Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.42 of 2012
(Arising out of OIA-189/2011/COMMR-A-/RBT/RAJ dated 20/10/2011 passed by Commissioner of Central Excise-RAJKOT)

Phoenix Project Pvt Ltd **......Appellant**
Sakar, 3rd Floor, Near Gymkhana, Dr. Radhakrishnan Road,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **......Respondent**
Central Excise Bhavan, Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

APPEARANCE:
Shri Amal Dave, Advocate for the Appellant
Shri J.A Patel, Superintendent(AR) for the Respondent

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

Final Order No. A/ 10969 /2022

DATE OF HEARING: 08.08.2022
DATE OF DECISION: 08.08.2022

RAMESH NAIR

The issue involved in the present case is that whether the construction of Market Yard for agriculture produce for APMC is liable to service tax under Commercial and Industrial Construction service.

2. Shri Amal Dave, Learned counsel appearing on behalf of the appellant at the outset submits that the very same issue has been decided by this Tribunal in the case of AB Projects Pvt Ltd – 2017 (5) GSTL 195 (Tri.-Mumbai) . He also placed reliance on the following judgments:-

- Sanjeev K. Gaddamwar Vs. Commissioner of Central Excise, Nagpur-2017 (5) GSTL 206 (Tri.- Mumbai)
- Ganpati Mega Builders (India) Pvt Ltd Vs. Commissioner of Customs, C.Ex.& ST., Agra – 2021 (55) GSTL 161 (Tri. –All)

- Ganpati Mega builders (I) Pvt. Ltd. Vs. Commissioner of Customs, C.Ex. & ST., Agra – 2022 (58) GSTL 324 (Tri.-All.)
- Commissioner vs. AC Projects Pvt Ltd – 2018 (14) GSTL J28 (SC)

3. Shri J.A Patel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute in the fact that the construction activity carried out for construction of market yard for APMC. This identical issue has been considered by this Tribunal in the case of AB Projects cited (Supra) and held that the construction of Market Yard for APCM is not covered under the Commercial and Industrial Construction service. The order is reproduced below:

> ***"4.****We have gone through the rival submissions. We find that Hon'ble High Court in appellant's own case has held that APMC is constituted for charitable purposes. In this regard the C.B.E. & C. Circular No. 157/8/2012-S.T., dated 27-4-2012 and Circular No. 80/10/2004-S.T., dated 17-9-2004 which are reproduced below :*
>
> > ***"Circular No. 157/8/2012-S.T., dated 27-4-2012***
> >
> > *4. When examined with reference to its constitution and functions, the services provided by APMC out of the 'market fee' collected from the licensees, do not appropriately fall under the category of BSS. The distinction between BSS and BAS is explained in the instructions dated 28-2-2006 issued from F.No. 334/4/2006-TRU. In the light of the above instruction, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'. It is not possible to hold that the licensees have outsourced the development and maintenance of agricultural market to the APMC, which could have been otherwise undertaken by them, solely in their business interest. Development and maintenance of agricultural market infrastructure undertaken by APMC in accordance with the statute, is for the benefit of all users, rather than an activity solely in the interest of licensees. Hence, APMC cannot be said to be rendering 'business support service' to the licensees. 'Market fee' is not in the nature of consideration for such BSS.*
> >
> > *5. As statutory bodies, APMCs provide basic facilities in the market area out of the 'market fee' collected from the*

licensees, mainly to facilitate the farmers, purchasers and others. APMCs provide a host of services to the licensees in relation to the procurement of agricultural produce, which are 'inputs' in terms of the definition given in section 65(19) of the Finance Act, 1994 itself. To that extent the meaning of 'input' is much wider in scope than the meaning assigned in rule 2(k) of Cenvat Credit Rules, 2004. Therefore, it is clarified that the services provided by the APMC are classifiable as BAS and hence covered by the exemption under Notification 14/2004-S.T."

Circular No. 80/10/2004-S.T., dated 17-9-2004

"Construction services (commercial and industrial buildings or civil structures)

The leviability of service tax would 13.2. depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax."

In view of above, the activities of APMC in respect of these contracts are not commercial in nature. Thus these contracts are not covered under the purview of commercial and industrial construction service.

5.*It is seen that the definition of term Railways is very wide it covers not only all the rail lines, sidings and yards but also warehouses as is apparent from the definition under Railways Act, 1989. The part of the said definition is reproduced below :*

(31)"railway" means a railway, or any portionof a railway, for the public carriage of passengers or goods, and icnldues -

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) ……....

(c) ……....

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, road and streets, running rooms, rest housed, institutes, hospitals, water works and water supply installations staff dwellings and

any other works constructed for the purpose of, or in connection with, railway;"

As can be seen that warehouses are specifically covered under the term Railways and they need not necessarily belong to railways. In these circumstances, it is immaterial if the said warehouses are used commercial or otherwise, as the same are not covered within the purview of commercial and industrial construction service the appeal on this count is also allowed. In view of above, both the appeals are allowed."

5. In view of the above decision of this Tribunal the issue is no longer res-integra. Accordingly the impugned order is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta