

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70541 of 2017

(Arising out of Order-in-Original No.01/Commissioner/ST/Noida/2017-18 dated 25/04/2017 passed by Commissioner of Service Tax, Noida)

M/s SSG Infratech Pvt. Ltd.,

.....Appellant

(A-56, Sector-136, Noida-201301)

VERSUS

Commissioner of Central Excise &

Service Tax, Noida

....Respondent

(C-56/42, Sector-62, Noida)

APPEARANCE:

A letter on record, 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.70798/2025

DATE OF HEARING : 18 July, 2025
DATE OF PRONOUNCEMENT : 13 November, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.01/Commissioner/ST/Noida/2017-18 dated 25/04/2017 passed by Commissioner of Service Tax, Noida. By the impugned order following has been held:-

"ORDER

(i) I confirm demand of the service tax amounting to Rs. 2,59,23,457/- (Rupees Two Crores Fifty Nine Lakhs Twenty Three Thousand Four Hundred Fifty Seven Only) under Section 73(2) of the Finance Act, 1994 & order to recover the same from the Party and drop the demand of remaining amount i.e. 2,86,22,671/- (Rupees Two Crores

Eighty Six Lakhs Twenty Two Thousand Six Hundred Seventy One Only) as discussed supra.

(ii) I confirm demand of the service tax amounting to Rs. 49,66,151/- (Rupees Forty Nine Lakhs Sixty Six Thousand One Hundred Fifty One Only) under Section 73(2) of the Finance Act, 1994 & order to recover the same from the Party. As the party has already deposited Rs. 32,43,137/-, I order appropriation of the said amount against the demand of Rs. 49,66,151/-.

(iii) I order for recovery of interest from the Party involved on the aforesaid confirmed amounts in Para (i) & (ii) under Section 75 of the Finance Act, 1994.

(iv) I impose penalty of Rs. 3,08,89,608/- (R. 259,23,457/- Rs. 49,66,151/-) (Rs. Three Crores Eight Lakhs Eighty Nine Thousand Six Hundred Eight Only) on the party under Section 78 of the Finance Act, 1994

(v) I further impose a penalty of Rs. 10,000/- (Rs Ten Thousand Only) on the party under Section 77 (1) (b) of the Finance Act, 1994 as they fail to keep, maintain or retain books of accounts and other documents as discussed supra.

(vi) I further impose a penalty of Rs. 10,000/- (Rs Ten Thousand Only) on the party under Section 77 (1) (c) of the Finance Act, 1994 as they fail to furnish information as called by the officers.

(vii) I further impose a penalty of Rs. 10,000/- (Rs Ten Thousand Only) under Section 77 (2) of the Finance Act, 1994 on the party."

2.1 Appellant is having Service Tax Registration No.AAJCS7616JS0001 for the premises A-6, Sector-30, Noida and engaged in providing taxable services i.e. Construction of Residential Complex services as defined under Section 65(105) (zzzh) of the Finance Act, 1994.

2.2 The major functioning of the assessee is at their new address i.e. A-56, Sector-136, Expressway, Noida and not at their registered address.

2.3 Both the premises of the appellant were searched on 02.02.2015 and found no records about the appellant instead, the officers found one M/s Solitaire Realinfra Pvt. Ltd, a sister concern of the party, functional at the registered address of the appellant. Investigations were undertaken and also statements of various persons were recorded.

2.4 A show cause notice dated 21.04.2016 was issued to the appellant asking them to show cause as to why-

"[i] Service Tax amounting to Rs 5,95,12,279/- (Rupees Five Crores Ninety Five Lakhs Twelve Thousands Two Hundred and Seventy Nine only) (including Education Cess and Secondary Higher Education Cess), being short payment of Service Tax, should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994. Since the assessee has deposited an amount of Rs: 32.43.137/-, should not be appropriated against aforesaid service tax demand as discussed supra.

[ii] Interest at the appropriate rates should not be demanded from them on the short payment of Service Tax under Section 75 of the Finance Act, 1994. Since the assessee has deposited lump sum interest amounting to Rs. 1,00,000/-against their interest liability, the same should not be appropriated against the same.

[iii] Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the facts from department regarding short payment of Service Tax, as discussed supra."

2.5 The said show cause notice was adjudicated as per the impugned Order-in-Original referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 This appeal has been listed for hearing on 16.05.2019, 19.07.2019, 01.08.2019, 06.09.2019, 30.10.2019, 07.01.2020, 24.08.2023, 08.11.2023, 14.12.2023, 08.01.2024, 01.02.2024, 14.02.2024, 01.03.2024, 22.04.2024, 06.05.2024, 29.07.2024, 18.09.2024 and for today i.e.18.07.2025. The Counsel for the appellant either in person or through the letter has only sought for taking adjournments in the matter. Proviso to Section 35C (1A) of the Central Excise Act, 1944 provides as follows-

“35C. Orders of Appellate Tribunal.-

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”

RULE 20 of CESTAT Procedure Rules, 1982 provide as follows:-

Action on appeal for appellant’s default. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal.

In view of the above, we do not find any justification for adjourning the matter beyond three times which is the maximum number statutorily provided. Hence, the matter is taken up for

consideration after hearing Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

3.2 On going through the records we find that appellant had filed a written submission in the Court on 22.04.2024. The said submission of the appellant is taken up for consideration.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authority.

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

4.2 We find that the major portion of the demand has been dropped by the impugned order by observing as follows:-

"5.4 I find that the demand of the service tax on the services rendered to government authorities may be divided into two portions i.e. one prior to 01.07.2012 and another is after 01.07.2012 First I take up the issue of liability of the service tax on the party for the period 2010 to 2012 Le upto 30.06.2012. The party claimed that for the period 01.10.2010 to 30.06.2012, they were providing works contract services to the NOIDA for laying of pipelines under the Ganga Jal Water Scheme construction of underground reservoirs, ranney wells etc. The party claimed that as these services were provided to government authorities and not for commerce or industry.

5.4.1 In this regard, I would like to discuss Section 65(105) (zzzza) of the Finance Act, 1994 which is as under-

"Taxable service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports: railways, transport terminals, bridges, tunnels and dams Explanation For the purposes of this sub-clause "works contract" means a contract wherein, (1) transter of property in goods involved in the execution of such contract is leviabale to tax

as sale of goods, and (ii) such contract is for the purposes of carrying out, (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators, or (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry, or (c) construction of a new residential complex or a part thereof, or (d) completion and finishing services, repair, alteration, renovation or restoration of or similar services, in relation to (b) and (c), or (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

5.4.2 Further, Section 55B of the Finance Act, 1994 explains works contract as 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 activity or a part thereof in relation to such property.

5.4.3 From the contracts submitted by the party with their defence reply, it is found that the party is engaged in various activities such as construction of renney well underground reservoir, laying of cable etc From the nature of work and above definitions, it is evident that the work conducted by the party for authorities comes under the preview of works contract services

5.4.4 I also rely on the Notification No. 24/2009-Service Tax dated 21.07.2009, 54/2010-Service Tax dated 21.12.2010 and 31/2010-Service Tax dated 22.06.2010 which provided exemption from payment of the service tax on the management, maintenance, repair of roads (Notification No 24/2009-Service Tax dated 21.07.2009), certain services when provided within a port or an airport roads (Notification No. 31/2010-Service Tax dated 22.06.2010) and management, maintenance or repair of roads, bridges, tunnels, dams, airports, railway & transport terminals (Notification No 54/2010-Service Tax dated 21.12.2010). I find that though certain services provided to government under works contract services were exempted from payment of service tax but there was no blanket exemption of service tax to all services provided to government. I also gone through the circular no. 137/40/2009-CX 4 dated 15.09.2009, also cited by the party in their defence reply, I find that the said circular was applicable to leviability of the service tax on construction of canals by the Government agencies and not applicable in the instant case I find that prior to 01.07.2012, there was no exemption available to the works contract services provided to the government except few exemption discussed above I find that the there is no exemption available to the party for the works done by them for the NOIDA in 2010-11 & 2011-12 in respect of the underground reservoir, renney well and construction of boundary wall. I find that the amount billed by the party from Noida & UP Jal Nigam for the work related to underground reservoir amounting to Rs.2,11,74,314/- rennywell amounting to Rs 3,91,42.635/- and construction of boundary wall amounting to Rs 6:71,885/ grand fotal Rs 6,09 88,834) are liable for payment of the service tax (total Rs 25:12.740/).

5.6 Now I will discuss the liability of the service tax on construction of electric sub-station and lying of cable for

NOIDA and Ghaziabad Development Authority (GDA). It has been submitted by the party that the sub-station so constructed by them for NOIDA is used by the UPPCL (Uttar Pradesh Power Corporation Limited) which is an undertaking of Uttar Pradesh Government. The UPPCL is responsible for planning and managing the power sector through transmission, distribution and supply of electricity, which is a basic amenity. The objective of the UPPCL is to serve the people and fulfill the social needs of general public and not to make any profit. Thus, UPPCL is non-commercial in nature and as a result construction service provided is outside the purview of the Finance Act, 1994.

I find that the contention of the party is misplaced and incorrect. I have gone through the official web-site of the UPPCL i.e. ww.uppcl.org which reads as under.

"UPPCL will be professionally managed utility supplying reliable and cost efficient electricity to every citizen of the state through highly motivated employees and state of art technologies, providing an economic return to our owners and maintaining leadership in the country.

We shall achieve this being a dynamic, forward looking, reliable, safe and trustworthy organization, sensitive to our customers interests, profitable and sustainable in the long run, providing uninterrupted supply of quality power, with transparency and integrity in operation, providing

TO OUR CONSUMERS:

High productivity reflected in a fair, equitable and cost based tariff across consumer categories, accurate and timely billing on a rational, comprehensible billing basis reflecting actual consumption, and convenient system for payment of dues. Simple and well-advertised procedures,

guaranteed connection of requested load within reasonable time, prompt breakdown attendance, and efficient complaint handling.

Timely actions based on anticipation of the future & perspective planning, and clear communication on customer issues.

TO OUR SHAREHOLDERS:

A secure and well managed asset, corporate governance in line with Kumaramagalam Birla committee recommendations, a business growing organically and through diversification, and satisfied stakeholders.

5.6.1 From the above, it is crystal clear that the UPPCL is an organisation with the aim of providing economic return to their owners with sustained growth and profitability. The UPPCL has also declared that they are managing assets with corporate governance in line with Kumaramagalam Birla committee recommendations, and engaged in business growing organically and through diversification, upto the satisfaction of their shareholders. Thus, I hold that the UPPCL is a business organisation whose aim is to gain growth and profitability which is the basic criterion for commerce and industry and thus not covered under the Notification No. 25/2012-ST dated 20.06.2012.

5.6.2 The construction of electric Sub-station & laying of cables which are to be used by the UPPCL has to generate business i.e. commerce and industry. Therefore, I hold that the service tax is leviable on the construction service provided by the party to NOIDA by constructing an electric sub-station and laying of cables. I also find that party themselves declared that they had deposited service tax on electric cable work done for Ghaziabad Development Authority and opted for VCES scheme 2013. From this fact,

it is evident that the party was also of the view that they were liable to pay the service tax on the laying of cable for the GDA but they did not deposit service tax on the same.

It is observed that while contesting the taxability of the work related to NOIDA or GDA, the party has mainly contended that all the activities undertaken for these authorities are not in relation to Commerce or industry, hence not taxable. I observe that there is no bar if the Noida or GDA undertake activity in relation to commerce and these authorities have constructed several commercial establishments primarily for purpose of commerce. Thus, though most of the activity got executed by the NOIDA/GDA may not be commercial in nature yet still there may be some projects which are commercial in nature. In the instant case, construction of sub-station and laying of cables are for electricity department. I observe that electricity department ie. Uttar Pradesh Power Corporation Ltd. is a commercial concern engaged in production and distribution of electricity to public at large as well as to commerce and industry also. The party has failed to explain as to how this project can be considered as non commercial in nature and they have also not produced any evidence or document to support their contention. The fact is that the NOIDA/GDA got constructed the office which is also being used for Commerce or industry. If the contention of the party is accepted, every construction by NOIDA/GDA shall not be in relation to Commerce or industry I observe this is not the contention or sprit of the referred clause of section 65(105)(zzb) of Finance Act 1994. Hence I hold that amount received against contract for construction of electric Sub station (amounting to Rs. 20,20,50,788/-) and laying of cables (amounting to Rs 26,88,08,997/-) are liable to payment of the service tax amounting to Rs.2,32,79,308/-.

7 Now I take up the issue of construction of store for NOIDA authority in Sector 5. On going through the contract awarded to the party by NOIDA authority for construction of store for keeping equipment. As the said construction of store room cannot be claimed work done for public utility even if the same was done for government authorities, the same cannot be exempted for payment of the service tax. Therefore, I hold that the services used in the construction of store for NOIDA authority comes under the ambit of service tax. Hence I find that service tax amounting to Rs. 1,31,409/- is leviable on the billed amount of Rs. 26,57,960/- on construction of store by the party for the NOIDA authority."

4.3 We find that demand has been confirmed upon the appellant in respect of the services provided to Noida for laying of pipelines under the Ganga Jal Water Scheme construction of underground reservoirs, ranney wells etc. The period of demand is prior and post to 01.07.2012. Impugned order concludes that these services do not fall under the category of exempted services. However, we find that Larger Bench of this Tribunal in the case of M/s Lanko Infratech (38) STR 709 (LB-Tri.) have held as follows:-

"21. *In the light of the foregoing analyses, we record our conclusions on the several issues framed, as follows:*

*(a) **Issue (A) :** Laying of pipelines/conduits for lift irrigation systems for transmission of water or for sewerage disposal, undertaken for Government/Government undertakings and involving associated activities like trenching, soil preparation and filling, supporting masonry work, jointing of pipes, electro-mechanical works or pumping stations and like activity, is classifiable only under Commercial or Industrial Construction Service (CICS) for the period up to 1-6-2007 and not under Erection, Commissioning or Installation Service (ECIS);*

(b) Issues (B), (C) and (D) :

(i) Construction of canals for irrigation or water supply; construction or laying of pipelines/conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract "in respect of dam" and is thus excluded from the scope of "Works Contract Service" defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision;

(ii) Turnkey/EPC project contracts, enumerated in clause (e), Explanation (ii) in Section 65(105)(zzzza) of the Act is a descriptive and ex abundant cautela drafting methodology. In the light of the decision in Alstom Projects India Ltd., fortified by the Special Bench decision (dated 19-3-2015) in Larsen & Toubro Ltd. reference, a turnkey/EPC contract is taxable prior to 1-6-2007 as well. On and since 1-6-2007, turnkey/EPC contracts must be classified on the basis of the essential character of the service provided thereby, with the aid of classification guidelines set out in Section 65A(2) of the Act. Consequently, a turnkey/EPC contract must be classified under any of the clauses (a) to (d), Explanation (ii), Section 65(105)(zzzza). The bundled bouquet of services provided as turnkey/EPC contract, classifiable as Commercial or Industrial Construction Service (CICS) prior to 1-6-2007, would be classifiable under clause (b), Explanation (ii), Section 65(105)(zzzza) on and from 1-6-2007 and would not be exigible to Service Tax if the rendition of service thereby is primarily for non-commercial, non-industrial purpose, in view of the exclusionary clause in clause (b) of the definition of WCS.

This is the only possible and harmonious interpretation possible of the several clauses under Explanation (ii) of Section 65(105)(zzzza), a distinct taxable service defined with constituent elements thereof substantially drawn from elements of pre-existing taxable services like ECIS, CICS

or COCS; and other services when bundled to amount to turnkey/EPC;

(iii) Construction of canals/pipelines/conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/ EPC contractual mode and would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would consequently not be exigible to Service Tax, in view of the exclusion enacted in clause (b); and

*(c) **Issue (E) :** Whereunder an agreement, whether termed as works contract, turnkey or EPC, the principal contractor, in terms of the agreement with the employer/contractee, assigns the works to a sub-contractor and the transfer of property in goods involved in the execution of such works passes on accretion to or incorporation into the works on the property belonging to the employer/contractee, the principal contractor cannot be considered to have provided the taxable (works contract) service enumerated and defined in Section 65(105)(zzzza) of the Act."*

4.4 In terms of the above decision of the Larger Bench, the services provided by the appellant are in nature of Commercial and Industrial construction services as has been held in the impugned order.

4.5 We are concern with the period after 01.06.2007 and the observations made in the said judgment vis-à-vis for the period prior to that, would not be applicable in the present case. The demand has been confirmed holding that these services are not exempted as per the notification no.24/2009-ST dated 21.07.2009, 54/2010-ST dated 21.12.2010 and 31/2010-ST dated 22.06.2010 these notifications exempted service tax on management, maintenance, repair of roads, certain services when provided within a port or an airport and the services

provided by the appellant are associated with supply of materials and in terms of decision of Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes and Anr., reported in 2016-TIOL-155-SC-VAT would qualify as Work Contract Services. Impugned order records that Work Contract Services provided to government authorities are exempt from payment of service tax but the said exemption is not applicable on certain specific work contract services. The services provided by the appellant to the Noida are not within the said category. Appellant has also relied upon the decision in the case of M/s Jyoti Buildtech (P) Ltd. Vs CCE & ST, Noida 2017 (3) GSTL 116 (Tri.-All.) to argue that these services are exempted from payment of service tax.

4.6 However, we do not find any merits in the said submission for the reason that the said order has been passed following the decision of M/s Lanco Indian Hume Pipes Company Ltd. 2015 (40) STR 214 (Mad.) for the period prior to 01.06.2007 and the demand has been set aside mainly on the ground of extended period of limitation.

4.7 We also find that the impugned order holds that NOIDA, GDA and HUDA are government authorities within the meaning of clause 2 (s) of the exemption Notification No 25/2012-ST. However it holds that these authorities are undertaking commercial and non commercial activities. Thus the benefit of the exemption as per this notification will not be available but needs to be examined categorically activity wise and the terms of agreement with the service provider. Hon'ble Supreme Court has in the case of Krishi Upaj Mandi Samiti [2022 (58) G.S.T.L. 129 (S.C.)] observed 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 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.

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 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, from the whole of service tax leviable thereon under section 66 of the said	Not applicable as service by way of maintenance of street light provide to a local authority is nothing to do with distribution of electricity.

		<i>Finance Act.</i>	
3	Entry 12 (a) of Notification No.25/2012 dated 20-6-2012	<p><i>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.</i></p> <p><i>"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).</i></p>	<p><i>Not applicable as street light is not covered in the definition of original works.</i></p> <p><i>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.</i></p>

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 clauses of the said exemption Notification have concluded that the exemption under that SI No. 12 is not admissible.

4.11 With regards to the second demand which is in respect of the services provided for construction of electric substations and laying of cables. The appellant has claimed that these services were provided to Noida and Ghaziabad Development Authority. Impugned order records that the said services have been provided to M/s UPPCL which is an undertaking of Uttar Pradesh Government and is in nature of a commercial concern as it has

been held that the submissions of the appellant that these services were provided to appellant do not dispute that these services were provided for UPPCL. In his submission they have themselves stated that UPPCL is charging certain amount in levy of providing services. For the period post to 01.07.2012 appellant have relied upon Notification No.25/2012-ST dated 02.06.2012, Sl.No.12 of the said notification provides 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-

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

4.12 Appellant has further contended that in respect of services provided to Ghaziabad Development Authority for construction of roads etc., the main contractor was M/s R P Electricals for getting contract from GDA as per Notification No.25/2012-ST dated 20.06.2012 the services of sub-contractor also get exempted. We do not find any merits in the said submission of the appellant. Larger bench of tribunal has in the case of Melange Developers has held as follows:

"14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a sub-contractor is required to pay Service Tax, it may amount to 'Double Taxation', but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged

to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by Cenvat Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as 'Cenvat Credit') of various duties under the Excise Act, including the Service Tax leviable under Sections 66, 66A and 66B of the Act. Rule 3(4) further provides that Cenvat credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the Cenvat Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the Cenvat Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

16. It is in this light that the main contention of Learned Counsel for the Respondent that if a sub-contractor is required to pay Service Tax when the main contractor has actually discharged Service Tax liability, it would amount to 'Double Taxation', has to be examined. For this

contention, reliance has been placed by the Learned Counsel for the Respondent on the following decisions of this Tribunal :

- (i) Urvi Construction v. Commissioner of Service Tax, Ahmedabad, reported in 2010 (17) STR 302 (Tri. - Ahmd.);*
- (ii) BCC Developers and Promoters Pvt. Ltd. v. Commissioner of Central Excise, Jaipur, reported in 2017 (52) S.T.R. 22 (Tri. - Del.);*
- (iii) M/s. Dhaneshra Engineering Works v. Commissioner of Central Excise, Allahabad, reported in 2018 (2) TMI 788 - CESTAT - Allahabad;*
- (iv) Power Mech Projects Ltd. v. Commissioner of Customs, Guntur, reported in 2017 (48) S.T.R. 165 (Tri.- Hyd.); and*
- (v) M/s. Edac Engg. Ltd. v. CST, Chennai, reported in 2017 (6) TMI 685 CESTAT Chennai.*

17. In Urvi Construction a Learned Member of the Tribunal observed :

"2. Further the learned advocate also submits that in the Master Circular issued by the Board vide Circular No. 96/7/2007-S.T., dated 23-8-2007, a stand has been taken that there is no exemption to a sub-contractor from payment of service tax merely because the contractor pays the tax. However, he submits that for the period circular issued late by the Board in 1997 was applicable and according to this Circular where the services have been provided by the sub-contractors such sub-contractors are not liable to pay service tax and service tax liability is on the main contractor. Taking note of the fact of the contention that main contractor has paid the service tax and charging service tax on the sub-contractor again would amount to taxing the same service twice and also taking note of the circular cited by the learned advocate

and the decisions of the Tribunal cited, I find that if the appellant is required to pay the service tax it would amount to taxing the same service twice and the circular and the Tribunal's decision are squarely applicable to the facts of this case and accordingly appeal is allowed with consequential relief to the appellant."

18. *In BCC Developers and Promoters Pvt. Ltd. it was observed :*

"6.1 We agree with the submission of the Ld. Counsel that no double taxation is permissible under the law. The Constitution (Article 265) provides to take the exact amount of tax i.e. neither more nor less. In the instant case, if the principal has already paid the Service Tax, then the same cannot be demanded from the appellant. As per the clarification of the Board's Circular dated 23-8-2007 as well as dated 7-10-1998, if the principal had not paid the Service Tax then the same can be charged. If the Service Tax has already been paid by the principal, then the same cannot be demanded again."

19. *M/s. Dhaneshra Engineering Works followed the aforesaid decision in BCC Developers and Promoters Pvt. Ltd.*

20. *In M/s. Edac Engg. Ltd., the Division Bench, after placing reliance upon the decision of the Tribunal in Urvi Construction, observed :*

"6.2 We are therefore of the considered opinion that these case laws are distinguishable from the decision taken by this very Bench in the case of the present appellants Edac Engineering Ltd. in Final order dated 19-12-2016. We also find that the very same Board's Circular No. 97/8/2007-S.T., dated 23-8-2007, relied upon by the Ld. AR has been taken note of by the Tribunal in Urvi Construction (supra). This being so, we have no hesitation in ruling that

when Service Tax has been paid by the main contractor, charging the sub-contractor again will amount to taxing the same service twice. In the circumstances, the issue at hand also requires to be remanded to the adjudicating authority to verify whether the service rendered by the appellant has suffered tax in the hands of the principal contracts. If that aspect is able to be proved by the appellants, no tax liability will accrue to them. Towards this end, the adjudicating authority will give suitable opportunity to the appellants to present their case. Appellants are also produce all evidence and documents to establish their claim that the tax liability required to be discharged by them has already been paid up by the main contractor. If that is provided, there will obviously be no demand for interest unless such demands have been made belatedly. Once this aspect is also able to be proved by the appellant, imposition of penalty will also not arise."

21. *The aforesaid decisions do not take into consideration the impact of the Cenvat Rules. It would, therefore, not be correct to conclude that double taxation would result if a sub-contractor is required to discharge the Service Tax liability even if the main contractor has discharged the tax liability.*

22. *The decisions of the Tribunal holding that double taxation will not result if a sub-contractor discharges the tax liability because of the Cenvat Rules, now need to be referred to.*

23. *In Max Tech Oil & Gas Services Pvt. Ltd. v. Commissioner of Service Tax, Delhi, reported in 2017 (52) S.T.R. 508 (Tri. - Del.), the Division Bench has held :*

"6. Regarding the contention of the appellant that they have acted only as a sub-contractor and

demanding service tax from them will amount to double taxation as the main contractor also is rendering similar service to ONGC, we find no legal basis for the contention of the appellant. The service tax leviable at the hands of each service provider is decided by nature of activities undertaken by them. If the same is covered by scope of the taxable entry under Finance Act, 1994 tax liability arises. The said service becomes part of final service rendered by main contractor is of no consequence to determine the tax liability of each and every service provider. If at all, the service tax paid by a sub-contractor which becomes part of service further provided by the main contractor, the scheme of credit as envisaged by the Cenvat Credit Rules, 2004 will come into play subject to fulfilment of conditions therein. It is nobody's case that the sub-contractors per se are not liable to service tax even if they rendered taxable service....." [emphasis supplied]

24. *The same view was taken by the Division Bench of the Tribunal in CCE & S.T., Raipur v. M/s. J.K. Transport, reported in 2017 (9) TMI 993 - CESTAT New Delhi. The relevant paragraph is reproduced below :*

"5. We find that the CBEC vide Circular dated 23-8-2007 has clarified that the services provided by the sub-contractor is a taxable service, even if the same is used for completion of the work by the main service provider. Thus, for providing the taxable service, the sub-contractor is liable for payment of service tax on provision of such service....."

25. *Similar views were taken by the Tribunal in (i) Max Logistics Ltd. v. Commissioner of Central Excise, Raipur, reported in 2017 (47) S.T.R. 41 (Tri. - Del.); (ii) Hargovind Electric Decorators v. Commissioner of Central Excise, Jaipur-I, reported in 2016 (43) S.T.R. 619 (Tri. - Del.);*

and (iii) *Sew Construction Ltd. v. Commissioner of Central Excise, Raipur*, reported in 2011 (22) S.T.R. 666 (Tri. - Del.).

26. At this stage, it would also be useful to refer to a Larger Bench decision of the Tribunal in *Vijay Sharma & Company v. CCE, Chandigarh*, reported in 2010 (20) S.T.R. 309 (Tri. - LB). The issue that arose before the Larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a sub-contractor is liable to pay Service Tax, the Larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the Cenvat Credit Rules. The relevant paragraph 9 is reproduced below :

"9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the

stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period.”

27. *The Commissioner did express in the impugned order that under the Cenvat Scheme every stage of provision of service is required to be taxed and if a sub-contractor discharges the Service Tax liability, it will not result in double taxable even if the main contractor discharges the Service Tax liability because the credit of the earlier tax paid is available at a subsequent stage, but it is because of the decision of the Tribunal in Urvi Construction, that the Commissioner held that double taxation would result if a sub-contractor is also required to discharge Service Tax liability when the main contractor has discharged the entire liability.*

28. *Learned Counsel for the Respondent has, however, relied upon the decision of the Supreme Court in Larsen and Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes and Anr., reported in 2016-TIOL-155-SC-VAT. In this case, the contracts which were secured by the Appellant therein were works contract and a part thereof was assigned to the sub-contractor who had submitted returns and paid taxes for the execution of the works contract. During the course of the assessment, the*

Appellant submitted that the sub-contractors had already been taxed and, therefore, the Appellant cannot be taxed again under Section 6B of the Karnataka Sales Tax Act. The submission, therefore, was that the value of the work entrusted to the sub-contractors could not be taken into account while computing the total turnover of the Appellant for the purpose of taxation under the Karnataka Sales Tax Act. It is in view of the provisions of the Karnataka Sales Tax Act that the Supreme Court observed that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6B of the Karnataka Sales Tax Act. This decision of the Supreme Court will not come to the aid of the Respondent in this case in view of the specific provisions of Section 66 and 68 of the Act as also the Cenvat Rules discussed in the foregoing paragraphs of this order. It also needs to be noted that there is no provision for input tax credit on deemed sales in levy of VAT.

29. The submission of the Learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

4.13 On perusal of the above notification, it is evident that the services provided in relation to construction, erection, commissioning and installation of water treatment, sewerage treatment all are exempt from the above notification and the impugned order itself has dropped the demand of Rs 2,09,73,235/- in respect of the services provided by the appellant to NOIDA and HUDA in respect of underground reservoir and rennywell. Appellant have in their submission stated as follows:-

"That the service tax deposited by the appellant is liable to be appropriated against the confirmed demand.

That payment of Rs.17,52,451/- should be appropriated against the confirmed demand. The Ld. Commissioner failed to consider the Challan submitted in this respect and erred in non-appropriation of tax of Rs.17,52,451/- already deposited by the appellant and duly reported in its ST-3 returns. Details of service tax paid on the contracts (in dispute) are as below.

Party	Demand proposed	Service Tax paid
<i>Solitaire Realinfra Pvt. Ltd.</i>	<i>21,36,402</i>	<i>21,36,402</i>
<i>Sahni Arcades</i>	<i>17,16,854</i>	<i>17,46,291</i>
<i>Pary Developers</i>	<i>11,12,895</i>	<i>11,12,895</i>
Total	49,66,151	49,95,588

4.14 We find that the impugned order itself appropriates an amount of Rs.49,66,151/- that appellant have paid. There may be some variations in the amount appropriated and explanation by the appellant (whatsoever is exact payment made as per the challan). The demand in respect of other heads, appellant has pointed out some minor differences. However, these are the payments made in respect of the services provided to M/s

Infratech Royalty. In respect of S.S. Infra impugned order records as follows:-

"5.8 Now I take up the issue of construction of residential flats and offices by the party to various parties other than the government authorities such as M/s Solitaire Realinfra Pvt. Ltd., M/s Sahni Arcade and M/s Pary Developers. The party was engaged in the construction services and they already accepted their service tax liability on the services provided to these parties and claimed to have deposited the entire service tax liability of Rs. 49,66,151/- alongwith interest of Rs 1 Lakh I also find that in the show cause notice itself, it mentioned that the party had already been deposited Rs. 32,43,137/- out of total liability of Rs. 49,66,151/ Though the party claimed that they have deposited all the liability of service tax in this account alongwith additional payment of Rs. 1 Lakh on account of interest but I did not find any evidence on records suggesting the same."

4.15 It is the claim of the appellant that the service tax liability on the services provided to M/s SS Infra was to the extent of Rs.49,66,151/-. Impugned order has appropriated an amount of Rs 32,43,137/- deposited by the appellant and evidence for which was produced before the adjudicating authority. If appellant claim that they have paid service tax of Rs.49,95,151/- then they should produce the evidence of deposit of the said amount to adjudicating authority for verification and the demand will get modified to that extent.

4.16 Appellant has challenged the demand on the ground of limitation. Impugned order on the ground of limitation records as follows:-

"Regarding the party's contention that a part of the SCN is barred by limitation, and is required to be dropped, I observe that the demand notice is not time barred and is served under the provisions of Section 73 of the Finance Act, 1994. Furthermore, Section 73 stipulates that where

any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, the Central Excise officer may within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or has been short levied or short paid or the person to whom such tax refund has erroneously been made, requiring him to show cause as to why he should not pay the amount specified in the notice. Thus, in a nutshell, the notice is required to be served within the stipulated period (one year for normal situation and five years for proviso to Section 73 (1) fraud, collusion, willful mis-statement, suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax) if the amount is not levied or not paid or short levied or short paid or erroneously refunded. It is also found that the party is well aware of their service tax liability on the services provided to various government authorities, as they have already opted for VCES scheme for payment of service tax on the laying of electric cables for Ghaziabad Development Authority.”

4.17 It is a fact that appellant was providing services from the premises other than the registered premises, in fact they had stopped all the activities at the registered premises but they never brought these facts to the knowledge of the department. It is also noted at the time of search of the registered premises of the appellant on 02.02.2015, not a single document relating to the appellant activities was found in the said premises, and the said premises was being used by another person namely M/s Solitaire Realinfra Pvt. Ltd. A sister concern of the appellant. The appellant intention to evade payment of service tax is thus evident. The appellant have claimed that they were under bonafide belief that service tax would not be leviable in respect of these activities, but have failed to establish and provide evidence, in respect of entertaining such belief. It is fact on

record that in respect of certain services provided to GDA appellant had declared their tax liability under VCES and claimed the benefit under that scheme. However even while making declaration under the scheme they did not made a true and complete disclosure of their tax liability. If service tax was payable in respect of services provided to GDA then how can they entertain a bonafide belief that service tax is not payable on the similar services provided to NOIDA. It is settled principle in law that bonafide belief needs to be established and the reason for claiming such belief should be established by evidence. We do not find any such thing in the present case. In case of Om Sai Fabricators [(2023) 6 Centax 208 (Tri.-Bom)] Mumbai Bench has observed as follows:

"4.8 To argue on the limitation appellant have pressed the ground of bonafide belief and for that reason they rely upon the certificate issued to them by M/s Gammon. They also submit that there were conflicting views in the matter. However on query from the bench the counsel for appellant was unable to point out to a single decision available during the relevant period giving a contrary view. Further the submission to the effect that there were conflicting circulars is also not borne out by any evidence. Larger bench has in case of Melange Developer Pvt Ltd. clearly in para 12 noted that all Trade Notices/Instructions/Circulars/Communications were superseded by the Master Circular dated 23 August, 2007, and this circular had clarified the liability of sub contractor to pay the service tax. It is settled law that bona fide belief is not the blind belief and needs to be established. Hon'ble Bombay High Court has in case of Responsive Industries Ltd. [2019 (26) G.S.T.L. 457 (Bom.)] held as follows:

"9. The contention that there was a bona fide belief that the Appellant are not liable to pay the service tax on outward transportation of goods and the GTA is not supported by any reasonable explanation. The

bona fide belief that one is not liable to pay the tax has to be based on some facts on record which led to the belief. It is not the Appellant's case that the belief based on a ruling of the some authority that it not liable to pay service tax on outward transportation. A mere statement to the effect that the Appellant was under a bona fide belief of non liability of paying tax cannot be accepted in the face of clear provision of law. Thus, it is not possible to accept the contention that the Appellant had bona fide belief of for non-payment of tax, so as to invoke Section 80 of the Act."

This decision has of Mumbai Bench has been affirmed by Hon'ble Supreme Court as reported at [(2023) 6 Centax 210 (S.C.)]

4.18 In case of Bharat Bijlee Ltd [2014 (314) E.L.T. 74 (Tri. – Mumbai)] Mumbai Bench observed as follows:

5.15 The argument of the bona fide belief raised by the appellant does not seem to be convincing. If the appellant is claiming bona fide belief, it is for them to establish that they were entitled to hold such a belief based on interpretation of law as pronounced by any judicial fora. In the case before us we do not find any reason for entertaining such a belief nor any judicial pronouncement to hold such belief has been cited before us. Bona fide belief is not blind belief. In the case of Andhra Pradesh Electricity Board [1984 (16) E.L.T. 579 (Tri.)], this Tribunal held that bona fide belief does not mean blind belief or a self-opinionated belief. It would imply a belief which has been reached after a sincere attempt to understand the issue and examining it reasonably. Similarly, in the case of Inter Scape [2006 (198) E.L.T. 275 (Tri.)] this Tribunal held that belief can be said to be bona fide only when it is formed after all reasonable consideration are taken into account. It is not the case of the appellant that they sought legal advice in the matter or were so advised by

any one. On the contrary, we find that there are a number of judicial pronouncements which prohibited diversion of goods from one project to another and, therefore, the plea of bona fide belief does not sustain.

4.19 In case of Hanuman Sahakari Dudh Vyvasaik Krushi Purak Seva Sanstha [2014 (309) E.L.T. 273 (Tri. – Mumbai)] Mumbai Bench observed as follows:

5.1 As regards the plea of bona fide belief taken by the counsel for the appellant, it is settled law that bona fide belief is not a blind belief and bona fide belief has to be formed after consulting experts in the field or after seeking clarification from the department. In the present case, the department has clearly directed the appellant that the appellant's products are excisable and excise duty liability requires to be discharged. In spite of this direction, the appellant chose to dispute this and contended that they are not liable to pay duty as biscuits and other bakery products cannot be treated as excisable products. Thus, despite receipt of the directions from the department, the appellant failed to discharge excise duty liability. Further, the appellant did not submit details sought by the department and continued to drag the issue by prolonged correspondence. In view of the above, suppression of information on the part of the appellant is clearly established.

5.2 The Hon'ble Apex Court in the case of Commissioner of Central Excise v. Mehta & Co. - 2011 (264) E.L.T. 481 has held that the relevant date for computation of time limit is the date on which date the department acquired knowledge regarding the activities undertaken by the appellant. In that case, the appellant submitted the details to the department only on 27-2-1997 and therefore, the Apex Court held as follows :

"The cause of action, i.e., date of knowledge could be attributed to the appellant in the year 1997 when

in compliance of the memo issued by the appellant and also the summons issued, the hotel furnished its reply setting out the details of the work done by the appellant amounting to Rs. 991.66 lakhs and at that stage only the department came to know that the work order was to carry out the job for furniture also. A bare perusal of the records shows that the aforesaid reply was sent by the respondent on receipt of a letter issued by the Commissioner of Central Excise on 27-2-1997. If the period of limitation of five years is computed from the aforesaid date, the show cause notice having been issued on 15-5-2000, the demand made was clearly within the period of limitation as prescribed, which is five years.”

Following the ratio of the aforesaid decision, in the present case also, the show cause notice is well within the time period of five years and accordingly the demand and interest thereon is sustainable and consequently penalty under Section 11A is also sustainable.

4.20 In case of Dr. Smita's Herbal Laboratories [2022 (381) E.L.T. 784 (Tri. - Mumbai)] Mumbai Bench observed as follows

19.*The appellants have submitted that it was their bona fide belief that they are eligible for the benefit of the Notification No. 8/2003 and as such extended period cannot be invoked. On the other hand the Learned Authorized Representatives for the Department submit that the appellants were availing SSI benefit and have not been filing monthly or periodic returns. Therefore, the department had no wherewithal to find out the avilment of benefit in violation of the conditions of the Notification and consequential evasion of duty by the appellants. Going by the catena of Judgments cited by the Authorized Representative and the clear wording of the notification, we find that the appellants cannot take the plea of bona*

fide belief. Therefore, we find that extended period is rightly invoked in this case. We find that the impugned orders have imposed equal penalty on the company as well as the Director in addition to penalty of other Director of the appellants and the Director of M/s. PPPL. Going through the facts of the case and the role played by Directors of the appellants, we find that the penalty is quite harsh and is not commensurate with the part played. Therefore, we are inclined to reduce the penalties imposed on the Directors of the appellants. Coming to the penalty imposed on M/s. PPPL, we find that the role played by them in the evasion of duty by the appellant is not clearly coming forth. M/s. PPPL have assigned/allowed the appellants to use their brand names in the manufacture of specified goods and have purchased and marketed entire production of the appellant. It was for the appellants to pay appropriate Central Excise Duty and for the non-payment of the same M/s. PPPL cannot be faulted with. Therefore, in our considered opinion the penalty imposed on the Director of M/s. PPPL need to be set aside.

4.21 Thus we do not find any merits in the submissions made in the appeal with regards to invocation of extended period of limitation. Extended period as per Section 73 (1) of the Finance Act, 1994 has rightly been invoked for making this demand. As we find that appellant has by resorted to suppression and mis-declaration with a clear intention of payment of service tax, penalty under Section 78 is also justified, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)].

4.22 We also note that appellant has contravened various provisions of the Finance Act, 1994 and the Rules made there under. For the contraventions made penalties have been imposed under section 77 (1)(b), 77 (1) (c) & 77 (2) for the Finance Act, 1994. As we observe that appellant has in fact contravened the various provisions by not maintaining the

records in prescribed manner, determining the and depositing the service tax by the due date and by not filing the appropriate returns declaring their correct service tax liability penalty under these provisions are justified and upheld. Penalties under Section 77 are not for the contumacious conduct but for the contravention of the provisions of statute and hence cannot be faulted. In case of Gujarat Travancore Agency [1989 (42) E.L.T. 350 (S.C.)] Hon'ble Supreme Court has held as follow:

"4. Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty under section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income-tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed

under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023 :

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

5. Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income-tax Officer under section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67."

4.23 Since appellants have not paid the service tax leviable by the due date the demand for interest under section 75 of Finance Act, 1994 is justified. In case of P.V. Vikhe Patil SSK [2007 (215)

E.L.T. 23 (Bom.)] Hon'ble Bombay High Court has stated as follows :

"10. So far as interest u/s. 11AB is concerned, on reference to text of Section 11AB, it is evident that there is no discretion regarding the rate of interest. Language of Section 11AB(1) is clear. The interest has to be at the rate not below 10% and not exceeding 36% p.a. The actual rate of interest applicable from time to time by fluctuations between 10% to 36% is as determined by the Central Government by notification in the Official Gazette from time to time. There would be discretion, if at all the same is incorporated in such notification in the gazette by which rates of interest chargeable u/s. 11AB are declared.

The second aspect would be whether there is any discretion not to charge the interest u/s. 11AB at all and we are afraid, language of Section 11AB is unambiguous. The person, who is liable to pay duty short levied/short paid/non-levied/unpaid etc., is liable to pay interest at the rate as may be determined by the Central Government from time to time. This is evident from the opening part of sub-section (1) of Section 11, which runs thus :

"Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person, who is liable to pay duty as determined under sub-section (2) or has paid the duty under sub-section (2B) of Section 11A, shall in addition to the duty be liable to pay interest at such rate"

The terminal part in the quotation above, which is couched with the words "shall" and "be liable" clearly indicates that there is no option. As discussed earlier, this is a civil liability of the assessee, who has retained the amount of public exchequer with himself and which ought to have gone in the pockets of the Central Government much earlier. Upon reading Section 11AB together with Sections 11A and 11AA, we are of firm view that interest on the

duty evaded is payable and the same is compulsory and even though the evasion of duty is not mala fide or intentional."

4.24 Thus we uphold the demand of interest under section 75 of the Finance Act, 1994. For upholding the demand of interest we also rely on the following decisions :

- (i) Kanhai Ram Thekedar [2005 (185) E.L.T. 3 (S.C.)]
- (ii) TCP Limited [2006 (1) S.T.R. 134 (T - Ahmd.)]
- (iii) Pepsi Cola Marketing Co. [2007 (8) S.T.R. 246 (T - Ahmd.)]
- (iv) Ballarpur Industries Limited [2007 (5) S.T.R. 197 (T - Mum.)]

4.25 Thus, we do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-13 November, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)