CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

(E-HEARING)

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70107 of 2015

(Arising out of Order-In-Appeal No.-MRT-EXCUS-000-APPL-I-97-2015-16, dated -30/06/2015 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

M/s Anubhavi Constructions, **.....Appellant**
(17/1, Foutain Chowk, Abu Lane
Meerut, U.P.)

VERSUS

Commissioner, CGST & Central Excise, Meerut-I

....Respondent

(Meerut)

APPEARANCE:

Shri Anurag Mishra, Advocate for the Appellant
Shri A. K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70789/2025

DATE OF HEARING : 17.07.2025
DATE OF DECISION : 13.11.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Appeal No.-MRT-EXCUS-000-APPL-I-97-2015-16, dated -30/06/2015 passed by Commissioner (Appeals) CGST & Central Excise, Meerut. By the impugned order following has been held:-

Order

(i) I uphold the confirmation of demand of Rs. 14,91,935/- (Rs. 8,98,337/-already appropriated)

(ii) Amt. of Rs. 1,64,469/- to be dropped in r/o service provided to UPRNNL, subject to verification of same by the jurisdictional Dy./ Assistant Commissioner of Central Excise.

(iii) Appropriate interest in r/o (i) above to be paid u/S 75 of the Finance Act, 1994 (Rs. 3,66,121/- already appropriated)

(iv) Penalty of Rs. 14,91,935/- u/S 78 of the Finance Act, 1994 is upheld.

(v) Penalty of Rs. 10,000/- u/S 77 of the Finance Act, 1994 is upheld.

2.1 The Appellant are registered with the Service Tax Department as provider of 'Construction Services other than residential complex, including commercial/industrial building or civil structures'. They have Registration No. ABZPA4108MST001. Acting on the intelligence that the Appellant was not discharging complete Service Tax liability on various taxable services provided by them, the premises of the Appellant were visited on 17.05.2010. Certain records and documents were received under Panchnama on the same date. Statement of Shri Ajay Singhal, Accountant of the Appellant who was present at the time of search was recorded and in his statement he submitted as follows:-

(a) that Shri Anubhav Agarwal was the proprietor of M/s Anubhavi Construction, whose office was at 171/1, Hotel Abu Tower, Abu Lane Meerut:

(b) that M/s Anubhavi Constructions was engaged in taking contracts relating to all type of Electrical works including Erection of Tubular Poles:

(c) that old records in the nature of tenders, work contracts, purchase documents account records, Bills/Invoices of said

the firm are kept at 171/1, Hotel Abu Tower, Abu Lane Meerut;

(d) that he was not aware about Service Tax and Central Excise matters;

(e) that invoices /Bills of M/s Anubhavi Constructions were not being generated at this office and the place from where the bills/invoices were generated, was known to Shri Anubhav Agarwal.

2.2 Subsequently, statement of Shri Anubhav Agarwal, Proprietor of the Appellant was recorded on 27.10.2010 and he in his statement stated as follows:-

(a) that M/s Anubhavi Constructions was carrying out trading of electrical goods and contract work for Government organizations;

(b) that they had never received service tax from any organization;

(c) that the contracts taken by M/s Anubhavi Constructions pertained to Street Lighting, Cabling, Erection of 11KV wires / 33KVA and substation work. They used mainly cables lights, V.C.B, Tubular Poles of M.S.Pipes and Aluminum Conductor.

2.3 From the scrutiny of records/contracts resumed during the course of search and also those subsequently provide by the Appellant vide Letter dated 29.08.2012 for the Financial Year 2009-10, 2010-11 & 2011-12 it transpired that Appellant was engaged in providing 'Erection & Commissioning Services' and 'Business Auxiliary Services'. It was observed that the Appellant had provided services which are classifiable in category as indicated in the table below:-

Sl. No.	Activities Carried	Taxable service
01	Installation of Semi/Mini High Mast Light	"Erection Commissioning & Installation Services

02	Lighting work on Road	"Erection Commissioning & Installation Services
03	Construction work of Substation and Installation of Transformer	"Erection Commissioning & Installation Service
04	Construction work of community center	"Commercial and Industrial Construction"
05	Installation of street light Traffics lights, flood lights & Electrical devices & External Work Electrification	"Erection Commissioning & Installation Services
06	Laying of cables beyond the distribution point of residential or commercial complex.	"Erection Commissioning & Installation Services"
07	Installation of other electrical and Electronic appliances / Devices or providing Electric connection to them;	"Erection Commissioning & Installation Services"

2.4 Appellant was also providing Business Auxiliary Services and was also required to pay Service Tax on the GTA Services.

2.5 From the scrutiny of records it transpired that the Appellant had received against total contract value of Rs.6,11,76,623/- an amount of Rs.4,30,75,271/-. The total abatement as per the Notification No.1/2006-S.T. dated 01.03.2006 comes to Rs.2,81,72,556/- thus the net taxable value inclusive of the Service Tax and CESS leviable comes to Rs.1,49,02,715/- and the net taxable value would be Rs.1,34,46,294/-. The Applicable Service Tax on this taxable value inclusive of CESS was Rs.14,56,421/-.

2.6 As per balance sheet of the Appellant, the Appellant had received an amount of Rs.24,547/- on account of commission. This commission received was required to be taxed under the category of Business Auxiliary Services. The Appellant short paid Service Tax of Rs.2,528/- including CESS on this account.

2.7 It was also observed that the Appellant had paid Rs.12,24,594/- towards freight. Thus they were required to pay Service Tax on this account in respect of GTA Services received by them on reverse charge basis which would have amounted to Rs.32,986/-.

2.8 The Appellant vide their Letter dated 23.11.2012 intimated that they have deposited the Service Tax in respect of the above services as detailed in the table below:-

Taxable Services	Service tax (including E.cess & S.H.Cess) (Rs.) deposited	Interest deposited (RS.)	Challan no. / date of deposit.
Erection,	8,62,822	3,49,782	01/12-11-12,02/12-11-

Commissioning & Installation Service,			12,03/12-11-12,04/12-11-12,20-11-12,21-11-12,21-11-12,
GTA Services	32,986	15,114	06/12-11-12
Business Auxiliary Services	2,529	1,225	05/12-11-12

2.9 The Appellant was registered with the Department for providing taxable services namely 'Construction Services other than residential complex' and though they were providing additional services they never applied for addition of taxable services in their ST-3. They did not submit any information to the Department that they are providing other taxable services and received payments against it. They did not furnished half yearly ST-3 Return in respect of the services for which they were registered. The Appellant have, therefore, willfully suppressed the payment received against these services they by suppressing the fact with intent to evade payment of service tax.

2.10 A Show Cause Notice dated 01.05.2013 was issued to the Appellant asking them to show cause as to why:-

i. *Service Tax alongwith Education Cess and Secondary & Higher Education Cess, total amounting to Rs.14,91,935/- (Rupees Fourteen lakh Ninety One thousand Nine hundred Thirty five Only) should not be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994 and why the amount of Rs.8,98,337/- already paid by them in this regard should not be adjusted against the said liability;*
ii. *Interest under Section 75 of the Finance Act, 1994 should not be charged and recovered from them on the aforesaid amount of Service Tax and why the amount of Rs.3,66,121/- already deposited by them towards interest should not be adjusted against the liability of interest; and*
iii. *Penalty should not be imposed upon them under Sections 76,77 & 78 of the of the Finance Act, 1994 and Rule 7C of Service Tax Rules, 1994 read with Section 70 of the of the Finance Act, 1994.*

2.11 The Show Cause Notice was adjudicated as per Order-In-Original No.54/JC/M-I/2014 dated 10.07.2014 confirming the demand proposed in the Show Cause Notice alongwith interest and penalty under Section 78 equivalent to the amount of tax demanded was imposed and penalty of Rs.10,000/- was imposed under Section 77. The amount deposited by the Appellant during the course of investigation was appropriated.

2.12 Aggrieved, Appellant filed appeal before the Commissioner (Appeals) which has been disposed of as per the impugned order.

2.13 Aggrieved, Appellant have filed this Appeal.

3.1 We have heard Shri Anurag Mishra, Advocate for the Appellant and Shri A. K. Choudhary, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned Counsel submits that:-

- The Service Tax is not leviable on Erection, Commissioning and Installation services. Reliance is placed on
  - Circular No.123/5/2010-TRU dated 24.05.2010.
  - Rajeev Electrical Works [C.E.A. No.64 of 2008 dated 11.05.2010]
  - R.S.T. Infocom (P.) Ltd. [Service Tax Appeal No.7244 of 2021 dated 28.09.2021]
- The Show Cause Notice is vague and is therefore Void Ab Initio as held in following cases:
  - Thirumurugan Enterprises [M.P. No.1 of 2015 dated 30.04.2015]
  - Yashoda Cenima [Civil Misc. Writ Petition No. Nil of 1993 dated 17.12.1993
- No bifurcation of the demand has been made issue wise hence the demand is bad in law:
  - Pacific International Pvt. Ltd. [W.P.(C) No.9943 of 2025 dated 05.05.2025.

- Steel Authority of India Ltd. [(2008) 16 VST 181 (S.C.)]

3.3 Learned Authorized Representative for Revenue reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 The impugned order records as follows:-

> *"5.1 I find that there is no ambiguity about the leviability of service tax in r/o Erection, Commissioning or Installation' services provided by the appellant inasmuch as the appellant has deposited the service tax on the same. The appellant submits that the construction services provided by him towards the construction of Community Center in Ghaziabad (for Ghaziabad Development Authority) should be treated as non taxable as such community center shall be used for the benefit of public at large and that the services provided in connection with non commercial building is out of the ambit of service tax.*
>
> *5.2 In the context of the issue to be decided, letter F.No.B2/8/2004-TRU, dated 10th September, 2004 is reproduced below-*
>
> *"01. The Finance Bill (No.2), 2004 has been enacted on 10.09.2004. With the enactment of the Finance Bill,*
>
> *A. the following new services have come under the service tax levy,-*
>
> *I----------*
>
> ***XI. Construction services (commercial and industrial buildings or civil structures)----------***
>
> *13. Construction services (commercial and industrial buildings or civil structures)*

13.1 Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a laborer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

13.2 The leviability of service tax would 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.

13.3 In case of multi-purpose buildings such as residential cum commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local municipal laws.

13.4 The definition of service specifically excludes construction of roads, airports, railway. transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy.

13.5 The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-ST) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (refer notification No.15/04-ST, dated 10.09.2004) This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under notification no.

12/2003-ST) of exemption towards cost of goods are availed." (emphasis supplied)

A plain reading of para 13 above, reveals that the service provided by the appellant comes under the purview of 'commercial or industrial construction'.

5.3 The contention of the appellant is totally untenable because the service provided clearly satisfies the definition of "Commercial or Industrial Construction Service (CICS). In this regard, there is no ambiguity that GDA is not prevented from carrying out commercial activity, the only condition is that the profit so generated has to flow back into the organization towards fulfillment of its purposes for which it was established.

Therefore, the service rendered to GDA with regard to construction of community center is taxable under CICS.

5.4 Further as per the clarification by the CBEC issued vide F. NO. 137/40/2009-CX. 4, dated 15.9.2009

"On a reference being received by the Board, two following issues were examined for a clear understanding of facts. The first is regarding leviability of service tax on construction of canals for Government projects.

1. As per section 65 (25b) of the Finance Act, 1994 "commercial or industrial construction service" means -

(a) construction of a new building or a civil structure or a part thereof, or

(b) construction of pipeline or conduit, or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools,

acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,
which is-

(i) used, or to be used, primarily for, or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

2. Thus the essence of the definition is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

----------"

I observe that as per the Section 65 (25b) and interpretation as above it is clear that buildings or civil structures should be used or to be used, primarily for, should be occupied, or to be occupied, primarily with; or should be engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry.

Further it is clarified by the Board that the essence of the definition is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged EITHER wholly OR primarily for the furtherance of commerce or industry.

From the above, the logical inference is, that the portions of the building or civil structure so constructed can also be put to use for other purposes besides the primary purpose of carrying out commerce or industry. It is common knowledge that the community centers charge fees according to thair rules, for any function, get together etc., from the public. Once they charge fees from the public, they can hardly be termed as charitable or philanthropic in nature.

5.5 Another contention of the appellant is that, if at all, they would be covered under the provision of 'works contract service' and not under 'CICS'.

I observe that as per the Notification No. 32/2007-ST Dated 22/5/2007 regarding Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. (effective from 1.6.2007) -

"3. (1) Notwithstanding anything contained in section 67 of the Act and rule 24 of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Explanation. For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on

transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract."

Thus it was essential to exercise such option, prior to payment of service tax and it could not be withdrawn till the completion of said works contract. Circular No. 128/10/2010-ST Dated 24/8/2010 further clarifies this scheme -

"Service tax on on-going works contracts entered into prior to 01.06.2007-regarding.-It has been brought to the notice of the Board that the following confusions/disputes prevail with respect to long term works contracts which were entered into prior to 01.06.2007 (when the taxable service, namely, Works contract came into effect) and were continued beyond that date:

3. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies rule 3 (3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced

prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme. (emphasis added)

Thus, to be eligible for the Notfn. No. 32/2007, the appellant should have fulfilled its conditions, which he did not do. Further the Notfn No. 32/2007-ST dt 22.5.2007 has been rescinded by the Notfn. No. 35/2012 dated 20.6.12 (effective from 1.7.12)

Hence the appellant is appropriately covered under 'commercial or industrial construction service

5.6 In this context, I further observe that in the case of M/s AHLUWALIA CONTRACTS (INDIA) LTD VS COMMISSIONER OF SERVICE TAX, NEW DELHI-2015-TIOL-270-CESTAT-DEL it has been held by the Hon'ble Tribunal that-

"Even the Municipal Corporation buildings are not outside the purview of commercial or industrial construction; indeed, many of its buildings are rented to various organisations. A claim has been made that the buildings made for the said hospitals is outside the purview of CICS on the ground that they were made for the charitable organisations. In this regard, there is no ambiguity that charitable organisation is not prevented from carrying out commercial activity; the only condition is that the profit so generated has to flow back into the organisation towards fulfillment of its charitable purposes. Thus, merely because the hospitals were constructed for the charitable organisations do not make the hospitals per se non-

commercial. Indeed these hospitals are not non-commercial and charge the patients for the medical services."

In the context of Community Center of GDA it has already been mentioned that prescribed amount is always charged by them for use of the same by general public. Further, the appellant has failed to adduce any evidence that this community centre does not charge any fee for activities conducted within its premises to prove that it is purely for charitable purpose. Thus 'CICS' provided to GDA for construction of community center definitely comes under the purview of service tax.

In the light of above discussion, I am of the opinion that the appellant's case does not get support from the case laws quoted by him in grounds.

5.7 Extended period As per the Section 73 of the Finance Act 1994, it is amply clear that any tax not levied or paid, short levied or short paid might be recovered from the party. The show cause notice for realisation of tax not levied or paid or short levied or short paid could be issued within one year from the relevant date. After amendment with effect from 28th May, 2012 by the Finance Act, 2012, the period of limitation is 18 months instead of one year. However, in view of the Proviso, where Service Tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of Chapter V of the Finance Act, 1994 with intention to evade Service Tax notice may be issued within five years instead of one year.

From the records it is evident that the appellant got themselves registered only for providing taxable service namely 'construction services other than residential complex including commercial/industrial building or civil structures' and they did not apply for addition of other taxable services

which were provided by them as discussed in previous paras. The appellant did not submit any information to the department that they had provided above taxable services and received payments against the same, which was mandatorily required of them. They failed to submit statutory ST-3 returns for the services for which they had registered themselves with the department. Thus the appellant had wilfully avoided in furnishing the details of services provided by them in order to evade payment of service tax, whereas services were provided right from 2008-09 itself. Malafide intent is clearly proved as the appellant failed to deposit the requisite tax with the department for several years. Had the Departmental Officers not visited the premises of the appellant, initiated an enquiry and unearthed the material facts, the matter would have been remained as it was before the issue of SCN. Therefore proviso to Section 73(1) is applicable for extended period of time. As such, penalty under relevant sections is also liable to be imposed.

Further, for delayed payment of Service Tax, they are liable to pay interest at appropriate rate as per Section 75 of the said Act.

5.8 Appellant's contention is that since he deposited the service tax before the issuance of SCN, penalty should not be imposed upon him.

In this regard even if it is assumed for arguments sake that the appellant was not aware about his liability of payment of service tax, in this context it is observed that he deposited the service tax after 2 years and 6 months of the visit by the Central Excise officers, which is too long a time to realise one's liability of service tax; the cause shown by the appellant is not convincing enough, and the logic offered by the appellant does not hold ground and cannot be accepted. Hence, the penalties u/S 78 (and 77) of the Act have been

rightly imposed by the adjudicating authority. It is also seen that the remaining amount of service tax (and interest) has still not been deposited by the appellant.

Due to the reasons discussed in para 5.7 & 5.8 above, the provisions of Section 73(3) of the Act, are not applicable in the case of appellant.

The Judgments quoted by the appellant are not applicable in the present case, due to the reasons discussed in above paras.

5.9 The appellant submits that out of the confirmed demand, Rs. 1,64,469/- has already been deposited by the service recipient i.e. Uttar Pradesh Rajkiya Nirman Nigam Ltd. and demand of this amount would lead to double taxation. I agree with the appellant on this issue. If it is proved that for rendering of that particular service, requisite service tax has been paid, then directing the appellant to pay service tax again on the same service, is not justified.

In this regard I direct the jurisdictional Dy/Assistant Commissioner to verify the claim put forth by the appellant, with the help of relevant records in this matter, The demand of Rs. 1,64,469/- of service tax shall stand dropped only after proper verification."

4.3 The basic dispute as per the Show Cause Notice is in respect of the activities listed in Table in Para 2.3 above. Circular No.123/5/2010-TRU dated 24.05.2010 clarifies as follows:-

"2. <u>Scope of certain taxable services in brief;</u>

(i)) 'Commercial or industrial construction services', in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered

under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

(ii) Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

(iii) 'Works Contract' incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of 'works contract' if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.

(iv) 'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road

3. The taxable status of various activities, on which disputes have arisen Based on the foregoing, the following

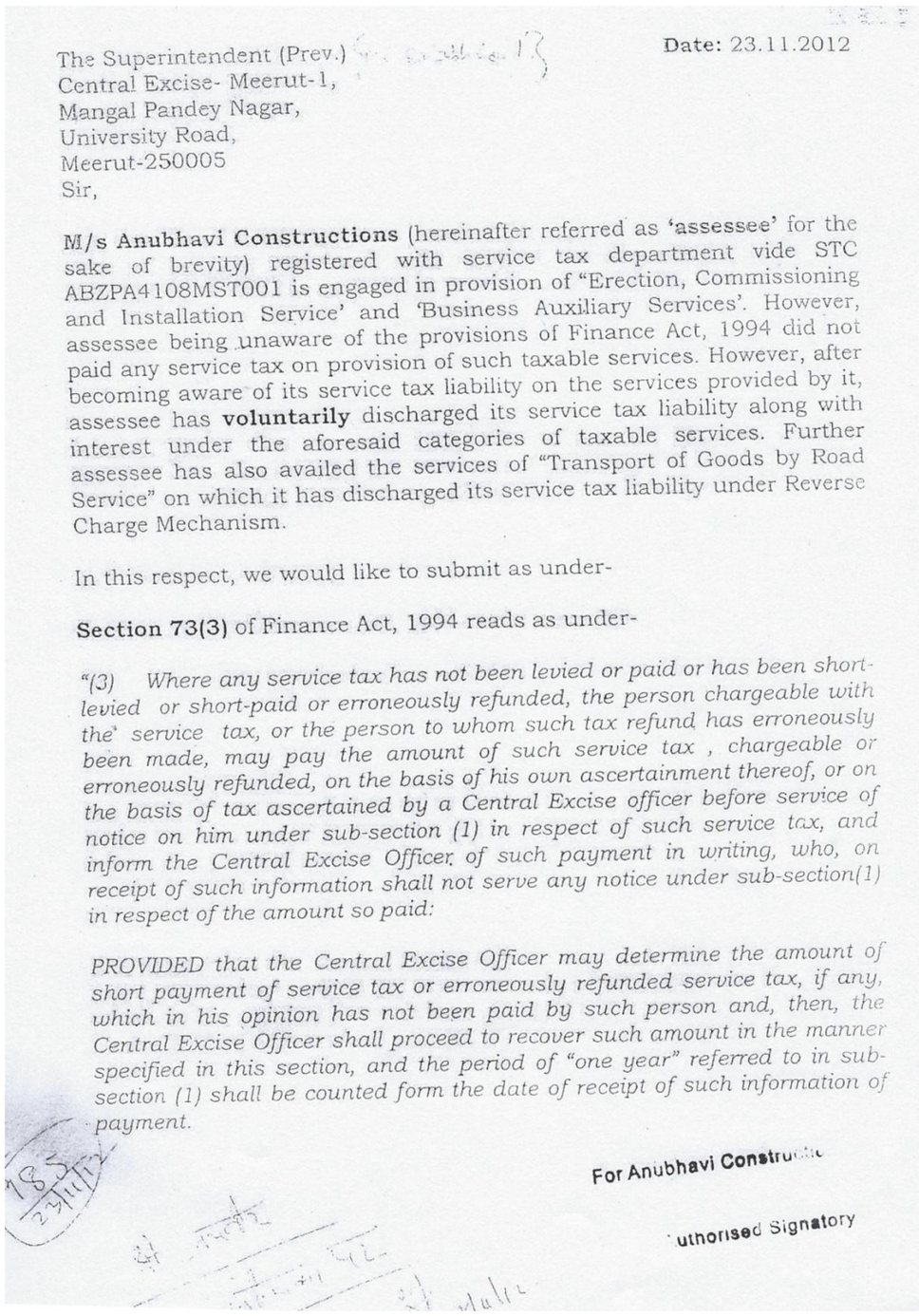
would be the tax status of some of the activities in respect of which disputes have arisen,-

S.No.	*Activity*	*Status*
1.	*Shifting of overhead cables/wires for any reasons such as widening/renovation of roads*	*Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994*
2.	*Laying of cables under or alongside roads*	*Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994*
3.	*Laying of electric cables between grids/sub-stations/transformer stations en route*	*Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994*
4.	*Installation of transformer/ sub-stations undertaken independently*	*Taxable service, namely Erection, commissioning or installation services [section 65 (105] (zzd].*
5.	*Laying of electric cables up to distribution point of residential or commercial localities/complexes*	*Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994*
6.	*Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.*	*Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105) (zzq)/(zzzh)], as the case may be.*
7.	*Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them*	*Taxable service, namely Erection, commissioning or installation services [section 65 (105] (zzd].*
8.	*Railway electrification, electrification along the railway track*	*Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994*

4.4 From the above clarification issued by the Board it is very clear that certain activities which have been sought to be taxed as indicated in the table in Para 2.3 have been stated by the circular itself to be not taxable or taxable under the category other than that specified in the Show Cause Notice specifically. Further we note that appellant has vide their letter dated 23.11.2012 have specifically admitted in respect of leviability of service tax in respect of the erection, commissioning and

installation services. They also discharged the service tax payable in respect of these services along with the interest.

4.5 The letter dated 23.11.2012 is reproduced below:-



The Superintendent (Prev.)
Central Excise- Meerut-1,
Mangal Pandey Nagar,
University Road,
Meerut-250005
Sir,

Date: 23.11.2012

M/s Anubhavi Constructions (hereinafter referred as **'assessee'** for the sake of brevity) registered with service tax department vide STC ABZPA4108MST001 is engaged in provision of "Erection, Commissioning and Installation Service' and 'Business Auxiliary Services'. However, assessee being unaware of the provisions of Finance Act, 1994 did not paid any service tax on provision of such taxable services. However, after becoming aware of its service tax liability on the services provided by it, assessee has **voluntarily** discharged its service tax liability along with interest under the aforesaid categories of taxable services. Further assessee has also availed the services of "Transport of Goods by Road Service" on which it has discharged its service tax liability under Reverse Charge Mechanism.

In this respect, we would like to submit as under-

Section 73(3) of Finance Act, 1994 reads as under-

"(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax , chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section(1) in respect of the amount so paid:

PROVIDED that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted form the date of receipt of such information of payment.

For Anubhavi Constructions

Authorised Signatory

Explanation- For the removal of doubts, it is here by declared that the interest under Section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section".

In view of section 73(3), it is hereby requested that since the assessee has voluntarily discharged its service tax liability along with interest, show cause notice should not be served upon it.

The calculation sheet of service tax payable and interest thereon is annexed herewith as **Annexure A (Part-I & Part-II)**. Further, the copy of challans deposited by assessee is enclosed as **Annexure B (Part-I & Part-II)**

In view of the above, you are requested not to initiate any proceedings against the assessee.

Hope you will do the needful at the earliest.

Thanking You,

For Anubhavi Constructions

(Authorized Signatory)

4.6 Impugned order specifically takes note of the above and observes that the appellant do not dispute the leviability of service tax in respect of these services. Hon'ble Supreme Court has in case of Systems and Components Pvt. Ltd. [2004 (165) E.L.T. 136 (S.C.)] held as follows:

> ***5.*** *……. The Tribunal has still strangely held that this by itself is not sufficient to show that they are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved."*

4.7 As the Appellant have admitted to the tax liability in respect of "erection, commissioning and installation services",

and "business auxiliary services" and "GTA Services" received by them. They discharged the same along with the interest, even prior to the issuance of the show cause notice. The benefit of Section 73(3) as claimed by the Appellant should have been extended to them in respect of the amount of tax discharged. Accordingly, penalty imposed under Section 78 in respect of the amount deposited along with interest should not have been imposed.

4.8 The dispute is whether in relation to the construction work of community center under the category of Construction Services other than residential complex, including commercial/industrial building or civil structures'. Necessarily the community center cannot be said to be not an activity of commerce. Commissioner (Appeals) have specifically recorded the findings that the community center constructed by the Appellant for Ghaziabad Development Authority is being used for certain prescribed charges to be recovered from the person making use of the said community center. In the case of M/s Ahluwalia Contracts (I) Ltd. [2015-TIOL-270-CESTAT-DEL], following has been held**:**

> ***"6.*** *As regards the contentions of the appellants that the flats made for Delhi Development Authority (DDA) were to be treated as meant for DDA's personal use, this contention is totally untenable because these flats were allotted to individuals and not meant for DDA or for its employees. Therefore, the service rendered with regard to construction of flats for DDA is taxable under CCS. The buildings constructed for BSNL, Reliance or Municipal Corporation clearly satisfy the definition of "Commercial or Industrial Construction Service" (CICS).* ***BSNL is a commercial organisation as is Reliance. Even the Municipal Corporation buildings are not outside the purview of commercial or industrial construction; indeed, many of its buildings are rented to various organisations. A claim has been made that the buildings made for the said hospitals is outside the***

> ***purview of CICS on the ground that they were made for the charitable organisations. In this regard, there is no ambiguity that charitable organisation is not prevented from carrying out commercial activity; the only condition is that the profit so generated has to flow back into the organisation towards fulfilment of its charitable purposes. Thus, merely because the hospitals were constructed for the charitable organisations do not make the hospitals per se non-commercial. Indeed these hospitals are not non-commercial and charge the patients for the medical services."***

Nothing has been placed on record by the Appellant to show that the community center was meant purely of the use of charitable purposes. On the contrary finding has been recorded that the community center was made available to public for their use against prescribed charges. We also note that Hon'ble Allahabad High Court has in case of Greater Noida Authority [2015 (40) S.T.R. 95 (All.)] held as follows:

> ***31.*** *As far as the circular dated 23rd August, 2007 issued by the Government of India, which has been so heavily relied upon by the appellant is concerned, we may record that under Clause 032.01, it has been provided that the Prasar Bharati Corporation (Doordarshan and All India Radio), which has been constituted under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is liable to pay Service Tax for broadcasting services.*
>
> ***32.*** *Similarly under Clause 999.01 with regard to the sovereign/public duties/functions, it has been clarified that activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account. Such activities*

are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to be performed by a sovereign/public authority under the provisions of any law, do not constitute taxable services. Any amount/fee collected in such cases are not to be treated as consideration for the purposes of levy of Service Tax.

33. *However, if a sovereign/public authority provides a services, which is not in the nature of an statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, Service Tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined."*

We also note that in the case of Krishi Upaj Mandi Samiti [2022 (58) G.S.T.L. 129 (S.C.)] Hon'ble Supreme Court has held as follows:

"6. *At the outset, it is required to be noted that the respective Market Committees are claiming exemption under the 2006 circular. The exemption circular issued by the Board reads as under :-*

Circular No. 89/7/2006, dated 18-12-2006 :-

"A number of sovereign/public authorities (i.e., an agency constituted/set up by Government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for

petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant lows. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.

A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

The issue has been examined. The Board is of the view that the 2. activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provision of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/ public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

However, if such authority performs a service, which is not in the 3. nature of statutory activity and the same is undertaken for consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

7. *As per the exemption circular only such activities performed by the sovereign/public authorities under the*

provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning.

8. *The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.*

8.1 *It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.*

8.2 *The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.*

8.3 *As per the law laid down by this Court in a catena of decisions, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is*

plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is so not found in the present case.

8.4 *Now, so far as the submission on behalf of the respondent that in the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption notification, when it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language. Thus, there is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification."*

In view of the above we do not find any merits in the submissions made by the appellant in respect of the demand made under this category.

4.9 In respect of the amount of Rs.1,64,469/- Appellant had claimed that the Service Tax in respect of this amount have discharged by the service recipient i.e. Uttar Pradesh Rajkiya Nirman Nigam Ltd. The impugned order have recorded that there is no dispute that the Service Tax could not have been demanded twice once from the service provider and also from the service recipient. For verification of this amount as being deposited by the service recipient observation has been made that on verification of the deposit the demand shall be dropped. Nothing is available on record to show that the Department conducted any verification subsequently to find out whether Rs.1,64,469/- have been deposited or not. Nothing has been stated at the time of hearing by the Department.

4.10 As far as penalty under Section 77 is concerned, we do not find any merits in the submissions of the Appellant because it is the fact on record undisputedly they have not amended their ST-3 Return to add the additional services which they were providing and also they were not filing the ST-3 Return for the service which they were registered.

4.11 To summarize:-

(i) Demand in respect of 'Erection, Commission & Installation Service', 'Business Auxiliary Services' and 'GTA Services' admitted and discharged by the appellant along with the interest is upheld.

(ii) The demand in respect of 'Construction Services other than residential complex, including commercial/industrial building or civil structures' in respect of construction of community center for the Ghaziabad Development Authority is upheld.

(iii) Penalty under Section 78 of the Finance Act, 1994 is upheld to the extent it is in excess of the amount of the service tax deposited along with interest prior to the issuance of the show cause notice.

(iv) Penalty under Section 77 of the Finance Act, 1994 is upheld.

5.2 Appeal is partly allowed as indicated in Para 5.1.

(Pronounced in open court on 13.11.2025)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Nihal