CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60136 of 2016

[Arising out of Order-in-Appeal No. 41/ST/COMMR/HG/RTK/2015-16 dated 12.02.2016 passed by the Commissioner of Customs & Central Excise (Appeals), Rohtak]

M/s Mahender Singh ......**Appellant**
69 Devi Vihar, Sector 22
Circular Road Rohtak
Haryana 124001

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak ......**Respondent**
SCO No. 6 to 8 & 10, Sector 1
Huda Market, Rohtak
Haryana 124001

APPEARANCE:

Shri Tarun Sharma, CA for the Appellant

Shri Aniram Meena and Shri Shantanu Kumar Meena, Authorized Representatives for the Respondent

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

FINAL ORDER NO. 61630/2025

DATE OF HEARING: 01.07.2025
DATE OF DECISION: 27.10.2025

S.S.GARG:

The present appeal is directed against the impugned order dated 12.02.2016 passed by the Commissioner (Appeal), Rohtak, whereby, the learned Commissioner (Appeals) has confirmed the demand of service tax amounting to Rs. 41,86,601 along with interest under Section 75 and also imposed equal penalty and Rs. 200 per day till 09.05.2013.

2. Briefly the facts of the present case are that the appellant have constructed godowns under the work orders awarded by Haryana State Warehousing Corporation (HSWC). HSWC is an undertaking of Haryana Government set up for storage of Post-Harvest Agricultural Produce. The allegation of the department is that the appellant have rendered the Works Contract Service to HSWC and are liable to pay service tax under section 65(105)(zzzza) of the Finance Act, 1994 on the ground that HSWC activities are commercial in nature. On this allegation, a show cause notice dated 02.07.2015 was issued on the premise that the service provided by the appellant to HSWC by way of construction of Godowns fall under the service category of 'works contract service as defined under Section 65(105)(zzzza) of the Finance Act, 1994 as applicable till 30.06.2012 and a 'taxable service' as defined under Section 65(44) and Section 65B(51) w.e.f. 01.07.2012. After following the due process, the learned Commissioner (Appeals) vide the impugned order, dropped the service tax demand for the period post 01.07.2012 onwards considering that the godowns were used for storage of Post-Harvest Agricultural Produce and thus, construction service was exempt from service tax under Sl. No. 14(d) of Notification No. 25/2012-ST dated 20.06.2012 but confirmed the service tax demand of Rs. 41,86,601/-for the period till 30.06.2012

under the service category of 'works contract service'. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned consultant Shri Tarun Sharma, appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of Works Contract Service as given under Section 65(105)(zzzza) of the Finance Act, 1994. He further submits that as per the explanation to Section 65(105)(zzzza) of the Finance Act, 1994, in order to fall under the scope of 'works contract', the contract should be for the purposes of carrying out 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.** He further submits that the leviability of service tax under works contract service is dependent upon the purposes for which building or civil structure is constructed and if the purpose is not primarily of commercial or industrial use i.e. not of making profit, the construction service is not taxable under the service category of works contract service. He further submits that in the present case, the Executive Engineer, HSWC in its Letter dated 08.07.2015 addressed to Assistant Commissioner (AE), Central Excise Commissionerate, Rohtak has clearly stated that the Godowns constructed by the appellant for HSWC were constructed with the sole aim for storage of Post-Harvest Agricultural Produce and Godowns have not been used for commercial or industrial use. He

further submits that this letter written by the Executive Engineer has evidentiary value and the same has not been considered by the learned Commissioner (Appeals). He also submits that when the Godowns were not constructed for commercial or industrial purpose, the service provided by the appellant to HSWC by way of construction of such Godowns cannot be exigible to service tax under 'Works Contract Service'.

4.2 The learned consultant further submits that the issue in the present case is squarely covered by the Final Order No. 60021/2025 dated 08.01.2025 passed by the Hon'ble CESTAT, Chandigarh in the case of M/s Suresh Kumar Gupta Vs. Commissioner of Central Excise and Service Tax, Panchkula (Appeal No. 50780/2014), as demand after considering the evidentiary value of the certificate issued by concerned authorities including HSWC stating that the buildings are not for any commercial or industrial use. He further submits that the adjudicating authority has confirmed the demand on the premise that HSWC charges the storage charges and therefore, the activities undertaken by the HSWC are of commercial nature. He further submits that the explanation to Section 65(105)(zzzza) is linked with the commercial purpose of building for civil structure and not of the organisation to whom such building or civil structure belong. He further submits that the godowns constructed by the appellant are not for the purposes of commercial or industrial use and thus, even if HSWC's activities are assumed to be of commercial nature, the same will not make the service provided by the appellant liable to service tax under 'works contract service'.

4.3 He further submits that it is a settled legal position that the commercial activities relates to activities having profit as the primary aim and mere collection of fee /charges will not automatically render a government undertaking as a commercial establishment. For this Submissions, he relied upon the following:

- ***M/s Seetha Builders Versus Commissioner of GST & Central Excise, Madurai-2024 (6) TMI 1110-CESTAT CHENNAI***
- ***Vij Construction Pvt. Ltd. Vs. C.C.E, New Delhi 2018 (4) TMI 598 CESTAT NEW DELHI***
- ***M/s. SRM Engineering Construction Ltd. Vs. Commissioner of Service Tax, Chennai-2018 (2) TMI 321-CESTAT CHENNAI***
- ***Ratan Das Gupta & Co. Vs. Commissioner of Central Excise 2017 (3) TMI1662-CESTAT NEW DELHI.***

4.4 The learned consultant further submits that the entire demand is barred by limitation as the demand pertains to the period April, 2010 to June, 2012, whereas, the show cause notice was issued on 02.07.2015. He further submits that there is nothing to show suppression of fact, much less with an intention to evade tax. The entire case of the revenue was based upon the documents provided by the appellant. Though, the issue involved interpretation of the scope of works contract service and the appellant's had a bona fide belief that the construction service was not liable to service tax cannot be doubted with. Moreover, the service was provided to Government undertaking and suppression of fact with mala fide intention to evade payment of service tax does not exist in the present case. In support of this, he relied upon the following cases:

- **Uniworth Textiles Ltd vs. CCE, Raipur 2013 (288) ELT 161 (SC)**
- **Anand Nishikawa Co Ltd vs. CCE, Meerut-2015-TIOL-118-SC-CX**
- **Padmini Products Limited vs. CCE-1989 (43) ELT 195 (SC)**
- **Mehta Construction Co Vs. CCE, Panchkula - Final Order No. 60078/2024 dated 05.03.2024 CESTAT Chandigarh**
- **Dhananjay G Kela Vs. CST-Ahmedabad-III 2024 (5) TMI 1278 - CESTAT AHMEDABAD.**

4.5 The learned Consultant also submits that the appellant is entitled to the benefit of Section 80 of the Finance Act, 1994 and has also submitted that the service tax has been wrongly computed as the benefit of Composition Scheme has not been given to the appellant and cum-tax benefit has also been denied.

5. On the other hand, learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that no doubt the appellant has provided Works Contract Service to HSWC which is a State Government undertaking and has constructed the godowns which are primarily used for storage of Post-Harvest. We also find that as per the explanation to Section 65(105)(zzzza) of the Finance Act, 1994, in order to fall under 'works contract', the contract should be for construction of a new building or a civil structure primarily for the purposes of commerce or industry. Further, we find that in this case, the Executive Engineer, HSWC vide their Letter dated 08.07.2015 addressed to Assistant Commissioner has verified that the godowns constructed by the appellant for HSWC were constructed with the sole aim for storage of Post-Harvest Agricultural Produce and further Godowns have not been used for commercial or industrial use; this letter which is crucial to determine the nature of the activities carried out by the appellant has been ignored by the adjudicating authority and they have confirmed the demand merely on the basis that the HSWC is collecting fee/charges but simply collection of fee or charges by the HSWC will not automatically render a government undertaking as a commercial establishment as held in the cases cited (Supra).

7. Further, the identical issue was decided by this Tribunal in the case of M/s Suresh Kumar Gupta Vs. Commissioner of

Central Excise and Service Tax, Panchkula cited (Supra), wherein the Tribunal has held as under:

> *4. Heard both sides and perused the records of the case. We find that the appellant has undertaken construction for Haryana State Warehousing Corporation, Haryana State Bijli Nigam, Haryana Police Housing Corporation and Bar Complex in Mini Secretariat, Kaithal. Understandably, these are Public Sector Undertakings having been constituted under an Act of State Legislature. We have also gone through the certificates issued by respective authorities to indicate that the buildings are used for office purposes and not for any commercial or industrial use. We find no reason, whatsoever, to disbelieve the certificates issued by the authorities. Revenue also does not produce any evidence to negate the certificates. In such circumstances, we are of the considered opinion that the said certificates have evidentiary value and are required to be accepted and therefore, it has to be concluded that the activity undertaken by the appellants is not for any commercial or industrial use so as to be exigible to service tax.*

8. As regards the limitation, we find that the entire demand is beyond the normal period of limitation which was 18 months during the relevant period and the Revenue has not been able to establish the suppression on the part of the appellant with intent to evade payment of service tax; moreover, the service was provided to the Government undertaking and the entire issue was relating to interpretation of scope of Works Contract Service and the appellant had a bona fide belief that they are not liable to pay service tax, therefore in view of the ratio of the various decisions

cited (Supra), we find that the entire demand is barred by limitation.

9. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable in law and therefore, we set aside the same on merit as well as on limitation.

10. Accordingly, the appeal of the appellant is allowed with consequential relief if any, as per law.

(Order pronounced in the open court on 27.10.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash