CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 54991 Of 2023

[Arising out of Order-in-Original No. 42-43/Commr/ST/JBP/2022-23 dated 28.02.2023 passed by the Commissioner of Central Goods, Service Tax and Central Excise, Jabalpur, M.P]

Saisun Outsourcing Services Private Limited : Appellant
240, Rajpal Tower, Near Gulzar Hotel
Mahanadda, Nagpur Road,
Jabalpur, Madhya Pradesh

Vs

Commissioner of Central Goods, Service Tax, Jabalpur : Respondent
GST Bhawan, Napier Town, Jabalpur, M.P.

APPEARANCE:
None for the Appellant
Shri Manoj Kumar, Authorized Representative for the Respondent

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

FINAL ORDER No. 50359/2025

Date of Hearing:05.11.2024

Date of Decision: 04.03.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Saisun Outsourcing Services Private Limited[1] to assail the Order-in-Original No. 42-43/Commr/ST/JBP/2022-23 dated 28.02.2023 wherein the Commissioner has confirmed the demand of service tax amounting to Rs. 19,62,41,273/- along with interest and equal penalty.

2. The brief facts of the case are that the appellant was registered under Service Tax for providing services under Manpower Recruitment/

1 the appellant

Supply agency Services. Audit of the unit was conducted for the period from April, 2015 to June, 2017. During the audit, the appellant submitted copies of agreements and some sample invoices and copies of 26AS and Balance Sheet/Trial Balance for the period 2015-16 to June, 2017. On perusal of the agreements submitted by the appellant, the Department found that none of the agreements was registered. The Department also noted that language in almost all the agreements was same, and the nature of work mentioned therein was farm labour, business facilitator and distribution of SIM and Man Power Supply. The maximum services mentioned in these agreements were exempted services under the Notification No. 25/2012 dated 20.06.2012. Similarly on perusal of sample invoices submitted by the appellant, the Department found that addresses of their clients had not been mentioned in any of the invoices. The nature of services & service tax amount were also not mentioned. Therefore, letters were issued to these clients to submit the copies of ledgers, invoices, agreements and the amount of Service Tax paid by them to the appellant for the period from 2015-16 to June, 2017. From the letters received from some of those clients made it clear that the appellant had charged the Service Tax in their invoices but had not deposited in the Government Account for provision of manpower supply. Show Cause Notice No. 02/COMMR/ST/Audit/2019-20 dated 30.08.2019 was issued to the appellant to show cause as to why:

> i) Service Tax amounting to Rs. 19,62,41,273/- | Nineteen Crore sixty two Lakh forty one Thousand two hundred Seventy Three only | [including Cess] for the period 2015-16 to 2017-18 (up to June 2017) should not be demanded and recovered from them under provisions of section 73 of the Finance Act, 1994 and Rs 2,03,24,036/- so deposited to the

credit of govt. account should not be appropriated against the said demand.

ii) Since the service tax has been collected from their clients and not been deposited to the credit of govt. account beyond the period of six months, Interest should not be recovered from them@ 24% as prescribed under section 75 of the Finance Act, 1994.

iii) Penalty should not be imposed upon them under section 78 of the Finance Act, 1994.

iv) Service Tax amounting to Rs. 31800/- [Thirty One Thousand Eight Hundred only] including Cess in respect of legal & Consultancy services under RCM should not be demanded and recovered from them under provisions of section 73 of the Finance Act, 1994.

v) Interest at appropriate rate should not be recovered from them under section 75 of the act on the amount so recovered.
vi) Penalty should not be imposed upon them under section 76 of the Finance Act, 1994 for contravention of provisions of the Finance Act, 1994.

Vii) The late fees of Rs. 3500/- as prescribed under Section 70 of the Act in respect of delayed filing of ST-3 returns should not be recovered from them.

The said show cause notice was adjudicated by the Commissioner who confirmed the demand of Service Tax of Rs. 19,62,41,273/- under proviso to sub-section 73 of the Finance Act, 1994 along with interest and equal amount of penalty. The Commissioner also confirmed the demand of Service Tax of Rs. 31,800/- in respect of legal & consultancy services under RCM under proviso to sub-section (2) of Section 73 of the Finance Act, 1994 along with interest. Penalty of Rs. 1,00,000/- was imposed on Shri Shailesh Rajpal under Section 78A of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017. Aggrieved by the said order, the appellant preferred this appeal before this Tribunal.

3. None appeared on behalf of the appellant. We find that despite several opportunities, the appellant failed to appear. A perusal of the daily order sheets, reveals as follows:-

> "**DATE OF HEARING: 09.08.2024**
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> The Madhya Pradesh High Court in Writ Petition 12552 of 2024 filed by the appellant observed, while dismissing the petition, that if the petitioner fulfills the requirement of pre deposit within a period of 60 days from the date of order, the Tribunal shall make an endeavour to decide the appeal within a further period of 120 days. There is nothing on the record to indicate that pre deposit has been made. Learned counsel for the appellant has also not appeared. List on August 19, 2024 with the office report regarding pre-deposit. Notice may also be sent to the appellant by speed post/e-mail to inform that the matter would be listed on August 19, 2024.
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> **Date of Hearing : 19/08/2024**
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> None is present for the appellant. A written request for adjournment is received. It has also been mentioned that the Writ Petition No.12552 of 2024 was mistakenly filed before the Hon'ble High Court of Madhya Pradesh and Jabalpur as the amount involving the amount of pre-deposit was already paid by the appellant. However, the order of Hon'ble High Court in the said Writ Petition is already on record where this fact is nowhere been recorded. However, a time period of 60 days + 120 days has been given to the Tribunal to decide the matter. In view of these circumstances, one more opportunity, as last, is given to the appellant. Matter now be taken up on 20th September, 2024.
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> **Date of Hearing : 20/09/2024**
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> None is present for the appellant. On last date of hearing the appellant was warned with the last opportunity. Despite those directions and despite the time bound directions by Hon'ble High Court, Madhya Pradesh, Jabalpur Bench, the appellant has opted to not to appear. We are not inclined to adjourn the matter any further to grant any further opportunity to the appellant to make the final submissions. Learned Departmental Representative however at this stage has requested time to place on record the annexures to the show cause notice. However, written synopsis has

been filed. In view thereof, appeal is adjourned to September 27, 2024.

DATE OF HEARING: 28.10.2024

The letter dated 16.08.2024 sent by the appellant regarding the hearing scheduled for 19.08.2024 has been perused. The appellant had sought adjournment on the ground that 19.08.2024 would be a public holiday for rakhi festival. The Tribunal functioned on that day, as it was not a holiday. On 19.08.2024, in view of the order passed by the High Court, the bench directed that the matter may be taken up on 20.09.2024. All orders are uploaded on website of the Tribunal. There is no reason as to why the appellant should not have visited to the website to ascertain the next date fixed by the Tribunal. It transpires from the ordersheets that neither on 20.09.2024 nor on 27.09.2024 or on 09.10.2024, the appellant appeared. Today learned authorised representative appearing for the department has placed a letter dated 26.10.2024 sent by the appellant seeking an adjournment. The letter mentions that the appellant did not receive any prior mail regarding the next date. It is only because of the order dated 09.10.2024, that a communication was sent to the appellant regarding the date fixed otherwise as all orders are uploaded on the website, information is not sent.

2. The appellant has been absolutely casual even though there is a direction by the High Court to decide the matter.

3. List the appeal for hearing on 05.11.2024. It is made clear that the appeal may be decided on merits even if the appellant does not appear. The report submitted by the Registrar of the Tribunal may be placed before the President on the administrative side.

As no one appeared for hearing on 05.11.2024, the Bench decided to proceed to hear the learned AR for the Department. The appellant's submissions in their Grounds of Appeal are noted.

3.1 The appellant has submitted that the Commissioner has grossly erred in determining wrong taxable value as the amount so determined is almost double of the actual taxable value. The appellant has further submitted that the Commissioner has erred in comparing the Gross receipts as per Form 26AS and receipts as per Profit & Loss account as these receipts were accounted in the Profit & Loss account. The appellant has further submitted that the Commissioner has erred in passing the order, by not considering the information which was submitted along with the documents. The appellant has further submitted that the impugned order was grossly erred in comparing figures of 26AS for the F.Y 2017-18 with 1st quarter figures of Books of Accounts. The penalty imposed u/s 78 of Rs. 19,62,73,073/- and Rs.1,00,000/- u/s 78A of the Finance Act 1994 is also erroneous and unjustified and the interest so applied under section 75 on the tax demand so calculated is also unjustified.

4. Learned Authorized Representative for the Department reiterated the findings of the impugned order.

5. We have heard the Ld. Authorized Representative for the Revenue and perused the appeal paper book. The facts of the case are that during audit, the appellant submitted copies of agreement and sample invoices of their clients before the audit team for the period 2015-16 to June-2017. The Department noted that the appellant had provided farm labours for agriculture operations, Business Facilitator, Distribution of SIM and Man Power Supply services, which were exempted under the Notification no 25/2012 dated 20.06.2012. On examination of the said agreements with corresponding invoices, the Department found that the appellant had not charged service tax in most of the invoices. In order to verify the genuineness of agreements and invoices submitted by the appellant, agreements and invoices were called from the clients of the appellant by the Department. In response TATA Teleservices Maharashtra Limited,

(TTML), TATA Teleservices Ltd. (TTSL), Gujrat Tea Processors and Packers Ltd., Paytm E commerce Pvt. Ltd., Instakart Services Pvt. Ltd., Jasper Infotech Pvt. Ltd. etc. submitted copies of these agreements, invoices to the Department. We find that the impugned order notes that a comparison of the Agreements provided by these clients of the appellant with the copies of the Agreements provided by the appellant, revealed that both versions were different. As per Agreements of the appellant, the nature of services were exempted from service tax viz. Distribution of SIM cards, Recharge Coupons, Supply of Farm Labour for agriculture operation, business facilitator etc. However, as per the copies of Agreements provided by the clients of the appellant, the services related to manpower supply services and other taxable service. The impugned order goes on to note that the appellant had submitted agreement dated NIL of farm labour supply with Gujrat Tea Processors und Packers Ltd., Ahmadabad in which scope of work was mentioned as "Supply of contract Farm labour/workers for agricultural operations and agricultural produce" and contract period was mentioned as 1st April 2015 to 31 March 2017. However, M/s Gujrat Tea processors & Packers Ltd. provided the copy of original work order dated 03.12.2012 for period 2013-14 to 2017-18 (Jun-17) wherein the scope of work mentioned, read as "you shall place the manpower for all position matching to our job specs and selection process". Upon comparison of both work orders, the impugned order notes that the appellant had deliberately forged the Agreement/work order of M/s Gujrat Tea Processors & Packers Ltd. in order to avoid payment of service tax. Further, the sample bill no. 529 dated 16/09/2015 issued by the appellant to M/s Gujrat Tea Processors and Packers Ltd. showed the amount as Rs. 42,733/- wherein no service tax was charged from M/s Gujrat Tea Processors and Packers Ltd. However, M/s Gujrat Tea Processors and Packers Ltd. provided the actual tax invoice no. 79 dated 16/09/2015 issued by the appellant wherein the appellant had charged service tax of Rs. 5.247/-@ 14% on Rs. 37.485/- from M/s Gujrat Tea Processors and Packers Ltd. It is clearly on record that the appellant has forged the work order as well as invoice with a malafide intention to evade payment of service tax actually collected by them.

6. Similarly, the appellant submitted the Agreement dated NII. for business facilitator issued by M/s Jasper Infotech Pvt. Ltd wherein the scope of work mentioned was "Enrolment of Customers, providing ID cards. Debit cards, Credit Cards etc." and contract period was mentioned as 1st April 2015 to 31 March 2017. The impugned order has proceeded to observe that the client, M/s Jasper Infotech Pvt. Ltd. provided the copy of original Service Agreement where the scope of work was mentioned as "to render the services of providing the temporary staff to the company for various project and work". On comparison of both work orders, the impugned order concludes that the appellant had deliberately forged the work order to avoid payment of service tax. The appellant submitted the sample bill no. 1753 dated 24/02/2016 issued by them to M's Jasper Infotech Pvt. Ltd. for Rs. 10,11,641/- wherein no service tax was charged from M/s Jasper Infotech Pvt. Ltd. However M/s Jasper Infotech Pvt. Ltd. provided actual tax invoice no. 1208 dated 30/12/2015 issued by the appellant where the appellant had actually charged service tax of Rs. 98,708/-@ 14.5% on Rs. 6,80,741/- from M/s Jasper Infotech Pvt. Ltd. Similarly other work orders submitted by the appellant when compared with the

original work orders provided by the service recipients indicated clearly that the appellant had deliberately forged the work orders and the invoices issued against said work orders, to establish that they had provided exempted services and had not collected service tax from their service recipients. However, the original documents provided by the service recipients revealed the forgery which establishes the malafide intention of the appellant.

7. We note that the impugned order has established that during the period 2015-16, 2016-17 and 2017-18 (up to June, 2017), the appellant had rendered taxable services which was deliberately suppressed resulting in the evasion of service tax of Rs. 19,81,97,629/-(including cess). We find that in their grounds of appeal, the appellant has stated that as per audited accounts, gross receipts for 2015-16 is Rs. 15,67,08,892/-, for 2016-17 is Rs. 62,16,63,588/- and for first quarter of 2017-18 is Rs. 10,83,21,412- The appellant has stated that the main reason for the difference is because the same receipt has been taken twice in show cause notice. The appellant stated that while calculating service tax liability, the gross receipts taken from 26AS was already included in gross receipts in books i.e. balance sheet. Consequently, their service tax liability has been more than doubled. We note that apart from merely stating that the impugned order has added the amount shown in 26AS statement with the amount shown in Books of Accounts no evidence has been adduced by the appellant in support of their contention. No one even appeared on the day this case was posted for hearing, nor any written submissions have been filed.

8. We note that it has been clearly established that the services provided by the appellant are covered under the definition of Taxable Services in the light of the changed provisions of the Finance Act, 1994 made applicable with effect from 01.07.2012. We find that the impugned order has given evidence that the appellant had received Rs. 1,52,54,53,781/- from its service recipients against provision of the said taxable services and was liable to pay service tax on said amount.

We also find that the appellant mis-declared the value of taxable services provided by them and service tax liability during the relevant period in their ST-3 returns for respective periods. In addition, the appellant submitted fabricated work orders, agreements with their clients, invoices etc., before the departmental audit team, clearly establishing their intent to evade duty.

9. We also note that the impugned order notes that the appellant failed to provide any relevant authentic documents like invoices in original work orders in original etc to justify their claim of duplication of demand in case of few of their clients. In the absence of any authentic evidence in the form of original invoice etc showing the actual value of taxable services provided by the appellant during the relevant period, we find that there is no reason to interfere with the computation of service tax liability against the appellant in the impugned order. Hence, we find that there is no merit in the above contention of the appellant and the same is rejected.

10. As regards the legal fees, we find that the appellant has shown Legal fees expense of Rs. 2,12,000/-in 2016-17. In this regard, no submission was made by the appellant nor have they contested the applicability of Service Tax on the said expense. In absence of any

reply or any supporting documents, we hold that Legal fees expense incurred by the appellant are expenses towards Legal services. Accordingly, Service Tax amounting to Rs. 31800/- on Legal Fee expense incurred by the appellant during the period F.Y. 2016-17 is upheld.

11. In view of the discussions above, we find no infirmity in the impugned order and uphold the order. Consequently, the appeal stands dismissed.

(Order pronounced in the open Court on 04.03.2025)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.