CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70657 of 2024

(Arising out of Order-in-Appeal No.172/ST/ALLD/2024 dated 15/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Syed Javed Ahmad, **.....Appellant**
(Qaziyana, Bindki, Fatehpur-212635)

VERSUS

Commissioner of Central Excise, Allahabad ....Respondent
(38, MG Marg, Civil Lines, Allahabad-211001)

<u>APPEARANCE:</u>

Shri Danish Husain, Chartered Accountant &
Shri Mohammad Shariq, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70921/2024

DATE OF HEARING : 07 October, 2024
DATE OF DECISION : 07 October, 2024

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.172/ST/ALLD/2024 dated 15/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order following has been held:-

"4.2 The appellant has contested in the instant appeal that they were engaged in erection/installation of Retro Reflective Sign Boards against the work orders of Krishi Utpadan Mandi Parishad, U.P. which are totally a part of road transportation for use by general public and covered under E. No.12 and 13 of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 but the adjudicating authority has assessed the work as part of advertisement

for the period 2016-17. It has been submitted by the appellant that Retro Reflective Sign Boards is implemented to ensure optimal safety and welfare of public unlike advertisement. Also Krishi Utpadan Mandi Parishad does not consider such services as advertisement but as public welfare work because the department also does not pay service tax to the assessee to pay to the service tax department.

4.2.1 The adjudicating authority has observed on perusal of the documents provided by the appellant that they were engaged in "Advertising Service and the same service in relation to advertisement are not specified as declared service under Section 66E but the same will fall under the definition of service governed under Section 65B(44) and considered as taxable service. Further it has been observed that none of the serial numbers in notification No.25/2012-ST dated 20.06.2012 relates to services provided in relation to advertisement or advertising agency, hence the amount received by the appellant has been held on account of providing advertising services and liable for payment of service tax.

4.3 The main issue in the instant case is to ascertain as to whether the appellant has received the payments during 2016-17 on account of any exempted nature of services in terms of S. No. 12 and 13 of Notification No.25/2012-ST dated 20.06.2012 or not?

4.4 In order to ascertain the nature of services provided by the appellant, all the documents like work orders/contract/agreements, invoices/Bills, Form 26AS, Balance sheet etc. are required to be examined. Here at the appellate stage. appellant has provided copies of work orders/bonds, Form 26AS, P&L A/c for the period 2016-17.

4.4.1 On going through the Form 26AS/Income & Expenditure A/c of the appellant for the period 2016-17, it is observed that they have received payments from different service recipients as under:

S.	*Name of service*	*Payment received under*	*Value of services as*

No	receiver	Section 194C during 2016-17 as per Form 26AS	per Income & Expenditure A/c
1.	DD E/M, Rajyn Krishi Utpadan Mandi Parishad	8682421	22403352
2.	Dy. Director E/M	8630999	
3.	Rajya Krishi Utpadan Mandi Parishad-UP	5084832	
	Total	22398252	

4.4.2 On perusal of the work orders/contract/agreements provided by the appellant it is observed as under:

S. No	Name of service receiver	Work Order No./Date	Name of work	Cost of work	Nature of work
1.	RKUMP Lucknow [Elect./Mect]	16/05.09.16	supply & Installation of 02 Cantilever Retro reflective Sign Board	727465	Taxable nature of work as per 5. No. 12A of Notfn. No.25/2012-ST dated 20.06.2012 as the work contract is beyond the stipulated date 01.03.2015
2.		1675/11.11.16	supply & Installation of o1 No. over head, 02 No. Cantilever Retro reflective Sign Board	1263734	-do-
3.		15/05.09.16	supply & Installation of o1 No. over head, 01 No. Cantilever Retro reflective Sign Board	937930	-do-
4.		14/05.09.16	supply & Installation of 02 No. Cantilever Retro reflective Sign Board	1224028	-do-
5.		1674/11.11.16	supply & Installation of 01 No. Cantilever Retro	1263607	-do-

			reflective Sign Board		
6.		*1652/17.06.16*	*supply & Installation of o1 No. over head, Cantilever Retro reflective Sign Board*	*3025577*	-do-
7.		*1644/21.03.16*	*supply & Installation of o1 No. over head, 02 Cantilever Retro reflective Sign Board*	*3073570*	-do-
8.	*RKUMP Gorakhpur [Elect./Mech-2]*	*64/01.09.16*	*supply & Installation of 02 No. over head o1, Cantilever Retro reflective Sign Board*	*1546085*	-do-
9.		*67/18.10.16*	*supply & Installation of o1 No. over head, Cantilever Retro reflective Sign Board*	*3394855*	-do-
1		*68/18.10.16*	*supply & Installation of 01 Cantilever Retro reflective Sign Board*	*1508976*	-do-
1		*54/02.03.16*	*supply & Installation of o3 No. over head, 02 Cantilever Retro reflective Sign Board*	*2183084*	-do-
1	*RKUMP Sahibabad [Elect./Mect]*	*244/12.08.16*	*supply & Installation of 03 Cantilever Retro reflective Sign Board*	*2541415*	-do-
1		*243/12.08.16*	*supply & Installation of 04 Cantilever Retro reflective*	*2542415*	-do-

			Sign Board		
Total				***25232741***	

4.4.3 It is observed that appellant has provided services of supply & installation of retro reflective sign boards and overhead lights to different units of Rajya Krishi Utpadan Mandi Parishad, U.P. which are of public use and for non-commercial purpose. However the exemption has been sought by the appellant under S. No. 12 and 13 of Notification No.25/2012-ST dated 20.06.2012 which provides as under:

"S. No. 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

*(a) *** to*

*(c)****

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (ii) sewerage treatment or disposal, or

**S. No.12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of*

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b)…………………..to (e)……………………….

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the Ist April, 2020;"

**S. No. 13. Services provided by way of construction, erection, commissioning. installation, completion, fitting out, repair, maintenance, renovation, or alteration of.-*

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public,

(b)............to (e)………………………..

4.4.4 It is observed that work orders allotted to the appellant by Rajya Krishi Utpadan Mandi Parishad, U.P. pertains to supply & installation of retro reflective sign boards and overhead lights and the same has been claimed by the appellant related to road safety and welfare of general public. On going through the exempted nature of works mentioned at S. No. 12. 12A and 13 of Notification No.25/2012-ST dated 20.06.2012, it is observed that S. No.13 provides specific exemption to construction, repair, maintenance, renovation of road, bridge, tunnel, or terminal for road transportation for use by general public and do not have mention of any allied activity like installation of sign boards and overhead lights. The work orders of the appellant are exclusive work of supply & installation of sign boards and overhead lights in mandi premises and outside mandi for general public and the work details mentioned in the work orders allotted to the appellant cannot be said to pertaining to work related to construction, repair, maintenance, renovation, or alteration of road. Therefore the works executed by the appellant do not falls under purview of exempted nature of works mentioned at S. No. 13 of the Mega Exemption Notification.

Further on perusal of works mentioned at S. No. 12A of the Notification, it is observed that nature of work of installation of a civil structure or any other original works meant predominantly for use other than for commerce, *industry, or any other business or profession has been exempted. However such work contracts executed before 01.03.2015 have only been provided to be exempted whereas in the instant case, all the work orders allotted to the appellant have been found pertaining to period beyond 01.03.2015 and therefore all these work orders do not qualify as exempted nature of works under S. No.12A of the Notification No.25/2012-ST dated 20.06.2012. Therefore the claim of the appellant that all the works done by them are exempted in nature in terms of S. No.12 and 13 is not proper and sustainable.*

4.4.5 It is observed that appellant has received payments under Section 194C of the Income Tax Act which are contractual receipts and the same as has been declared as value of receipts in ITR for the period 2016-17 therefore it falls under services as per Section 65 B (44) of the Act. Further appellant could not show the payments received by them during 2016-17 pertaining to any non-taxable/exempted nature of services, therefore the same pertains to taxable services as per Section 65B(51) of the Act and chargeable to service tax.

4.4.6 Further appellant has claimed that service recipient has not treated the work order allotted to them to be taxable under service tax and not paid any service tax.

It is observed from the details of the work orders, income expenditure details, and copy of running bill that there is no mention of service tax applicability. Hence the gross amount received by the applicant is inclusive of service tax and the service tax liability has to arrived considering the gross amount charged as inclusive of service tax in terms of Section 67 of the Act. Accordingly the service tax liability against the appellant needs to be re-quantified as under:

S.No.	*Gross amount during 2016-17*	*S. Tax rate*	*Cum tax value*	*S. Tax liability*
1.	*22403152*	*15%*	*19481176*	*2922176*

Thus the service tax liability against the appellant for the period 2016-17 comes out Rs.29,22,176/. It is observed that the appellant has failed to discharge their Service Tax (including Cesses) liability within stipulated period of time limit, therefore they are also liable for payment of interest under Section 75 of the Act alongwith due service tax for the period 2016-17.

4.5 It is observed that extended period has been invoked in the instant case on the grounds of suppression of facts with intent to evade payment of service tax by the appellant as the fact of non-payment of service tax on the value of services received during 2016-17 has been detected only consequent to enquiry made by the department. It is observed that the fact of providing taxable services was not disclosed on their own by the appellant to the department clearly indicates the intention of the appellant to evade the payment of service tax as department detected the contraventions on the part of the appellant after conducting enquiry against them. It is therefore observed that extended period clause has been rightly invoked against the appellant and they are liable for penalty under Section 78 of the Act.

4.6 It is further observed that contravention of non-registration, non maintenance of records, failure to provide information called by officers and non- filing of returns is evident on records and therefore the penalties under Section 77(1)(a), 77(1)(b) 77(1)(c) and late fee under Section 70 of the Act readwith Rule 7C of the Rules imposed against the appellant in the impugned order are proper and justified."

2.1 On the basis of third party information received from the Income Tax Department, it was observed that during the financial year 2015-16 appellant had received consideration of Rs.2,24,03,352/- from their clients and fail to pay service tax on the same.

2.2 Appellant was asked to submit documents such as copies of Balance Sheet, 26AS, ST-3 returns, ST-2, Work Orders, copy of GAR-7/e-payment and other relevant documents to ascertain their exact tax liability, however, they failed to provide the documents.

2.3 Proceedings culminated into issuance of show cause notice dated 20.10.2021, asking them to show cause as to why-

> *"(i) The service tax amounting to Rs. 33,60,503/- (Rs. Thirty Three Lakhs Sixty Thousand and Five Hundred Three only) Including applicable cess, should not be demanded and recovered from them under the proviso to section 73(1) of the Finance Act, 1994;*
>
> *(ii) The interest due thereon on the value of service tax payable should not be demanded and recovered from them under section 75 of the Finance Act, 1994;*
>
> *(i) Penalty should not be imposed upon them under section 78 of the Finance Act, 1994 for the failure to pay service tax and suppressing the facts and value of taxable service with intend to evade payment of service tax;*
>
> *(ii) The service tax so collected from the customers and not deposited with the Govt. exchequer, if any, should not be demanded and recovered from them under section 73A of the finance Act, 1994;*
>
> *(iii) The interest due thereon on the amount of service tax collected and not deposited by the party to the credit of Central Government, if any, should not be demanded and recovered from them under section 738 of the Finance Act, 1994;*
>
> *(vi) Penalty should not be imposed upon them under section 77(1)(a) of the Finance Act, 1994 as amended for non-registration;*
>
> *(vii) Penalty should not be imposed upon them under section 77(1)(b) of the Finance Act, 1994 as amended for non-maintenance of accounts and records;*

(viii) Penalty should not be imposed upon them under section 77(1) (c) of the Finance Act, 1994 as amended for non-submitting of documents as were called for,

(ix) Penalty should not be imposed upon them for non filing of ST-3 returns under the provisions of section 70 of the Finance Act, 1994 read with the Rule 7C of the Service Tax Rules."

2.4 This show cause notice was adjudicated as per the Order-in-Original No.107/ST/AC/RBL/2022 dated 31.01.2023 holding as follows:-

"ORDER

(i) *I confirm the demand of Rs. 33,60,502/- (Rs. Thirty Three Lakhs Sixty Thousand and Five Hundred Two only) the proviso to section 73(1) of the Finance Act, 1994;*

(ii) *I order for charging interest at the appropriate rate under the provisions of Section 75 of the Act on the amount of service tax confirmed at (i) above.*

(vi) I also impose a penalty of Rs. 5,000/- (Rupees Five Thousand only), upon the party for non maintenance of accounts and records under Section 77 (1) (b) of the Act.

(vii) I also Impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only), upon the party under the provisions of section 77(1)(c) of the Act.

(vii) I drop the demand of penalty/late fee under section 70 of the Act read with Rule 7C of the Rule for non filing of ST-3 returns."

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of, as per the impugned order referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Danish Husain learned Chartered Accountant & Shri Syed Javed Ahmad learned Counsel appearing for the appellant and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- services provided by them were erection/installation of Retro Reflective Sign Boards on the roads, which are very important and beneficial part of road transport and are solely installed/erected for use by the general public.
- These services has been done for Krishi Utpadan Mandi Parishad, Uttar Pradesh, which a local government body.
- These services provided by them are exempt from service tax as per exemption Notification No.25/2012-ST dated 20.06.2012, as amended.
- The services recipient i.e. Krishi Utpadan Mandi Parishad do not consider such services as advertisement service but as public welfare work.
- No service tax liability is due from the appellant.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 From perusal of the work orders, (details reproduced in the impugned order para 4.4.2) it is clear that all the services provided by the appellant were in respect of retro reflective sign boards on the roads for Krishi Utpadan Mandi Parishad.

4.3 Original Authority has confirmed the demand against the appellant by treating these services to be services of advertisement.

4.4 Commissioner (Appeals) has decided the matter by disallowing the claim made by the appellant with regards to admissibility of exemption i.e. entry no.12 & 13 of the Notification No.25/2012.

4.5 The services provided to Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession have been exempted by Sr. No.12

of the said Notification and the services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public.

4.6 We find that the Tribunal in the case of M/s Quest Engineers & Consultant Pvt. Ltd. Final Order No.70226 of 2021 dated 28.09.2021 have held as follows:-

> *"11. Having considered the rival contentions, we find that the following are the admitted facts :-*
>
> *(i) The appellant have provided consulting engineer services to various recipients and from the copy of agreements produced before the Department, that all the services provided are related to road construction activity.*
>
> *(ii) The appellant is registered with the Department for providing the consulting engineer services and have regularly filed the returns and deposited the admitted tax.*
>
> *(iii) The period involved is 2011-12 to 2015-16 and the show cause notice was issued on 5-1-2017, invoking the extended period of limitation.*
>
> *(iv) The appellant have admittedly paid service tax of Rs. 82,91,173/- during the period of dispute.*
>
> *(v) The Revenue have computed the tax liability on the basis of gross turnover as reflected in Form No. 26AS (under the Income Tax provision), which is a document available on the website of Income Tax Department, wherein the data recorded is on cash basis or receipt basis of accounting. Whereas under the provisions of service tax, the tax liability is computed on the basis of accrual on mercantile system of accounting, which is in contrast to the cash basis of accounting.*
>
> *(vi) The only allegation in the show cause notice for invocation of extended period of limitation is - appellant was not paying service tax within time and have not deposited the statutory return in time and thus have fully*

suppressed the material facts with intent to evade payment of service tax.

(vii) It is further alleged that it was only on enquiry by the Department, it was found that appellant have provided consulting engineer services to various recipient(s) for construction department as pure agent of NHAI and EE - Road Construction Department, and have received payments during the periods 2011-12 to 2015-16.

12. Appreciating the facts and circumstances, we find that the allegations of Revenue are frivolous, that it was only on enquiry it came to know about the affairs of the appellant, i.e. providing of taxable service in view of the admitted facts that appellant is a registered assessee under the Service Tax provision, and have been filing their returns and paying tax. It is not alleged by the Revenue that the appellant was not maintaining proper financial records, register and vouchers for their transaction. We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived.

13. We further hold that the extended period of limitation is not available to Revenue under the facts and circumstances. We further hold that the appellant is entitled to exemption under the Notification No. 25/2012-S.T. under Sl. No. 13(a) of the said notification for providing consulting engineer services in the matter of road construction. When road construction is exempt, *every activity is exempt relating to the road construction including consulting engineer services. The appellant also relied on the ruling in Lord Krishna Real Infra Pvt. Limited v. Commissioner of Customs, CE & ST, Noida, Final Order No. 70126/2019, dated 27-12-2018. This Tribunal has held in other disputed cases, that even the barricade provided on the side of highway, maintaining greenery on the side or middle of highway, construction of any facility, refreshment centre for road users, is also part of the road construction and such activity is also exempt. Even the administrative building constructed by the concessionaire, for construction of the road or highway for administration and collection of toll etc. is part of road."*

4.7 The Tribunal in the case of M/s GMR Project Pvt. Ltd. 2021 (44) G.S.T.L. 110 (Tri. - Bang.) has held as follows:-

"5. In the case of CST, Ahmedabad v. Shilpa Constructions [2010-TIOL-1132-CESTAT-AHM = 2010 (19) S.T.R. 830 (Tribunal)], another coordinate Bench of this Tribunal, with regard to construction of driveway in the petrol pump, have held that when a contract recognizes the two activities i.e. the construction of petrol pump and the road within the pump, as separate activities, still the benefit/exemption for 'Road' is available.

6. Having considered the rival contentions and perusal of record, we hold that construction like toll plaza, cattle/pedestrian crossing facilities, parking bay for buses/trucks, rest room for staff and common public at large, etc. are also part of the road, as these are meant for exclusive use by the highway staff and the people using these roads. Further we take notice of several judgments of the Tribunal wherein even greenery done in the middle of the road, by way of divider or on the side of the roads, as well as crash barriers erected on the side of the roads all form part of the road and not exigible to service tax. We also take note of the decision of the Delhi Bench of this Tribunal in the case of Jagdish Prasad Agarwal v. CCE, *Jaipur-I [2017 (3) G.S.T.L. 455 (Tri. - Del.)]. Accordingly, we hold that the appellant is entitled for the exemption under Section 65(105)(zzzza). We also hold that the show cause notice is bad for invocation of extended period of limitation as the same is issued merely on change of opinion on the part of the Revenue. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law."*

4.8 The activities undertaken by the appellant are more or less identical with the activities in the above orders.

4.9 Further, we find that the demand has been made on the basis of the third party information received, appellant was under a bonafide belief that his services were exempt from payment of service tax. The belief was not only his belief but was on the basis of the fact that his client i.e. Krishi Utpadan Mandi Parishad was not paying any tax in respect of these services provided. Commissioner (Appeals) has accepted the said claim made by the appellant by allowing the benefit of cum tax value. However, in case of such a bonafide belief there could have been no reason for invocation of extended period of limitation for making this demand.

4.10 Accordingly, we do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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