.**⁴ holding that services of “renting of immovable property” are being received in their individual capacity as owners of the premises and not as directors of the appellant. Properties were owned by them as directors of the appellant merely because they also happen to be the directors of the appellant, however, that would not mean that they had collected rent as directors of the appellant.

9. Learned Authorised Representative for the Revenue contested the appeal reiterating the findings of the authorities below. With reference to the decision in **M/s. Cords Cable Industries Ltd. (supra)**, the submission was that the same is distinguishable and is not applicable in the facts of the present case. According to him, in the case of **M/s. Cords Cable Industries Ltd.**, the directors had already deposited the applicable service tax on forward charge basis whereas in the present case, no service tax was deposited by the directors.

⁴ (2023) 4 TMI 441 (Cestat, New Delhi)

Secondly, in that case the director had obtained service tax registration for "renting of immovable property", which in the present case has not been taken. The learned Authorised Representative emphasized that in the present case, the director had not paid the service tax on the amount of rent received and hence, no benefit can be granted in the terms of the decision in **Cords Cable Industries Ltd.**

10. The short question to be considered is whether the service tax can be levied under the RCM on the appellants, when the service of renting of immovable property provided by the directors was in their individual capacity and not as the director of the company.

11. Firstly, dealing with the issue on merits, it is the settled position of law that the liability to pay service tax in terms of Section 68(1) is on the service provider, however, the provisions of Section 68(2) read with Rule 2(i) and (d) of Service Tax Rules, 1994 and the Notification No.30/2012-ST dated 20.06.2012 (as amended), carves-out an exception, where the service receiver is liable to pay service tax. The Notification No.30/2012-ST in relation to the specified services provides for payment of service

tax under RCM and Entry No.5A of the Notification No.302/2012-ST provides for payment under RCM in the case of services rendered by the director of a company in the following terms:-

Sl.No.	Description of service	%age of service tax payable by the person providing service	%age of service tax payable by the person liable for paying service tax other than the service provider.
5A.	In respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate.	NIL	100%

12. From the aforesaid provisions, it is evident that in the case where the director provides services to the company in individual capacity or other than the director then the liability to pay service tax would not fall on the company under the RCM and the director himself is liable to pay service tax on the same. The services, which are provided in the capacity of a director alone are subject to the service tax under RCM. We find that in the present case, the payment made by the company to the directors is in the nature of office rent as shown in the audited Profit & Loss Account. This clearly relates to the fact that the service provided by the director is not as directors as renting of the building on rent does not fall under the director's service. It is a matter of chance that the renting service provided by a person happens to

be a director. If the liability towards the services rendered by a person in his individual capacity is fastened on the company where he is a director, it would lead to extending the unwarranted liability on the company. The intention of the government is not that any activity/service which is performed by the director, the company would be liable to pay the tax.

13. The Circular No.201/13/2023-GST dated 01.08.2023 relied on by the learned counsel although related to the regime of GST, however, the issue considered in the said circular squarely covers the interpretation, which needs to be placed on the provisions of Entry 5A of the Notification No.30/2012-ST. The relevant provisions of the circular are quoted hereinbelow:-

“Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism (RCM) or not.

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services

supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. **Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification no.13/2017-CTR (SL.No.6) dated 28.06.2017.**"

14. The Circular clarifies and distinguishes the applicability of service tax on the company only when the services have been provided by way of "renting of immovable property" in the company by the directors in their capacity as directors and not in their personal capacity.

15. We find that in identical situation, this Tribunal in the case of **Cords Cable Industries Ltd.** considered the issue of payment of service tax under RCM and observed that the directors in that case were providing service of "renting of immovable property"

not as directors of the appellant company but in their individual capacity as owners of the premises and as the directors of the appellant and in such a situation, the appellant could not have been asked to pay the service tax on RCM.

16. The distinguishing feature, which the learned Authorised Representative has tried to point out from the decision of **M/s. Cords Cable Industries Ltd.** that the directors had already deposited the service tax on the rent received by them was only an additional consideration by the Tribunal, as the issue was already decided on merits that Shri Naveen Sawhney and Shri D.K. Prashar, who happened to be the directors of the appellant company therein have provided the service of "renting of immovable property" in their individual capacity of owners of the premises. Similarly, the other factor that the directors in the present case were not registered with the Service Tax Department has no implication on the liability of the appellant company. We, therefore, do not find any good reason to differ from the view taken by the Co-ordinate Bench in **M/s.Cords Cable Industries Ltd.** Following the said decision, we hold that the appellant company cannot be saddled with the liability of service tax under RCM when the service of "renting of immovable

property” has been provided not in the capacity of the directors of the company but in their personal capacity.

17. The learned counsel for the appellant has also challenged the imposition of penalty under Section 78 of the Act on the amount of cenvat credit claimed for the exempted services provided in the State of Jammu & Kashmir on the ground that the amount of cenvat credit so taken was reversed before the issuance of the show cause notice and hence, it is not a case of service tax being short paid by reason of fraud or collusion or wilful mis-statement or suppression of facts. Both the Authorities below have upheld the imposition of penalty as at the time of audit of the records of the appellant company, the cenvat credit was not reversed and if the audit had not taken place, the appellant would not have reversed the said amount.

18. We find that the amount of cenvat credit taken by the appellant on the exempted services was in contravention of the provisions of the Finance Act and the Rules made thereunder with intent to evade payment of duty. The Authorities below are correct in observing that the amount of cenvat credit was reversed only after the audit has taken place. We also find that

instead of directing the imposition of mandatory penalty of 100%, the Adjudicating Authority had granted liberty to the appellant by directing that the imposition of penalty shall be limited only to 25%, subject to the condition that such reduced penalty is also paid within 30 days of the date of receipt of the order. Hence no interference is called for in imposition of penalty. Accordingly, we do not find any error in the imposition of penalty.

19. The appellant is also required to pay the balance amount of interest from the sum of Rs.51,088/- as they had deposited only Rs.12,469/-. It is a settled law that the levy of interest is automatic and hence, the appellant is liable to pay the same under Section 75 of the Act.

20. In view of our above discussion, the impugned order is partly set aside. The appeal is accordingly allowed partially.

[order pronounced on 12th September, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.

