

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

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 51360 of 2019

(Arising out of Order-in-Appeal No. 85(SM)ST/JPR/2019 dated 28.02.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur (Rajasthan)

M/s Prem Motors (P) Limited

E-101 A, Road No. 8, VKI Area,
Jaipur – 302013, Rajasthan.

Appellant

Versus

**Commissioner, Central Excise & Central
Goods & Service Tax, Jaipur**

NCRB, Statue Circle, Jaipur (Rajasthan)

Respondent

Appearance:

Present for the Appellant: Shri Vishal Kumar, Advocate

Present for the Respondent: Shri Manoj Kumar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble Mr. P.V. Subba Rao, Member (Technical)

Date of Hearing : 11/02/2025

Date of Decision : 02.05.2025

Final Order No. 50576/2025

Dr. Rachna Gupta:

M/s Prem Motors (P) Ltd.¹ is engaged in providing of output services namely, repair, reconditioning, restoration or decoration or any other similar services of motor vehicle, business auxiliary

1 the appellant

service, business support service etc. During the course of audit of the records of the appellant by officers of the Central Excise Audit Commissionerate, Jaipur, it has been observed that the appellant has been carrying out repair and maintenance, has been issuing the Motor Vehicle on the basis of job card prepared at the time of handing over of motor vehicle by the customers to the appellant and after completion of repair and maintenance, has been issuing the invoice charging for repair and maintenance of a vehicle, which appears to be a contract of repair of Motor Vehicle.

2. Department also observed that the appellant in some of the cases, the appellant issued single invoice for all the works i.e.

- (i) charges of parts, and paid VAT on such charges;
- (ii) labour charges and paid service tax on full value of labour charges; and
- (iii) charges for painting work and paid service tax on 70% value of such painting work and opted for valuation under Rule 2A(ii)B of Service Tax (Determination of Value) Rules, 2006.

In other case of labour charges for repair and maintenance, the appellant paid service tax on full value of labour charges thereby they opt for valuation of such work contract under Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006.

3. Department formed the opinion that they are not supposed to opt/follow both the procedures of valuation, as stipulated under Rule 2A(i) *ibid* and under Rule 2A(ii) *ibid* for one single contract/invoice. Since the appellant has not included value of

parts of motor vehicle, in the value for charging service tax by opting Rule 2A(i) *ibid* and paid service tax on full value of labour charges, therefore, they have opted valuation method under Rule 2A(i). The same procedure should have been followed in another case also i.e. for painting job and so the service tax should have been paid on full value of charges of painting. The details of such charges collected from customers during the period May, 2013 to September 2015 by the appellant along with other documents were received on 21.03.2016 from the appellant.

4. From the documents, department observed that prior to 07.05.2013, the appellant had paid service tax on the full amount charged for painting work by adopting valuation method as specified in Rule 2A(i) *ibid*. Later, during the period from 07.05.2013 to 30.09.2015, the appellant paid service tax on 70% value instead of 100% value, hence it appears that they have wrongly availed abatement under Rule 2A(ii)B of (Determination of Value) Rules, 2006 on painting work. Thus, the appellant has short paid differential service tax. Since the appellant has never disclosed the fact of opting two methods of valuation as prescribed under Rule 2A(i) and Rule 2A(ii)B *ibid* for single contract/invoice and about abatement taken by them in the light of Rule 2(A) of Service Tax (Determination of Value) Rules, 2006 and this fact came to the notice of the department only during the course of audit of the records of the appellant, the appellant was alleged to have willfully suppressed the fact with an intent to evade payment of service tax.

5. Based on these observations, the Show Cause Notice bearing No. 410/2015/2546 dated 26.10.2016 was served upon the appellant invoking the extended period of limitation proposing the demand of service tax amounting to Rs. 19,60,956/- to be recovered from the appellant under provisions of Section 73(1) of Finance Act, 1994 along with interest and appropriate penalties. The said proposal has been confirmed by the original adjudicating authority vide Order-in-Original No. 01/2017 dated 23.11.2017. The appeal against the said order has been rejected vide Order-in-Appeal No. 85/2019 dated 28.02.2019. Being aggrieved the appellant is before this Tribunal.

6. We have heard Shri Vishal Kumar, learned counsel for the appellant and Shri Manoj Kumar, learned Authorized Representative for Revenue.

7. Learned counsel for the appellant has submitted that appellant is running an authorized service station of Maruti Suzuki Ltd. The appellant has been providing the maintenance and repair services of various kind. The service tax liability has been discharged in two separate ways:

(i) Where the value in property of goods transferred while rendering the services was determinable, the liability has been calculated in terms of Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006².

(ii) With respect to paint job executed by the appellant it discharged the service tax in relation to the service portion

2 (hereinafter referred to as Valuation Rules)

involved in execution of the work contract in terms of Rule 2A(ii) of the Valuation Rules purely for the reason that the value of paints consumed in the execution of works contract was not available. The former mode of payment has not been disputed by the department. However, the tax calculated as per Rule 2A(ii) of Valuation Rules has been objected alleging the short payment of service tax by the appellant.

8. Learned counsel submitted that though Commissioner (Appeals) has also upheld the order in original confirming the alleged short payment, but he has arrived at an independent finding that since paint was used as consumable in providing the output service, the painting of vehicle cannot be differentiated from repair and maintenance. The confirmation of demand despite these observations is wrong and have liable to be set aside. With these submissions and relying upon the decision of Hon'ble Supreme Court in the case of **CIT Vs. Pearl Mechanical Engineering and Foundry Works**³ wherein it was impressed upon that when law requires a particular thing to be done in a particular manner the same has to be done only in that manner or not to be done at all. It is submitted that in the present case there was no particular requirement of following only one option for full the service tax on service portion involved in the works contract under Valuation Rules. Hence, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

9. Learned Departmental Representative while rebutting the said submissions has mentioned that for a single contract/job the

3 (2004) 4 SCC 597

appellant cannot opt for two different valuation methods as per Rule 2A(i) of the Valuation Rules. The appellants were paying service tax on full value of labour charges but were not paying service tax on full value of painting work mentioned in the single invoice. This has resulted in short payment of service tax. Hence there is no infirmity in the finding in order under challenge. The appeal is, accordingly prayed to be dismissed. The learned Departmental Representative has relied on the decision in the case of **Anamika Motors Vs. State of Assam⁴**.

10. Having heard both the parties, we observe that short payment of service tax has been alleged on account of adopting two different modes valuation under Rule 2A of the Valuation Rules specifically while discharging service tax on paint job. To adjudicate, foremost we peruse Rule 2A which reads as follows:

"2A. Determination of value of taxable services involved in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

- (i) Value of service portion in the execution of a works contract service shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relating to supply of labour and services;

(vii) other similar expenses relating to supply of labour and services; and

(viii) profit earned by the service provider relating to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods involved in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under this clause (i), the person liable to pay tax on the taxable service involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract:

(B) in case of works contracts, not covered under sub-clause (A), including works contract entered into for, -

(i) Maintenance or repair of reconditioning or restoration or servicing of any goods ; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

Service tax shall be payable on seventy per cent of the total amount charged for the works contract.

Explanation 1 – for the purposes of this rule, -

(a) "original works" means

.....

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, after deducting-

(i) The amount charged for such goods or services, if any, and

(ii) The value added tax or sales tax, if any, levied thereon;

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.....

(Emphasis supplied)

The definition of works contract is also perused as given under Section 65B(54) of the Finance Act, 1994 which reads as under:

“Works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.”

11. From the said definition of works contract there appears two basic ingredients:

- (i) The contract shall involve transfer of property in goods in executing such contract which should be eligible to tax as sale of goods;
- (ii) The contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out improvement, repair, renovation, alteration of any movable or immovable property.

If the service provider uses the goods in execution of work contract, the property of which is transferred, it qualifies as work of contract. However if the service provider only provides the specific services without transferring any goods, the services will not be considered as works contract. When this observation about the works contract is read in light of Rule 2A above it becomes clear that Rule 2A(i) has to be invoked where value of goods transferred while rendering the service is determinable/quantified/separately demanded for rendering Works Contract Service. Whereas Rule 2A(ii) has to be invoked when while rendering the service the value

of consumable cannot be vivisected and it cannot be determined separately.

12. The another concept which is relevant to be taken into consideration the Article 366 (29A) of Constitution of India as has been incorporated vide 46th Amendment of Constitution. By virtue of said provision, the transfer of property in goods is deemed to be the sale of the goods involved in execution of work contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made. Thus, by virtue of the legal fiction introduced by Article 366 (29)A (b), there is the deemed sale of the goods which are involved in execution of work contracts even if a contract is a single and indivisible works contract. Such a deemed sale has all the incidence of the sale of goods involved in the execution of works contract where the contract is divisible into one for the sale of the goods and the other for supply of labour and services. This Article 366 29A(b) serves to bring transaction where essential ingredients of 'sale' defined in sale of goods at 1930 are absent within the ambit of sale or purchase for the purposes of levy of sales tax. In other words, the transfer of movable property in works contract is deemed to be a sale even though it may not be a sale within the meaning of sale of goods, provided that value of such goods is determinable that too at the time of incorporation of the goods in the works as it was held by Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. Vs. State of Karnataka**⁵ .

5 2014 (303) ELT 3 (SC)

13. From the entire above discussion, it becomes clear that the agreements for composite contracts involving the goods as well as service can always be bifurcated into those where value of goods involved in rendering Works Contract Service is separately quantified from the service element and another where goods are so consumed while rendering service that the value thereof cannot be separately determined like in case of 'paint job' in the present case. This observation is sufficient for us to hold that the bifurcation done by the appellant with respect to the services having determined value of goods and the services having no precise value of goods determined is permissible under law. As already observed from Rule 2 quoted above, where the value of goods is determinable, the tax has to be paid under Rule 2A(i) where it is not determinable it has to be paid under Rule 2A(ii). From the invoices in question, it is apparent that the value of goods/spare parts while rendering the services of the motor vehicles by the appellant has been separately earmarked hence has been bifurcated from the value of the charges of labour incurred for rendering the services. However, vis-à-vis the service of painting there is no bifurcation of amount of paint consumed and the labour charges. The painting job becomes nothing but works contract where the value of goods is not determinable. Hence, we do not find any error committed by the appellant while calculating the tax liability vis-à-vis painting charges in terms of Rule 2(A)(ii). The Hon'ble High Court of Madhya Pradesh in the case of **Agarwal Colour Advance Photo System Vs. Commissioner of Central Excise**⁶ has held that it is permissible to bifurcate the contract and

6 2020 (38) GSTL 298 (MP)

levy sales tax of the value of the material involved in execution of the works contract. It was recorded as follows:

"70. The forty-sixth Amendment leaves no manner of doubt that the States have power to bifurcate the contract and levy sales tax on the value of the material involved in the execution of the works contract. The States are now empowered to levy sales tax on the material used in such contract. In other words, Clause (29A) of Article 366 empowers the States to levy tax on the deemed sale."

14. We further observe that in the decision in the case of **Anamika Motors** (supra) as relied upon by the department, it has been held as follows:

"18.....In this regard, the submission of the Learned Counsel for the petitioner appears to be correct that when a person goes to a workshop for getting a denting and painting job done on a vehicle, there is no contract for sale or purchase of any article, commodity or thing, but it is a contract for labour and service. The marketability test, thus, appears to be the first test to decide the issue, which is decided in favour of the petitioner as the painting work on a vehicle, of its own, not marketable. Based on the finding recorded in Paragraph 56 of the case of Larsen & Toubro Ltd. (supra), as quoted herein before, the second test appears to be whether the denting and painting job is something which becomes embedded on earth and to the said query, the answer would be in the negative and in favour of the petitioner."

15. Irrespective that transfer of goods consumed while rendering service also amounts to transfer of property in goods and are covered under the definition of deemed sale of Article 366 29(A). But the mere fact that in case the value of such consumable is not determinable it is Rule 2(A)(ii) of Valuation Rules which is applicable.

16. In view of the entire above discussion, we do not find any justification when the impugned order has denied the bifurcation of the composite contract and has disallowed the computation of such part of contract where the value of goods and service rendered indivisible unquantifiable. As a result, we hold demand has wrongly

been confirmed. Hence we hereby set aside the order under challenge and allow the appeal.

(Pronounced in open Court on 02.05.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technica)

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