

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10666 of 2020-DB

[Arising out of Order-in-Original/Appeal No BHV-EXCUS-000-COMM-03-04-2020-21 dated 27.04.2020 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR]

Commissioner of Central Excise & ST, Bhavnagar **Appellant**

Plot No.6776/B-1, Siddhi Sadan, Narayan
Upadhyay Marg, Beside Gandhi Clinic, Near
Parimial Chowk, Bhavnagar, Gujarat

VERSUS

D G NAKRANI **Respondent**

M-101/C, Akshardeep Complex, Shastrinagar
Bhavnagar, Bhavnagar Gujarat.

AND

SERVICE TAX Appeal No. 10667 of 2020-DB

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Commissioner of Central Excise & ST, Bhavnagar **Appellant**

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VERSUS

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Bhavnagar, Bhavnagar Gujarat.

APPEARANCE :

Shri Mihir G Rayka, Addl. Commissioner (AR) for the Appellant -Revenue
Shri Vikas Mehta, Consultant for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING : 27.10.2023

DATE OF DECISION: 23.02.2024

FINAL ORDER NO. 10470-10471/2024

RAMESH NAIR :

The present appeals have been filed by the Revenue being aggrieved with the Order-in-Original No. BVR-EXCUS-000-COMM-03 to 04-2020-21

dated 27.04.2020 passed by the Learned Commissioner, Central GST, Bhavnagar, wherein out of total demand of Service tax of Rs. 16,36,81,158/-, demand of Rs. 88,82,663/- has been confirmed and demand of Rs. 15,47,98,495 has been dropped. Since both the appeals are arising out of the above adjudication order dated 27-04-2020, the same are taken up for disposal by this common order.

2. The facts of the case in brief are that M/s D.G. Nakrani (respondent) is engaged in providing taxable services such as Cleaning Services and Manpower Recruitment or Supply Agency Services etc. Information received by the DGGI indicated that respondent have provided the taxable services but had not paid the appropriate amount of Service tax on taxable services provided by them. Acting on the intelligence, an inquiry was initiated against the respondent. Accordingly, a search was carried out at their registered office and documents/ records relevant to the inquiry available which at the said premises were withdrawn under Panchnama. During the investigation, it has been revealed that the Respondent had not paid service tax on services provided in respect of Manpower Recruitment and Supply Agency Services, Cleaning Services, Housekeeping services, Rent-a-cab service, Solid Waste Management services to various government offices, government hospitals, community health centers, medical colleges, municipal corporation, Government Educational Institutes. Investigative agency have further observed that the respondent had not shown the amount of taxable value and Service tax payable thereon in their ST-3 returns filed with the department. Accordingly a detail show cause notice dated 21.11.2017 was issued to the respondent proposing the Service tax demand along with interest and penalties. Another recurring show cause notice dated 24.01.2019 was also issued wherein demand of Service tax with interest raised in respect of the taxable services provided by the respondent during the subsequent period April 2016 to June 2017. Both the show cause notices are decided by the adjudication authority under impugned order, wherein the Ld. Commissioner has partially dropped the service tax demand proposed in the both show cause notices. Hence the present appeals by the Department.

3. Shri Shri Mihir G Rayka, learned Addl. Commissioner (AR) appearing for the Revenue reiterated the grounds of appeals and submits that the

assessee had provided manpower on outsourcing basis to Hospital, Community Health Centers etc. and claimed exemption from payment of Service tax under Sr. No. 25(a) of the Notification No. 25/2012-ST dated 20.06.2012 as amended. As per the agreement with these service recipients i.e. Hospital, Community/ Public Health Centres etc. the respondent has supplied Paramedics and other Class 4 category manpower to these Hospitals, health centers etc. The Adjudicating authority has allowed the exemption from payment of Service tax under Sr. No. 25(a) of Notification No. 25/2012-as amended vide Notification No. 6/2014-ST dated 11.07.2014 in respect of the said supply of Manpower to Organizations/institutions by observing that by way of supply of Manpower Services, the respondent providing public health services under the supervision and authorized medical officers of the Government run hospitals and Government health centers. Adjudicating authority has not appraised the fact that to get qualified for availing the exemption provided under Sr. No. 25(a) of Notification No. 25/2012, all condition specified therein must be fulfilled. First condition is that the services should be provided to Government, a Local authority or a Governmental authority. Adjudicating authority has not examined and not discussed about the primary condition as to whether the organizations/institution are coming under the purview of 'Government', 'Local Authority' , or ' Government Authority'.

4. He also submits that adjudicating authority has examined the aspect of the nature of the services provided by the assessee to the service recipients, but has wrongly concluded that by way supply of manpower services, the assessee are providing health services under the supervision of authorized medical officers of government –run municipal hospitals and government health centers and hence eligible for exemption under Sr. No. 25(a) of Notification No. 25/2012-ST upto 11.07.2014; that the supply of manpower services provided by the assessee to the government run public health institutions is nothing but Public health to the Government which is exempted in terms of Notification No. 25/2012-ST as amended vide Notification No. 6/2014-ST dated 11.07.2014. The nature of activity of assessee i.e. Supply of manpower to various institutions, as per the agreement made between the service recipients, is squarely falls under the

category of 'Manpower Recruitment of Supply Agency". Adjudicating authority has erred in holding that the assessee is providing health services.

5. He also submits that exemption from payment of Service tax under Sr. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012 is available when service is provided to Government, a local authority or a government authority, and the said services are provided by way of 'carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management. Municipality has been entrusted to work for public health and sanitation conservancy for the common people. Such functions cover activity of Municipality like spraying of DDT, acting during epidemics, distribution of polio drops to children. All such works are carried out by Municipality for common cause for public health. The Service provider (assessee) has provided manpower Supply agency services by way of providing Para medical staff and administrative staff to service recipients which are government Hospital/ medical colleges etc. These Hospital/Colleges have their own legal status. The service provider (assessee) never undertakes any responsibility of providing health related services to such hospitals or colleges etc. The person so supplied by the assessee i.e. service provider works under control and superintendence of respective hospitals. Therefore, the assessee has provided 'Manpower Supply Agency Services' only which do not have any responsibility of their own to provide services in relation to public health. Further municipality has not assigned any works relating to public health to the assessee. Supply of Para medical and administrative staff to any hospital as manpower supply agency service cannot be considered as supply of service by way of 'Public Health'. The service provider i.e. the assessee is therefore not entitled for any exemption under Sl. No. 25(a) of Notification No. 25/2012-ST as amended.

6. He further submits that adjudicating authority has allowed the exemption from service tax claimed by the assessee for providing Cleaning & Housekeeping services to various organizations under Sr. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012 as amended. Adjudicating authority in this area also repeated the mistake of non verifying the fact that the first condition of the Notification i.e. whether the service is provided to Government, a local authority or a government authority or otherwise. The

nature of activity of the assessee i.e. cleaning of the premises of various institutions is squarely falls under the category of "cleaning service". Adjudicating authority has erred in holding that Cleaning service provided to Government Hospitals and other government entities forms an essential part of sanitation conservancy and waste management and without all the aforementioned services public health cannot be achieved. On perusal of the Sr. No. 25 of Notification 25/2012-ST dated 20.06.2012 as amended, it would be seen that the above said exemption is available only when services are provided to Government, a local authority or a government authority, if the said services is given by way of 'carrying out any activity in relation to any function ordinarily entrusted to a Municipality in relation to water supply, public health, sanitation conservancy, solid waste management. Upto 10.07.2014 and with effect from 11.07.2014 services by "way of water supply, public health, sanitation conservancy, solid waste management of slum improvement and up-graduation". All such works are carried out by Municipality in public common spaces. Municipality acts to provide facilities and services for the safe disposal of human urine and solid waste, maintenance of hygienic conditions, through services such as garbage collection and waste water disposal etc. The Municipality does not clean the premises of individual hospitals, government undertakings, educational institutions etc., Works of Cleaning/ Housekeeping of hospital, government undertaking, educational institutions etc. Work of cleaning /Housekeeping of hospital, government undertaking, educational institutions premises cannot be treated as work done for 'Public Health' and /or for 'Sanitation Conservancy'. The assessee is therefore not entitled for any exemption under Sr. No. 25 of Notification No. 25/2012-ST as amended. The activity of cleaning of the premises of institutions by the assessee cannot be termed as 'Sanitation conservancy'. Adjudicating authority has ignored all these facts and wrongly held that as per Sr. No. 25(a) of the Notification No. 25/2012-ST dated 20.06.2012, as amended, service tax demand for the assessee for providing Cleaning and Housekeeping services to Government undertakings, Government Hospitals, Educational Institutions, Community Health Centers is liable to be dropped.

7. He also argued that demand of Service tax of Rs. 46,71,866/- is dropped for the period 2012-13 to 2015-16 by merely relying the upon a CA certificate, which is not proper.

8. He further submits that cleaning services and supply of manpower services provided to educational institution is not exempted and respondent is liable to pay the service tax on such supply of services.

9. He also submits that the assessee had failed to declare the collection of amounts for providing taxable services in the ST-3 returns filed by them. Consequently, this amount to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service tax. The non-payment of service tax on the amounts so collected by assessee which appeared to be consideration for providing taxable services viz. Supply of Manpower or cleaning services to various Community Health Centers etc. came to the knowledge of the DGGI only due to specific investigation carried out. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the Finance Act 1994 is rightly invocable in respect of demand of Service tax for the period April 2012 to March 2016. The findings of the adjudicating authority that extended period of limitation is not invocable in this case is not proper and legal.

10. Shri Vikas Mehta, the learned Consultant for the respondent submitted that the reasoning followed by the Commissioner is proper and correct.

11. He submits that the appeals filed by the department are beyond the scope of show cause notices inasmuch as it is nowhere alleged in the show cause notice that the service recipients, i.e. government hospitals, medical colleges, primary health centres, community health centres, etc. cannot be treated as Government, a local authority or a Government authority. The fact that the service recipients were all government run bodies and were engaged in public service is nowhere disputed or questioned in the show cause notice. It is settled law that a new case cannot be made out in appeal proceedings and the lower authority cannot be directed to go beyond the scope of show cause notice. He placed reliance on following decisions:-

(i) Krishan Petrochemicals – 2024(304) ELT 744 (Tri. Ahmd.)

(ii) Amar Coach Builders – 2005(191) ELT 621 (Tri. Del.)

(iii) A.P. Industrial Components – 2002 (148) ELT 246(Tri. Chennai.)

12. He further submits that it is duly admitted by department that paramedics supplied by respondents were trained health care professionals who worked in Government Hospitals and public health centres under supervision of medical superintendent and Medical Officers. The service involved in supply of paramedics and other supporting staff to government hospitals, public health centres, etc, has satisfied both the requirement of Sl. No. 25(a) of Notification No. 25/2012-ST dated 29.06.2012 i.e. the service must be provided to Government, a local authority or a governmental authority and the service must be any activity in relation to public health.

13. He further submits that the requirement of Sl. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012, as amended, is provision of Service to Government, etc. and not by Government, etc., the requirement of contract between the Respondent and patients, invoicing by the Respondent to patients, etc. that is propounded by department in appeals filed by department is beyond the scope of aforesaid Notifications.

14. He also submits that it is canvassed in appeals that output service is provided by government by using input service provided by respondent. Hence, exemption meant for main service cannot be per se extended to the input service. However, the appeals ignore the fact that what is exempted is the service provided to Government, etc., and not by Government. In this case, the services provided by the Respondent, by itself, is an output service. Consequently, Section 66F(1) of Finance Act, 1994 is not applicable.

15. He also argued that inasmuch as there is no challenge to the basic facts that the service recipients are all government institutions/ bodies/ centre etc. and there is also no dispute over the fact that the paramedics and other personnel provided by respondent to these entities engaged themselves in providing public health service through the former, the appeals filed by department proposing to deny the exemption under Sl. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012, is not tenable on merit.

16. He also submits that the cleaning and house-keeping services provided by Respondent to government offices, court, educational institutions, etc, are essential and integral part of public sanitation and solid waste management for achieving the goal of public health. Hence, these services are exempted under Sl. No. 25 of Notification No. 25/2012-ST dated 12.06.2012 as amended by Notification No. 6/2014-ST dated 11.07.2014

17. He also submits that the present appeals are filed by the revenue without verification of the relevant documents. No error was pinpointed in the Certificate of Chartered Accountant based on which demand of Service tax amounting to Rs. 46,71,866/- is dropped. The appeals have been primarily filed with repeated prayers of general nature i.e. for remand rather than contesting the impugned orders on merit. Hence, the appeals of revenue are devoid of merit and therefore, the same is liable to be rejected.

18. He further submits that the issue involved in this case is about interpretation of statute in general and Notification No. 25/2012-ST dated 20.05.2012, as amended, in particular. The respondent had a bona fide that they are eligible for the exemption owing to the fact that service provided by them were in relation to public health and sanitation conservancy. The belief of Respondent has been duly upheld by the Ld. Adjudicating authority. Extended period of limitation is also not invocable where the issue involves interpretation, there is a bona fide belief of assessee regarding exemption to the services provided by him and all the transactions are duly recorded in the books of accounts. He placed reliance on following judgments:-

- (i) Sujana Metal Products Ltd. -2011(273)ELT 112(Tri. Bang.)
- (ii) Anjuman Islahul Muslimin -2019(27)GSTL 685 (Tri. All.)
- (iii) Patel Labour Contractor Pvt. Ltd.- 2021(4)TMI 811-CESTAT-Ahmedabad.
- (iv) Asian School of Media Studies- 2023(68)GSTL 161(T)
- (v) Elegant Developers- 2019(29)GSTL 277(T)
- (vi) G.T. Cargo Fitting India Pvt. Ltd. 2019(370)ELT 1181(T)
- (vii) Intermark Shipping Agencies Pvt. Ltd. 2023(8)TMI 123-CESTAT-Ahmedabad.

19. We have carefully considered the submissions made by the side and perused the records.

20. As regard the Service tax demand of service tax dropped by the Ld. Commissioner in impugned order we find that in respect of said demand it has been alleged in the show cause notice dated 20.11.2017 that the respondent has collected the Service tax but not paid to the Government exchequer. We find that the Ld. Commissioner after verifying the CA Certificate dated 09.07.2019, ledger of Service tax liability, ST-3 returns and other documents etc., found that the difference of Service tax collected and not paid is of Rs. 2,15,195/- only. Ld. Commissioner has therefore held the demand of Rs. 2,15,195/- is sustainable and remaining amount is not sustainable. We find that as regard the said dropped demand revenue in the present appeal nowhere rely upon any details/ documents or any evidence by which it can be concluded that the demand dropped by the Ld. Adjudicating authority is not correct.

21. Now we deal with services provided by the respondent to the Government Hospitals, Medical Colleges, Primary Health Centres, Community Health centres, etc. As per the revenue the nature of activity of respondent i.e. supply of manpower to above service recipient is squarely fall under the category of 'manpower recruitment or supply agency services' and liable to service tax. However, Respondent have countered the allegation of revenue by inter alia citing Sr. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 6/2014-ST dated 11.07.2014 and claimed the service tax exemption on the ground that they have provided services to hospitals, health centres etc. run by government. The paramedic personnel and other staff provided by them to the said hospitals have worked under the Medical Superintendent, Medical Officers etc. of Government Hospitals, Medical College, Primary Health Centres, Community Health Centres etc., who in turn are run by government for providing public health services.

22. We find that to come to a conclusion, the entry at Sl. No. 25(a) in Notification No. 25/2012-S.T. needs to be reproduced and the same are reproduced below for ready reference.

“25. Services provided to Government, a local authority or a governmental authority by way of –

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

Further Notification No. 6/2014-ST dated 11.07.2014 substituted entry No. 25 of above mentioned Notification as under :

(viii) in entry 25, for item (a) , the following item shall be substituted, namely :-

“(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or”;

23. On perusal of the above entry of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 6/2014-ST dated 11.07.2014, it would be seen that the above said exemption is available to services which are provided to Government, a local authority or a government authority by way of carrying out any activity in relation to any function ordinarily entrusted to a Municipality in relation to water supply, public health, sanitation conservancy, solid waste management upto 10.07.2014 and w.e.f. 11.07.2014 services ` by way of water supply, public health, sanitation conservancy, solid waste management of slum improvement and up-gradation. In the impugned matter revenue nowhere dispute the fact that Government Hospital, Health Centres are engaged in providing services related to public health. The para-medical personnel, etc. provided by the respondent to said Hospitals / Health Centre have worked under the supervision of authorized Medical Practitioner i.e Medical Superintendent, Medical Officers of the Hospital, health centres etc. Thus the Medical Superintendent, Medical Officers of the Hospital and Health centres have provided service by way of public health to the said government hospital and health centre run by the government in the capacity of government employee. The para-medics, etc., who worked in the same hospitals/ health centres are their subordinates and carried out their instructions in connection with public health and they were all providing the services to government with a common goal of public health. From the above exemption entry it is clear that the intention of the legislature is clear that services contributing in the public health is required to be exempted from payment of Service tax. Further the said entry of above Notification supra is for providing public health services `to Government` and not `by government`.

The words "any activity" and "by way of" employed by the legislature in above exemption entry of Notification No. 25//2012-ST would make it abundantly clear that all the activity involved in relation to public health are covered under the said entry. We find the strength in the finding of Ld. Adjudicating authority that any services provided to government in relation to water supply, public health, sanitation conservancy solid waste management or slum improvement etc, are exempted from payment of service tax in terms of above mentioned Notification. We also noticed that the concept of categorization of services under Section 65 of the Finance Act, 1994 has been redundant after 01.07.2012. For the exemption of service tax under the disputed entry only two requirements has to be satisfied. First the service must be provided to Government, Local Authority or a Governmental authority and second is the services must be any activity in relation to public health. In the present disputed matter respondent fulfill both the requirement. Therefore, we do not find any reason for interfering in the conclusion reached by the Ld. Commissioner in the impugned order before us. In our view, impugned order is correct, legal and does not suffer from any infirmity.

24. Further we find that the revenue for denying the claim of above exemption also take the ground that the para-medics and other staff provided by the respondent do not have any direct contract with the patients and do not raise any invoices on the patients and also do not have any legal responsibility to provide public health services on his own account. In this context we find that a plain reading of the above provisions of Notification No. 25/2012-ST as amended makes it clear that there is no requirement of a contract between the para-medics, etc. and Patients. There is no requirement that such para-medics and personnel must issue invoices in the name of patients. In such circumstance, it is not permissible to insert such a requirement with a view to deny the exemption. The requirement of the said above exemption entry is only that services must be provided to Government in relation to public health. Once it is the requirements of exemption only, any further condition of contract or invoice between the service provider and patients that is nowhere specified in the above notification cannot be read into it. We find that the outsourced personnel are helping, supporting and assisting the government authorities to perform and deliver health services. Therefore we find that the services provided by

the respondent to Government Hospitals/ Medical offices/ Health Centres etc. for providing public health related services are eligible for exemption under Sr. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 06/2012-ST dated 11.07.2014.

25. As regard the demand dropped by the Ld. Commissioner on services provided to the Education Institution i.e Government Arts & Commerce College, Government Medical College, Government college, Nursing College, Gujarat Secondary and Higher Secondary Education Board, Gujarat Vidhyapith Ashram Road, training Centers, etc. we find that the Revenue has contended that services provided by the respondent are not covered under the Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012. We find that in the impugned matter there is no dispute on the facts that the service recipients are educational institutions. As per the revenue the activity of respondent are not covered under the Sr. No. 9 of Notification No. 25/2012-ST. The relevant portion of Sr. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012 is reproduced below.

“9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

- (a) auxiliary educational services; or*
- (b) renting of immovable property;*

Further Notification No. 6/2014-ST dated 11.07.2014 substituted entry No. 25 of above mentioned Notification as under :

(iii) for entry 9, the following entry shall be substituted, namely :-

“9. Services provided, -

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

- (i) transportation of students, faculty and staff;*
- (ii) catering, including any mid-day meals scheme sponsored by the Government;*
- (iii) security or cleaning or house-keeping services performed in such educational institution;*
- (iv) services relating to admission to, or conduct of examination by, such institution;”;*

26. We find that the Serial No. 9 of the Mega Exemption Notification No. 25/2012-S.T., dated 20-06-2012 exempted from service tax the services by way of "(a) auxiliary education services to an educational institution". Further, vide Notification No. 06/2014, dated 11-07-2014, Entry 9 came to be substituted as above. We also find that C.B.E. & C. vide their Circular No. 172/7/2013-S.T., dated 19-9-2013, which has been issued for clarification regarding levy of service tax on certain services relating to the education sector clarify as under :

*2. The matter is covered by two provisions of the Finance Act, 1994. Section 66D of the Finance Act contains a negative list of services and clause (I) thereof reads as under :
"services by way of-*

- (i) pre-school education and education upto higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- (iii) education as a part of an approved vocational education course;"*.

Further Section 93(1) of the Finance Act, 1994, enables the Government to exempt generally or subject to such conditions taxable service of specified description. By virtue of the said power, Government has issued a Notification No. 25/2012-S.T., dated 20th June, 2012, exempting certain services. Sl. No. 9 thereof reads as follows :

*"Services provided to an educational institution in respect of education exempted from service tax, by way of,-
(a) auxiliary educational services; or
(b) renting of immovable property;"*.

As defined in the said notification, "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from Service Tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification

From the above Notification and Clarification issued by the Board it is clear that all the Services provided to education institution such a transport

services, hostels, housekeeping, security, canteen services and any other type of services provided to education institution are covered under the above entry of exemption notification and exempted from payment of service tax. In the disputed matter it is on record that respondent supply the manpower to educational institutions and said staff supplied by the respondent have supported the educational institutions for performing their works/activities related to education. Therefore in our view respondent is eligible for exemption from payment of Service Tax for supply of manpower to above mentioned educational institutions under Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012

27. As regard the cleaning and housekeeping services provided by the respondent to Government offices, Courts, government undertakings we find that in this regard Ld. Adjudicating authority rightly concluded that these services are exempted under Sl. No. 25 of Notification No. 25/2012-ST dated 12.06.2012 as amended by Notification No. 6/2014-ST dated 11.07.2014. We find that as per Sr. No. 25(a) of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 6/2014-ST dated 11.07.2014, service provided to Government, Local Authority or a Government authority by way of carrying out any activity in relation to public health, sanitation conservancy, solid waste management etc. are exempted from service tax. We find that in the present matter revenue demanded the services tax from the respondent for providing cleaning services to Government Hospitals, courts, local authorities, government undertakings etc. We find that the cleaning and housekeeping services are an essential parts of sanitation conservancy and waste management and respondent are eligible for exemption under Sr. No. 25(a) of the Mega Notification No. 25/2012-ST dated 20.06.2012 for cleaning and Housekeeping service provided to Government Hospitals and other government entities. Accordingly the demand of service tax with respect to cleaning services provided to Government entities cannot be sustained and rightly dropped by the Ld. Adjudicating authority.

28. We also find that the Revenue has also challenged the finding of the Ld. Commissioner dropping the demand on ground of limitation. We find that if a tax is chargeable, in order to recover the service tax not paid or short paid a notice has to be issued under Section 73 of the Act. This is the only

remedy available to the Revenue. The notice can be issued within the normal period of limitation only unless the elements of fraud or collusion or willful statement or suppression of facts or contravention of any provisions of the Act or Rules with an intent to evade payment of service tax is established. If any of these elements are established in any case, the demand can be raised within an extended period of limitation of 5 years.

29. We are unable to find any proof of 'intent to evade' either from the show cause notice or from the grounds of appeals of revenue in the present matter. The department nowhere allege that respondent had deliberately interpreted the Exemption Notification and its clause in a wrongly manner with intent to evade payment of Service tax. In the instant case, we do not see any such wilful or deliberate suppression of the fact with intent to evade payment of service tax. We are of the opinion that whether the respondent is entitled for the benefit of the exemption notification or not depends on the interpretation of the exemption notification and on the contrary, to a very large extent, their interpretation is found correct. Thus, it is evident that there is not even an iota of evidence to even suggest that there was any willful misstatement or suppression of facts on the part of the Respondent. Consequently, extended period is not invokable in this case. Therefore we do not see any reason to interfere with the impugned order.

30. In view of the foregoing discussion and findings, the impugned order is upheld. Revenue's appeal is dismissed.

(Pronounced in the open court on 23.02.2024)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL