IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(arising out of Diary No. 53372/2024)

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, NAVI MUMBAI ..... **APPELLANT(S)**

VERSUS

HINDUSTAN CONSTRUCTION COMPANY LTD. ..... **RESPONDENT(S)**

O R D E R

Delay condoned.

We do not find any good ground and reason to interfere with the impugned judgment; hence, the present appeal is dismissed.

Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
JANUARY 20, 2025.

ITEM NO.12 COURT NO.1 SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No. 53372/2024

[Arising out of impugned final judgment and order dated 06-01-2023 in STA No. 87430/2019 passed by the Custom Excise Service Tax Apellate Tribunal, West Zonal Bench at Mumbai]

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, NAVI MUMBAI **Appellant(s)**

VERSUS

HINDUSTAN CONSTRUCTION COMPANY LTD. **Respondent(s)**

IA No. 10637/2025 - CONDONATION OF DELAY IN FILING
IA No. 10638/2025 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS
IA No. 10640/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 10643/2025 - STAY APPLICATION

Date : 20-01-2025 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. N. Venkataraman, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. V C Bharathi, Adv.
Mr. Rupesh Kumar, Sr. Adv.
Mr. B K Satija, Adv.
Ms. Prema Priyadarshini, Adv.

For Respondent(s)

UPON hearing the counsel, the Court made the following
O R D E R

Delay condoned.

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY) **(R.S. NARAYANAN)**
AR-CUM-PS **ASSISTANT REGISTRAR**
(Signed order is placed on the file)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87430 of 2019

(Arising out of Order-in-Original No. 83/CGST-NM/Commr/KV/2018-19 dated 30.03.2019 passed by the Commissioner of CGST & CX, Navi Mumbai)

Hindustan Construction Company Ltd. **…. Appellant**
Hincon House, B Tower, 247 Park,
LBS Marg, Vikhroli (West), Tagore Nagar,
Mumbai- 400 085.

Versus

Commissioner of Central Goods and Service Tax, Navi Mumbai **…. Respondent**
10th Floor, Satra Plaza, Plam Beach Road,
Sector 19 D, Washi, Navi Mumbai- 400 705.

Appearance:

Shri Mahesh Raichandani, Advocate for the Appellant

Shri Anand Kumar Authorized Representative, for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87585/2023

Date of Hearing: 06.01.2023
Date of Decision: 06.01.2023

Per: S.K. MOHANTY

Brief facts of the case, leading to this appeal, are summarized herein below:

1.2 The appellants are, *inter alia*, engaged in the business of providing taxable services under the head of construction and other services. For provision of such services, the appellants were initially registered with the Service Tax department w.e.f. September, 2004 and subsequently, obtained the centralized registration w.e.f. May, 2007. The appellants incur certain expenditure such as insurance

premium, advance tax payment, stamp paper/duty, hotel expenses etc. on behalf of their group companies. The said expenses do not relate to any supplies made to the appellants. Incurrence of such expenses were used to be reimbursed by the group companies at actual. The appellants also share cost of common expenditure that has been incurred by them, with their group companies in accordance with company's group policy. To recover the said expenses, the appellants issue debit notes in favour of their group companies. The appellant did not pay any service tax on the transactions made by them with their group companies, owing to the reason that there is no provision of any taxable service between them and it was mere arrangement of accounting such reimbursable expenditure.

1.3 During the course of audit of the books of accounts under EA-2000, the officers of the service tax department observed that the appellants had recovered amounts from their related party by raising debit notes on two broad heads viz., (i) debit notes raised for reimbursement of various revenue expenses; and (ii) debit note raised for reimbursement of expenses incurred on behalf of group companies. On the basis of such observation, the audit wing had alleged that the amount so recovered by the appellants should be considered as a taxable service under the category of 'business support service', defined under Section 65 (104c) of the Finance Act, 1994. Based on the audit report, the department had issued periodical Show Cause Notices (SCNs) dated 21.04.2014, 24.03.2015 and 19.02.2016, proposing for recovery of the service tax demand for the period October, 2008 to March, 2015. The said SCNs were adjudicated vide Order-in-Original dated 28.04.2017, in confirming the proposed demands against the appellants. On appeal against the said adjudication order dated 28.04.2017, this Tribunal vide Final Order No. A/86933/2021 dated 24.09.2021 had set aside the adjudication order and allowed the appeals in favour of the appellants.

1.4 In continuation to the earlier show cause proceedings (supra), the department had issued another SCN being No. 10/2017-18/Commr/CGST/ NN dated 09.03.2018, proposing for recovery of service tax demand for the period 01.04.2015 to 31.03.2017. The said SCN was adjudicated by Commissioner, CGST & Central Excise,

Navi Mumbai vide Order-in-Original No.83/CGST-M/Commr/KV/2018-19 dated 30.03.2019 (for short, referred to as 'the impugned order'), in confirming service tax demand of Rs.11,71,17,556/- along with interest. Besides, the impugned order has also imposed penalties of Rs. 1,17,11,756/- and Rs. 10,000/- under Section 76 *ibid* and 77 *ibid*, respectively.

1.5 Feeling aggrieved with the impugned order dated 30.03.2019, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. On perusal of the case records, we find that in order to have the cost effectiveness, the appellants incur various expenses for and on behalf of their group companies and cost of such services were recovered as reimbursement by way of raising debit notes. We find that the service tax demands raised for the earlier period viz., October, 2008 to March, 2015 were set aside by the Tribunal vide Final Order dated 24.09.2021, by relying upon the judgement of the Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 10 GSTL 401 (S.C.)].

4. The period involved in the present dispute is from 01.04.2015 to 31.03.2017. The phrase 'service' has been defined in Section 65B *ibid* to mean 'any activity carried out by a person for another for consideration, and includes a declared service…..'. On reading of the said definition clause, it transpires that in order to constitute a service, there must be involvement of more than one person i.e., a service provider and a service receiver; and that there must be 'consideration' for provision of such service. The phrase 'consideration' explained in the *Explanation*, appended to Section 67 *ibid* has provided that 'consideration' includes any amount that is payable for the taxable services provided or to be provided. The said explanation clause, providing the meaning of the phrase 'consideration' was substituted by the Finance Act, 2015 (20 of 2015), dated 14.05.2015, as under:

> *"Explanation: for the purpose of this section,--*
> *(a) "consideration" includes-*
> *(i) any amount that is payable for the taxable services provided or to be provided;*
> *(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or*

agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket."

5. For deciding the issue in hand, clause (ii) in the Explanation (supra) is relevant, which provides that any reimbursable expenditure or cost incurred by the service provider for provision of the taxable service is to be considered as 'consideration', for the purpose of levy of service tax thereon. In the present case, the appellants herein have not provided any taxable service to their group companies, which is evident from both the SCN and the impugned order. The nature of activities undertaken by the appellants were discussed by the original authority in the impugned order at paragraph 5.3, as under:

"5.3 In view of the above definition/scope of service, it is found that the noticee has provided the services of sourcing of input services for their 23 associated/subsidiary companies, having distinct and independent identity. The intention of sourcing the input service for and on behalf on their group of companies was with intent to have cost effectiveness. Thus, the activities of the noticee were for another person and it involves element of consideration."

6. We find that the impugned order has not specifically discussed as to how and which particular services were provided by the appellants to their group companies. Though, the original authority has stated that the act of sourcing of the service for the group companies would be categorized under 'business support service', but has not dealt with the vital aspect regarding the manner of provision of a service, that too a taxable service. Rather, the facts of the case indicate that the mode of operation undertaken by the appellants in making payment for the services and getting the same reimbursed are not for provision of any service, but are only reimbursement for the services procured for their group companies. Thus, the reimbursement of the cost/expenses incurred by the appellants as per actual, cannot be regarded as consideration, flowing to the appellants towards the taxable services provided by

them. In other words, the amount claimed in the debit notes are for the simple reimbursement of the cost/expenses incurred by the appellants in terms of the cost sharing arrangements with the group entities, with the only purpose of cost effectiveness, having no service element involved therein. Therefore, we are of the considered view that in absence of any provision of service by the appellants to their group companies, mere claim of reimbursement of actual cost and expenses should not form a part of provision of any taxable service, for payment of service tax thereon.

7. In view of the foregoing discussions, we do not find any merits in the impugned order dated 30.03.2019 and therefore, the same is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(C J Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

SM