Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 742 of 2011-DB
(Arising out of OIA-BC-202-SURAT-II-2011 Dated- 16/08/2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

Nirmal Construction Co .....**Appellant**
17, Vaishali Society, Ankleshwar,
ANKLESHWAR, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-ii ......**Respondent**
1st Floor... Room No.101,
New Central Excise Building, Vadodara,Gujarat-390023

APPEARANCE:
Shri. Vinay Kansara, Advocate for the Appellant
Shri. Dinesh M. Prithiani, Assistant Commissioner (Authorized Representative) for the Respondent

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

Final Order No. A/ 10220 /2022

DATE OF HEARING: 23.02.2022
DATE OF DECISION:07.03.2022

RAJU

This appeal has been filed by M/s Nirmal Construction Company against demand of Service Tax, interest and imposition of penalty under Section 78 of the Finance Act, 1994 and also under Section 77 of the Finance Act 1944.

2. Learned Counsel for the appellant pointed out that the demand of Service Tax was raised under four different contracts. The list of the Four different contract is as under:-

Sr. No	Work Order No. i.e. Contract/agreement	Date	Name of services provided	Period	Amount
1	W.O.No.Ank/MM/P 4/014/2003-04	19.09.03	Cleaning services such as up-keeping/environmental services	July 05 to March 06	2323546/-
2	W.O.No.Ank/MM/P 4/015/2004-05	15.06.05	Clearing services as such Grass, Bush, Jungle cutting at Area-III of ONGC Ank. And regular maintenance as tender documents	Aug. 05 to March 06	2023346/-
3	W.O.No.Ank/Asset/ CPF/OPS/76/Work Order/2005-06	16.09.05	Cleaning of LPG Condenser	Oct 05	50000/-

4	W.O.No.Ank/Asset/ CPF/OPS/21/Filters /2005-06	22.06.05	Maintenance of sand and activated carbon filter of ETP at CPF Gandhar	Oct. 05	141000/-
			Total		45,37,892 /-

2.1 Learned Counsel pointed out that they are not contesting the demand of Service Tax on Serial No. 3 & 4 on merits, however, they are contesting the said demands on the issue of limitation. As far as Serial No. 1 of the above table is concerned the contract dated 19.09.2003, required the appellant to do the following activity:-

ANK/MM/P4/014/03-04 Dt 29-09-03 51

SECTION- IV

SCOPE OF WORK

The agency shall carry out the following in the ONGC Township, Ankleshwar Asset, Ankleshwar.

A. **UP-KEEPING OF RESIDENTIAL TOWNSHIP:**

1.1 Up- Keeping of all building in the ONGC Township of Ankleshwar Asset, The building include the entire single, triple an multistoried residential quarters 917 Nos, Electrical sub-station, KV , Nanhi Duniya, Civil Maintenance Office, Staircases and Common space of all buildings etc. Up keeping job will consist of collection of all garbage from the said building and removal/ dumping the collected garbage with tractor and trolley on a daily basis to the identified areas in the township. The garbage will include all waste material including refuse waste papers, glass, rags, plastic bags etc,. The collect garbage to be segregated in to biodegradable and non-degradable waste and shifting the separated garbage to the identified areas in the township. Non-biodegradable garbage to be shifted outside the township area at his convenient place at his own cost. The contractor has to provide area at his convenient place at his own coast. The contractor has to provide all the materials, tools, tackles and manpower required for the job.

1.2 Upkeep, removal and disposal of all garbage from all roads, streets and open space by brooming bi-weekly basis or as and when required. Length of all the roads will be approx. 10 K.M. The collected garbage to be segregated in to biodegradable and non-degradable waste and shifting the separated garbage to the identified areas in the township non biodegradable garbage to be shifted out side the township area at his convenient place at his own cost. The contractor has to provide all the materials, tools, tackles and manpower required for the job.

De-silting and removing checking of all the sewage lines, drains and manhole chambers (500 Nos. approx.) of the township including those of the buildings. De-silting of storm water drains including clearing of pipes below culverts, removing all rubbish, grass, each and other choking materials to the identified areas in the township with all tools tackles and manpower once before rainy season and as and when required. This job also includes opening the door bends of chocked W.C's/ Bathroom traps from outside the buildings for cleaning. The collected garbage to be segregated in to biodegradable and non- degradable waste and shifting the separated garbage to the identified areas in the township. Non-biodegradable garbage to be shifted outside the township area at his convenient place at his open cost. The contractor has to provide all the materials, tools, tackles and manpower required for the job.

For Nirmal Construction Co.

Proprietor

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1.4 To collect refuse and garbage from the entire single, double, , triple and multistory residential quarters of the Township on a daily basis. The collected garbage to be separated garbage to the identified areas in the township. Non-biodegradable garbage to be shifted out side the township area at his convenient place at his own cost. The contractor has to provide all the materials, tools, tackles and manpower required for the job.

1.5 Drainage cleaning jobs. Maintaining all strom water drains. Approx. length 6 K.M. including de-silting of pipes below culverts, removing rubbish and excavation of filled up earth upto bottom of drain wherever necessary prior to monsoon and once a week during monsoon. The contractor has to provide all the materials, tools, tackles and manpower required for the job.

1.6 To remove chockage of all the sewage lines of the township catering to 920 quarters approx. including de-silting of manhole chambers (500_ Nos. Approx) and any of the chocked fully traps(total 2400 Nos. approx). The contractor has to provide all the materials , tools tackles and manpower required for the job.

1.7.1 Mopping of all public building within the campus. The contractor shall have to remove dust, cob-webs etc. from the ceiling, walls etc of the public buildings atleast once in month or more number of times as may be directed by Officer-in-charge without any extra cost. The contractor shall have to keep the sewer lines from chockages etc and any chockage shall have to be removed by him at no extra charge. The cleaning of sewer lines will have to be done as and when instructed by the Officer-in-charge without any extra charge. The contractor shall get all the garbage lifted from bins/pits etc twice a week or as directed by the Officer-in-charge . The contractor has to provide all the materials , tools, tackles and manpower required for the job.

1.7.2 Removal of garbage includes removal of dead bodies of animals in the ONGC Township. The contractor has to provide all the materials, tools, tackles and manpower required for the job.

1.7.3 The contractor shall catch all stray does,, pigs, cows, buffaloes etc, found inside floating materials from the manholes upto original bottom level of manholes the satisfaction of the Officer-in-charge and dispesal of wage to the allocated site will be done by the contractor as per the instructions of Officer-in-charge . The contractor has to provide all the materials, tools, tackles and manpower required for the job.

FOR THE ABOVE JOBS UNDER "A" MINIMUM 36 LABOURERS ARE TO BE DEPLOYED DAILY.

For Nirmal Construction Co.

Proprietor

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B. GRASS/ BUSH CUTTING/ TREE TRIMMING

1.12 Cutting of Grass,. Bush, Shrubs & Tree trimming in all open space, wall sides including its collections and removal to the identified area in the township the all tools, tackles and manpower. The grass & wood will be property of the contractor.

FOR THE ABOVE JOBS UNDER "B" MINIMUM 8 LABOURERS ARE TO BE DEPLOYED DAILY.

C. UPKEEP OF COMMON FACILITIES

1.13 Upkeep of dispensary at Township and Ankleshwar town.

1.14 Upkeep of shopping center areas

1.15 Upkeep of Transport control room

1.16 Upkeep of sports complex, Badminton Hall, Table tennis Hall, Ladies Club, Officers Club, Cricket Ground, Ramlila Ground, New club Building etc.

1.17 Upkeep of surrounding area of Transit Accommodation and VIP Guest house.

1.18 Upkeep of Community Centre, 3 Nos of water sump area, pump rooms, Ashirwas.

The contractor is to collect refuse and garbage from all above-mentioned facilities. The collected garbage to be segregated in to bridgeable and non degradable waste and shifting the separated garbage to the identified areas in the township. Non-biodegradable to be shifted out side the township area at his convenient place at his own cost. The contractor has provide all the materials, tools, tackles and manpower required for the job.

FOR THE JOBS UNDER 'C' MINIMUM 10 LABOURERS ARE TO BE DEPLOYED DAILY.

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For Nirmal Construction Co.

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2.3 Learned Counsel pointed out that the demand has been made under the head of Cleaning Services are defined under Section 65 (24b) of the Finance Act, 1994 which reads as under:

> ***"25.1-1*** *Section 65(24b) of the Act defines 'cleaning activity as follows:*
>
> *(246) "cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of-*
>
> *(i) Commercial or industrial buildings and premises thereof; or*

(ii) Factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying."

2.4 Learned Counsel pointed out that the entire activity in terms of the above aforesaid contract take place in the residential colony and therefore no Service Tax can be levied as clarified by CBEC vide Letter F. No. B1/6/2005-TRU, dated 27-7-2005 where in the para 9 reads as follows:-

"9. Cleaning services

9.1 Any service provided or to be provided to any person, by any other person, in relation to cleaning activity is taxable under sub-clause (zzzd) of section 65(105) of the Finance Act, 1994 "Cleaning activity has been defined under dause (24b) of section 65 of the Finance Act, 1994

9.2 Generally contracts/agreements are entered into for cleaning of commercial complexes such as multiplexes, shopping complexes, office complexes, industrial buildings etc. The contracts/agreements may be in writing or may be unwritten. The gross amount charged for such cleaning would be leviable to service tax. This taxable service includes,
(i) Specialized cleaning services such as disinfecting and exterminating, sterilization of objects, etc. Such cleaning services would be taxable when <u>performed for commercial or industrial buildings and their premises, factories, plant and machinery, tank or reservoir of such buildings;</u>
(ii) Disinfecting, exterminating insects, rodents and other pests and fumigation services in respect of specified premises would be liable to service tax. In respect of multi-storeyed commercial buildings, window cleaning is a specialized service Window cleaning services, including exterior window cleaning using swing stages would be liable to service tax;

(iii) Floor cleaning and waxing, wall cleaning etc. performed on the premises of commercial or industrial buildings;
(iv)Specialized cleaning services such as cleaning services for computer rooms, cleaning of machinery or plant. reservoirs and tanks of commercial or industrial buildings, furnace and chimney cleaning services and similar services.

9.3 However, such cleaning services in relation to agriculture, horticulture, animal husbandry and dairying would be excluded from the purview of service tax <u>further, such cleaning services in respect of non-commercial buildings and premises thereof would not be covered within the purview of service tax under this category."</u>

2.5 Learned Counsel further pointed out that as per Serial No. 2 of the table in para 2 above is concerned the contract dated 15.06.05 described the service as follows:-

ANNEXURE - I 40

ANK/MM/P4/15/04-05 dt-15-06-05

ANNEXURE-III

GROUP-2

SCOPE OF WORK – AREA III

The scope of work includes cutting & maintenance of the area of the Nine GGS and Two EPS at different locations in Gandhar for Cutting of wild growth & unwanted vegetation and it contain first cit in initially for six months and regular maintenance for 18 months. Rate contract may be given for two years to minimize the time of tendering formalities.

1st Cut Initially for Six Months

01) Cutting & removal of all kind of unwanted grasses, bushes, trees, weeds, removal/uprooting the roots of wild vegetations (With J.C. B.. if required), removal of all the debris and other unwanted materials including from storm water channel at all stages of work including surface dressing inside the GGS's, Gandhar area and disposal of the same outside the GGS premises at the safe place with mechanical transport within a lead of 3.00 KM and as per direction of Engineer in Charge of GGS, Gandhar. The initial period of the contract for the jobs under first cutting shall be six months from the date of commencement of the jobs. The total area covered under the scope of work for cutting and removal of grasses and bushes etc. will be approximately 971500 m2. The quantity mentioned above are indicative only and may be decreased or increased as per the actual site requirement and the contractor shall be bound to undertake such works accordingly. Also the area/location of work, after completion of the first cutting can be changed as per the actual site requirement/situation and the contractor shall be bound to undertake such works accordingly. This willbe solely at the discretion of Engineer in Charge of GGS, Gandhar and will be binding on the contractor. Deployment of required labours/workman as per labour license obtained from the office of the labour commissioner, necessary tools and tackles and allm kinds of transport required for collection and disposal of the cut grass and other unwanted materials shall be in the scope of the contractor.

Contractor will deploy at least one literate supervisor at each site for supervision of the work day to day interaction with Engineer in Charge of GGS.

If the contractor fails to complete the first cut within the stipulated time as mentioned above LD will be imposed on the contractor @ 0.5% per week of the total value for the first cut limited to 10% of the total value of the first cut. If the contractor fails to complete the job even after 20 weeks from the completion of initial six months ONGC reserves the right to terminate the contract.

For Nirmal Construction Co.

Proprietor

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D.C. SIL
Manager (MM)

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Regular Maintenance of the total area for 18 months

(02) The scope of work under the regular maintenance shall be to cut the grass /bush etc. and should be maintained in such a way that the grass etc. does not grow more than 10 cms from the ground level. The scope of work also includes the removal of all kind of unwanted grasses etc and disposal of the same to a initial lead upto 3.0 kms at a designated place outside the GGS premises as directed by EIC. The period of contract for the jobs under first cutting. The total area covered under the scope of work for cutting and removal of grasses and bushes etc. will be at par of the first cut of the respective GGS. This also can be changed as per the actual site requirement/situation and the contractor shall be bound to undertake such works accordingly. This will be solely at the discretion of Engineer in Charge of GGS, Gandhar and will be binding on the Contractor.

Total area covered under the scope of work will e approximately 971500 m2. The quantity mentioned above are indicative only and may be decreased or increased as per the actual site requirement and the contractor shall be bound to undertake such works accordingly.
Deployment of required labours/workman as per labour license obtained from the office of the labour commissioner, necessary tools and tackles and alls kind of transport required for collection and disposal of the cut grass and other unwanted materials shall be in the scope of the contractor.

Contractor will deploy at least one literate supervisor at each site for supervision of the work day to day interaction with Engineer in Charge of GGS.

Contractor's work would be closely monitored by the Engineer-In-Charge in association with the authorized representative of contractor on monthly basis. During the monthly inspection, if the contractor fails to maintain grass level below 10 Cms. height in the specific area, the payment shall be made to the contractor only for the area maintained below 10 Cms from the ground level. However, for the area not maintained below 10 Cms, from the ground level, recovery shall be made from the respective monthly bill @ 10% of total amount of monthly bill against that particular area not maintained as per scope of work on prorate basis ad the contractor will be bound to repeat the such operations to provide the required level of the grass/weed etc. of such specific area in the period of next month. If the contractor fails to maintain grass below 10 cms in consecutive three months, the LD will be imposed on the contractor @ ½% of the total yearly contract value per week of delay thereafter.

For Nirmal Construction Co.
Proprietor

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D.C. SIL
Manager (MM)
ONGC Ltd. Ankleshwar

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SPECIAL CONDITIONS OF THE CONTRACT

1. Commencement date for the purpose of this contract shall be written declaration signed by representatives of both Contractor and ONGC to the effect that all the required material and other allied items and personnel required to be provided by the contractor in terms of provisions in the contract are available at site and all the objective conditions required to be fulfilled by the contractor are fulfilled.

2. ONGC will give mobilization of 15 days to the Contractor. However, if required, the Contractor may have to mobilize within a shorter period also.

3. The Contractor will deploy sufficient manpower for carrying out the jobs as mentioned under scope of work alongwith the qualified & experienced supervisors.

4. ONGC reserves the right to direct the contractor to replace any person due to lack of knowledge of misbehavior. Replacement will be done within four days, if not, then payment will be deducted from the monthly Bills as deemed appropriate.

5. The contractor will provide cotton uniform and necessary personnel protective equipment as per the safety practices of the relevant area i.e. different kits and liveries like overalls, Helmets, Safety Shoes, Raincoats, Hand Gloves etc. to his workmen/employees. Consumables such as cotton waste etc. shall also be provided by Contractor.

6. ONGC will provide free utilities at available points for justified work. Utilities shall mean water, air, steam ad electricity.

7. Log books/Log sheets should be maintained at site by the contractor.

8. All labours, tools and the equipments required to carry out the job shall be arranged by the contractor at their own cost including the cost of transport involved in the disposal of the all kind of rubbish and debris.

D.C. SIL
Manager (MM)
ONGC Ltd. Ankleshwar

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ANNEXURE-IV

PRICE SCHEDULE

A.	1st Cut initially for Six Months :			
	JOB DESCRIPTION	QTY IN SQ. MTR.	UNIT RATE IN RS.	AMOUNT IN RS.
a)	Grass/bush cutting	629500	0.50	Rs. 3,14,750.00
b)	Jungle/trees Cutting	211800	1.75	Rs. 3,70,650.00
c)	Uprooting of the trees	82600	1.50	Rs. 1,23,900.00
d)	Removal of creepers/sediments from open channel.	47600	1.00	Rs. 47,600.00
	Total amount for A =			Rs. 8,56,900.00

B.	Regular Maintenance of the total area for Eighteen Months :		
	JOB DESCRIPTION	QTY IN SQ. MTR.	RATE PER MONTH
1.	Regular Maintenance as per detailed scope of work indicated in tender document.	971500	Rs. 1,70,000.00
	Total amount for B = Rate per Month x 18 Moths =		Rs. 30,60,000.00
	Total amount for A+B which covers total scope of work as per the tender for two years.		Rs. 39,16,900.00

Note :
1. Quoted amount should be inclusive of all. However, Service Tax, if applicable will be reimbursed as per actual against documentary evidence.

2. Quantity mentioned is indicative only & may be decreased or increased as per the actual site requirements.

For Nirmal Construction Co.
Proprietor

D.C. SIL
Manager (MM)
ONGC Ltd. Ankleshwar

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2.6 Learned Counsel pointed out that the activities relate to cutting of grass, trees and bushes and does not amount cleaning service and thus, the activity should be called horticulture and does not amount to cleaning service. He, however admitted that the premises in which the activity was being undertaken are commercial and industrial premises where natural Gas is collected by ONGC.

2.7 Learned Counsel further pointed out that though the appellant had not taken Service Tax registration and had not filed any returns but as soon as the issues was raised the appellant voluntarily admitted their liability in respect of item 3 & 4 of the above table in para 2 and paid duty. He further pointed out that in their response to summons they had clarified that the appellant had bonafide belief that no Service Tax is leviable on Serial No. 1 & 2 of the above table as these services do not amount to cleaning services as defined in Section 65 (24b) of the Finance Act, 1994.

2.8 He further pointed out that the penalty under Section 78 has been imposed at double rate of the duty demand and therefore excessive. Moreover the penalty under Section 77 has wrongly been imposed.

3. Learned Authorized Representative relies on the impugned order. He argued that the appellant had admitted the duty liability in case of item No. 3 & 4 of the table in para 2 above and paid the Service Tax immediately. He pointed out that the appellant at the material time was not registered with Service Tax nor were filing any returns.

3.1 Learned Authorized Representative argued that the activity under taken in Serial No. 2 of the above table in para 2 can by no stretch of imagination, be considered as horticulture. He pointed out that in para 6.1 of the impugned order, this fact has been clearly examined. He further argued that the residential colony would be covered by the terms premises appearing in the definition of cleaning service. He relied on the decision of Hon'ble High Court in case of COMMISSIONER OF CUS. & C.EX., HYDERABAD-III Vs. ITC LIMTED-2013 (32) STR 288 (A.P.), to assert that credit of input service is permissible for maintenance of residential colony of ITC LIMITED. He argued that in terms of the said decision the residential colony should be considered as premises of the factory. He relied on the similar decision of Tribunal in the case of LAKSHMI VILAS BANK LTD. Vs. COMMISSIONER OF C. EX., TRICHY-2011

(21) STR 294 (Tri.-Chennai) and CCE, TRIUPATHI Vs. INDIA CEMANTS LTD-2017 (3) GSTL 144 (Tri-Hyd).

4. We have carefully considered the rival submissions. As far as Serial No. 3 & 4 of the table in para 2 above are concerned the appellant are not contesting the same on merit.

5. For Serial No. 1 of the table in para 2 above, it is seen that this scope of work as elaborated in para 2.1 above. It can be seen that the appellants were engaged in all kind of activities relating to up keep of the residential colony. It involved cleaning of not only open spaces but also various facilities located within the residential colony. In the terms premises appearing in the definition of the cleaning activity under Section 65 (24b), the said Section reads as under:-

> ***"25.1-1*** *Section 65(24b) of the Act defines 'cleaning activity as follows:*
>
> *(246) "cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of-*
>
> *(i) Commercial or industrial buildings and premises thereof; or*
> *(ii) Factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying."*

5.1 It is seen that the terms premises in the definition of cleaning activity does not cover the premises of service recipients but it covers only the premises of "commercial or industrial building" or "factory, plant or machinery, tank or reservoir" of such commercial or industrial building only. It is not as if all the premises on the service recipient would be covered in the definition. All the three decisions relied upon by Revenue relate to eligibility of Cenvat Credit. This definition of input services in the Cenvat Credit Rules is significantly differently worded and the decisions applicable to eligibility of input services as Cenvat Credit cannot be applied to levy of Service Tax on cleaning activity. The definition of input services is very vast and uses words like "in or in relation to " and also has inclusive parts which covers services received at places other than the main office. Moreover the

CBEC Circular No. B1/6/2005-TRU, dated 27-7-2005 at www.cbec.gov.in has also clarified that such cleaning services in respect of non-commercial buildings and premises thereof would not be covered within the purview of Service Tax under this category. The residential Colony would therefore not be covered under the description 'premises' appearing in Section 65 (24b). In view of above the demand of Service tax in respect of Serial No. 1 of above table is set aside.

6. The next issue relates to Serial No. 2 of table in para 9, it is seen that the said demand relates to cutting of trees, grass shrubs etc. and maintain it over a period of time in the Gas collection Centre of the service recipient namely ONGC. Learned Counsel has tried to argue that the said activity is not cleaning activity but is in the nature of horticulture the Commissioner (Appeals) in para 6.1 and 6.2 has observed as follows:-

> *"6.1 I find that meanings of horticulture are i) the study and practice of growing plants ii) the art of cultivating gardens and iii) cultivation of fruits, vegetables, flowers and ornamental plants. It means horticulture is all about related to growing and cultivation of plants/trees etc but not related to cutting and removal of all kind of unwanted grasses, bushes, trees, weeds, removal/uprooting the roots of wild growth and unwanted vegetation, removal of all debris and other unwanted materials including from storm water channel etc. Further, I find that appellant had contended that the services provided by them are not liable for service tax only because of these services were in the nature of horticulture which has fallen in the category of exclusion clause of definition of cleaning activity services in Finance Act 1994.*
>
> *6.2 In view of the above, I find that activities related to cutting and removal of all kind of unwanted grasses, bushes, trees, weeds. Removal /uprooting the roots of wild growth and unwanted vegetations. removal of all debris and other unwanted materials including from storm water channel etc in commercial/industrial premises of M/s ONGC Ltd, cannot be treated as horticulture and hence appellant unit is liable to pay service tax in respect of work order dated 15.06.2005."*

7. We are in an agreement with the observations of Commissioner (Appeals) and find that the activity of the appellant cannot be treated as horticulture from the description given in above para. It is apparent that the activity undertaken by the appellant is in the nature of cleaning activity and therefore covered under the definition of this service as defined in Section 65

(24b) of the Finance Act, 1994, the demand of this ground is therefore upheld.

7.1 It is seen that the appellants were not registered with the Service Tax department at the time when the case was booked against him. The appellant had immediately paid Service Tax on 2 of the 4 issues raised by authorities. Learned Counsel tried to argue that the appellant had bonafide belief that the services were not taxable. We find that as far as the activity at Serial No. 2 of the table in para 2 above is concern there is absolutely no doubt that the said activity amounted to provision of the cleaning services as defined in Section 65 (24b) of Finance Act, 1994 and there could not have been any bonafide doubt to in that regard. In view of above, we do not find any merit in the argument that the appellant, harboured a bonafide view.

8. In view of above the demand on Serial No. 2, 3 & 4 of the table in para 2 is upheld. The demand in Serial No. 1 of the above table is set aside.

9. Penalty under Section 78 has been imposed amounting to double of the total duty confirm. We find that the said penalty is excessive needs to be revised to equivalent to the duty confirm and thus the penalty is revised to Rs. 2,25,803/- only under Section 78. The penalty under section 77 is upheld as the appellant had not taken registration or filed ST-3 return.

10. The appeal is partly allowed in above terms.

(Pronounced in the open court on 07.03.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi