CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. III

SERVICE TAX APPEAL NO. 50326 OF 2021

[Arising out of the Order-in-Original No. 26/TPS/PC/CGST/DSC/2020-21 dated 28/10/2020 passed by The Principal Commissioner, Central Goods & Service Tax, New Delhi – 110 066.)

M/s Sun Bright Manpower Solutions Pvt. Ltd., **......Appellant**
435, Mehrauli Gurgaon Road, Village Ghitorni,
New Delhi – 110 030.

Versus

Principal Commissioner, **....Respondent**
Central Goods & Service Tax,
Delhi South Commissionerate,
Plot 2-B, 3rd Floor, EIL Annexe, Bhikaji Cama Place,
New Delhi – 110 066.

AND
SERVICE TAX APPEAL NO. 54668 OF 2023

[Arising out of the Order-in-Appeal No. 37/2022-23 dated 20/01/2023 passed by Commissioner (Appeals-II), Central Excise/GST, Delhi, New Delhi – 110 066.)

M/s Sun Bright Manpower Solutions Pvt. Ltd., **......Appellant**
435, Mehrauli Gurgaon Road, Village Ghitorni,
New Delhi – 110 030.

Versus

Commissioner, **....Respondent**
Central Goods & Service Tax,
Delhi South Commissionerate,
Plot 2-B, 3rd Floor, EIL Annexe, Bhikaji Cama Place,
New Delhi – 110 066.

APPEARANCE:

Shri Amit Jain, Advocate for the appellant.
Shri Shashank Yadav, Authorized Representative for the Department

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51315-51316/2026

DATE OF HEARING : 07.07.2026
DATE OF DECISION: 11.08.2026

P.V. SUBBA RAO

M/s. Sun Bright Manpower Solutions Pvt. Ltd.[1] filed these two appeals to assail two orders involving the same issue. **Service Tax Appeal 50326 of 2021** assails order dated 28.10.2020[2] passed by the Commissioner deciding the proposals in the show cause notice dated 6.1.2020[3] and confirmed demand of service tax of Rs. 2,71,24,723/- only of the total demand of Rs. 5,99,99,689/- proposed in the SCN. The order also confirmed recovery of interest and imposed penalties. There is no appeal before us on that part of the demand proposed in the SCN which has not been confirmed by the Commissioner. Thus, the issue attained finality to that extent.

2. During the course of investigation itself, the appellant had deposited certain amount which was partly appropriated by the Commissioner in the first impugned order dated 28.10.2020 referred to above. The appellant filed a refund claim for Rs. 1,29,04,999/- being the amount which was deposited during the investigation itself but which was not appropriated. This application for refund was rejected by the Assistant Commissioner and on appeal, the Commissioner (Appeals) passed order dated 20.2.2023 upholding the rejection of refund.

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1. The appellant
2. First Impugned order
3. First SCN

This order of the Commissioner (Appeals) is assailed in **Service Tax Appeal 54668 of 2023** by the appellant.

3. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records. We proceed to examine the **Service Tax Appeal 50326 of 2021** first.

4. On merits, there are three points of dispute in this demand:

a. Demand of service tax on activity which, admittedly, amounted to manufacture on job work basis;
b. Inclusion of reimbursable expenses in the value of taxable services before 14.5.2015 (when section 67 was amended to include reimbursable expenses in the value for determining the service tax); and
c. Recovery of an amount beyond the extended period of limitation of five years by appropriating the amounts which were deposited during investigation.

5. Besides, learned counsel also contested the demand on limitation and further contested the penalties imposed on the appellant.

Demand of service tax on activity which amounted to manufacture on job work basis

6. The appellant was engaged in manpower supply service and as per the agreements, the appellant received the actual cost of wages, ESI, PF, Labour Welfare Fund, etc. for the labour

and 5% to 10% as service charges. It paid service tax on the service charge part of it but not on the reimbursable expenses.

7. With some of it's clients, instead of agreements to supply manpower, the appellant had entered into agreements to manufacture goods on job work basis and was paid for such jobs on 'per piece rate basis'. The case of the appellant is that in such contracts, it was not liable to pay service tax because it had manufactured goods instead of providing any service. After examining the contracts, the Commissioner found that the appellant had, indeed, manufactured goods and therefore, in such contracts, it was not liable to service tax as per Notification No. 25/2012-ST dated 20.6.2012 [S. No. 30(i)] except in respect of manufacture for M/s. Sandhar Automach. In respect of the manufacture carried out for this client, the Commissioner found that the appellant had collected service tax from the client and hence it was also liable to pay the differential service tax demanded in the SCN. He confirmed demand of service tax to that extent.

8. Once it is found as a matter of fact that any activity was not chargeable to service tax or was exempted, service tax cannot be demanded or confirmed. Of course, even if no service tax is payable, if an amount has been collected as representing service tax, as per **section 73A** of the **Finance Act, 1994**[4], such amount has to be deposited with the Central Government.

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4. Act

In this case, there is no dispute that to the extent the amounts were collected as service tax by the appellant from M/s. Sandhar Automach, they were deposited. Section 73A reads as follows:

> **73A. Service Tax collected from any person to be deposited with Central Government:-**
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> (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made there under from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.
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> (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.
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> (3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
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> (4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub- section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.
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> (5) The amount paid to the credit of the Central Government under sub-section (1) or subsection (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).
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> (6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 or, as the case may be, refunded to the person who has borne the incidence of such

> amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

9. However, the fact that some amount was collected and deposited does not create a charge of service tax and no service tax will become payable and no exemption which is otherwise available will become unavailable. What is to be deposited under Section 73A is the amount collected as representing service tax (but which is not a service tax). If 'A' collects Rs.100/- as service tax (which is otherwise not payable) from its clients, the entire Rs. 100/- has to be deposited with the Central Government as per section 73A. However, there cannot be demand of another Rs. 20/- when there is no charge of service tax at all. If the assessee has wrongly collected Rs. 100/- the department cannot wrongly demand another Rs. 20/-. It must be understood that the demand under Section 73 of the Act is for service tax not levied, not paid, short levied or short paid. Inherent in this clause is the supposition that such service tax was payable but was not paid. The amount to be deposited under section 73A is only an amount collected from the client and not service tax -essentially, wrongly collected. Section 73 does not give the power to the officers to demand that more amounts should be so wrongly collected and deposited in the account of the Central Government.

10. The demand of service tax on the activity of manufacture undertaken by the appellant for M/s. Sandhar Automach, therefore, deserves to be set aside and is set aside.

Demand of service tax on reimbursable expenses received by the appellant from its clients upto 13.5.2015

11. As discussed above, to some clients, the appellant provided manpower during the period up to 13.5.2015 and charged from them the actual wages, PF, ESI, etc and a service charge of 5% to 10%. The demand of disputed service tax is in respect of the reimbursable expenses.

12. In paragraph 27.1, the Commissioner noted that as per the judgment of the Supreme Court in **Union of India** versus **Inter-continental Consultants and Technocrats Ltd.**, no service tax could be charged on reimbursable expenses. However, observing that in the invoices raised in 2013-2014 and 2014-2015, the appellant had, after self-assessment, paid service tax including the reimbursable expenses, he declined to follow the judgment of the Supreme Court in **Inter-continental Consultants and Technocrats.**

13. Needless to say, that if the appellant had wrongly paid service tax on reimbursable expenses up to 13.5.2005 in some invoices, it does not give the department the right to charge similarly wrong service tax on other reimbursable expenses or in other invoices also. The charge of the service tax comes from the charging section and service tax has to be paid at the rate

specified on the value as per section 67. The charge does not come from the fact that the assessee has self-assessed tax in a particular fashion. Of course, any amounts wrongly collected by the assessee as representing service tax have to be deposited with the Central Government but neither has the assessee any responsibility to collect more money wrongly as service tax nor can the officer issue an order to that effect.

14. The powers of the officers under service tax are conferred under section 12E of the Central Excise Act, 1944 as made applicable to service tax by section 83 of the Finance Act, 1994. These read as follows:

> **83. Application of certain provisions of Act 1 of 1944** – The provisions of the following section of the Central Excise Act, 1944,as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: -
> sub- section (*2*) of section 9A″, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D,**12E**, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36,36A,37A, 37B, 37C, 37D 38A and 40.
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> **12E. Powers of Central Excise Officer**s.—(1) **A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him**.
> (2) Notwithstanding anything contained in sub-section (1), the Principal Commissioner of Central Excise or Commissioner of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in Section 14 or Chapter VI-A.

15. Neither the Commissioner nor any other officer has been conferred under the Act the power to confirm demand of service tax which admittedly was not chargeable on the disputed

amounts during the relevant period as held by the Supreme Court in **Inter-continental Consultants and Technocrats.**

Adjustment of service tax paid but not reflected in the ST-3 returns for the period June to August 2014

16. It is the submission of the appellant that an amount of Rs. 10,36,367/- which was paid by the appellant was not reflected in the ST-3 Return for the period June to August 2014 and that it had requested the Commissioner to adjust this amount in the demand but there is no finding in the impugned order on this issue.

17. Since this is a matter of fact to be verified, this question needs to be remanded to the Commissioner to verify and re-calculate as appropriate.

Adjustment of excess service tax of Rs. 10,14,332/- paid by the appellant during April 2017 to June 2017

18. According to the learned counsel for the appellant, it had deposited excess amount of Rs. 10,14,332/- as service tax during April to June 2017 which needs to be adjusted but which was not adjusted in the impugned order against the confirmed demand.

19. Since this is a matter of fact to be verified, this question needs to be remanded to the Commissioner to verify and re-calculate as appropriate.

Appropriation of an amount of Rs. 1,38,00,000/-deposited during the investigation for the period April 2014 to September 2014 (beyond the five years) towards the demand

20. According to the learned counsel the appellant had deposited Rs.1,38,00,000/- during investigation as service tax during investigation on insistence of and pressure from the departmental officers which is reflected in paragraphs 9 and 13.6 of the SCN and in RUD XIII annexed to it. This amount has been appropriated in the impugned order towards service tax, interest and penalty. According to him, this adjustment is not permissible for the reason that it was for the period beyond 5 years of extended period of limitation.

21. The SCN issued on 6.1.2020 proposed demand of a sum of Rs. 5,99,99,689/- as service tax covering the period April 2013 to Sept 2013 and from Oct 2014 to June 2017 and the demands were confirmed for the same period. No demand has been made in the SCN nor confirmed in the impugned order for the period April 2014 to September 2014. In the impugned order, demand of service tax of Rs. 2,71,24,723/- has been confirmed and the amount of Rs. 1,38,00,000/- said to have been deposited by the appellant for the period April 2014 to Sep 2014 was reckoned as service tax for this period amounting to Rs. 54,96,859/- and interest of Rs. 74,08,140/- and the balance amount was adjusted against the penalties imposed in the impugned order.

22. When the SCN was issued on 6.1.2020, the extended period of limitation could have extended to five years, i.e., up to January 2015. The demand for the period beyond this was clearly beyond the extended period of limitation provided under the proviso to section 73(1) of the Act. The demand to that extent cannot be sustained.

23. As far as the amounts paid for the period April 2014 to September 2014 is concerned, according to the appellant this amount could not have been appropriated in the impugned order.

24. On the other hand, according to the Revenue, the appellant had paid service tax voluntarily for this period and had submitted a letter to this effect.

25. Revenue's submission would have been correct if that payment was not part of the impugned order. However, this amount is included the SCN and also the impugned order. The SCN did not propose appropriation of the amount but the Commissioner appropriated the amount. Since the appropriation was part of the adjudication proceedings, what needs to be seen if the proceedings could have extended beyond the five year period. The short answer is NO.

26. In this factual matrix, the appropriation of an amount deposited by the appellant deserves to be set aside.

Other submissions

27. Learned counsel for the appellant also contested the invocation of extended period of limitation and imposition of penalties.

28. Since we have decided in favour of the appellant on merits on both the issues viz., activity amounting to manufacture being taxed as supply of manpower and on the inclusion of reimbursable expenses in the value of taxable services before 1.4.2015, we find it unnecessary to examine the question of limitation and the penalties imposed consequent upon the confirmation of the demand.

Appeal No. ST/54668/2023 assailing rejection of refund

29. In this appeal, the appellant assailed the order of the Commissioner (Appeals) dated 23.1.2023 upholding the order of the Assistant Commissioner dated 30.6.2022 rejecting refund of Rs. 1,29,04,999/- to the appellant.

30. The application was for refund of Rs. 1,29,04,999/- (of Rs. 1,38,00,000/- for the period April 2014 to Sept 2014) deposited during investigation on the ground that there was no proposal to appropriate the amount in the SCN.

31. The refund was rejected by the Assistant Commissioner on the ground that in the order dated 28.10.2020 (impugned in Service Tax Appeal 50326 of 2017), the amount has already been appropriated and unless the order is modified, refund cannot be sanctioned.

32. The Commissioner (Appeals) upheld the rejection of refund.

33. We find that the service tax was deposited by the appellant for the period April 2014 to September 2014. The SCN covered periods both before and after this period. However, no SCN was issued proposing demand of service tax short paid for this period nor was any proposal made to appropriate the amount paid towards any demand. The appropriation of the amount in the impugned order was clearly beyond the scope of the SCN. The SCN could not have demanded duty for this period because it was beyond the normal period of limitation. As far as the merits is concerned, it is not clear as to why the service tax was paid for this period- whether it was for the same reasons as discussed above, which, we have found in favour of the appellant or for some other reasons.

34. Since no SCN was issued either demanding the duty or proposing to appropriate the amount paid during investigation, Revenue was bound to refund the amount so deposited.

35. The rejection of refund by the lower authorities are not correct. The service tax deposited by the appellant must be refunded along with interest as per law.

36. In view of the above, both appeals are allowed with consequential relief to the appellant.

(Order pronounced in open court on 11/08/2026.)

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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