CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 27800 of 2013

(Arising out of Order-in-Appeal No. MLR-EXCUS-000-DIVIII-APP-BRC-011-13-14 dated 14.06.2013 passed by the Commissioner of Central Excise (Appeals) Mysore.)

M/s. Panchami Builders & Developers,
D.No. 5-273, II Main VP Nagar
Manipal Road, Manipal
Udupi – 576 104.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax, Mangalore Commissionerate,
7th Floor, Trade Centre Bunt's Hostel
Road, Mangalore – 575 003.

Respondent(s)

APPEARANCE:

Mr. A. Saiprasad, Advocate for the Appellant

Mr. Vikalp Jain, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20951 /2026

DATE OF HEARING: 25.06.2026
DATE OF DECISION: 25.06.2026

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding inclusion of the value of material while computing aggregate value for SSI Exemption.

2. Alleging that the Appellant who were provider of service has not paid service tax even after crossing the threshold exemption limit in the month of January, 2011, proceedings were

initiated and Adjudicating authority as per the Order-in-Original dated 07.12.2012 confirmed the demand and also imposed penalties. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 14.06.2013 dismissed the appeal. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, learned Counsel for the Appellant submits that Appellant is a partnership firm engaged in construction business and also registered with Service tax under Construction of Residential Complex Service. While computing the aggregate value, excluding the value of construction material, the turnover was below the exemption limit as per the Notification. Appellant had availed SSI Exemption for services as per Notification No. 6/2005-ST dated 01.03.2005 since However, alleging that while computing the gross amount, value of material ought to be included, proceedings were initiated and show cause notice was issued on 22.03.2012 for the period from October, 2010 to March, 2011 on the ground that the Appellant crossed the threshold exemption of Rs. 10 lakhs in the month of January, 2011. In this regard, learned Counsel drew our attention to the Explanation B to Para 3 of the Notification No.6/2005-ST, wherein it is stated that *"aggregate value not exceeding four lakh rupees" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification*". Thus, the aggregate value is the gross amount as per Section 67 of the Finance Act, 1994, gross amount as per Section 66 does not include value of material. Hence the value of material is not includable in the

gross amount. Consequently, the value of the materials sold during the construction is 'deemed sale' as per Article 366 of the Constitution of India considering the value is eligible to sale tax. Learned Counsel also relied on the following decisions.

i. Gujarat Ambuja Cements Ltd. Vs. UOI [2005(182) ELT 33 (SC)]
ii. CCE&C, Kerala Vs. Larsen & Toubro Ltd. [2015(39) STR 913 (SC)]
iii. Vishwanath Mishra Vs. CCE, Lucknow [2019(22) GSTL 271 (Tri. All.)
iv. Ashok Kumar Mishra Vs. CCE&ST, Allahabad [2018(12) GSTL 107 (Tri. All.)]

4. Learned Authorized Representative (AR) reiterated the finding in the impugned order.

5. Heard both sides and perused the records.

6. We find that this Tribunal in the matter of **Ashok Kumar Mishra** (supra)**,** while deciding similar issue, held as under**:-**

> **4.** Having considered the rival contention and on perusal of Explanation "B" to the said Notification No. 6/2005-S.T., dated 1-3-2005, we find that the said explanation authorizes exclusion of consideration received towards providing service which are exempt from whole of Service Tax leviable thereon. On perusal of the said Notifications No. 9/2004 and No. 1/2006-ST, we find that 60% of the consideration received is exempted from the whole of the Service Tax leviable thereon. Therefore, we find that for the purpose of calculation of aggregate value as per said explanation "B" 60% of the consideration received by the appellant for which exemption was admissible does not need to be taken into consideration. We also find from the record that after excluding 60% consideration the aggregate value of clearance for the years 2007-08, 2008-09 and 2009-10 in the present case is within the permissible limit for the exemption under the said Notification No. 6/2005-ST, dated 1-3-2005 which exempts taxable service from whole of Service Tax leviable under Section 66 of the Finance Act, 1994. We, therefore, hold that the impugned Order-in-Appeal is not sustainable.

7. By following the ratio of the above decision of this Tribunal, we hold that the Appellant is eligible for the exemption as per Notification No.06/2005-ST dated 01.03.2005. Accordingly, the

impugned order is set aside and appeal is allowed with consequential relief if any in accordance with law.

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

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…