## CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

**(E-HEARING)**

REGIONAL BENCH - COURT NO.II

**Service Tax Appeal No.70571 of 2020**

(Arising out of Order-In-Original No. AGA-EXCUS-000-COM-0002-2020-2021, dated-27/07/2020 passed by Commissioner, Customs, Central Excise & Service Tax, Agra)

**M/s Ganpati Mega Builders India Pvt. Ltd., .....Appellant**
(D-660/93, Balaji Nagar, Kamla Nagar,
Agra, Uttar Pradesh 282004)

*VERSUS*

**Commissioner, CGST & Central Excise, Agra**

**....Respondent**

(113/4 Sanjay Place, Agra, Uttar Pradesh, 282002)

**APPEARANCE:**

Ms. Rinki Arora, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

**FINAL ORDER NO.70797/2025**

DATE OF HEARING : 17.07.2025
DATE OF DECISION : 13.11.2025

**SANJIV SRIVASTAVA:**

This appeal is directed against Order-In-Original No. AGA-EXCUS-000-COM-0002-2020-2021 dated 27.07.2020 Commissioner, Customs, Central Excise & Service Tax, Agra. By the impugned order following has been held:

*ORDER*

(i) *I hereby confirm .the demand of Service Tax including Education Cesses amounting to Rs. 3,15,48,267.00 (Rupees Three Crore Fifteen Lakhs Forty eight Thousand two Hundred Sixty Seven only\under Section 73(1) of the Act against Ms Ganpati Mega Builders (India) Pvt. Ltd., D-660/93, Balaji Nagar, Kamla Nagar, Agra along with interest under Section 75 of the Act read with Section 174 of the CGST Act, 2017.*

(ii) *I hereby impose penalty of Rs. 31,54,827.00 (Rupees Thirty One Lakhs Fifty Four Thousand Eight Hundred Twenty Seven only) upon the Noticee under Section 76 of the Act, read with Section 174 of the CGST Act, 2017 as discussed above.*

(iii) *I do not impose any penalty under Section 77 (2) of the Act upon the Noticee, as discussed above.*

(iv) *I also impose Late Fee amounting to `60,000/- (Rupees Sixty Thousand only) for delayed filing of ST-3 Returns for the Financial Year 2016-17 and 2017-18 [upto June 2017] under the provisions of Section 70 of the Act read with Rule 7C of the Rules and read with Section 174 of the CGST Act, 2017.*

2.1 Appellant is engaged in providing the taxable service under the category of "Works Contract Services" and registered with Service Tax Department vide Registration Number.AACCG7829ESD001

2.2 They were providing Work Contract Service to M/s Rajya Krishi Utpadan Mandi Parishad, Uttar Pradesh (Mandi Parishad) and claiming exemption from payment of Service Tax in the ST-3 Returns filed by them under various notifications relevant to the said periods. On scrutiny of ST-3 returns. it was observed that the Noticee had provided the services under the category of Works Contract Service but the exemption claimed by them was not admissible to them. Three Show Cause Notices were issued to them and adjudicated as detailed in table below:

| Period | Order in Original | |
|---|---|---|
| | Number | Date |
| 2009-10 (Oct.'09-March'10) to 2013-14 | AGA-EXCUS-000-COM-0047-15-16 | 31.03.2016 |
| April '14 to March '15 | AGA- EXCUS-000-COM-0026-16-17 | 03.11.2016 |
| April '15 to March '16 | 21- 22/ST/JC/2018 | 02.01.2019 |

By these order the services provided by the Appellant to Mandi Parishad were held leviable to service Tax.

2.3 In addition to the recurring demand in respect of service provided to the Mandi Parishad., it was observed that Appellant was providing Work Contract service to Kanpur Development Authority, Kanpur (KDA) for construction of multi-level Car Parking and renovation of Naveen Market in Financial Year 2015-16 and had received gross amount of Rs. 51,03,063/- on which due Service Tax of 2,95,978/- has already been paid as detailed in the ST-3 return filed for the period October, 2015 to March, 2016 after availing abatement of 60% on the gross amount received for original work under the provisions of clause (ii) of Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

2.4 In corresponding Financial Year 2016-17 and 2017-18 (up to June, 2017) Appellant was claiming exemption from payment of Service Tax in the ST-3 Returns filed by them on 09.02.2019 under various notifications relevant to the said periods. On scrutiny of ST-3 returns, it was observed that they had provided the services under the category of "Works Contract Service" but the exemption claimed by them was not admissible to them.

2.5 To ascertain the actual amount of services, Appellant provided to Mandi Parishad and KDA during financial year 2016-17 and 2017-18 (up to June, 2017),Appellant was asked to provide the copies of Balance Sheet, Form 26-AS and work contract orders for the financial year 2016-17 and 2017-18 (up to June, 2017) vide letter dated 10.12.2018 and 11.01.2019.

2.6 Appellant along with their letter dated 04.01.2019 and letter dated 12.02.2019 submitted the copies of Balance Sheet, Form 26-AS and work contract orders for the financial year 2016-17 and 2017-18 along with ledger of 2017-18 of

Professional Expenses, Freight and Security service. On perusal of Form 26-AS for the financial year 2016-17 and Form 26AS for the Financial Year 2017-18 (upto June, 2017).

2.7 From the scrutiny of the above it was observed that Appellant had received the amounts as detailed in the table below:

| Period | Mandi Parishad | KDA | Total |
|---|---|---|---|
| 2016-17 | 34,34,69,198 | 14,76,14,049 | 49,10,83,247 |
| 2017-18 (upto June 17) | 0 | 2,76,40,606 | 2,76,40,606 |
| Total | 34,34,69,198 | 17,52,54,655 | 51,87,23,853 |

2.8 Appellant had claimed exemption in respect of the amount as received above under Sl. No. 12(a), 12(c), 12( d), 12(e), 13(a), 25(a), 12A(a) & (b) of Notification No. 25/2012-S dated 20.06.2012, as amended. The said exemptions were prima facie did not appear to be admissible to them. Service Tax short paid in respect of these work contract services provided by the Appellant is as per the table below:

| Period | Gross Receipts | Taxable value | Service Tax @ (%) | Service Tax Payable |
|---|---|---|---|---|
| 1 | 2 | 3=40% of 2 | 4 | 5= 3 * 4/100 |
| 2016-17 | 490976079 | 196390432 | 15 | 29458565 |
| 2017-18 (upto June 17) | 27640606 | 11056242 | 15 | 1658436 |
| Total | 518616685 | 207446674 | | 31117001 |

2.9 From the Balance Sheet for F.Y. 2016-17 and 2017-18 [Ledger A/c upto June, 2017), it was observed that Appellant has made expenditures towards receiving services of Goods Transport Agency (shown under the Head of Freight & Cartage), Security Agency Service and Legal Service provided by a firm of advocates or an individual advocate. As the Appellant is a Body Corporate, therefore, they are also liable to pay Service Tax on such services under Reverse Charge Mechanism (RCM), as per provisions of Notification 30/2012-ST dated 20.06.2012. percentage of Service Tax to be paid by the service recipients and service providers in respect of these services.

| Period | Expenses/ Taxable Value | | | | Total Taxable Value | Service Tax @ (%) | Service Tax Payable |
|---|---|---|---|---|---|---|---|
| | GTA | | Security Agency | Legal | | | |
| | Expenses | Taxable Value | | | | | |
| 2016-17 | 3598909 | 1079673 | 1506061 | 57500 | 2643234 | 15 | 396485 |
| 2017-18 (upto June 17) | 437800 | 131340 | 100531 | 0 | 231871 | 15 | 34781 |
| Total | 4036709 | 1211013 | 1606592 | 57500 | 2875105 | | 431266 |

2.10 As per provisions of Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994, Appellant in case of delay in filing their ST-3 return was required to pay the late fees as prescribed. Appellant has filed their ST-3 returns much after the due date as detailed in table below and were thus required to late fees.

| Period | Date of Filing ST-3 | | Delay | Total Late Fees (Not exceeding Rs 20,000 |
|---|---|---|---|---|
| | Due | Actual | | |
| Apr 16 to Sept 16 | 25.10.2016 | 09.02.2019 | 837 | 20000 |
| Oct 16 to Mar 17 | 25.04.2017 | 09.02.2019 | 650 | 20000 |
| Apr 17 to Jun 17 | 15.08.2017 | 09.02.2019 | 543 | 20000 |

2.11 Thus it appeared that Appellant contravened the following provisions of the Finance Act, 1994 and Rule made thereunder:

i. Section 67 of the Act in as much as they did not properly compute the value of taxable services on the basis of Gross Amount charged and received by them in lieu of providing these services.

ii. Section 68 of the Act read with Rule 6 of the Rules in as much as they did not pay Service Tax on the gross amount received by them in lieu of providing these taxable services.

iii. Section 70 of the Act read with Rule 7 of the Rules in as much as they did not themselves assess the tax appropriately on the services provided by them and furnish the half yearly returns in Form ST-3 properly to the department on due date.

iv. Section 68(2) of the Act read with Notification No.30/2012-ST dated 20.06.2012, as amended for non-payment of Service Tax for the services received by them under reverse charge mechanism.

2.12 Thus the amount of the service tax (inclusive of cesses) was liable to be recovered from them along with the interest as per Section 75 of Finance Act, 1994. Appellant was also liable for penalty under Section 76 and 77 (2) ibid, for various contraventions made as detailed above.

2.13 A Show Cause Notice dated 04.04.2019 was issued to them asking them to show cause as to why:

*(i) An amount of Rs.51,86,16,685/-, should not be treated as the gross amount of taxable services of Work Contract provided by them during the Financial Year 2016-17 & 2017-18 (upto June, 2017) and accordingly as to why Service Tax (including applicable Cesses) at appropriate rates amounting to Rs.3,11,17,001/- (Rupees Three Crore Eleven Lakh Seventeen Thousand One only) should not be demanded and recovered from them under Section 73(1) of the Act read with Section 174 of the CGST Act, 2017*

*(ii) Service Tax (including Cesses) amounting to Rs. 4,31,266/- (Rupees Four Lakh Thirty One Thousand Two Hundred Sixty Six only) should not be demanded and recovered from them under Section 73(1) of the Act read with Section 174 of the CGST Act, 2017 for the services received by them under reverse charge mechanism.*

*(iii) Interest at the appropriate rate for the relevant period ill the payment of above Service Tax should not be demanded and recovered from them under the provisions of Section 75 of the Act read with Section 174 of the CGST Act, 2017.*

*(iv) Penalty should. not be imposed upon them under Section 76 of the Act read with Section 174 of the CGST Act, 2017 for non-payment of Service Tax.*

*(v) Penalty should not be imposed upon them under Section 77 (2) of the Act read with Section 174 of the CGST Act, 2017 for the contraventions of the various provisions of the Act and the Rules, as discussed supra.*

(vi) *Late fee amounting to Rs. 60,000/- (Rupees Sixty Thousand only) for delayed filing of ST-3 returns, as discussed above, should not be demanded and recovered from them under Rule 7C of the Rules read with Section 70 of the Act further read with Section 174 of the CGST Act, 2017.*

2.14 The show cause notice has been adjudicated as per the impugned order referred in para 1 above.

2.15 Aggrieved Appellant has filed this appeal.

3.1 We have heard Ms. Rinki Arora, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the Revenue.

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

4.2 Impugned order records the findings as follows:

*"25. I find that the following main issues in the case are to be decided:*

*(i) Whether the exemption from payment of Service Tax in respect of services provided by the noticee to Rajya Krishi Utpadan Mandi Parishad in short ('Mandi Parishad') and Kanpur Development Authority (in short KDA) duing2016-17 and 2071-18 (Upto June, 2017), for construction work under Work Contract would be available under SI. No. 12, 13 & 25 of Notification No. 25/2012-ST dated 20.06.2012?*

*(ii) Whether the exemption from payment of Services received by them under reverse charge mechanism.*

*(iii) Issue relating to demand of interest and penal action against Noticee.*

*Taxability of Construction Work for Mandi Parishad:-*

*26. The noticee pleaded that in respect of construction work undertaken by them for Mandi Parishad and KDA during 2016-17 and 2017-18 (Up to June, 2017), same is* *exempted service under clause 12, 13 & 25 of Notification No. 25/2012-ST dated 20.06.2012 because the Mandi Parishad is a Governmental Authority which came into existence by Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (25 of 1964) of the Uttar Pradesh State Government and the construction work undertaken by them is original work for use other than commerce, industry, or any other business or profession. I find that under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, the State Government declare any area as Market Area and for every Market Area there shall be a Committee to be called the Mandi samiti. On examination of the statutory structure of the Krishi Utpadan Mandi Samiti, it has been found that Mandi samitis a body corporate having perpetual succession and is defined under Section 12 of Chapter-III funds i.e. wages and expenses are being allocated and borne by the Apex Body, the an Apex Body and al the earnings are being transferred to the Apex Body and the of the Uttar Pradesh Krishi Utpadan Mandi Adhiyniyam, 1964 and the Mandi Parishad is Mandi Parishad. Such Mandi Samiti has the authority to levy and collect License Fee, Market Fee etc. and the shops available in such Market Areas are given to the traders of agricultural produces on rent.*

*27. I have perused the copy of Contracts/ Agreements entered into by the Noticee with Mandi Parishad and KDA, it appears that they have mainly constructed Shops, Auction Platform, Parking, Canteen, Godown etc. for the said Mandi Parishad at Orai, Distt. Jalaun and at Bhojla Bharari, Distt. Jhansi and construction of multilevel car parking and renovation of Naveen Market for KDA, which-are commercial in nature and not provided to any Government, local authority or governmental authority. Further, as per the Contracts, VAT/sales tax was leviable on the transfer of property in goods involved in the execution of works contracts. Accordingly, I find that the* *taxable service provided by the Noticee appears to be appropriately classifiable under the "Works Contract Service" as defined under Section 65B(54) of the Act.*

*Therefore, the question to be determined is as to whether any service provided to the "Mandi Parisad" would be exempted or not. The fact is that the Negative list-exempts only the service provided to the Government etc.) which are not commercial in nature. However, careful scrutiny of the activities of a Mandi Parisad reveals that they are into business of Commercial in nature and the infrastructure developed by the Noticee is basically used for commercial activities only. Therefore, even, if it is accepted that Service recipient (Mandiparisad) is a government, the benefit of Notification No.25/2012-ST dated 20.06.2012 SI.No.12, 13 & 25 is not available to the notice.*

*28. And whereas, after the advent of Negative List regime with effect from 01.07.201 2, Section 65B(54) of the Act, defines "Works Contract" as under:*

> *"Works contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance renovation. alteration of any movable or immovable property or for carrying out any other similar ac ivity or a part thereof in relation to such property."*

*29 And whereas, Rule 2A of the Valuation Rules w.e.f. 01.07.2012 reads as under:*

> ***"2A. Determination of value of service portion in the execution of a works contract,***
>
> *Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act,*

*shall be determined in the following manner, namely :-*

*(iii) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.*

*Explanation.- For the purpose of this clause,-*

*(e) gross amount charged for-the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;*

*(f) value of works contract service shall include,-*

*(ix) labour charges for execution of the works;*

*(x) amount paid to a sub-contractor for labour and services;*

*(xi) charges for planning, designing and architect's fees;*

*(xi) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;*

*(xi) cost of consumables such as water, electricity, fuel used in the executior of the works contract;*

*(xiv) cost of establishment of the contractor relatable to supply of labour and services;*

*(xv) other similar expenses relatable to supply of labour and services; and*

*(xvi) profit earned by the service provider relatable to supply of labour and services;*

*(g) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.*

*(iv) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the Service Tax payable in the following manner, namely:-*

> *(C) in case of works contracts entered into for execution of original works, Service Tax shall be payable on. forty per cent, of the total amount charged for the works contract;*
>
> *(D) in case of 'other works contracts, not covered under sub-clause (A), including works contract entered into for,-*
>
> > *(iii) maintenance or repair or reconditioning or restoration or servicing of any goods; or*
> >
> > *(iv) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,*
>
> *service tax shall be payable on seventy per cent of the total amount charged for the works contract.*

*Explanation 1.- For the purposes of this rule,-*

*(b) "original works' means-*

i. *All new construction*
ii. *all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*
iii. *erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;*

*(h) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-*

*(i) the amount charged for such goods or services, if any; and*
*(ii) the value added tax or sales tax, if any, levied thereon;*

*Provided that the fair market value of goods and services supplied may be determined in accordance with the generally accepted accounting principles.*

*Explanation 2,- For the removal of doubts, it is clarified that 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".*

*30(a) And I also find that as per the entry numbers 12, 13 & 25 of the Mega Exemption Notification No. 25/201 2-ST dated 20.06.2012 , which covers the exemption relating to the Works Contract service, with effect from 01.07.2012. Entry No. 12(a) and 12(d) of the said Notification exempts the 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 a commerce industry or any other business or profession and canal, dam or other irigation works respectively. As per Entry No. 12(e) of the Mega Exemption Notification exempts the services provided to the Government, a local authority or a governmental authority regarding works of pipeline, conduit, or plant for (i) water supply (ii) water treatment or., (iii) sewerage treatment or disposal.*

*They also claimed the exemption under entry No. 12A(a) and 12A(b) of the said Notification under which 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 civi structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession and a structure meant predominantly for use as fi) an educational, (i) a clinical, or f(it) an art or cultural establishment has been exempted.*

*Further Entry No. 13(a) of the Mega Exemption, Notification, exempts services provided by way of construction, erection, commissioning., installation, completion. fitting out, repair, maintenance, renovation, or alteration of, a road, bridge, tunnel, of terminal for road transportation for use by general public.*

*The Noticee also claimed the exemption from payment of service tax under Entry No. 25(a) of the said notification for the services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation. The construction of 100 bedded hospital at Aligarh, Jaunpur, Shahjahanpur under HSCC India Ltd. (Govt. of India Enterprises), Canal Work under water resources Divison-2, Kesli Bazar,* *Sagar(MP), Construction of 100 Bedded Maternity wing at S.N. Medical College, Agra under CDS, Construction of Government Forest Training School, Amarkantak, AnoopPur (MP), Boundary fencing for MTRC towers & CERs in BRE-MGS section under North Central Railway and construction of road and other related work at Sarswati Hitech City at Allahabad under UPSIDC are covered under these and are thereby exempted from the levy of Service Tax.*

*30 (b) However, the other works contract executed by the Noticee in respect of Mandi Parishad and KDA appears liable for payment of Service Tax, as the same are for construction of Shops, Auction Platform, Parking, Canteen, Godown etc. and construction of multilevel car parking and renovation of Naveen Market for KDA, which are not only commercial in nature but also "not provided to any Government, local authority or governmental authority. Though the Noticee has also constructed some toilets, water supply, sewage line, STP, rain water harvesting, water storage tank, but these are incidental or ancillary to main service for construction of Mandi Sthal (Market Area) for said Mandi Parishad. Thus, I find that the Service Tax is leviable on the entire receipt from Mandi Parishad during 2016-17 and 2017-18 (upto June, 2017) at appropriate rate as a composite service of construction of Market Area under work contract. Further, in respect of KDA, Kanpur the contract for Naveen Market, Kanpur was entered on 05.12.2015 vide पत्रांक डी/ 366 /अ० अ० (1 )/15 -16, and in respect of उपनिदेशक (निर्माण), राज्य कृषि उत्पादन मंडी परिषद्, उ० प्र० लखनऊ contract was entered on 21.03.2016 vide पत्रांक: नि/ लेखा/2016-1225 दिनांक 21.03.201 6 thus the conditions of exemption as provided in SL. No. 12A of Notification No. 25/2012-ST dated 20.06.2012, as amended, are not fulfilled, as the contracts were entered after 01.03.2015. Moreover, I also find the Noticee failed to provide any* *evidence that Mandi Parishad/ Mandi samiti and KDA, Kanpur are Government or local authority or governmental authority.*

*31. And I find that, from the gross receipt from various contracts undertaken by the Noticee are not individually reflected in their Balance Sheets/ ST-3 returns, the value of taxable services provided by the Noticee during the Financial Year 2016-17 and 2017-18 (upto June, 2017), has to be taken from the Form 26AS of the Noticee. From the contracts with Mandi Parishad and KDA it appears that Noticee has done original work of new construction but the value for service portion and value of supply of goods in work contracts is not shown separately in any financial account. Thus, against the taxable services of 'Works Contract Services' provided by the Noticee to Mandi Parishad and KDA during the Financial Year 2016-17 and 2017-18 (upto June,2017), the resultant Service Tax liability has to be determined in terms of clause (i) of Rule 2A of the Valuation Rules. Thus, I find that as per Form 26AS, the Noticee has received an amount of Rs. 14,29,48,829/- from the Dy. Director Construction RKU Mandi Parishad, Jhansi and Rs. 1,40,04,770/- from Raiya Krishi utpadan Mandi Parishad, Orai (UP), Rs. 18,64,08,431/- from Dy. Director Construction, Lucknow (UP) and Rs. 14,76,14,049/- from KDA, Kanpur during 2016-17 and received an amount of Rs. 2,76,40,606/- during Financial Year 2017-18 (upto June, 2017) from KDA, Kanpur and resultant Service Tax liability is calculated as under:*

*TABLE-D*

*(Amount in Rs)*

| *S No* | *Financial Year* | *Gross Amount received by Noticee from Mandi Parishad and KDA (As per Form 26AS)* | *Taxable Value as per Rule 2A(II)(A) of Valuation Rules, 2006 i.e. 40% of gross amt. In Col.3* | *Rate of Service Tax (Inclusive of cesses)* | *Amount of Service Tax payable* | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | *Service Tax* | *Swachh Bharat Cess* | *Krishi Kalyan Cess* | *Total* |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| 1 | 2016-17 | 49,09,76,079 | 19,6390,432 | 15.00% | 2,74,74,660 | 9,81,952 | 9,81,952 | 2,94,58,565 |
| 2 | 2017-18 (upto June 2018) | 2,76,40,606 | 1,10,56,242 | 15.00% | 15,47,874 | 55,281 | 55,281 | 16,58,436 |
| | Total | 51,86,16,685 | 20,74,46,674 | | 2,90,42,534 | 10,37,233 | 10,37,233 | 3,11,17,001 |

*31.1 As far as the argument of the noticee that the services are provided to Governmental Authority, and clause 12 of Notification No. 25/201 2-ST dated 20.06.2012, is concerned; the same is reproduced, before further deliberation*

> *"Services provided to the Government, a locail 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) …*
>
> *(c) …*
>
> *(d) …*
>
> *(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or"*

*Similarly the claimed exemption under clauses 13 & 25 of said notification is reproduced, as under:*

*As per exemption under clause 13 of Notification No. 25/2012-ST dated 20.06.2012*

> *"Services provided by way of construction, erection, commissioning, installation, completion, fiting out, repair, maintenance, renovation, or alteration of,-*
>
> *(a) a road, bridge, tunnel, or terminal for road transportation for use by general public:*

> *(b) to (d) …"*

*As per exemption Notification No. 25/2012-ST dated 20.06.2012 clause 25 provides*

> *"Services provided to Government, a local authority or a governmental authority by way of-*
>
> *(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or*
>
> *(b) …….*

*Further, Governmental Authority has been defined in 'Definitions' given in said Notification No. 25/2012-ST dated 20.06.2012 (as amended vide Notification No. 2/201 4-ST dated 30.01.201 4 w.e.f. 30.01.2014), as under:*

> *"For the purpose of this notification, unless the context otherwise requires,-*
>
> *(s) "governmental authority" means an authority or a board or any other body:*
>
> *(i) set up by an Act of the Parliament or a State Legislature; or*
>
> *(ii) established by Government with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.'*

*Thus to be a Governmental Authority, there are two conditions i.e.*

*(a) Such body is set up by an Act of Parliament or a State Legislature or established by Government; AND*

*(b) Such body to be formed with 90% or more equity participation or control by Government to carry out*

*any function entrusted to a Municipality under Article 243W of the Constitution.*

*31.2 As a matter of fact, these Mandi Parishad are formed under State Legislative Act i.e. Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 but not for carrying out any municipality functions which are carried under Article 243W of the Constitution. Further, it is not established by Noticee that 90% of equity or control is by Government. Rather it is run more on commercial basis, having a perpetual succession, collects rent from various shops located in the Market Area; collects fees from traders participating in the activities. No doubt it provides basic facilities like shelter, roads, sanitation, water etc. but does charge fee etc.*

*31.3 I observe that some internal roads, to be used for a selected group of persons not a public road to be used by general public, sanitation construction, water related construction were constructed by Noticee, but no bifurcation was provided by Noticee. As per terms of contract, Noticee carries out various types of construction activities & one of them is Internal road, hence the benefit of clause 12(e), 13 & 25 of Notification No. 25/2012-ST dated 20.06.2012, can also not be extended to them. Further entitlement of benefit of an exemption claimed by the noticee need to be proved by the noticee itself., This has been upheld by the Hon'ble Supreme Court also in the case reference M/s Cincinnati Milacron Ltd Vs CC, 2003(1 53 ELT 181 (T-Del), that fulfilment of condition of an exemption notification is the responsibility of noticee.*

*31.4 With effect from 30.01.2014, the definition of Governmental Authority has been changed and now, if a body corporate is formed by a State Act or Parliamentary Act, same is a Governmental Authority. Thus Mandi Parishad is a Governmental Authority since 30.01.2014. But the activities carried out by it are commercial in* *nature, hence clause 12(a) benefit is not available to Noticee. Since no bifurcation of sanitary work, water work was made available by Noticee, the benefit of same cannot be extended under clause 12(e) & 25 of the Notification No. 25/2012-ST dated 20.06.2012. Further, all work are incidental to prime work of construction of commercial marketing complex, therefore, they are not exempted from service tax on individual basis, by dissecting a big contract into many parts are definitely not allowed.*

*32. Noticee relied on various decisions of higher appellate forum to press the points that substance and not the form should be considered while arriving at the commercial nature of activities. I respectfully bowed before such decisions. I have analysed in detail the formation, activities, fees and rent details of the Mandi Parishad, while coming to conclusion that activities performed by them are commercial in nature. It is the substance and intent of the activities done by Mandi Parishad, which classify them as commercial.*

*33. Accordingly, 1 find that the Service Tax including Education Cesses, at appropriate rate amounting to Rs. 3,11,17,001/- (Rupees Three Crore Eleven Lakh Seventeen Thousand One only) is leviable on the taxable value of Rs. 51,86,16,685/-, received by them in lieu of providing service under the category of Work Contract during the financial year 2016-17 and 2017-18 (upto June, 2017), which is liable to be confirmed against Noticee under the provisions of Section 73(1) of the Act along with interest under Section 75 of the Act.*

*34. Further, I find from the perusal of Balance Sheet of Noticee for F.Y. 2016-17 (RUD-6) and 2017-18 [Ledger A/c upto June, 2017] (RUD-7), that they have made expenditures towards receiving services of Goods Transport Agency (shown under the Head of 'Freight & Cartage'), Security Agency Service and Legal Service* *provided by a firm of advocates or an individual advocate. As the Noticee is a Body Corporate, therefore, they are also liable to pay Service Tax on such services under Reverse Charge Mechanism ([RCM) under the provisions of Rule 2(1) (d) of the Service Tax Rules, 1994 (in short 'the Rules') read with Notification No.30/2012-ST dated 20,06.2012, as amended. As per provisions of Notification 30/2012-ST dated 20.06.2012, percentage of Service Tax to be paid by the service recipients and service providers in respect of these services, as applicable during 2015-16, is as under:-*

| *Sl. No.* | *Description of Service* | *Percentage of service tax payable by the person providing service* | *Percentage of service tax payable by any person liable for paying service tax other than the service provider* |
|---|---|---|---|
| *2* | *in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road* | *Nil* | *100%* |
| *5* | *in respect of services provided or agreed to in respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services.* | *Nil* | *100%* |
| *8* | *in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services.* | *Nil* [Substituted for "25%" by Notfn. No. 7/2015-ST dated 1.3.2015 w.e.f 1.4.2015.] | *100%* [Substituted for "75%" by Notfn. No. 7/2015-ST dated 1.3.2015 w.e.f 1.4.2015.] |

*35. I find that the Noticee being a Body Corporate, hence they are liable for payment of Service Tax as service recipient of the above services. I find from the perusal of the balance sheet for the financial year 2016-17 and Ledger A/c for the period from April'17 to June'17, that the noticee has paid the following amount in lieu of the services received by them and service Tax liability thereon under reverse charge mechanism upon Noticee is calculated as under:*

*TABLE-E*

*(Amount in Rs)*

| *No.* | *Category of service on which Service Tax not paid under RCM* | *Period* | *Gross Amount on which Service tax to be paid* | *Abatement as per Notfn. No. 26/2012-ST dt. 20.06.12* | *Taxable Value on which Service Tax not* | *Rate of Service Tax (inclusive of Cesses)* | *Amount of Service Tax payable* | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | *Service Tax* | *Swachh Bharat Cess* | *Krishi Kalyan Cess* | *Total* |
| *1* | *2* | *3* | *4* | *5* | *6* | *7* | *8* | *9* | *10* | *11* |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| *1* | *Freight & cartage (GTA Service)* | *2016-17* | *3598909* | *2519236* | *1079673* | *15%* | *151154* | *5398* | *5398* | *161951* |
| | | *2017-18 (upto June 17)* | *437800* | *306460* | *131340* | *15%* | *18388* | *657* | *657* | *19701* |
| *2* | *Security Agency Service* | *2016-17* | *1506061* | *0* | *1506061* | *15%* | *210849* | *7530* | *7530* | *225909* |
| | | *2017-18 (upto June 17)* | *100531* | *0* | *100531* | *15%* | *14074* | *503* | *503* | *15080* |
| *3* | *Legal Service* | *2016-17* | *57500* | *0* | *57500* | *15%* | *8050* | *288* | *288* | *8625* |
| | | *2017-18 (upto June 17)* | *0* | | *0* | *15%* | *0* | *0* | *0* | *0* |
| | *Total* | | *5700801* | *2825696* | *2875105* | | *402515* | *14376* | *14376* | *431266* |

*From the above Table-B, I find that Noticee has not paid Service Tax (inclusive of applicable Cesses) amounting to Rs 4,31,266/- (Rupees Four Lakh Thirty One Thousand Two Hundred Sixty Six only) for the services received by them under reverse charge mechanism and the same is demandable from Noticee under Section 73(1) of the Act along with interest under Section 75 of the Act.*

*36. Further, I find that, as per provisions of Section 70 of the Act read with Rule 7C of the Rules, where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government Late Fee, as prescribed in the said Rule 7C of the Rules. On perusal of ST-3 Return filed by the Noticee, it has been noticed that they have late filed their ST-3 Returns, the details are as under:*

*TABLE-F*

*(Amount in Rs)*

| *S. No.* | *Period of ST-3 Return* | *Due date for filing of Return* | *Actual Date of filing* | *Number of days in delay* | *Total Late Fee (Not exceeding Rs. 20,000)* |
|---|---|---|---|---|---|
| *1* | *April 16 to September16* | *25.10.2016* | *09.02.2019* | *837* | *20,000* |
| *2* | *October16 to March'17* | *25.04.2017* | *09.02.2019* | *650* | *20,000* |
| *3* | *April'17 to June'17* | *15.08.2017* | *09.02.2019* | *543* | *20,000* |

*Accordingly, the Noticee is liable for payment of Late Fee amounting to Rs. 60,000/- (Rupees Sixty Thousand only)* *for delayed filing of ST-3 Returns for the Financial Year 2016-17 and 2017-18 [upto June, 2017] under the provisions of Section 70 of the Act read with Rule 7C of the Rules.*

*37. I also find that the noticee had contravened the provisions of Section 67, 68 & 7C of the Act and Rule 6 & 7 of the Rules, as they failed to properly compute the value of taxable value provided by them; failed to discharge the tax liability and failed to file ST- 3 Returns properly for the impugned period with intent to evade payment of Service Tax and claimed exemption under Notification No. 25/2012-ST dated 20.06.2012, which was not admissible to them. Therefore, Noticee is liable for penal action under Section 76 of the Act. However, as per amended provisions of Section 76 read with Section 788 of the Act, the penalty equal to 10% of the tax evaded is imposable, which comes to `31,54,827.00. I also find that a penalty has been proposed in the SCN under Section 77(2) of the Act for failure to maintain or retain books of account for the taxable services provided by them. I find that the noticee was filing ST-3 returns declaring therein the gross receipts under Work Contract service, however claiming exemption under Notification No. 25/2012-ST dated 20.06.2012 and maintaining the records, on the basis of which Balance Sheet/ Profit & Loss A/c is prepared and audited by the Chartered Accountant and also submitted to the department. Therefore, the allegation of the department is not sustainable on this issue and no penalty is imposable under Section 77(2) of the Act.*

4.3 Appellant have argued that the issue in respect of the demand of the service tax in respect of services provided by the Appellant to Mandi Parishad as per the impugned order is case of recurring demand and the cases for the past period were adjudicated as per the order in original referred in para 2.2 above. The issues raised while confirming these demand have been adjudicated by the CESTAT vide order referred below hold that the demand made in respect of the services provided to Mandi Parishad is not sustainable and was set aside.

| Order in Original | | Service Tax Appeal | Final Order | |
|---|---|---|---|---|
| Number | Date | | Number | Date |
| AGA-EXCUS-000-COM-0047-15-16 | 31.03.2016 | ST/70671/2016 | 70182/2021 | 05.08.2021 |
| AGA- EXCUS-000-COM-0026-16-17 | 03.11.2016 | ST/70073/2017 | 70196-70197 / 2021 | 19.08.2021 |
| 21- 22/ST/JC/2018 | 02.01.2019 | ST/70729/2019 | | |

4.4 We find that the tribunal has considered the issue for period post introduction of negative list regime of taxation i.e. 01.07.2012 in the Final Order dated 19.08.2021 and for allowing the appeals have observed as follows:

> *"12. Having considered the rival contentions, We find that admittedly the Principal-Mandi Samiti is the statuary authority for whom the Appellant have rendered the construction services. Further Sl. No. 12, 13 & 14 of Mega Exemption Notification No. 25/2012-ST reads as follows:-*
>
> > *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) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
> >
> > *(b) A historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*
> >
> > *(c) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*
> >
> > *(d) Canal, dam or other irrigation works;*

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

(f) *A residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;*

*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)* *A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;*

*(c)* *A building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;*

(d) *A pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;*

*14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-*

*(a)* *An airport, port or railways, including monorail or metro;*

*(b)* *A single residential unit otherwise than as a part of a residential complex;*

*(c)* *Low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered*

*under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;*

(d) *Post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or*

*13. From above citation we find that undisputedly the Appellant have rendered construction service to the Mandi Samiti, which is a statuary authority. We, further find that the services provided to Mandi Samiti for construction services in the market yard are not commercial in nature as held by a coordinated Bench of this Tribunal in KRISHI UPAJ MANDI SAMITI Vs. Commissioner of C. Ex & S.T., JAIPUR, 2017(4)G.S.T.L, 346 (Tri.-Del)). Wherein Para 10 & 11 it is held herein with the introduction of Negative List Regime of Taxation w.e.f. from 1st July, 2012, the Mandi Parishad is excluded from tax liability. Under Section 66 D (d) provides exemptions for services relating to agriculture or agricultural produces by way of renting or leasing of agro machinery, shorting, grading, cooling or bulk packaging, loading, unloading, packaging, storage or warehousing of agricultural produce agricultural extension services by any Agricultural Produce Marketing Committee or Board for sale or purchase of agricultural produce. Accordingly, this Tribunal held that Mandi Samiti or Board are not liable to Service Tax on renting of immovable property used for storage of agricultural produce in the market area. Accordingly, we held that the Court below have confirmed the demand of Service Tax in Appeal No. ST/70073/2017.*

***SERVICE TAX APPEAL No.70729 Of 2019***

*14. Under similar facts and circumstances for the subsequent period 2015-2016, the proposed demand as per the Show Cause Notice was confirmed along with*

> *penalty confirmed by the Joint Commissioner in Appeal before the Commissioner (Appeal) on similar grounds as well as on limitation, held that it is apparent from the record that the demand for the period is clearly time barred. The Impugned Order is not sustainable and was set aside. It was further held that the post-harvest strategy of storage marketing etc. being done by the Mandi Samiti is exempted under serial no. 14 of Notification No. 12/2012-ST. Reliance was placed on the Order-in-Appeal No. 75/ST/Alld/2019 dated 18.04.2019, in the case of M/s. Garg Trading Company Vs. CCE, Lucknow.*
>
> *15. In view of the above findings recorded herein above, we allow the Service Tax Appeal No.70073 of 2017 filed by the assessee with consequential benefit and dismiss the Appeal by Revenue being Service Tax Appeal No.70729 of 2019."*

4.5 Appellant has also placed on record the decision of Hon'ble Allahabad High Court in their own case {Order dated 12.10.2022 in Central Excise Appeal defective No. 3 of 2022, [2022 (10) TMI 583 –Allahabad High Court]} holding as follows:

> *"10. Before dealing with the said submissions, we may note that the Krishi Utpadan Mandi Samiti falls within the definition of Government Authority under clause 2(s) of the exemption notification which reads as under:-*
>
> > *"2.(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution."*
>
> *11. A Government Authority or any body as defined in clause 2(s) is entitled for exemption under Clause-12.*

*12. The Krishi Utpadan Mandi Samiti is established by an Act of the State Legislature to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefor in the State of Uttar Pradesh. Section 16 of U.P. Krishi Utpadan Mandi Adhiniyam has been placed before us to demonstrate that none of the functions and duties of the Committee are commercial or business in nature. Amongst its various functions, as mentioned in sub-Section (2) of Section 16, it is required to standardise specified agricultural produce and regulate trade charges, market practices and customary methods of sale and purchase of specified agricultural produce; to provide suitable amenities in the market yards; construct, repair and maintain link roads, pathways and market lanes and bye-lanes in the market area. It is to ensure fair dealings between the producers and the purchasers of specified agricultural produce. While discharging its functions, the Committee requires construction of shops, market yards, warehouses, for packaging, storage, cooling or bulk packaging etc in the market area, the constructions which were carried out by the respondents.*

*13. Having perused the scheme of the Mandi Samiti Act, none of the activities of the Mandi Samiti can be said to be for commerce, industries or any business purposes. The services provided by the respondent assessee to Mandi Samiti by way of construction, erection, commissioning or installation of original work pertaining to "Post-harvest storage infrastructure" for agricultural produce including a cold storage for such purposes are exempted by virtue of Clause-14. The words "Post-harvest storage infrastructure for agricultural produce" when examined carefully, shows that any construction, erection, commissioning or installation work for providing infrastructure for Post-harvest storage of agricultural produce would fall within the meaning of Clause-14. The words "Post-harvest* *storage infrastructure for agricultural produce" when read carefully would mean to include the work of constructions etc for creation of storage infrastructure for agricultural produce after harvesting and, thus, would be covered within the meaning of "Work Contract Services" exempted under Clause-14 of the Notification.*

*14. The literal meaning of word "infrastructure" in Black's law dictionary 8th Edition further shows that it means the underlying framework of a system which means not only the construction activities such as shed but the underlying framework i.e supporting services such as roads, toilets etc are to be included in the word "infrastructure" which is needed for Post-harvest storage of agricultural produce.*

*15. The word "infrastructure" thus to be given a purposive meaning under the exemption notification so as to include the underlying framework of the system. It would, thus, include all construction activities other than construction of market sheds etc which are necessary for providing "Post-harvest infrastructure for agricultural produce".*

*16. The contention of the learned counsel for the department/revenue that the construction activities apart from market sheds, shops etc could not be included in clause 14(d) of the notification no. 25/2012-ST dated 20-6-2012, therefore, is not sustainable.*

*17. As regards the findings in the order of the Commissioner that the activities of Mandi Samiti are commercial in nature, it may be noted that the said issue has been brought to its logical end with the decision of the Apex Court in Krishi Upaj Mandi Samiti v. Commissioner of C.Ex. & S.T., Alwar [2022 (58) G.S.T.L. 129]/[2022] 135 taxmann.com 354 (SC).*

*18. It is evident from the Mandi Samiti Act that the Mandi Samiti is a Corporate body and all its functions and duties* *are directed towards regulating the sale and purchase of the agricultural produce. The Mandi Samiti is required to establish markets to exercise superintendence and control over the sale and purchase of the agricultural produce. The construction activities inside the Mandi area cannot be termed as business activities.*

*19. In the similar facts and circumstances of this Court in Central Excise Appeal No. 06 of 2022 had taken a view that the provisions of Mega Exemption Notification in light of the functions and duties of the Krishi Utpadan Mandi Samiti would be applicable in case of "Work Contract Services" provided by the Contractor to Krishi Utpadan Mandi Samiti and the Contractor would be entitled to exemption from levy of service tax in view of the exemption notification no. 12/2012-ST. The argument of the learned counsel for the Appellant revenue therein that the activity of letting/renting of Krishi Utpadan Mandi Samiti being commercial has been turned down."*

4.6 On going through the above orders we are not in position to draw any support in respect of the issues that are raised in the present case. CESTAT order referred above relies only on the decision of Delhi Bench in case of Krishi Upaj Mandi Samiti [2017 (4) GSTL 346 (T-Del)] and do not record any finding in respect of the admissibility of the exemption under Notification No 25/2012-ST. Thus to this extent this order is sub-silento and cannot be relied upon as binding precedent. Hon'ble Allahabad High Court has in the case of Super Cassette Industries Ltd. [1997 (94) ELT 302 (ALL)] held as follows:

***"8.*** *……… The mere fact that the CEGAT has accepted the claim for refund in some other cases cannot be a ground for taking the view that the credit taken by the petitioner was correct and its reversal was illegal and Article 14 cannot be invoked by the petitioner for claiming equality [See Chandigarh Administration v. Jagjeet Singh J.T. 1995 (1) S.C. 445]."*

4.7 The issue decided by the Delhi Bench in case of Krishi Upaj Mandi Samiti, was in respect of the services provided by the Krishi Upaj Mandi Samiti and not in respect of the services provided to the Krishi Upaj Mandi Samiti. Bench has observed that the services provided by the Krishi Upaj Mandi Samiti are commercial in nature and would be subjected to service tax prior to 01.07.2012. The services provided by the Krishi Upaj Mandi Samiti are excluded from purview of Service Tax as per Section 66D. The observations made in the said decision are reproduced below:

> *6. We have heard both the sides and perused the appeal records. First, we considered the preliminary objection regarding validity of some of the demand notices. The Appellants claimed that demand notices issued after 1-7-2012 cannot invoke charging Section 65 or tax entry under Section 65(105)(zzzz) of the Finance Act, 1994. These provisions ceased to exist with effect from 1-7-2012. We note that Notification No. 20/2012-S.T., dated 5-6-2012 is very clear. It stated that Section 65 of the Act shall not apply with effect from 1-7-2012 except as respects things done or omitted to be done before the said Section 65 so ceases to apply. Accordingly, in view of this clear saving provision, we find no infirmity in the demands raised after 1-7-2012 for periods prior to that date. Regarding invoking old provisions of Act for periods post 1-7-2012, we note that it is well settled legal principle that mention of incorrect section/rule will not make the proceedings invalid. The scope of demand along with applicable facts are brought out in the notice. Not mentioning the changing Section by itself will not be fatal to the proceedings.*
>
> *7. The Appellants' status as an authority created under a State enactment is not in dispute. Their overall functions and the activities were regulated by the said enactment and the rules made thereunder is also an admitted fact. The Appellant strongly pleaded that they are allotting*

*land/shops to various traders in furtherance of their statutory functions for promoting welfare of agriculturists. Reliance was placed by the Appellant on the clarification issued by the Board vide Circular dated 18-12-2006. The said circular is reproduced below :-*

> *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 laws. 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.*
>
> *2. The issue has been examined. The Board is of the view that the 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.*

*3. However, if such authority performs a service, which is not in the 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 levaible, if the activity undertaken falls within the ambit of a taxable service."*

*8. We note that the claim of the Appellant for exclusion from the Service Tax liability in terms of the above Circular was examined by the lower authorities. In one of the impugned orders, it is recorded as below :-*

*(i) Services provided by them with a view to regulate agriculture produce market wherein they charge market fee (mandi shulk) for issuing licence to wholesale trader cum-commission agent, any other buyer of agriculture produce, etc. As statutory body the Appellant provide basic facility in the market area out of the market fee collected from licensee, mainly to facilitate the farmers, purchasers and others. This activity of the Appellant is not taxable as clarified under C.B.E. & C. Circular No. 89/7/2006-S.T., dated 18-12-2006 read with C.B.E. & C. Circular No. 157/8/2012-S.T., dated 27-4-2012.*

*(ii) The Appellant have been providing another kind of service, which is not in the nature of Statutory activity and the same is undertaken for a*

> *consideration like renting of shops, canteen, dharamkanta in the krishi upaj mandi samiti market area. I find that this is liable to Service Tax as amply clarified in Para 3 of C.B.E. & C. Circular No. 89/7/2006-S.T., dated 18-12-2006 and reiterated under para 6 of C.B.E. & C. Circular No. 157/8/2012-S.T., dated 27-4-2012.*

*9. It is relevant to note that here that the allotment of land/shops to the traders is not in terms of the Rajasthan Agricultural Produce Markets Act, 1961 or the rules made thereunder. In fact, in the written submissions, made by the ld. Counsel for the Appellants in Appeal No. ST/50069 of 2017 and ST/51936/2016, it is specifically mentioned that the allotments of land and shops were made by the Appellants in terms of the Immovable Property Allotment Rules, 2005 and the fees are received for such allotments. We have examined sample copies of allotment letters and agreements, entered into by the Appellants with the traders. The Appellants allotted shops/godown/platforms towards a monthly consideration called as allotment fee. The allottee shall pay three months advance of allotment fee, which shall be kept as a security by the Market Committee. The allottee shall pay the monthly allotment fee on or before 5th of every month. We have perused the allotment letter as well as agreements. The agreement clearly mentions that the allotment is made for a consideration of allotment fee/lease amount. The terms of the agreement/allotment letter clearly indicated the arrangement for renting of immovable property for a consideration. The fact that the allottee uses the shop/premises for commercial purpose is not in dispute. As such, we find the claim of the Appellant that the allotment of shop or land to the traders cannot be considered as "renting of immovable property" is not tenable. We also do not agree with the submission of the Appellant that such renting out of shop/land is a mandatory/sovereign function* *carried out by the Appellant. There is no support for such assertion. As such, we find that the Appellant are liable to Service Tax on the considerations received by them for renting out the shop/land to traders and others for activities of furtherance of commerce.*

*10. However, we note that with the introduction of Negative List Regime of Taxation w.e.f. 1-7-2012, the Appellants' services were excluded from the tax liability. The provisions of Section 66D are as below :-*

> *66D. The negative list shall comprise of the following services, namely :-*
>
> *(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -*
>
> > *(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*
> >
> > *(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*
> >
> > *(iii) transport of goods or passengers; or*
> >
> > *(iv) any service other than services covered under clauses (i) to (iii) above, provided to business entities;*
>
> *(b) services by the Reserve Bank of India;*
>
> *(c) services by a foreign diplomatic mission located in India;*
>
> *(d) services relating to agriculture or agricultural produce by way of -*
>
> > *(i) agricultural operations directly related to production of any agricultural produce*

*including cultivation, harvesting, threshing, plant protection or testing;*

*(ii) supply of farm labour;*

*(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;*

*(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;*

*(v) loading, unloading, packing, storage or warehousing of agricultural produce;*

*(vi) agricultural extension services;*

*(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.*

*11. It is clear that the Appellants, being an Agricultural Produce Marketing Committee, is excluded from the tax liability in terms of the above provisions. Services relating to agricultural produce by way of storage or warehousing are in the negative list. The scope of negative list has been examined by the Board in the Education Guide dated 20-6-2012. Para 4.4.9 of the said Guide states as below :-*

> *4.4.9 Would leasing of vacant land with green house or a storage shed meant for agricultural produce be covered in the negative list?*
>
> *Yes. In terms of the specified services relating to agriculture 'leasing' of vacant services land with or*

> *without structure incidental to its use' is covered in the negative list. Therefore, if vacant land has a structure like storage shed or a green house built on it, which is incidental to its use for agriculture then its lease would be covered under negative list entry.*

*Further, on APMCs, the guide clarified as below :-*

> *4.4.11 What are the services referred to in the negative list entry pertaining to Agricultural Produce Marketing Committee or Board?*
>
> *Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities, etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, licence fees, rents, etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.*

*12. Accordingly, we hold that the Appellants are not liable to Service Tax on renting of immovable property used for storage of agricultural produce in the market area. In this connection, we refer to Paras 161 and 162 of the Budget Speech of the Hon'ble Finance Minister while introducing Budget 2012-2013. The same is extracted as below :-*

> *161. The important inclusions in the negative list comprise all services provided by the Government or*

> *local authorities, except a few specified services where they compete with private sector. The list also includes pre-school and school education, recognized education at higher levels and approved vocational education, renting of residential dwellings, entertainment and amusement services and a large part of public transportation including inland waterways, urban railways and metered cabs.*
>
> *162. Agriculture and animal husbandry enjoy a very important place in our lives. Practically all services required for cultivation, breeding, production, processing or marketing up to the stage the produce is sold in the primary markets are covered by the list.*

*13. It is mentioned that practically all services required for cultivation, breeding product, processing or marketing up to the stage the produce is sold in the primary markets are covered by the list. In the present case, we note that we are dealing with the shops and land given out on rent, which are in the primary market areas, where agricultural produce are brought for sale. The allotment stipulates that the shops/godown shall be used for business of notified commodities and licence is issued by the Market Committee. As such, the premises in the primary market areas are let out with reference to agricultural produce, their storage/warehousing, etc. During the course of arguments, the ld. Counsel for the Appellants submitted that they are not disputing their Service Tax liability with reference to renting of shops, etc., given to commercial establishments like banks, general shops, etc. In fact, they are discharging Service Tax on the same.*

*14. We have examined the scope of entry in the negative list along with various clarifications issued by the Government. On harmonious construction of all material facts on record, we find that the Appellants are not liable* *to Service Tax on shops/sheds/platforms/land leased out in the notified market area for traders for temporary storage of agricultural produce traded in the market. In respect of shops, premises, buildings, etc., rented/leased out for any other commercial purpose other than with reference to agricultural produce (like bank, general shop, etc.), the same shall not be covered by the negative list and the Appellants shall be liable to Service Tax.*

*15. In view of the above position, we find that the Appellants are not liable to Service Tax for the period after 1-7-2012.*

4.8 This decision of the Delhi Bench has been affirmed by the Hon'ble Supreme Court as reported at [2022 (58) G.S.T.L. 129 (S.C.)] observing 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.*

***9.****In the present case, it is the case on behalf of the Appellants that the activity of rent/lease/allotment of shop/land/platform/space is a statutory activity and the Market Committees are performing their statutory duties cast upon them under Section 9 of the Act, 1961 and therefore they are exempted from payment of service tax on such activities.*

*The aforesaid submission seems to be attractive but has no substance. Section 9(2) is an enabling provision and the words used is "market committee may". It is to be noted that in so far as sub-section (1) of Section 9 is concerned, the word used is "shall". Therefore, wherever the legislature intended that the particular activity is a mandatory statutory, the legislature has used the word "shall". Therefore, when under sub-section (2) of Section 9, the word used is "may", the activities mentioned in Section 9(2)(xvii) cannot be said to be mandatory statutory duty and/or activity. Under Section 9(2), it is not a mandatory statutory duty cast upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders. Hence, such an activity cannot be said to be a mandatory statutory activity as contended on behalf of the Appellants. Even the fees which is collected is not deposited into the Government*

*Treasury. It will go to the Market Committee Fund and will be used by the market committee(s). In the facts of the case on hand, such a fee collected cannot have the characteristics of the statutory levy/statutory fee. Thus, under the Act, 1961, it cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/platform on rent/lease. If the statute mandates that the Market Committees have to provide the land/shop/platform/space on rent/lease then and then only it can be said to be a mandatory statutory obligation otherwise it is only a discretionary function under the statute. If it is discretionary function, then, it cannot be said to be a mandatory statutory obligation/statutory activity. Hence, no exemption to pay service tax can be claimed.*

***10.****The next provision relied upon by the Appellants - respective Market Committees is Rule 45 of the Rajasthan Agricultural Produce Markets Rules, 1963 (hereinafter referred to as "Rules, 1963"), which reads as under :-*

***The Market Committee "45. fund.*** *- All money received by the Market Committee shall be credited to the fund called the Market Committee fund. Except where Government on application by the Market Committee or otherwise shall direct, all money paid into the Market Committee fund shall be credited at least once a week in full into Government treasury or sub-treasury, or a bank duly approved for this purpose by the Director. All balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn upon except in accordance with these rules."*

***10.1****Now, so far as the submission on behalf of the Appellants relying upon Rule 45 of the Rules, 1963 that the fees, which is collected shall be deposited with the Government Treasury and therefore also the Market Committees are exempted from payment of service tax is* *concerned, it is to be noted that on fair reading of Rule 45, the amount of fee so collected on such activities - rent/lease shall not go to the Government. Rule 45 provides how the money received by the Market Committees shall be invested and/or deposited. It provides that all money received by the Market Committee shall be credited to the fund called the Market Committee Fund. It further provides that all money paid into the Market Committee Fund shall be credited once a week in full into Government Treasury or sub-treasury, or a bank duly approved for this purpose by the Director and all balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn except in accordance with the Rules. Therefore, it does not provide that on deposit of the money received by the Market Committees into the Government Treasury/sub-treasury or a bank duly approved, it ceases to be the Market Committee Fund. It will continue to be the Market Committee Fund. Even it is the case on behalf of the Appellants that the fees collected, which will be deposited in the Market Committee Fund will be utilized by the Market Committee for expanding/benefit of the Market Committee etc.*

***11.****Even otherwise, it is to be noted that on and after 1-7-2012, such activities carried out by the Agricultural Produce Market Committees is placed in the Negative List. If the intention of the Revenue was to exempt such activities of the Market Committees from levy of service tax, in that case, there was no necessity for the Revenue subsequently to place such activity of the Market Committees in the Negative List. The fact that, on and after 1-7-2012, such activity by the Market Committees is put in the Negative List, it can safely be said that under the 2006 circular, the Market Committees were not exempted from payment of service tax on such activities. At this stage, it is required to be noted that it is not the* *case on behalf of the Market Committees that the activity of rent/lease on shop/land/platform as such cannot be said to be service. However, their only submission is that the Market Committees are exempted from levy of service tax on such service/activity as provided under the 2006 circular, which as observed hereinabove has no substance."*

4.8 From the above decision it is quite evident that Krishi Upaj Mandi Samiti is statutory authority created under relevant State Legislation. They perform functions which are statutory in nature. However these functions may be of commercial nature or non commercial nature. The functions which are undertaken by such bodies which are commercial in nature are subject to service tax if not exempted. It is for this reason that Delhi Bench and Hon'ble Supreme Court has held that "activity of renting of immovable property" by the Krishi Upaj Mandi Samiti is subject to service tax prior to 01.07.2007. However with effect from this date, by virtue of Section 66D, the activities undertaken by them have been put under negative list hence no service tax is leviable. This decision has been followed by Hon'ble Supreme Court and High Court across country, making distinction between the statutory functions and non statutory functions to determine the leviability of service tax on these statutory bodies. Some of these decision are listed below:

- Agriculture Produce Marketing Committee Gazipur [2023 (2) CEN 293 (SC)]
- Gujarat Industrial Development Corporation [2023 (5) CEN 171 (SC)]
- Tata Power Delhi Distribution Ltd. [2024 (17) CEN 155 (DEL)]

4.9 From the above decisions it is quite evident that the certain statutory activities undertaken by the statutory body have been held to be exempted from payment of service. The decision of Delhi High Court in the case of Tata Power Delhi Distribution Ltd., is the case where liability to pay service tax on services provided to MCD has been upheld. The observations made by Hon'ble High Court are reproduced below:-

> *"5. Mr Gautam contends that respondent no. 1/MCD performs statutory functions, which are delineated in Section 42(n) and 42(o) of the Delhi Municipal Corporation Act, 1957 [in short, "the 1957 Act".]*
>
> *5.1 Furthermore, in support of this very submission, our attention is drawn by Mr Gautam to Article 243W of the Constitution.*
>
> *5.2 The said provision of the Constitution, inter alia, alludes to the powers, authority and responsibilities of municipalities.*
>
> *5.3 In particular, Mr Gautam adverts to sub-clause (ii) of clause (a) of Article 243W of the Constitution.*
>
> *5.4 Based on the said provision, it is emphasised that respondent no. 1/MCD is empowered to perform functions and implement schemes which are entrusted to it, including those in relation to matters, listed in the Twelfth Schedule of the Constitution.*
>
> *5.4. (a) The Twelfth Schedule of the Constitution, inter alia, refers to roads and bridges, as also public amenities including street lighting, parking lots, bus stops and public conveniences. (See items 4 and 17 of the Twelfth Schedule.)*
>
> *5.5 It is, therefore, the contention of Mr Gautam that the omnibus expression "management, maintenance or repair of roads", adverted to in the 2009 Notification, as noted above, would include the functions entrusted to respondent no. 1/MCD, of maintaining street lights.*
>
> *8.6 Although the aforementioned affidavit was not filed by the concerned member of the CBIC, the contents of the affidavit do clear the fog, in a manner of speech, qua the controversy at hand. Since the affidavit is short, we intend to extract the relevant portions of the said affidavit below:*

*"1. That vide order dated 15-7-2019, the Hon'ble Court was pleased to direct the concerned Member of the Central Board of Indirect Taxes to file an affidavit within three weeks clarifying the position whether the notification has been issued by the Government exempting service tax on the maintenance of street lights, if yes, to enclose a copy of the notification along with the affidavit and also to clear the date of effect of the said notification.*

*2. That the Service Tax is a self assessed tax and the assessee must claim the exemption citing the benefit claimed by him. In the present case, M/s BSES Rajdhani Power Ltd or Tata Power Delhi Distribution Ltd. are service providers under Management, maintenance or repair service: in respect of maintenance of Street lights in the area of Municipal Corporation (MCD) of Delhi. The following are the exemption provisions which may be applied:-*

| *S. No.* | *Notification* | *Provision of service Tax* | *Opinion of TRU-II* |
|---|---|---|---|
| *1* | *Notification No. 24/2009 dated 27-7-2009* | *Exempts the taxable service, referred to in sub-clause (zzg) of clause (105) of section 65 of the Finance Act, 1994, provided to any person by any other person in relation to management, maintenance or repair of roads from the whole of the service tax leviable thereon under section 66 of the said Finance Act.* | *Not applicable as service by way of maintenance of street lights provided to a local authority is not a service in relation to management maintenance or repair of roads.* |
| *2* | *Notification No. 32/2010 dated 22-6-2010* | *Exempts the taxable service provided to any person, by a distribution licensee, a distribution franchisee, or any other person by whatever name called authorized to distribute power under the Electricity Act 2003 (36 of 2003), for distribution of electricity,* | *Not applicable as service by way of maintenance of street light provide to a local authority is nothing to do with distribution of electricity.* |

| | | | |
|---|---|---|---|
| | | *from the whole of service tax leviable thereon under section 66 of the said Finance Act.* | |
| *3* | *Entry 12 (a) of Notification No.25/2012 dated 20-6-2012* | *Service provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion fitting out, repair maintenance, renovation, 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.*<br><br>*"Original Works" means (i) all new construction; (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable (iii) erection, commissioning or installation of plant machinery or equipment or structures, whether pre fabricated or otherwise (Notification No. 24/2012 - Service Tax, dated 6th June 2012 refers).* | *Not applicable as street light is not covered in the definition of original works.*<br><br>*Advance Ruling Authority vide Ruling No. AAR/ST/09/2015 dated 28th August 2015 also observed same i.e. maintenance of street lights is not covered by entry no. 12A of Notification No. 25/2012- Service Tax.* |

*4. That there is no exemption available for the services by way of maintenance of street lights provided to a local authority by any service provider including electricity distribution company such as BSES Rajdhani Power Ltd. or Tata Power Delhi Distribution Ltd.*

*It is submitted accordingly." [Emphasis is ours.]*

*9. Although this affidavit was filed only in W.P.(C) No. 11127/2009, it will not impact the cause of the petitioner* *in W.P.(C) No. 4586/2012, as it is also mentioned in the said affidavit.*

*9.1 Given this position, it is quite evident that as far as the Service Tax Department is concerned, during the relevant period, the service provided by the petitioners was not exempted from service tax.*

*9.2 In other words, service tax was leviable on maintenance of street lights, contrary to the stand taken by respondent no. 1/MCD.*

*10. Interestingly, respondent no. 1/MCD had also sought a clarification from the Central Board of Excise and Customs, as to whether the exemption from service tax was available, vis-à-vis maintenance of street lights. The clarification sought, however, did not reap beneficial results for respondent no. 1/MCD. The same is evident upon a perusal of the following extract taken from the affidavit filed by respondent no. 1/MCD:*

" ** ** **

*2. That the present affidavit is being filed in pursuance of the order(s) dated 19-8-2011 and 17-1-2012 passed by this Hon'ble Court. It is submitted that as stated in para No. 44 of, the counter affidavit, the MCD had not applied to the Central Govt. after the rejection order. However, it is submitted that vide letter No. 9095/CA-CUM-FA/2012 dated 16-1-2012, which came to the knowledge of the deponent afterwards than 17-1-2012, through CA-Cum-FA, MCD, the Respondent side gave the said letter/application for exemption of service tax on maintenance of street lights with the Director (Service Tax), Central Board of Excise and Customs, North Block, New Delhi. However, no response to the same has been received till date by the said office of MCD.*

** ** **"

*11. Mr Gautam's contention that the 2009 Notification or the 2010 Notification should be read to include maintenance of street lights does not impress us. It is well-established that an exemption notification has to be read strictly. It does not warrant for inclusion of a service, which is not provided therein.*

*11.1 In this behalf, reference may be made to Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Ors., (2018) 9 SCC 1/[2018] 95 taxmann.com 327/69 GST 239/2018 (361) E.L.T. 577 (S.C.). For the sake of convenience, the relevant part of the said judgment is extracted hereafter:*

> *"66. To sum up, we answer the reference holding as under:*
>
> *66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
>
> *66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.*
>
> *66.3 The ratio in Sun Export case is not correct and all the decisions which took similar view as in Sun Export case stand overruled."*

*11.2 Also see the following judgments: Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar v. Commissioner of Central Excise and Service Tax, Alwar, [2022] 5 SCC 62 = 2022 (58) G.S.T.L. 129 (S.C.)/135 taxmann.com 354 (S.C.); Commissioner of Customs, Bangalore v. GE BE Ltd. and Anr., [2016] 15 SCC 733 = 2015 (322) E.L.T. 785 (S.C.); Commissioner of Customs (Preventive), Mumbai v. M.*

*Ambalal and Company, [2011] 2 SCC 74 = 2010 (260) E.L.T. 487 (S.C.) and State of Jharkhand and Ors. v. Tata Cummins Ltd. and Anr., [2006] 4 SCC 57 = 2008 taxmann.com 1129 (S.C.)*

*12. It is, however, Mr Gautam's contention that roads cannot be maintained or repaired unless the street lights are maintained.*

*12.1 To our minds, while the argument, at first blush, is attractive, it does not help the cause of respondent no. 1/MCD, as we are dealing with an issue involving a claim for exemption from levy of tax. The aphorism that "tax knows no equity", generally holds good. There is no reason why it should not apply in this case as well.*

*12.2 This contention of Mr Gautam, thus, cannot be accepted.*

*13. Therefore, insofar as the first issue, as noted in paragraph 1 above, is concerned, it has to be decided in favour of the petitioners, which is that, during the relevant period, there was no exemption available from the payment of service tax, concerning the maintenance of street lights.*

*14. Insofar as the second issue is concerned, it can be decided based on an admitted fact, which is, that the petitioners have paid service tax, during the relevant period. The logical sequitur would be that the petitioners would have to be reimbursed the service tax that they have paid, since the recipient would have to bear the ultimate burden of the payments in that behalf."*

4.10 Thus in view of the decisions as above, the services provided to the statutory authorities or government will not be exempt from payment of service tax, till it can be shown that the services provide are strictly falling within the purview of exemption notification. Appellant has in the present case in respect of the "work contract services" provided by them claimed exemption under various S No. of the exemption Notification No 25/2012-ST. These clause have been dealt by the impugned order and after examination of the specific activities and the Sl Nos. of the said exemption Notification have concluded that the exemption under that Sl No. is not admissible. Appellant has relied upon the decision of Hon'ble Allahabad High Court, rendered in their own case referred by us in para 4.5 above. We do not find any merits in the reliance placed on the said decision as said decision has been rendered in respect of the activities covered by clause 14 (d) of the Notification No 25/2012-ST. The said clause is reproduced below:

> "14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
>
> (*d*) Post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes."

In the present case Appellant has not even claimed exemption under the said Sl No of Notification No 25/2012-ST. From the impugned order it is evident that the Appellant were claiming exemption in terms of Sl No 12, 13 & 25 of the said Notification. After the decision of the Hon'ble Supreme Court in case of the Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)], the onus to claim and establish that the benefit of the claim to exemption is admissible, is on the person seeking to claim the benefit of exemption. Para 66 of this decision has been reproduced by the Hon'ble Delhi High Court referred earlier in case of Tata Power Tata Power Delhi Distribution Ltd., as the Appellant has not been able to establish their claim to said entry in the notification we do not find any support from the said decision. Impugned order itself admits that Krishi Upaj Mandi Samiti is a Government Authority as defined by Clause 2 (s) of the Notification No 25/2012-ST. In view of the discussions as above, it is for the Appellant to claim the specific entries in terms of which they claim that the services provided by them are exempted from payment of service tax. Adjudicating authority after considering the terms of contracts entered between the Appellant and such government authority have concluded that benefit under the entries claimed by the Appellant is not admissible.

4.11 Further in respect of the services provided by the Appellant to KDA, we find that Hon'ble Allahabad High Court has in acse of Greater Noida Industrial Development Authority [2015 (40) S.T.R. 95 (All.)] has held as follows:

> ***"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.*
>
> ***34.*** *Letting of immovable property for consideration, which is determined on the basis of offers received from public at large by the assessee Greater Noida Industrial Development Authority is a service provided for consideration and not on payment of statutory fees, neither it is a statutory service performed by the assessee.*

> *It may be that the statute permits such activities of letting out of immovable property for augmenting its finances but the same cannot be termed as the service in public interest nor it is a mandatory or statutory functions of the Development Authority. Accordingly such activity of leasing do constitute a taxable service, in our opinion."*

4.12 Thus we find that the demand made in respect of the work contract services provided to Krishi Upaj Mandi Samiti and KDA are sustainable and are upheld.

4.13 Now coming to the demand made in respect of services received by the Appellant, on which they were required to pay service tax under reverse charge mechanism. The demand has been made in respect of Good Transport Agency Services, Security Agency Services and Legal and Professional Fees.

4.14 To dispute the levy of service tax in respect of services received from Good Transport Agencies, Appellant has placed reliance on the decision of the Delhi Bench in case of Aaditya Constructions [2025 (26) Centax 411 (T-Del)] wherein following has been held:

> *"24. As far as the demand of service under reverse charge mechanism on GTA service is concerned, section 65 (50a) defines goods transport agency as any person who provides service in relation to transportation of goods by road and issues a consignment note, by whatever name called. Section 65 (105)(zzq) defines "goods transport agency service" as a service provided to any person by "goods transport agency" in relation to transport of goods by road in a goods carriage. Unless the service provider is a "goods transport agency", its services are not taxable either at the hands of the service provider or at the hand of service recipient because such services are out of the purview of the charging section. In order for an organisation to be a goods transport agency it must issue consignment notes. It is a well settled legal position that individual truck owners who do not issue consignment*

*notes are not covered by the definition of goods transport agency and the services rendered by them are not exigible to service tax.*

*25. Learned counsel for the Appellant submits that to the extent the Appellant had received amount through goods transport agencies it has already paid service tax as a part of settlement under VCES 2013. As far as the individual truck owners are concerned, the services rendered by the Appellant are not exigible to service tax because they are not goods transport agency.*

*26. In view of the above, the demand of service tax under reverse charge mechanism on roads transport agency services on the services rendered by the individual truck owners also cannot be sustained. Since the demand of service tax cannot be sustained, the demand of interest and penalty also need to be set aside."*

4.15 We are in total agreement with above decision of the Delhi Bench. However we find that Appellant has not be able to show as what was the extent of services received by them from individual truck owners. On perusal of Ledger Account of the Appellant for the period in dispute it is evident that Appellant had been receiving services from Good Transport Agencies such M/s Tirupati Agencies, M/s Roop & Sons, M/s Ajay Enterprises, Shree Shyam Transport Corporation India, Shri U P bihar Transport Corporation, Unistone Interior Pvt ltd., Aditya Enterprises, M/s Maa Sharda Transport, M/s sri Jagdamba Transport, M/s Jeet Golden Transport Company, M/s Vishwakarma Trailor Service etc.. In the ledger there are certain entries with regards the payments made in cash, to individuals and to some traders etc., also. Howver Appellant has not given any bifurcation in respect of the services which have been from the Good Transport Agencies and from others towards the transportation of goods. Following the decision relied we hold that in respect of the services received from the Good Transport Agency during the period in dispute the Appellant are required to pay service tax under reverse charge mechanism. Thus in respect of this demand we remand the matter back to the original authority to re-compute the demand by limiting the same to services received by the Appellant from good transport agency only.

4.16 Appellant has not disputed the leviability of service tax under reverse charge mechanism, on the security agency services received by them. We uphold the demand made.

4.17 Appellant has claimed that they amount paid by them under the head "Legal professional and consultation" charges are towards services provided by the chartered accountant for the statutory audit of the books of accounts. They had produced the ledger in this regard before the adjudicating authority. Impugned order has been passed confirming this demand without recording any finding in this regards. We find merits in the submissions made by the Appellant. In respect of services of statutory audit by chartered accountant, service tax could not have been levied under reverse charge mechanism on the Appellant. Thus we set aside this demand.

4.18 We are in complete agreement with the findings recorded in the impugned order in respect of the late filing of the ST-3 returns. Undisputedly Appellant had filed their ST-3 return, with delay of 837 days, 650 days and 543 days. Thus the late fees imposed upon them is just and is as provided by the statute.

4.19 We also uphold the penalty imposed upon the Appellant under Section 76 of the Finance Act, 1994.

4.20 As Appellant have failed to pay the Service Tax due by the prescribed date, the demand of interest under Section 75 is also upheld, by placing reliance on the following decisions:

- P V Vikhe Patil SSK [2007 (215) ELT 23 (Bom)]
- Kanhai Ram Thakedar [2005 (185) ELT 3 (SC)]
- TCP Limited [2006 (1) STR 134 (T-Ahd)]
- Pepsi Cola Marketing Co [2007 (8) STR 246 (T-Ahd)]
- Ballarpur Industries Limited [2007 (5) STR 197 (T-Mum)]

4.21 Summarizing our findings-

- Demand of Rs 3,11,17,001/- made in respect of "Work Contract Services" provided to M/s Krishi Upaj Mandi Samiti and M/s Kanpur Development Authority is upheld.
- Demand of Rs 2,40,989/- on reverse charge basis in respect of Security Agency Services, received by the Appellant is upheld.
- Demand of Rs 1,81,652/- on reverse charge basis in respect of Good Transport Agency Services, received by the Appellant is set aside and matter is remanded to the original authority for re-quantification as per our observations in para 4.15.
- Demand of Rs 8,625/- on reverse charge basis in respect of Legal Services, received by the Appellant is set aside.
- Late fees imposed in terms Section 70 read with Rule 7C of Service Tax Rules, 1994 is upheld.
- Penalty imposed under Section 76 of the Finance Act, 1994 is upheld.

5.1 Appeal is partly allowed as indicated in Para 4.21 above.

(Pronounced in open court on 13.11.2025)

**Sd/-**
**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

**Sd/-**
**(ANGAD PRASAD)**
**MEMBER (JUDICIAL)**

*Nihal*