CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70797 of 2024

(Arising out of Order-in-Appeal No.338-ST/APPL/LKO/2023 dated 12/05/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Veeresh Kumar, **.....Appellant**
(101, Krishna Vihar,
Near Shankar Vihar, Quarshi Ram
Ghat Road, Aligarh-202001)

VERSUS

Commissioner of Central Excise &

CGST, Agra **....Respondent**

(GST Bhavan, Lal Diggi Road, Aligarh)

APPEARANCE:

Shri Prakhar Shukla, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70821/2025

DATE OF HEARING : 22 September, 2025
DATE OF PRONOUNCEMENT : 02 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.338-ST/APPL/LKO/2023 dated 12/05/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order, Commissioner (Appeals) has modified the Order-in-Original No.109/Adj/ST/2022 dated 20.06.2022 wherein following has been held:-

"ORDER

I hereby drop all the case proceedings initiated through demand-cum-show cause notice bearing C.No.V(12) P&l/Veersh Kumar/Prev./Alg/161/2020/1533

dated 18/10/2021 against M/s Veeresh Kumar, Address 101, Kristusa Vihar, Near Sankar Vihar, Quarsi, Ramghat Road, Aligarh -202001."

2.1 On the basis of information received from Income Tax Department under third party data exchange policy, it was revealed that the respondent, having PAN AOIPK8254M, had not paid service tax on the taxable amount of Rs.3,06,50,318/- as shown in their Income Tax records for the F.Y.2016-17.

2.2 Accordingly, a show cause notice dated 18.10.2021 was issued to the respondent demanding Service Tax amounting to Rs.45,97,548/ in terms of proviso to Section 73(1) of the Finance Act, 1994 along with due interest under Section 75 of the Act. Penalties were also proposed to be imposed upon the respondent under Section 77 & 78 of the Act.

2.3 The said show cause notice was adjudicated as per the Order-in-Original dated 20.06.2022 referred in para 1 above.

2.4 Aggrieved revenue have filed appeal before Commissioner (Appeals) vide the impugned order, Commissioner (Appeals) has modified the Order-in-Original.

2.5 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Prakhar Shukla learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

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

4.2 Impugned order records as follows:-

"6. I have, carefully gone through the grounds of appeal, as well as the records of the case placed before me. I find that the respondent has neither filed the memorandum of cross objection nor has he availed the opportunity of personal hearing provided to him. I am therefore proceeding on the basis of available records. It is observed that the adjudicating authority has found the entire services valued at Rs. 1,69,40,225/- provided by the respondent during FY 2016-17 as exempted under entry

number 12(e) and 13(a) of exemption notification number 25/2012-ST dated 20.06.2012 and thus he dropped the proceedings initiated against the respondent vide show cause notice dated 18.10.2021 through the impugned order. Whereas the reviewing authority has found that out of total services valued at Rs.1,69,40,225/ the services amounting to Rs.82,35,428/- provided to the Rajya Krishi Utpadan Mandi Parishad are not exempted under entry number 12(e) and 13(a) of exemption notification number 25/2012-ST dated 20.06.2012 as found by the adjudicating authority.

7. It is noticed that the Rajya Krishi Utpadan Mandi Parishad, Aligarh being a body corporate does not fall under the ambit of Government, a local authority or a governmental authority as required under entry number 12(e) of exemption notification number 25/2012-ST dated 20.06.2012 and hence the services. provided to Rajya Krishi Utpadan Mandi Parishad, Aligarh by the respondent are not covered under the said entry and therefore not exempted. With regards to the construction of road the appellant has mentioned that the roads are constructed within the gated boundary wall of Mandi Sthal and are not used by general public as required under entry number 13(a) of exemption notification number 25/2012-ST dated 20.06.2012 and hence do not qualify for exemption under the said entry. Nothing contrary to the above claim of the appellant is available on record.

8. In view of above I find that the services amounting to Rs.82,35,428/-provided by the respondent to the Rajya Krishi Utpadan Mandi Parishad, Aligarh are not exempt under Entry number 12(e) and 13(a) of exemption notification number 25/2012-ST dated 20.06.2012. The service tax liability on the said amount of Rs.82,35,428/- @ 15% comes to Rs. 12,35,314/-, which is confirmed under Section 73(2) along with interest under Section 75 of Finance Act, 1994. Equal penalty is also imposed under

Section 78, but I refrain from imposing any other penalty under Section 77 of the Act in view of the fact that mandatory penalty has already been imposed."

4.3 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 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."*

4.4 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)]

4.5 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 Finance Act.*	*Not applicable as service by way of maintenance of street light provide to a local authority is nothing to do with distribution of electricity.*
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.* *"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.* *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."

4.6 Thus in view of the decisions as above, the services provided to the statutory authorities or government authorities 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 clauses 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 Sl No. 12 (e) and 13 (a) is not admissible.

4.7 Sl.No.12 (e) and 13 (a) 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;*
>
> *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;”*

4.8 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 when provided to government authority. Undisputedly in terms of the decision of Hon’ble Supreme Court the Krishi Utpad Mandi Samiti is a statutory authority under taking certain commercial activities also. Clause 2 (s) of Notification No 25/2012-ST define the ‘government authority’ as follows:

(s) "governmental authority'' means a board, or an authority or any other body established with 90% or more participation byway 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;

The above definition was amended by Notification No 02/2014-ST dated 30.06.2014 to read as follows:

'(s) "governmental authority" means an authority or a board or any other body;

(i) set up by an Act of 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;'"

From the perusal of the above definition, it is evident that to be called a "government authority",

- the authority should have been set up by an act of parliament or a state legislature or established Government;
- have 90% or more equity participation or control; and
- should be established to carry out any function entrusted to municipality under article 243 W of Constitution.

4.9 Article 243 W of Constitution is reproduced below:

243W. Powers, authority and responsibilities of Municipalities, etc.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

The Twelfth Schedule of the Constitution is reproduced below:

[TWELFTH SCHEDULE

(Article 243W)

1. *Urban planning including town planning.*
2. *Regulation of land-use and construction of buildings.*
3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*

16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.]*

From the perusal of the above I am not in position to conclude that the activities undertaken by the Krishi Upaj Mandi Samiti will fall within any category of the activity specified by the Article 243W. Thus when the definition of "Government Authority" as per Notification No 25/2012-ST as amended by the Notification No 02/2014-ST is read along with the decision of Hon'ble Supreme Court as referred above and Article 243W of the Constitution of India and Schedule 12, Krishi Upaj Mandi Samiti though constituted under an Act of State Government will not qualify a "Government authority" under this notification.

4.10 In case of Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)] Hon'ble Supreme Court has observed as follows:

52. *To sum up, we answer the reference holding as under -*

(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.

(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.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.

4.11 In view of discussions as above I do not find any merits in submissions made by the appellant claiming exemption under S No 12 (e) of the Notification No 25/2012-ST.

4.12 I also observe that exemption under S No 13 (a) is applicable only in respect of roads meant for use by general public. Impugned order specifically records the finding that the work of roads undertaken by the appellant is not in respect of roads meant for use by general public. Delhi bench has in case of Warsi Buildcon [(2024) 17 Centax 37 (Tri.-Del)] held as follows:

> ***10.*** *The Notification No. 25/2012-ST dated 20-6-2013 w.e.f. 01-7-2012 granted exemption on services, provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of road, bridge, tunnel, or terminal for road transportation for use by general public. By virtue of the said notification the exemption on payment of service tax in respect of services relating to the construction of roads was limited only in respect of those roads which were meant to be used by general public. In other words the utility of the roads was linked with general public. The very clause of the exemption notification when it uses the words road, bridge, tunnel or terminal for road transportation implies the common services to be used by the general public and cannot be restricted which is constructed for development of any township or residential complexes by a builder/developer/coloniser for the utility of the occupants therein. The two has to be distinguished on account of the nature of utility, whether the same is meant for common public or for private use by the buyers of the builders. Also, the definition clause (q) of the notification defines "general public" meaning the body of people at large sufficiently defined by some common quality of public or impersonal nature. We have no doubt on the intent and the scope of the notification exempting the construction of roads for use by general public and as per the Rules of interpretation the exemption notification has to be construed strictly. Considering the activity of construction*

of roads by the appellant for the development of the township/residential complexes on behalf of the builders/developers is specifically meant for the buyers of the plots/residential/commercial complexes and the same cannot be termed for the use of the general public in the sense it has been provided in the notification. Hence the appellant is not entitle to claim exemption from levy of service tax under the notification.

11. *In addition to the notification, we find that CBEC had issued Master Circular D.O.F. No. 334/1/2012-TRU dated 16-3-2012 where it has been clarified that construction of roads for use by general public is exempt from service tax. Construction of roads which are not meant for general public use e.g. construction of roads in a factory, residential complex, etc would be taxable. This itself clarifies that the exemption in respect of construction of roads is not available where they are not meant for general public use whereas the majority of the services rendered by the appellant are "construction of roads" within the residential complexes of the builders/developers, which cannot be construed to mean for general public use.*

4.13 Appellant have relied upon the decision of Hon'ble Allahabad High Court in case of Ganpati Mega Builders [2023 (4) Centax 93 (All)]. However I find that the said decision is in respect of the services covered by the clause 14 of the Notification No 25/2012-ST and not Clause 12 hence distinguishable.

4.14 Thus, I do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-02 December, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp