

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

**PRINCIPAL BENCH – COURT NO. II**

**Service Tax Appeal No.52190 of 2022 (SM)**

(Arising out of Order-in-Original No.04-05/PR.COMMR/ST/IND/2022 dated 30.06.2022 passed by the Principal Commissioner, Central Excise & Central Goods & Service Tax, Indore).

**M/s. M.P. Audyogik Kendra Vikas Nigam  
(Indore) Ltd. Free Press House,**

First Floor, 3/54, Press Complex,  
Agra-Mumbai Road, Indore (M.P.)  
(Now MPIDC RO, 1<sup>st</sup> Floor),  
Atulya IT Park, Near Crystal IT Park,  
Khandwa Road, Indore (M.P.).

**Appellant**

Versus

**Principal Commissioner of Central Goods  
& Service Tax and Central Excise,**

Manik Bagh Palace, Indore (Madhya Pradesh).

**Respondent**

**APPEARANCE:**

Shri Ankur Upadhyay, Advocate for the appellant.

Shri Mahesh Bhardwaj, Authorised Representative for the respondent.

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 50720/2023**

**DATE OF HEARING:19.05.2023**

**DATE OF DECISION:26.05.2023**

**Anil Choudhary:**

The issue in this case is whether demand of service tax under Reverse Charge Mechanism has been rightly raised on the appellant.

2. The brief facts are that the appellant is having service tax registration and is engaged in providing taxable services under the category of "Renting of Immovable Properties, Manpower Supply Services, Legal professional & Consultancy & Rent-a-Cab Services etc. In the course of audit for the period 2012-2013 to 2015-2016, it appeared to Revenue that as per the

balance sheet the taxable value of legal, professional and consultancy expenses comes to Rs.8,09,07,952/-whereas as per ST-3 Returns, it is shown at Rs.25,57,721/-. Hence, it appeared that the appellant have suppressed taxable value of Rs.7,81,50,231/- on which service tax under RCM comes to Rs.1,01,44,126/- .

3. Similarly, as per balance sheet, the taxable value of security expenses comes to Rs.8,83,28,081/- . Whereas as per ST-3 Returns, there is no mention of security services by the appellant. Hence, it appeared that the appellant have suppressed taxable value of Rs.8,83,28,081/- on account of security expenses on which service tax under RCM comes to Rs.1,16,25,922/-. Thus, totaling to Rs.2,17,70,048/-. The Range Superintendent issued letter No. 216 dated 4th May 2016 to Appellant to pay service tax on expenses incurred (service received) as hereinabove mentioned under reverse charge mechanism (RCM). The appellant vide its letter No.2854 dated 1st June, 2016 and other letters replied that legal & professional head is not purely of legal services, it is containing other professional services also, which are not covered under RCM. As regards security services, the appellant submitted that the notification, under which liability for paying service tax on recipient was imposed vide notification No.30/2012 – ST dated 20th June, 2012 is effective from 1st July, 2012. Further, security service was clubbed with manpower service vide notification No.45/2012 dated 7th August, 2012. Further, it was pointed out that liability under RCM is applicable only where service provider is having status as individual/HUF/partnership firm, which have been ignored. It was also pointed out that out of full amount of security service for the entire financial year 2012 – 13 and for the rest amount, service tax already paid to the service provider and hence, they are not liable to pay service tax under RCM. It was also pointed out that manpower and security service of

Rs.2,67,52,302/- is taxable under RCM as pointed out by revenue, which amount has 4 parts as follows: –

**(a)** Rs.20,95,745/- for their DTA operations, of which service provider is having status individual/HUF/partnership,

**(b)** Rs.54,75,845/- for their DTA operation, where service provider is a Private Limited Company and thus, as per notification, there is no liability under RCM. It was also pointed out that the service provider have charged and collected service tax,

**(c)** On amount of Rs.1,69,68,954/- having paid to service provider towards the SEZ operation, which is exempt and further the service provider is a Private Limited Company. Thus, there is no service tax liability under RCM.

**(d)** On amount of Rs.22,11,758/-, which has been paid to the staff provided to the Customs SEZ under the SEZ Developers liability, thus being SEZ, is exempted.

4. However, without considering the clarifications given by the appellant, show cause notice dated 24<sup>th</sup> April, 2004 was issued invoking the extended period of limitation alleging that the appellant have not paid service tax under the Reverse Charge Mechanism, as there is apparent difference between the balance sheet figure of expenses and the amounts shown in the ST-3 Returns. Accordingly, the appellant was required to show cause as to why not the service tax amounting to Rs.2,17,70,048/- (Rs.1,01,44,126/- plus Rs.1,16,25,922/-) should not demanded as service tax short paid under RCM for the period 2012-2013 till 2015-2016 along with interest. Further penalty was proposed under Sections 76, 77 and 78 of the Act.

5. A second show cause notice was also issued dated 28.06.2019 on the very same allegations for the subsequent period April 16 to June 17

demanding service tax of Rs.9,30,598/- on legal professional and consultancy service, and Rs. 88,33,052/- on security service, totaling Rs.97,63,650/- including cess, as short paid under RCM, along with interest and penalty was proposed under Section 76 of the Act.

6. Both the show cause notices were adjudicated vide order-in-original dated 18.02.2019 passed by the Commissioner, C & C and CGST, Indore confirming a truncated amount of Rs.36,17,013/-.

7. This is a second round of allegation. Earlier this matter had come up before this Tribunal when the appeal was allowed by way of remand vide Final Order No.50351 dated 18.02.2020 with the following directions :-

"5. Heard the parties and perused the records.

6. On going through the impugned order, I find that in this case the appellant was never asked to provide copy of invoices to verify whether the service provider has paid any service tax or not. Therefore, arguments advanced by the learned Authorised Representative for the Revenue is not sustainable.

7. Further, I find that in this case, without co-relation/verification by the authorities below has confirmed the huge demand against the appellant, which shows negligence on the part of Audit team.

8. In view of the above, I set aside the impugned order and remand the matter back to the Adjudicating Authority to co-relate the amount of service tax paid by the appellant as well as paid by the service provider and thereafter to compute the correct demand, if payable by the appellant or not.

9. With these observations, the matter is remanded back to the adjudicating authority to afford an opportunity to the appellant to provide all the relevant documents. The Adjudicating Authority is at liberty to depute an officer at the premises of the appellant to verify all the records and compute the demand, if payable by the appellant or not.

10. Appeal is disposed of by way of remand."

8. Pursuant to remand, the matter has been re-adjudicated by the Principal Commissioner, Indore, who was pleased to confirm a higher

amount of Rs.41,46,372/-. Being aggrieved, the appellant is before this Tribunal.

9. Assailing the impugned order, Id. Counsel appearing for the appellant, *inter alia*, states that the impugned order is non-speaking and unreasoned. The whole demand is bad as the same has been confirmed without making a proper verification with respect to the facts on record. The appellant had submitted every single voucher/invoice along with the written submissions. The appellant had also prayed for deputing an officer to the premises of the appellant, for verification of the documents and records. In spite of pointing out that in several cases, the service providers have charged the service tax and collected from the Appellant, in which case no tax was payable under the RCM mechanism. It is evident from the plainreading of the show cause notice that the demand has been raised on the basis of assumptions and presumptions without verifying the records. The liability of RCM has to be worked out with respect to each transaction or invoice/voucher issued by the provider of service. Whether service tax has been charged or not or has been charged at a lower rate, as per concession allowed under notification No.30/2012-ST. Further, the liability under RCM on the recipient of service/appellant also depends upon the status of the service provider as to whether the provider of services is an individual/HUF/partnership firm/Private Limited Company/Corporation/Cooperative Society, etc. etc. The show cause notice has been evidently issued by looking at the apparent difference of the expenses under the security and manpower head and professional services head, as compared to the amount offered for tax in the ST 3 returns (on RCM basis). Such approach is totally illegal and unknown to the process of assessment. In several instances, where the appellant pointed out before the Adjudicating Authority, that full amount of service tax has

already been paid as charged by the provider of service, still revenue calculated tax liability again on RCM basis.

10. Learned Counsel further urges that admittedly the appellant have maintained proper records of the transactions, books of accounts in the ordinary course of business. Further, admittedly, the appellant have filed their periodical ST-3 returns regularly. Thus, there is no element of any suppression, mis-statement or fraud. The issue being wholly interpersonal, the extended period of limitation is not available to the Revenue.

11. Learned Authorised Representative for Revenue relies on the impugned order.

12. Having considered the rival contentions, I find that the show cause notice does not contain the gist of allegations for raising the demand on RCM basis. The provisions of service tax read with the rules thereunder do not provide for raising of demand on the basis of apparent difference in the figure of expenses in the balance sheet and the amount offered for service tax in the ST-3 Returns. This court takes judicial notice that the demand under service tax on reverse charge mechanism, has to be worked out and calculated transaction wise-wise and invoice-wise. In absence of such exercise, I find that the show cause notices is vague and fit to be held misconceived and mis-directed. In view of my aforementioned findings and observations, I allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits in accordance with law.

[Order pronounced on 26.05.2023 ]

(Anil Choudhary)  
Member (Judicial)

Ckp.

