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

REGIONAL BENCH-COURT NO.2

Service Tax Appeal No. 12621 of 2019- DB

(Arising out of OIA-VAD-EXCUS-001-APP-335-2019-20 dated 23.09.2019 passed by the Commissioner (Appeals), GST & Central Excise-VADODARA)

CHAROTAR GAS SAHKARI MANDALI LIMITED .....Appellant
PLOT NO. 11, GIDC JANTA CROSSING, V.U.NAGAR
ANAND, GUJARAT

VERSUS

Commissioner of CGST & Central Tax-VADODARA-I .....Respondent
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA, GUJARAT-390007

APPEARANCE:
Shri A. X. S., Jiwan, Consultant appeared for the Appellant
Shri NeilPrakash G Makwana, Superintendent (AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 11442/2025

DATE OF HEARING: 10.09.2025
DATE OF DECISION: 24.12.2025

SATENDRA VIKRAM SINGH

1. M/s. Charotar Gas Sahkari Mandli Ltd, Anand (Appellant) are registered for payment of service tax under Business Auxiliary Service, Transportation through Pipeline Service, Maintenance & Repair Service, Erection and Commissioning service etc.

1.1 During audit, the officers observed that the appellant had paid an amount of Rs.60 Lakhs in three equal instalments on 1st May, 1st June and 1st July, 2016 to Vallabh Vidhyanagar Nagarpalika (VVNA) under settlement agreement dated 28.04.2016. The said service of "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act" provided by VVNA is taxable under Declared Service as defined under Section 66E (e) of the Finance Act, 1994 on which appellant was liable to pay service tax under reverse charge mechanism. On being pointed out, the appellant produced service tax payment Challans for Rs.6,48,359/- by VVNA under the

category of Renting of Immovable Property Service. It was also found that the appellant had received legal service from July 2012-June 2017 on which they had not paid service tax under RCM. Accordingly, the department issued a show cause notice on 26.03.2018 demanding service tax of Rs.8,90,000/- (including Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC)) under Section 66E(e) and service tax of Rs.73,840/- on legal service under proviso to Section 73(1) of the Finance Act, 1994, along with interest and penalty under Section 76, 77(2) and Section 78 of the Finance Act, 1994. The said show cause notice was decided by the Assistant Commissioner vide order dated 31.03.2019 wherein, he confirmed demand of service tax as proposed in the show cause notice along with interest and imposed equal amount of penalty under Section 78 of the Finance Act, 1994. He also imposed penalty of Rs.10,000/- on the appellant under Section 77(2) of the Finance Act,1994 but refrained from imposing any penalty under Section 76 of the said Act.

1.2 aggrieved with the above order, the appellant filed appeal before Commissioner (Appeal) who vide impugned order upheld the order of the Assistant Commissioner and rejected their appeal. Hence, the appellant filed present appeal before this Tribunal.

2. In their appeal, the appellant took the following grounds:-

a) They have not disputed demand of service tax of Rs.73,840/- on legal service received from the various Advocates during the period from July-2012 to June-2017 and paid the same along with interest vide Challan No.301 dated 18.03.2019 before issue of adjudication order. Therefore, there is no dispute about this issue.

b) Being authorised distributor of PNG & CNG in Vallabh Vidhyanagar, they lay down underground pipeline for transportation of gas for which VVNA demand rent. They had dispute with VVNA regarding payment of rent for the period from 2007 which alongwith 18% penalty became Rs.98,89,656/- (upto March 2016). There was a mutual agreement

between both the parties through a settlement deed dated 26.04.2016, in pursuance of which, the appellant paid an amount of Rs.60 Lakhs in three equal instalments to VVNA on which Nagar Palika had paid the service tax under the category of Renting of Immovable Property Service.

c) Subsequent to issue of show cause notice, they produced Challans showing payment of service tax by VVNA, before the Adjudicating authority which were not accepted by him. Para 2.4 of the OIO reads as, "*Further, from the challans of Vallabh Vidhanagar Nagapalika submitted by the noticee, it was not possible to establish one-to-one co-relation with payment of service tax on the amount in question. Also, the challans were of only Rs. 6,48,359/- against Rs.8,90,000/- payable by the noticee. Therefore, the proof submitted by the noticee was not acceptable at its face value.*"

d) The commissioner (Appeal) did not discuss and record findings on their submissions. The department has demanded service tax from them under Declared Service. Guidance Note-5- Declared Service attached to DOF No.334/1/2012-TRU dated 16.03.2012 states as under:-

"Guidance Note- 5

"5.7 Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

In terms of this entry, the following activities if carried out by a person for another for consideration would be treated as provision of service.

- *Agreeing to the obligation to refrain from an act.*
- *Agreeing to the obligation to tolerate an act or a situation.*
- *Agreeing to the obligation to do an act."*

e) For charging service tax under Section 66E(e), all three conditions should be satisfied. From the settlement deed between them and VVNA, it can be seen that neither party has refrained from doing any particular act or things, or have imposed any conditions or circumstances and/or

have to perform any act under any law for the time being in force. Therefore, finding of the Adjudicating Authority in para 14.2 is prima facie wrong. Both the authorities presumed that there was a contract having built in clause which refrained parties from bringing in arbitration.

f) The settled amount of Rs.60 Lakhs paid by the appellant to VVNA was not on account of any consideration to refrain from an act or to tolerate an act or situation or for doing an act. Both the parties voluntarily and mutually agreed at this amount against total outstanding rent and penalty amount of Rs.98,89,656/-.

g) CESTAT, New Delhi vide order dated 12.09.2018 in the case of M/s. Monnet Ispat & Energy Ltd. Vs. Commissioner of Central Excise & Service Tax, Raipur, held that UI charges have been received by the appellant only in those cases where buyer has drawn more electricity than what was scheduled for him. I fail to see how such an act can be considered as agreeing to an obligation to refrain from supply of electricity.

h) While dealing with the issue of service tax liability on hotel cancellation charges under Section 66E(e), CESTAT, New Delhi vide order dated 08.03.2019 in the case of M/s. Lemon Tree Hotel Vs. Commissioner of GST, Central Excise and Customs, held that the customers pay an amount to the appellant in order to avail hotel accommodation service and not for agreeing to the obligation to refrain from an act or to tolerate an act or situation, or to do an act. The retention amount (on cancellation made) does not undergo any change after receipt. Therefore, no service tax is attracted under the provisions of Section 66E (e) of the Finance Act, 1994.

i) There is no dispute that Rs.60 Lakhs was paid by the appellant to VVNA on account of outstanding rent for use of their land for laying

underground pipeline in the areas falling within the jurisdiction of Nagar Palika. The dispute arose due to non-payment of rent and therefore, it is a clear case of payment towards Renting of Immovable Property Service rendered by the Nagar Palika. It was obligatory on the part of Nagar Palika to discharge service tax under the said category for which they had taken service tax registration. Therefore, demand of service tax from them on reverse charge basis under Section 66E(e) is not justified.

j) Penalty is also not imposable on them as there is neither any suppression, mis-statement nor mens-rea to evade payment of service tax. They rely on the following decisions:-

- Hindustan Steel Ltd Vs. State of Orissa - 1978 (2) ELT (J-159),
- Sanjiv Fabrics reported at 2010 (258) 465 (SC),
- UT Ltd reported at 2007 (207) ELT 27 (P&H),
- Kamal Kapoor reported at 2007 (5) STR 251 (P&H)

k) Extended period is also not invokable in this case as there is no suppression, fraud, collusion or wilfull mis-statement on their part. They rely on the following cases:-

- Order dated 18.01.1995 of Hon’ble Supreme Court in the case of Collector of Central Excise Vs. HMM Limited
- Order dated 13.01.2003 of Hon’ble Supreme Court in the case of Easland Combines Vs. Collector of Central Excise, Coimbatore
- Order dated 28.03.1995 of Hon’ble Supreme Court in the case of Pusham Pharmaceuticals Co. Vs. Collector of Central Excise, Bombay,
- Order dated 06.09.1994 of Hon’ble Supreme Court in the case of Cosmic Dye Chemical Vs. Collector of Central Excise, Bombay.

In view of the above, they prayed that the impugned order may be set aside and their appeal may be allowed.

3. During hearing, learned Counsel emphasized that there was dispute of rent between them and VVNA since 2007 which was not paid by the appellant. The total outstanding yearly rent bill from 2007-08 to 2015-16 along with 18% penalty was calculated to be Rs.98,89,656/-. The dispute was mutually settled before the Hon'ble Principal Civil Judge of Anand Court and a settlement deed dated 28.04.2016 was executed between both the parties, as per which, they paid Rs.60 Lakhs to VVNA in three equal instalments and VVNA paid appropriate service tax thereon under Renting of Immovable Property Services. He argued that once service tax on the said amount has been paid by VVNA under Renting of Immovable Property Services, revenue is demanding service tax on the same amount again under reverse charge under Declared Service category. He pleads that show cause notice was issued on 26.03.2018 for demand of service tax for the period from 2007-08 to 2015-16 by invoking extended period which is not invokable as there is no suppression, mis-statement or fraudulent intent on their part to evade payment of service tax. He also pleads that the Settlement Deed was not for providing or receiving any service and the settled amount paid was not on account of any consideration for provision of service or any act or obligations. He relies on CBIC Circular No.214/1/2023-ST dated 28.02.2023 to plead that no service tax is chargeable on this account. He also relied on the decision of Larger Bench of the Tribunal New Delhi in the case of M/s. South Eastern Coalfield Ltd which vide order dated 22.12.2020 held that "what needs to be noted is that each of these refer to "where the provision of service is for a consideration, "whether it be in the form of money, or not wholly or partly consisting of money, or where it is not ascertainable. In either of the cases, there has to be a "consideration" for the provision of such service". Learned Counsel also relied on the following decisions to negate department's

stand not only on merits but also on time bar. He prayed for allowing appeal by setting aside the impugned order:-

- Final Order No. 50025/2025 dated 01.01.2025 of CESTST, New Delhi in case of M/s Hindustan Zinc Ltd Udaipur.
- Final Order No 10319-10320/2025 dated 06.05.2025 of CESTST, Ahmedabad in case of M/s CCE Surat Vs. Gujarat Industrial Power Co. Ltd.
- Final Order No 12618/2024 dated 07.11.2024 of CESTST, Ahmedabad in case of Mis Hariyana Ship Demolition Ltd.
- Order dated 26.02.2021 of CESTAT, Ahmedabad in case of M/s Ratnamani Metals & Tubes Ltd (Gandhidham)-2021(2) TMI 1150.

4. Countering the arguments, learned AR reiterats the findings of the lower authority and states that both Adjudicating Authority as well as Appellate Commissioner have recorded reasoned findings after examination of records and documents. He emphasises that the appellant had paid amount following settlement agreement between them and VVNA. The said services of Nagar Palika fall under Declared Service on which appellant was required to discharge service tax under RCM basis. He justifies his say by mentioning that outstanding dues between VVNA and the appellant till 2015-16 were Rs.98,89,656/- against which only Rs.60 Lakhs was paid which means that the balance amount of approximately Rs.39 Lakhs has been written off. In other words, this amounts to agreeing to tolerate an act or agreeing to refrain from act. Therefore, the appellants are liable to make payment of service tax under Section 66E(e) on RCM basis.

5. Heard both the sides. The short issue in this matter is that whether amount of Rs.60 Lakhs paid by the appellant to VVNA in accordance with settlement deed dated 28.04.2016 is towards outstanding rent or a consideration for tolerating an act. The appellant has submitted copies of the Challans showing amount of service tax paid by VVNA under the category of

Renting of Immovable Property Service on receipt of settlement dues of Rs.60 Lakhs. As per him, these dues pertained to rent for the period from 2007-08 to March 2016 to be paid by the appellant to VVNA. Since, there was a dispute, settlement was agreed between both the parties on a consideration of Rs.60 Lakhs which they paid to VVNA in three equal instalments. VVNA also accounted for this amount as rent and paid the service tax under the category of Renting of Immovable Property Service. Instead of verifying service tax payment by VVNA, the department issued a show cause notice to them treating payment of the said amount towards tolerating an act and thus, bringing the said activity under Declared Service category under Section 66E (e) of the Finance Act, 1994 and then fastened the service tax liability on RCM basis by virtue of Notification No.30/2012-ST dated 20.06.2012. Basically, the issue is that if the recipient Nagar Palika has treated the amount as rent on which they also paid service tax, can revenue again ask service tax on the said amount from the appellant on reverse charge basis under the category of Declared Service. The answer as per us is clear "No" as the same amount cannot suffer service tax twice. Otherwise also, if this amount is not treated as rent, then it becomes compensation in the form of damages received in accordance with settlement dated 28.04.2016. What is covered under Section 66E (e) is, agreeing to an obligation to refrain from an act or to do an act. Absence of such elements in the present case lead us to hold that the amount paid by the appellant is not for any Declared service and hence, demand cannot be sustained against the appellant on merits also.

5.1 We also agree with the pleadings of the appellant that there is nothing in this case which has been suppressed or mis-stated or fraudulently declared to the department. We therefore find that ingredients to invoke extended period of limitation as provided under proviso to Section 73(1) of the Finance Act, 1994 are missing. Therefore, accepting the appellant's contention, we hold that extended period of limitation is not invokable in this case. For the same

reasons, we also hold that penalty under Section 78 of the Finance Act, 1994 is not imposable on the appellant as there is no Mens rea to evade payment of service tax.

5.2 As regards penalty under Section 77(2) of the Finance Act, 1994, we find that neither the Adjudicating Authority nor the Appellate Authority have given any findings on the provisions that have been contravened by the appellant requiring imposition of penalty under Section 77(2) of the Finance Act, 1994. The Adjudicating Authority in para-18 of his order has simply mentioned that "the appellant is also liable to the penalty under Section 77 of the Finance Act, 1994" but without any justification. The learned Commissioner (Appeal) has upheld this order also without giving any findings on the provisions contravened by the appellant for imposing the penalty. We are therefore not convinced and accordingly, set aside penalty of Rs.10,000/- upon the appellant under Section 77(2) of the Finance Act, 1994.

6. The appeal is disposed of in above terms.

(Pronounced in the open court on 24.12.2025)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi