CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 22676 of 2014

(Arising out of Order-in-Original No.27/2014 dated 20.06.2014 passed by the Commissioner of Service Tax, Bangalore)

M/s. Keppel Purvankara Development Pvt. Ltd.,
No.39, 8th Main, First Cross,
Vasanthnagar,
Bangalore - 560 052. Appellant(s)

VERSUS

Commissioner of Central Tax, Bangalore North
No.59, HMT Bhavan,
Bellari Road,
Bengaluru. Respondent(s)

APPEARANCE:

Mr. Jatin Christopher, Chartered Accountant for the Appellant.

Mr. M.A. Jithendra, Asst. Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20648 /2026

DATE OF HEARING: 03.02.2026

DATE OF DECISION: 03.02.2026

PER: R. BHAGYA DEVI

Briefly the facts are that the appellant Keppel Puravankara Development Pvt. Ltd. was rendering services under the category of Construction of Complex Service. The allegation of the revenue is that the appellant was wrongly availing exemption under Notification No. 12/2003-ST dated 20.06.2003, hence show-cause notice was issued. The Commissioner in the impugned order referring to the conditions of the Notification No. 12/2003-ST dated 20.06.2003 held that the appellant was not eligible for the benefit of the above Notification. Accordingly, confirmed service tax amount is Rs.5,04,02,041/- along with interest and also imposed equal amount of penalty under Section 78 in addition to penalty under Section 76 & 77. Aggrieved by this order, the appellant is in appeal before us.

2. The learned Chartered Accountant (CA) for the appellant submits that the Commissioner failed to appreciate the documentary evidence placed before him with regard to the value of goods and materials on which the abatement was claimed. It is his argument that the appellant is registered under the Karnataka Value Added Tax (KVAT) as a works contractor and has discharged VAT on the materials that are used in the construction of complex services. He further submits that the said Notification clearly admits that the service tax is to be levied only on the services and not on the materials, having fulfilled the conditions of the Notification, the question of levying service tax on the entire value does not arise. He further submits the Revenue has ignored the fact that for the previous period June 2005 to September 2008 vide order dated 26.10.2012, the benefit of Notification No. 12/2003-ST dated 20.06.2003 has been allowed.

3. With regard to limitation, it is submitted that during the disputed period, the appellant has filed 7 half yearly ST-3 returns showing the details of the goods and services; hence, to allege wilful mis-statements and suppression of facts is not justified, hence the impugned order cannot be sustained.

4. The Authorized Representative reiterated the findings of the Commissioner in the impugned order.

5. Heard both sides. From the records, we find that two show-cause notices have been issued to the appellant one dated 10.06.2011 for the period October 2008 to March 2011 and the second show-cause notice dated 18.10.2012 for the period April 2011 to March 2012. The relevant exemption Notification No.12/2003-ST dated 20.06.2003 is reproduced below:

> **Notification No. 12/2003-S.T., dated 20-6-2003**
>
> Valuation (Service Tax) — Goods and materials sold by service provider to recipient of service — Value thereof, exempted
>
> In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.
>
> 2. This notification shall come into force on the 1st day of July, 2003.

From the above Notification, it is clear that the service tax cannot be levied on the value of the goods. It is also a fact that the appellant had paid VAT on the value of the goods. The appellant at the time of hearing has placed on record enormous data to show that the value of the goods on which VAT has been paid; hence, we find that the matter needs to be remanded for verification of these documents placed on record in order to provide the abatement on value of goods as per the above notification. The reliance placed on by the Commissioner on the decision of *Agarwal Colour Photosystem Vs. CCE, Bhopal 2011 (23) STR 608 (Tri. -LB)* is no longer a good law since the same has been set aside by the Hon'ble High Court. Similarly, the reliance placed by the Commissioner on the decision of the Tribunal in the case of *M/s. Safety Retreading Company (P) Ltd. Vs. Commissioner of Central Excise, Salem* since reversed by the Hon'ble Supreme Court as reported at 2017 (48) S.T.R. 97 (S.C.) dated 18.01.2017, the question of disallowing the benefit of Notification No. 12/2003-ST dated 20.06.2003 does not arise as long as there is evidence to show that VAT has been paid on the cost of the materials. The Hon'ble Supreme Court observed as follows:

> "**10.** The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service. This, in fact, is what is provided by the Notification dated 20th June, 2003 and CBEC Circular dated 7th April, 2004, extracted above, subject, however, to the condition that adequate and satisfactory proof in this regard is forthcoming from the assessee. On the very face of the language used in Section 67 of the Finance Act, 1994 we cannot subscribe to the view held by the Majority in the Appellate Tribunal that in a contract of the kind under consideration there is no sale or deemed sale of the parts or other materials used in the execution of the contract of repairs and maintenance. The finding of the Appellate Tribunal that it is the entire of the gross value of the service rendered that is liable to service tax, in our considered view, does not lay down the correct proposition of law which, according to us, is that an assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%."

6. In view of the above, we are of the view that the benefit of Notification No. 12/2003-ST dated 20.06.2003 needs to be

extended to the appellant to the extent of cost of materials involved. However, to examine the extent of materials used by the appellant, the matter is remanded only for the purpose of quantification based on the records placed before us. Needless to say, an opportunity of hearing to be given to the appellant for placing on record the details of cost of materials on which VAT has been paid. We also find that since regular returns have been filed by the appellant incorporating/informing the department the cost of materials being used, the question of suppression does not arise. We set aside all the penalties.

Appeal is allowed by way of remand.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv