

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

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 51048 OF 2019

[Arising out of the Order-in-Original No. 03/Commissioner/DDN/2019 dated 29/01/2019 passed by Commissioner, Central Goods & Service Tax, Dehradun – 248 001.]

M/s Makin DevelopersAppellant
Private Limited,
11, Narinder Vihar, Ballupur Road,
Dehradun – 248 001.

Versus

Commissioner, Central GoodsRespondent
and Service Tax, Dehradun,
E-Block, Nehru Colony, Haridwar Road,
Dehradun – Uttarakhand – 248 001.

**WITH
SERVICE TAX APPEAL NO. 51049 OF 2019**

[Arising out of the Order-in-Original No. 03/Commissioner/DDN/2019 dated 29/01/2019 passed by Commissioner, Central Goods & Service Tax, Dehradun – 248 001.]

Shri S.K. Makin,Appellant
Managing Director,
M/s Makin Developers
Private Limited,
11, Narinder Vihar, Ballupur Road,
Dehradun – 248 001.

Versus

Commissioner, Central GoodsRespondent
and Service Tax, Dehradun,
E-Block, Nehru Colony, Haridwar Road,
Dehradun – Uttarakhand – 248 001.

**AND
SERVICE TAX APPEAL NO. 50777 OF 2021**

[Arising out of the Order-in-Original No. 03-04/Commissioner/DDN/2021 dated 28/01/2021 passed by Commissioner, Central Goods & Service Tax, Dehradun – 248 001.]

M/s Makin DevelopersAppellant
Private Limited,
11, Narinder Vihar, Ballupur Road,
Dehradun – 248 001.

Versus

**Commissioner, Central Goods
and Service Tax, Dehradun,**

E-Block, Nehru Colony, Haridwar Road,
Dehradun – Uttarakhand – 248 001.

....Respondent

APPEARANCE:

Shri B.L. Narasimhan and Shri Ashutosh Choudhary, Advocates
for the appellant.

Shri Aejaz Ahmad, Authorized Representative for the Department

CORAM:

HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51129-51131/2026

DATE OF HEARING : 13.05.2026.

DATE OF DECISION : 03.07.2026.

P.V. SUBBA RAO

M/s. Makin Developers Pvt. Ltd.¹ and its Managing Director **Shri S K Makin**² have filed these three appeals to assail the orders passed by the Commissioner deciding the proposals in the three show cause notices dated 3.1.2018 (SCN-1), 16.4.2019 (SCN-2) and SCN dated 8.1.2020 (SCN-3). The proposals in the SCN-1 was decided by the Commissioner by impugned order dated 29.1.2019 which is assailed by both the assessee and Shri Makin. The proposals in SCN-2 and SCN-3 were decided by the impugned order dated 16.4.2019 which is assailed by the assessee. The details are as follows:

1. Assessee

2. Makin

Service Tax Appeal No.	<u>ST/51048/2019</u> Makin Developers Private Limited (Appellant) Vs. Commissioner, CGST, Dehradun (Respondent)	<u>ST/51049/2019</u> S.K. Makin, Managing Director (Appellant) Vs. Commissioner, CGST, Dehradun (Respondent)	<u>ST/50777/2021</u> Makin Developers Private Limited (Appellant) Vs. Commissioner, CGST, Dehradun (Respondent)
Orders-in-Original	Order-in-Original No. 03/Commissioner/DDN/2019 dated 29.01.2019 (Page 74-116 of Volume 1 of Paper Book) ["OIO-1"]		Order-in-Original No. 03-04/Commissioner/DDN/2021 dated 28.01.2021 (Page 88-117 of Volume 1 of Paper Book) ["OIO-2"]
Show cause notices ("SCNs")	Show cause notice dated 3.1.2018 bearing C. No. IV-CE(9) CP/DDN/AE-TPI/Makin Developers RCM/63/16 (Page 119-187 of Volume 1 of Paper Book) ["SCN-1"]		1. Show cause notice dated 16.4.2019 bearing C. No. V (15)Adj./DDN//Makin/10/2019 (Page 119 to 122 of Volume 1 of Paper Book) ["SCN-2"] 2. Show cause notice dated 8.1.2020 bearing C. No. V-CGST(15) off/Adj./Makin/Div-DDN/38/2019 (Page 123 to 127 of Volume 1 of Paper Book) ["SCN-3"]
Relevant period	<u>SCN-1</u> : July 2012 to March 2016		<u>SCN-2</u> : April 2016 to March 2017 <u>SCN-3</u> : April 2017 to June 2017
Relevant Period : July 2012 to June 2017			
Service Tax demand	Rs. 3,82,18,161/- under proviso to Section 73 (1) of the Finance Act, 1994 ("Act")		Rs. 1,29,45,846/- under Section 73 (1A) of the Act.
Interest	Under Section 75 of the Act (not qualified)		Under Section 75 of the Act (not quantified)
Penalty	Rs. 2,15,63,389/- under Section 78 of the Act		Rs. 12,94,585/- under Section 76 of the Act
Personal Penalty	* Rs. 1,00,000/- under Section 78A of the Act. * Rs. 10,600/- under Section 77 (1) (C) (iii) of the Act.		-----
Issues	Demand of Service tax under the reverse charge from the appellant under the categories of 'manpower supply', 'security services', 'legal services', 'works contract service' and 'GTA services' on the basis of figures/ particulars reported in the financial statements/balance sheets.		

2. All three SCNs proposed recovery of service tax under reverse charge basis. SCN-1 was issued demanding service tax invoking extended period of limitation under the proviso to section 73(1) of the Finance Act, 1994³ which proposals were confirmed by impugned order dated 29.1.2019.

3. Learned counsel for the appellant submitted that the assessee was a tax payer and was availing CENVAT credit and if any service tax was paid under reverse charge, it could have immediately taken CENVAT credit of the amount so paid and utilized it to pay service tax. Since it was a Revenue neutral case, it cannot be alleged that the appellant had an intention to evade service tax.

4. Learned authorised representative for the Revenue supported the impugned order.

5. We have considered the submissions. As per section 73 of the Act demand can be raised only within the normal period of limitation of thirty months. Notices invoking extended period of limitation can be issued only if the non-payment of service tax is by reason of fraud or collusion or wilful mis-statement or suppression of facts or violation of the Act or Rules with an intent to evade payment of service tax. In a case where demand is on reverse charge and the assessee could have immediately taken CENVAT credit o the service tax paid and utilized the entire demand is Revenue neutral and it cannot be alleged that the assessee had any intention to evade. Impugned order dated

29.1.2019 confirms demand of service tax made under SCN-1 dated 3.1.2018 covering the period July 2012 to March 2016 which was fully beyond the normal period of limitation. For this reason alone, the impugned order dated 29.1.2019 cannot be sustained and needs to be set aside.

6. Consequently, the appeals no. ST/51048/2019 filed by the assessee and ST/51049/2019 filed by Shri Makin deserve to be allowed.

Appeal No. ST/50777/2021

7. This appeal filed by the assessee assails order dated 28.1.2021 passed by the Commissioner in which SCN-2 dated 16.4.2019 (covering the period April 2016 to March 2017) and SCN-3 dated 8.1.2020 (covering the period April 2017 to June 2017) have been decided. These are also on reverse charge basis but the demands were within the normal period of limitation.

8. **However, it may be pointed out that both the SCNs were issued after the GST was introduced in 2017 and the Finance Act, 1994 was repealed. So, the assessee could not have taken CENVAT credit. Instead, as per section 142 (7)(b) of the Central Goods and Services Tax Act, 2017, the appellant would have been entitled to cash refund of the amount paid. Section 142 (7) (b) of the CGST Act reads as follows:**

142. Miscellaneous transitional provisions.—

...

(7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

9. Thus, if it is decided that appellant was liable to pay any service tax under reverse charge during the relevant period, such liability and the consequential admissibility of CENVAT credit must be examined as per the Finance Act, 1994 and CENVAT credit Rules and since there is no CENVAT credit any longer, the assessee must be refunded the entire amount in cash. In short, it will be a case where the assessee will have to pay with one hand and receive refund of the entire amount with the other hand. The entire exercise is pointless.

10. Nevertheless, since the Commissioner has confirmed the demand and the assessee has contested the demands in these appeals, we proceed to decide the demands on merits.

11. The demand of service tax was in respect of three services viz., Manpower supply services, works contract service and GTA service said to have been received by the assessee chargeable to service tax under reverse charge. Although there was also a demand on legal services in the SCN-2 but the demand was dropped by the Commissioner in the impugned order. The details are as follows:

Expenses particulars as per Financial Statements	Alleged Taxable Service in the SCNs	Service Tax Demand confirmed in the OIO-2				
		2016-17	2017-18 (upto June)	Total Proposed demand in SCN-2 and SCN-3	<u>Demand Dropped</u> in OIO-2	<u>Demand confirmed</u> in OIO-2
Professional service	Legal Services	1,02,996	27,224	1,30,220	1,30,220	0
Legal Exp. A/c						
Piece Work-Labour Supply	Manpower Supply Service	1,98,11,927	12,18,716	2,10,30,643	82,25,098	1,28,05,545
Piece Work						
Labour Payment (Deptt. Expenses Particulars as per Financial Statements Labour)						
Labour Payment	Manpower Supply Service					
Security Service						
Repair & Maintenance	Works Contract Service	1,12,959	40,510	1,53,469	52,485	1,00,984
Freight & Cartage Reimbursement	GTA Service	0	1,02,013	1,02,213	62,696	39,317
Freight & Cartage						
Hire Charges						
Travelling & Conveyance A/c						
TOTAL DEMAND		2,00,27,882	13,88,463	2,14,16,345	84,70,499	<u>1,29,45,846</u>

Manpower supply service (Rs. 1,28,05,545/-)

12. Learned counsel for the appellant submits that service tax was demanded on the expenses incurred by the assessee for 'piece work' but wrongly booked in the financial statements under 'supply of manpower services'. No manpower supply was involved in this. The demand was dropped to this extent in the impugned order.

13. The second type of expenses booked were for work orders with petty contractors for execution of earth work, brick work, flooring work, etc. without any supply of materials and the payments were made on the basis of per square metre or per square foot, etc. Demand has been confirmed in the impugned order on such work under the head "manpower supply service".

14. In order to ascertain the nature of a service, what needs to be seen is what was the contract (written or oral, formal or informal) for. Any amounts paid to contractors for executing any work cannot be called a contract for supply of manpower. The assessee is not paying the petty contractors for supplying manpower but was paying him for the work. There is no lis in such contracts between the assessee and the workers. The workers work for the contractor and get paid by him. The contractor completes the work and the assessee pays him for the work. This cannot be called a manpower supply service. The demand on this count needs to be dropped.

15. The third part of the demand under this head was on the amount booked under 'labour' accounting head by the assessee.

According to the learned counsel, it had employed two types of labourers and booked the wages paid to them under the head 'labour'. The first were regular labourers who are card holders who worked regularly and were paid on weekly basis. The second were temporary workers who were employed on adhoc basis and their wages were recorded in the muster rolls. Learned counsel submits that this expense also cannot be said to be a receipt of manpower supply.

16. Countering these submissions, learned authorised representative for the Revenue took us through some of the receipts to show that the wages in the names of several persons were received by a single person which shows that the lis was between such person and the assessee in respect of the services of all the labourers. The person who so received the amount is the one who supplied the manpower and has received the payment.

17. Learned counsel for the appellant countered these submissions and said that it has been the practice for one person to sign for several workers and collect their payment and pass it to them. This, however, does not mean that the person who so received the payment was the manpower supplier and the assessee was the service recipient.

18. We agree that any amount paid by the assessee to its labourers whether regular or *adhoc* cannot be called as 'manpower supply service'. However, we find force in the

submission of the learned authorised representative for the Revenue. We find that this issue needs detailed verification by the Commissioner to determine if someone acted as the manpower supplier and if so, the amount of service tax payable on his services by the assessee under reverse charge. Needless to say that in view of section 142(7) (b) of the CGST Act, 2017, any amount of service tax so determined and paid by the assessee will have to be refunded to the assessee. The assessee will be entitled to refund as soon as it pays the amount.

Works contract service (Rs. 1,00,984/-)

19. This part of the demand was confirmed on the expenses booked by the assessee under the head 'Repair and Maintenance'. Learned counsel for the appellant produced a CA certificate giving break up of these expenses as below

Year	Total Expenditure	Pure purchase of maintenance items	Services received from bodies corporate	Services whereon service tax paid to other than corporate bodies	Pure job work on account of repairs
2016-17	21,51,603	4,62,347	54,736	45,298	15,89,222
2017-18 (till June 2017)	7,71,609	1,25,779	25,898	0	6,19,932

20. Learned counsel submits that the assessee was not required to pay any service tax on purchase of items because it was not a service. The assessee was also not required to pay service tax on contracts for pure repairs because they are not "works contracts" and hence there was no liability under reverse charge.

21. As far as the works contracts are concerned, it is the submission that where the services were received from corporate bodies, no reverse charge would apply. Only an amount of Rs. 45,298/- was spent by the assessee on works contract services received from service providers other than body corporates. The assessee has already paid service tax under reverse charge on such amounts as indicated above.

22. In view of the above explanation and the certificate of the Chartered Accountant, we find that the demand under this head cannot be sustained.

GTA services (Rs. 39,317/-)

23. Learned counsel for the assessee submits that this demand has been made on the expenses accounted under freight and cartage reimbursement, hire charges, travel and conveyance. It is his submission that expenses on transport cannot be charged to service tax. Unless a goods transport agency is involved and a consignment note is issued, no service tax can be charged under reverse charge on the assessee.

24. We agree with the learned counsel that the demand under GTA service cannot be fastened in the absence of issue of a consignment note.

25. In view of the above:

- a. **Service Tax Appeal 51048/2019** filed by M/s. Makin Developers Pvt. Ltd. and **Service Tax Appeal No.**

51049/2019 filed by Shi S K Makin are allowed and the order impugned in them is set aside.

- b. **Service Tax Appeal 50777/2021** filed by M/s. Makin Developers Pvt. Ltd. is partly remanded to the extent of amounts paid in the name of various labourers and received by one person to ascertain if the person who received the amount was the manpower supplier and accordingly determine the amount of service tax and interest payable by the M/s. Makin Developers on reverse charge basis. Rest of the impugned order including the penalty under section 76 is set aside.
- c. Any amount determined by the Commissioner as payable as service tax as per (b) above and paid by M/s. Makin Developers will be refundable to it as per section 142 (7) (b) of the CGST Act.

(Order pronounced in open court on 03/07/2026.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)