CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70671 of 2016

(Arising out of Order-in-Original No.AGA-EXCUS-000-COM-0047-15-16 dated 31.03.2016 passed by Commissioner, Customs, Central Excise & Service Tax, Agra)

M/s GANPATI MEGA BUILDERS (INDIA) PVT. LTD.
.....Appellant
(D-660/93, BALAJI NAGAR, KAMLA NAGAR, AGRA)

VERSUS

Commissioner, Customs, Central Excise
& Service Tax, Agra ....Respondent
(113/4, Sanjay Place, Agra-282002)

APPEARANCE:

Ms. Rinki Arora (Advocate) & Shri Aalok Arora (Advocate) for the Appellant
Shri Rajeev Ranjan, Authorized Representative for the Respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 70182 / 2021

DATE OF HEARING: 02 August, 2021
DATE OF PRONOUNCEMENT : 05 August, 2021

ANIL CHOUDHARY:

The issue in the appeal is whether the service tax have been rightly demanded on the appellant who has constructed houses for rehabilitation of poor people under JNNURM.

2. The appellant is engaged in providing works contract services and is registered with the Department.

3. The facts in brief are that in the month of February, 2014 the Department received some financial data from third party source wherein the name of the appellant appeared. Thereafter the appellant was requested to submit documents for verification

of discharge of service tax liability. In response, the appellant by letter dated 08 May, 2014 submitted copies of their balance sheet along with income tax returns, copy of contracts/agreements entered for the period 2009-10 to 2012-13. The details submitted are as follows :-

S. No.	Financial Year	Turnover Achieved	Work Retates to	Remarks
1.	2009-10	Rs.20,20,14,266.74	JNNURM Yojna under Agra Development Authority	Exempt from Service Tax Vide Notification No. 28/2010 dated 22.06.2010
2.	2010-11	Rs. 18,39,15,805.94	JNNURM Yojna under Agra Development Authority	Exempt from Service Tax Vide Notification No. 28/2010 dated 22.06.2010
3.	2011-12	Rs. 6,42,44,503.21	JNNURM Yojna under Agra Development Authority	Exempt from Service Tax Vide Notification No. 28/2010 dated 22.06.2010
4.	2012-13	1.JNNURN yojna Work Amount to Rs. 1,42,35,508.37	JNNURM Yojna under Agra Development Authority	Exempt from Service Tax Vide clause no. 13(b) Notification no. 25/2012 dated 20.06.2012
		2.M/s Sintex limited work amount to Rs.2,40,33,232.75	M/s Sintex Industries Ltd. Luckow	Service Tax of Rs. 9,60,643/- is paid on 7th May 2014 vide Challan No. 02622

4. Further, the appellant by their letter dated 16 May, 2014 also gave project wise details of ongoing construction works which are as under:-

S. No.	Nature of Contract	Tender Authority	Remarks
1.	Construction of Residential Houses for Weaker Section	Under JNNURM	Exempt from Service Tax Vide clause no. 13(b) of Notification no.

			25/2012
2.	Canal Work	Under Water Resources Division-2 Kesli, Sagar, M.P.	Exempt from Service Tax Vide clause no. 12(b) Notification no. 25/2012
3.	Construction of government public building under Bundelkhand package	Rajya Krishi Utpadan Mandi Parishad, U.P., Orai	Construction Service provided to Government; Exempt from Service Tax Vide clause no. 12(a) of Notification no. 25/2012
4.	Construction of Government Forest Trading School	Director, Forest Training School, Amarkantak, Anooppur, M.P.	Construction Service provided to Government; Exempt from Service Tax Vide clause no. 12(a) of Notification no. 25/2012

5. Thereafter the Range Superintend requested the appellant to provide contract wise detail of all the contract works done during the last five financial years. In response, the appellant submitted a copy of Form 26AS (downloaded from the website of Income tax) for the financial year 2009-10 till 2013-14. Further, they claimed that their entire work, except the work order of M/s Sintex Industries Ltd. is exempted under different notifications. It is also specified that they had discharged service tax for the work done for M/s Sintex Industries Ltd..

6. It appeared to the Revenue that appellant had wrongly availed exemption in respect of Jawaharlal Nehru Urban Renewal Mission (JNNURM) during the Financial year 2009-10 to 2010-11 as the construction services provided under JNNURM were exempted vide Notification No. 28/2010–ST which came into force on 01 July, 2010. It further, appeared that appellant had wrongly claimed exemption in respect of construction works done for Krishi Utpadan Mandi Parishad (for short Mandi Parishad) during the financial year 2013-14 as under Serial No.12(a) of Notification No.25/2012-ST exemption is available for construction services provided to a government authority which is meant predominantly for use other than

commercial/industrial. It further appeared that appellant had not discharged service tax on construction services provided to M/s Uncle Builders during the financial year 2009-10 & 2010-11.

7. It further appeared to Revenue that the gross receipts for various contracts executed by the appellant are not individually reflected in their balance sheets and thus Revenue adopted the value as per Form 26AS. It was further observed that appellant failed to submit any documents/records so as to arrive at the value of goods involved in works contract. Accordingly, tax liability was calculated under works contract composition scheme, as amended, and for the period starting from 01 July, 2012 the service tax liability was calculated in terms of Rule 2A (ii) of Service Tax Determination of Value Rules, 2006. Accordingly, tax liability including cess was calculated of Rs.1,73,08,890/-

8. It was further alleged in the SCN dated 21 October, 2014, that the appellant have failed to disclose true material facts and have contravened the provisions of the Act and Rules, to evade payment of service tax. Accordingly, extended period of limitation was invoked under proviso of 73(1) of the Act for raising demand for the period 2009-10 to 2013-14. The amount of Rs.26,55,67,195/- was proposed to be treated as the value of taxable service provided during the afore mentioned period and tax on the same was demanded of Rs.1,73,08,890/- including cess, with a proposal to impose penalty under Section 78 & 77 of the Act. The SCN was adjudicated on contest by the Commissioner who framed the following issue.

(i) *Whether the exemption from payment of Service Tax in respect of services provided by the notice to Agra Development Authority (in short 'ADA') under Jawaharlal Nehru Renewal Mission (in short 'JNNURM') for construction of houses for weaker section of society would be available for the period from 2009-10 to 2010-11(up to 30.06.2010) before issuance of Notification No. 28/2010-ST dated 22.06.2010 (w.e.f. 01.07.2018).*

(ii) *Whether the exemption from payment of Service Tax in respect of services provided by the noticee to Rajya Krishi Utpadan Mandi Parishad (in short 'Mandi Parishad') during 2013-14, for construction work under Works Contract*

would be available, under Sl. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012.

(iii) Taxability of services provided to M/s Uncle Builders during 2009-10 & 2010-11.

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

9. As regards the exemption claimed for services to ADA, JNNRUM during the financial year 2009-10 to 2010-11 (up to 30 June, 2010) i.e. before issuance of Notification No.28/2010-ST, the learned Commissioner observed that exemption is available under this Notification dated 22 June, 2010 with effect from 01 July, 2010 only. Whereas the appellants have provided the specific services for the period before 30 June, 2010. Further, the plea of the appellant that such houses are constructed for personal use of ADA, the learned Commissioner further observed that works contract is normally taxable for residential complex, but when the construction of such complex is for personal use, by such person, then the exemption is available. It is ADA who gets planning and designing done and thereafter gave drawings to appellant to provide the work contract services. The first exclusion clause is not fulfilled by the appellant.

10. It was further observed that in fact, ADA has leased out such houses to ultimate beneficiary on nominal rent and thus condition for personal use is not fulfilled. It is further observed that personal use of appellant is material and not of ADA.

11 The learned counsel assailed the findings of the Commissioner stated that for the advance amount received before July, 2010 for construction of residential houses under JNNURM & 'Rajiv Awaas Yojana', the work was done after July, 2010 and exempted as per Notification No. 30/2010 dated 28 June, 2010. Further, for the work relating to JNNURM have been executed for the Uttar Pradesh Government, which is providing shelter and home to the poor people at nominal rental basis and thus falls under the definition of construction for personal use of the Government or government authority. Further, this nowhere falls under commercial purpose as held by this Tribunal in the case of CCE & ST, Allahabad V/s Ganesh Yadav reported in 2017

(6) G.S.T.L. 428 (Tri.All.) wherein this Tribunal referring to Larger Bench ruling in the case of M/s Lanco Infratech Ltd. V/s CC. CE & ST –(2015) 38 S.T.R. 709 (Tri.-LB) have held that such activity which was not taxable prior to 01 June, 2007 under the category of commercial and industrial construction, continues to be non taxable under the works contract category from 01 June, 2007, when works contract was introduced as taxable head in the Finance Act. Reliance is also placed on another Division Bench ruling of this Tribunal being Final Order No.53288/2018 dated 11 September, 2018 in the case of M/s Jethanand Arjundas & Sons V/s CCE & ST, Indore wherein also similar construction of houses for slum dwellers under JNNURM & Valmiki Ambedkar Awas Yojna, Awasiya Vishwavidyalaya for MP Laghu Udyog. This Tribunal held that the same is not taxable following the ruling of Ganesh Yadav (supra).

12. As regards the second issue relating tax liability for construction for Mandi Parishad, learned Commissioner observed that these Mandi Parishad are formed under the Act of State Legislature 'Uttar Pradesh Krishi Utpadan Mandi Adhiniyam 1964', but not for carrying out any municipal function which are provided under Article 243W of the Constitution of India. Further, it is not established by Government with 90% of the equity or control with Government. Further, observing that this Mandi Parishad are running on commercial basis, having perpetually, it is collecting rent from various shops located in the market and collecting fees from traders . Further, observing that Mandi Samiti is not a Government Authority, thus the benefit of Notification No.25/2012-ST is not available for such works contract done for Mandi Samiti.

13. Assailing the findings of the learned Commissioner, the learned Counsel for the appellant urges that admittedly appellant have constructed toilets, roads, drainage, outer sewage, underground water storage tank reservoir, drinking water supply, S.T.P. (Sewage Treatment Plant)Labour shed etc. for the Mandi Samiti. The order of learned Commissioner is self contradictory as in the same paragraph (25.2) of the impugned

order, the learned Commissioner observes that Mandi Parishad are formed under the State Act and in the same breath observed that Mandi Parishad is not a Government Authority. Admittedly, Mandi Parishad is a statutory body created under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964. Thus as per Entry No.12 & 13 of Mega Exemption Notification No.25/2012, the appellant have rightly claimed exemption for providing construction services to the Statutory Authority, and the same is not commercial in nature as has been clarified by the Board vide Circular dated 18 December, 2006. Further, reliance is placed on the ruling of the Tribunal in the case of M/s Krishi Upaj Mandi Samiti V/s CCE & ST, Jaipur-I & II-2017 (4) GSTL 346. In Para 10 of the judgement reference to negative list under Section 66 of the Finance Act w.e.f. 01 July 2012, which also covers services relating to agriculture produce and services by Agricultural Produce Marketing Committee/Board. Further this Tribunal in Para 11 of the judgement have held that Agricultural Produce Marketing Committee is excluded from tax liability under the service tax provisions as Clause (d) of Section 66(D) provides exemption for services provided to agriculture or agricultural produce by way of agricultural operations directly related to production of any agricultural produce, supply of farm labour, processes carried out at an agricultural farm, renting or leasing of agro machinery or vacant land, with or without structure, loading, unloading, packing, storage or warehousing of agricultural produce, agricultural extension services, services by any Agricultural Produce Marketing Committee or Board. Reference was also made by this Tribunal to the Education Guide dated 20 June, 2012 wherein Para 4.4.9 of the guide, read with Para 4.4.11-that APMCs or Boards are set up under the State Law for the purpose of regulating the marketing of agricultural produce. Such marketing committees or Board have been set up in most of the States which provide a variety of support services for facilitating the marketing of agricultural produce through various activities and facilities like sheds, water, light, electricity, grading facilities etc. These Boards also take measures to ensure fair price to the farmers and they collect market fee, license fee, rent etc. for these services by such APMCs or Boards and are covered in the negative list. Further, clarifying that other services provided by such body which is not directly related to agriculture or agricultural produce, will be liable to tax. This Tribunal held that the appellant APMC or Krishi Utpadan Mandi Samiti is not liable to Service Tax on renting of immovable property used for storage of agricultural produce in the market area.

14. Having considered the rival contentions on this issue, we hold that the various construction works carried out for Mandi Parishad are not liable to service tax and are exempted in view of the Education Guide dated 20 June, 2012 by the Board, read with Circular No.89/7/2006 dated 18 December, 2006, read with the Mega Exemption Notification No.25/2012-ST.

15. As regards the third issue i.e. tax liability for work done for Uncle Builders (from 2009-10 to 2010-11), admittedly the appellant have paid tax on 04 June, 2006 along with interest before the issuance of SCN (issued on 31 March, 2016). We, further, find that the issue is wholly interpretational as per the findings of the Tribunal. There is no tax liability on the appellant in respect of various construction works done for government/statutory authority under JNNURM, canal work for water resources division, for construction done for Mandi Samiti etc.

16. Accordingly, we hold that extended period of limitation is not available to Revenue in these facts and circumstances. Admittedly, appellant have maintained books of account and filed regular returns. We further find that Revenue have erred in adopting Form 26AS for calculating tax liability, which is patently wrong, as Form 26AS is not a prescribed document in the service tax rules for ascertaining the gross turnover of the assessee. Further, neither the books of account nor the returns filed have been rejected.

17. That tax has to be assessed or calculated as per the facts on record and related documents like bills, invoices, bank statements etc.

18. Thus, the impugned order is set aside and the appeal is allowed. The appellant is entitled for consequential benefit in accordance with law.

(Order Pronounced in the open Court on 05 August, 2021)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
Member (Technical)

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