

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Service Tax Appeal No.41725 of 2014

(Arising out of Order-in-Original No.CHN-SVTAX-000-COM-073-13-14 dated 20.03.2014 passed by Commissioner of Service Tax, Newry Towers, No.2054-I, II Avenue, Anna Nagar, Chennai 600 040)

M/s.Tamilnadu Industrial Development Corporation Ltd.

No.19-A, Rukmini Lakshmipathi Road, (Marshall's Road)
Egmore,
Chennai 600 008.

.... Appellant

VERSUS

The Commissioner of CGST & Central Excise

... Respondent

Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

APPEARANCE :

Shri Vikram Vijayaraghavan, Advocate, for the Appellant
Shri Harendra Singh Pal, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40521/2024

DATE OF HEARING : 01.05.2024
DATE OF DECISION : 01.05.2024

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant M/s.Tamil Nadu Industrial Development Corporation Ltd. (for short, TIDCO), a Government of Tamil Nadu Enterprise, is engaged in identifying and promoting the establishment of large and medium scale industries within the State of Tamil Nadu. On intelligence gathered that TIDCO is rendering taxable services and has neither obtained service tax registration nor discharged appropriate service tax on the taxable services provided by them, the officers of the Service Tax Commissionerate undertook investigations.

2. On verification, it was noted that TIDCO was established as a Government of Tamil Nadu Enterprise to stimulate industrial development and leverage capital investment through joint ventures and facilitates investment in large industrial and infrastructure projects in Tamil Nadu. TIDCO is also registered with the Reserve Bank of India as Non-Banking Financial Company. The promotion of industries in the State of Tamil Nadu is the main activity of TIDCO and it promotes industries through equity participation. TIDCO assists the promoters in exploring opportunities, project evaluation, obtaining statutory clearances, land procurement, sourcing of technology, securing financial tie-ups and in positioning utility sources like power, water etc. TIDCO enter into agreements with other parties as Joint Venture (JV) partners.

3. On scrutiny of agreements, entered by TIDCO with other parties it was noted by department that TIDCO is providing service in the nature of assisting the promoters in exploring opportunities, project evaluation, obtaining statutory clearances, land procurement, sourcing of technology, securing financial tie-ups and in positioning utilities sources like power, water etc. These services are rendered by TIDCO in coordination and liason with the Government. From the scrutiny of agreements and explanation furnished by the appellant, it appeared that these services provided by TIDCO to their client (JV) falls under the category of "Business Auxiliary Service" as defined under Section 65 (19) of the Finance Act, 1994 and TIDCO is liable to pay service tax under the said category for the period April 2005 to December 2008.

4. Further, it appeared that TIDCO has rendered 'Manpower Recruitment and Supply Agency Service' (MRSA) to M/s.Tamil Nadu Road Development Corporation (TNRDC) in as much as they deputed their Director (Projects) to the said company. TIDCO did not discharge service tax in respect of the services provided to TNRDC.

5. It was noted that TIDCO had subleased their premises to M/s.NATRIP Implementation Society & TNERC. Such subleasing of premises by TIDCO for office purposes would fall under the category of 'Renting of Immovable Property Service' w.e.f 1.6.2007. The appellant had not discharged service tax under this category also.

6. During the course of investigation, TIDCO paid the entire service tax under protest.

7. Show cause notice No.12/2010 dated 12.01.2010 was issued to TIDCO demanding service tax for the period from April 2005 to December 2008 invoking proviso to Section 73 (1) of Finance Act, 1994 alleging suppression of facts with intent to evade payment of service tax. The notice proposed to appropriate the service tax already paid by them. The SCN also proposed for imposing penalties under Section 76, 77 & 78 of the Finance Act, 1994.

8. After due process of law, the original authority vide order impugned herein confirmed the demand, interest and imposed penalties. The adjudicating authority ordered for appropriation of the service tax paid by the appellant. Aggrieved, TIDCO is before the Tribunal.

9. Ld. Counsel Shri Vikram Vijayaraghavan appeared and argued for the appellant. It is submitted that the appellant is a wing of the Government of Tamil Nadu established to stimulate industrial development in the State of Tamil Nadu and leverage capital investment through joint ventures in the State. The main object of the appellant is promotion of companies in the State of Tamil Nadu through equity participation and the appellant is not providing services. The promotional activities consists of -

- (i) Conceiving projects
- (ii) Examining the commercial viability and promoting the projects
- (iii) Taking advice from Indian / Foreign consultants regarding viability before implementing the projects.
- (iv) Deciding the location of the projects, taking into account the policy of the Government regarding dispersal of industries throughout the State of Tamil Nadu.
- (v) Identifying acceptable joint promoter for implementing the projects and entering into MO&U with term, after taking the approval of State Government.
- (vi) Assisting promoters in exploring opportunities project evaluation, obtaining statutory clearance, land procurement, sourcing of technology, securing financial tie-ups and in positioning utilities / sources like power, water etc.

10. In order to achieve the objectives in timely and proper manner, the appellant enters into agreements with other parties. Thus, the appellant along with other parties have constituted Joint Ventures in order to establish Special Economic Zone units, IT parks and pharmaceutical business organisations. The appellant being a party to the JV cannot be said to have rendered service to the joint venture. In some cases, the appellant retains an equity partnership and in some

cases, they dispose of the equity partnership after setting up of the business. The entire aim is to support and promote the JV.

11. Ld. Counsel submitted that the appellant receives charges from the JV for carrying out certain activities of obtaining approvals needed for the implementation of the JV. The responsibility of the appellant is mentioned in the agreement and the appellant has to carry out such responsibilities as a party to the JV. These appellant does not act as a service provider and these are not services provided to the JV though the appellant receives charges for carrying out such responsibilities.

12. The agreement itself stipulates for payment of required charges and other fees by the Company to the appellant. So also, the agreement stipulates the responsibilities to be carried out by appellant which are in the nature of getting permissions / approvals taking possession of land acquired and proposed to be acquired for the project; to obtain permission for converting the agricultural land for the development of the project; to get environmental clearances from the State Pollution Control Board and the Ministry of Environment and Forests, Government of India. TIDCO also enables to obtain project approvals, lay out approvals, building plan approvals, no objection certificates and other statutory approvals. The appellant is entrusted with the responsibility of getting permission and clearances with all State and Central Government for Special Economic Zone approval. While carrying out such responsibilities as per the agreement, the

appellant receives charges as a party to the JV and is not providing any services to the JV. The department has considered the appellant to be a service provider. Further, the department has considered the JV to be a client of the appellant which is highly erroneous. There is no service provider and service recipient relationship between the appellant and the JV.

13. It is submitted by the appellant that the details of the JV for which the charges have been subject to service tax in the present impugned order are as under :

Sl.No.	JV Company	Percentage equity	Nature of business
1.	Ascendas India Pvt. Ltd.	11%	SEZ
2.	ETA Star Property Developers Ltd.	----	SEZ
3.	Rakindo Developers Pvt. Ltd.	----	I.T. Park
4.	Zillion Estates Pvt. Ltd.	----	SEZ for IT/ITES
5.	IVR Hotels & Resorts Ltd.	----	SEZ
6.	GVK Infratech Pvt. Ltd.	----	SEZ
7.	Sattva Agro Expo Pvt. Ltd.	----	AEZ
8.	NATCO Organics Ltd.	----	Pharmaceuticals

13.1 It is stated that in the above list of companies, the appellant has equity participation in M/s.Ascendas India Pvt. Ltd. Further, the nature of these business organizations are SEZs and IT parks which after approval enjoy the benefit of exemption from taxes and duties. The JV is established wherein the appellant is also a party to the

organization. When the JV as SEZ/IT park is exempted from service tax under specific enactments and notifications, the appellant who is party of the JV cannot be burdened with levy of service tax.

13.2 It is submitted by the Ld. Counsel that prior to 1.7.2012, the Finance Act, 1994 did not provide definition of the word 'person'. After 1.7.2012, Section 65B (37) of Finance Act, 1994 defines the word 'person' to include *'an association of persons or body of individuals whether incorporated or not'*. Section 65B (44) gives the definition of 'service'. As per the Explanation (3) (a) of Section 65B (44) *"an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons"*. Only w.e.f 1.7.2012, the constituents of JV and the JV can be treated as distinct persons. The period involved in the present case being prior to 1.7.2012, the demand raised alleging that the appellant though party the joint venture, is a distinct person from the JV is without any legal basis. It is thus submitted by the learned counsel that the demand of service tax alleging that the appellant has provided service to the JV cannot sustain.

14. Ld. Counsel adverted to the definition of "Business Auxiliary Service" which reads as under :

"Business auxiliary service" means any service in relation to, -

- (i) *promotion or marketing or sale of goods produced or provided by or belonging to the client; or*

- (ii) promotion or marketing of service provided by the client; or*
- (iii) any customer care service provided on behalf of the client ; or*
- (iv) procurement of goods or services, which are inputs for the client; or*

Explanation. – For the removal of doubts it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client;

- (v) Production or processing of goods for or on behalf of the client; or*
- (vi) Provision of service on behalf of the client ; or*
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).*

Explanation – For the removal of doubts, it is hereby declared that for the purposes of this clause, –

(a) “Commission Agent” means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person –

- (i) deals with goods or services or documents of title to such goods or services; or*
- (ii) collects payment of sale price of such goods or services; or*
- (iii) guarantees for collection or payment for such goods or services; or*
- (iv) undertakes any activities relating to such sale or purchase of such goods or services;*

14.1 In the impugned order at the end of para 6.2, the adjudicating authority has rendered a finding that the appellant has provided services to the JV which would fall under clause (iv), (vi) and (vii) of the definition of ‘Business Auxiliary Service’ as under Section 65 (19) of the Finance Act, 1994. It is explained by the Ld. Counsel that the

activity rendered by TIDCO would not fall under clause (iv) as there is no procurement of goods or services which are inputs for the JV. Also for the reason that the JV is not a client of the appellant. Clause (vi) of definition of 'Business of Auxiliary Services' would be attracted only if there is provision of services on behalf of the client. Appellant is not providing any services on behalf the JV and therefore this ingredients of the definition cannot be applied for demanding service tax on the appellant. Clause (vii) deals with '*services incidental or auxiliary to any activity specified in sub-clauses (i) to (vi)*'. Clause (i) deals with '*promotion or marketing or sale of goods produced or provided by or belonging to the client*'. The appellant is not doing any promotion or marketing or sale of goods of the JV. The appellant being part of JV this clause will not apply.

14.2 Clause (vii) deals with activities of billing, issue or collection or recovery of cheques, payments etc. done for the client. The appellant has not carried out any such activity and therefore clause (vii) of the definition would not be attracted.

14.3 Further, in the SCN, the department has merely stated that the activity carried out by the appellant would fall under the definition of "Business Auxiliary Service" and did not specify the clause under which the activities of the appellant would be subject to levy of service tax. However, the adjudicating authority in the impugned order has confirmed the demand stating that the clauses (iv) (vi) and (vii) of

Section 65 (19) would apply for levy of service tax. The appellant having carried out the responsibility as a partner of JV cannot be said to have provided service to the JV.

15. In regard to 'Man Power Recruitment or Supply Agency (MRSA) Services', learned counsel submitted that the demand has been confirmed alleging that the appellant has deputed their Director (Projects) to M/s.TNRDC. The appellant holds 50% equity in TNRDC and therefore as a party to TNRDC, it cannot be said that the appellant has provided MRSA service to itself. Ld. Counsel also submitted that in the SCN there is no demand raised under MRSA and demand has been raised under 'Management Consultancy Service'. For this reason, the demand under MRSA service cannot sustain.

16. In regard to demand raised under 'Renting of Immovable Property Services, Ld. Counsel submitted that the appellant is not contesting the matter.

17. Ld. Counsel argued that TIDCO is a Government of Tamil Nadu Enterprise. The intention of the State Government to establish TIDCO is for the purpose of carrying out promotion of Industries & Commerce within the State. The appellant has carried out the responsibilities as a part of the State Government and therefore the activities is only in discharge of sovereign function which is not subject to levy of service tax.

17.1 The decision in the case of *Karnataka Industrial Areas Development Board Vs Commissioner of Central Tax, Bangalore North* vide Final Order No.20357/2020 dt. 09.06.2020 was relied by the Ld. Counsel to argue that in the said case, the Tribunal had held that the appellant is statutory body discharging the statutory functions as per the Karnataka Industrial Areas Development Act, 1966 (KID Act) and is not liable to pay service tax.

17.2 So also in the decision of *CCE Nashik Vs Maharashtra Industrial Development Corporation – 2017-TIOL-2629-HC-MUM-ST* it was held that the Maharashtra Industrial Development Corporation having been constituted under the Maharashtra Industrial Development Act, 1961 (MID Act, 1961) cannot be subject to levy of service tax as they are discharging sovereign function.

18. Notification No.4/2004-ST dt. 31.03.2004 was adverted to by the Ld. Counsel to state that the services provided to Special Economic Zone is exempt from levy of service tax.

19. Ld. Counsel argued on the ground of limitation also. It is submitted that appellant is a Government of Tamil Nadu Enterprise. Being a State Government Enterprise, the appellant cannot be saddled with the guilt of suppression of facts with intent to evade payment of service tax. The appellant has accounted the entire amount received by them as well as the transactions carried out with the JVs. There is no specific act of suppression alleged in the SCN. Further, the appellant

has paid the entire service tax along with interest before issuance of SCN. It is submitted that though appellant paid the entire service tax, along with interest before issuance of SCN, in the impugned order, it is not specifically mentioned that appellant has paid the interest. Appellant had paid interest of Rs.20,76,804/- on 31.3.2009 which is much before issuance of the show cause notice. The adjudicating authority has noted payment of service tax and appropriated the same. There is no mention of payment of interest. As per sub section (3) of Section 73, the adjudicating authority ought not to have imposed any penalty when the service tax has been paid by appellant on being pointed out by officers before issuance of SCN. Ld. Counsel prayed that the demand, interest and penalties may be set aside and appeal allowed.

20. Ld. A.R Shri Harendra Singh Pal appeared and argued for the Department. The finding in the impugned order was reiterated. It is submitted that the argument of the appellant that they are discharging sovereign function cannot be accepted for the reason that appellant is not constituted by an enactment as in the cases of *Karnataka Industrial Areas Development Board* (supra) and *Maharashtra Industrial Development Corporation* (supra). The appellant cannot be said to be carrying out sovereign functions.

20.1 The activities of appellant are in the nature of promotion and development of the JV. Appellant has received charges for these

activities which would fall under the definition of 'Business Auxiliary Service'. So also, the appellant has provided services of Director (Projects) to M/s.TNRDC which has to be treated as MRSA service. Appellant having rented out the premises to others is liable to pay service tax on 'Renting of Immovable Property Service'. It is submitted that the impugned order does not require any interference. Ld. A.R prayed that the appeal may be dismissed.

21. Heard both sides.

22. The issue that arises for consideration is whether the appellant is liable to pay service tax under (i) Business Auxiliary Service (BAS), (ii) Man Power Recruitment or Supply Agency Service (MRSA) and (iii) Renting of Immovable Property Service (RIP).

23. The foremost contention put forward by the appellant is that the appellant is a party to the JV Agreement and therefore is not providing any service to the JV. It is submitted that there is no service provider and the service recipient relationship between the appellant and the JV. Even on perusal of the SCN, it is stated that appellant is partner of JV. It is noted in SCN that in order to stimulate industrial development, appellant promotes Joint Ventures of the following types :

- (i) Joint Sector (equity participation – above 11% upto 26%)
- (ii) Associate Sector (equity participation of 2% to 11%)
- (iii) Escor Sector (1% equity)
- (iv) Escort Services (no equity participation)

24. The appellant TIDCO is represented on the Board of the JV through its nominee directors. This evidences that appellant is part of the JV. The appellant has entered into agreements with other parties to constitute JV in order to promote establishment of SEZ, IT parks etc. The department has considered these JV Agreements as 'Service Agreements'. It requires to be mentioned that some of these agreements are titled as 'Service Agreements'. We may proceed to scrutinize some of the agreements. The relevant part of agreement entered by appellant with IVR Prime Urban Developers Ltd. is as under :

SERVICE AGREEMENT

“.....1. The Second Party intends to develop through the Company, a Township with SEZ in Santha Vellore village in Sriperumbudur Taluk, Kanchipuram District, in an area of around 150 acres (hereinafter referred either as the "Projects" or "Township" or "Special Economic Zon" (SEZ) in phased manner at an estimated cost of about Rs. 125 crores (without land cost) in association with the First party under Escort Sector model. The First party has agreed in principle to associate with this project to invest upto Rs 49 lakhs in the form of equity. Discussion is being held between the parties on the different options with reference to the form of investment of the first party.

.....

4. The First Party will assist the Company on best effort basis in respect of following activities subject to the condition that the Company shall comply with the terms and conditions imposed by the concerned authorities / agencies and also subject to payment of required charges, costs and other fees by the Company levied by the concerned authorities / agencies.

(i) In getting permission / exemption for holding land acquired and proposed to be acquired further for the Project from the Revenue, the Land Reforms Commissioner and other state authorities.

(ii) In obtaining permission for converting the agricultural land for the development of the Project from the Revenue, the Commissioner for Land Reforms and Developmental Authorities.

(iii) In getting environmental clearance from the state pollution control board and the Ministry of Environment and Forests, Government of India.

(iv) In obtaining Project approval, layout approval, building plan approvals, No Objection certificates and all other statutory approvals from Local Panchayats Town Planning Authorities, Central and State Governments and other authorities related for the implementation of the Project.

(v) In obtaining permission and clearances with all State and Central Government for Special Economic Zone approval.

(vi) To extend all required assistance and support to secure all eligible Central and State Incentives, concessions and subsidies for the Project.

(vii) In seeking tax rebate and rate concessions and exemptions from various State and Central Government and other authorities.

(viii) In obtaining water supply, drainage and sewerage connection for the Project from TAMILNADU WATER SUPPLY & DRAINAGE BOARD (TWAD), and other related authorities.

(x) In obtaining broad band, tele-communication and IT links for the Project.

(xi) In providing multiple connectivity to the project including Highway punctures and road map to Sriperumpudur and connectivity / linkage to the Chennai city.

(xii) In providing Fire and Rescue Service, Post office, banks, police station out post etc.

(xiii) In getting completion certificate of the project (s).

5. The Second Party / the Company have agreed to pay to the First Party, the service charges of Rs 2,50,00,000/- (Rupees two crores and fifty lakhs only) (hereinafter referred to "Service Charges or Service Fee" being 2% of the project

cost without land cost for the services specified under Clause-4 above in the manner as indicated below for the entire works in 150 acres of Integrated Township and Special Economic Zone area. The service charges will be payable by the Second Party / the Company to the First Party in the following manner

- i) 50% of the service charges/ fee at the time entering into this agreement
- ii) 25% of the service fee on the company incurring 75 % of the project cost
- iii) Balance 25 % on completion and commissioning of the project 100%.”

25. From the agreement, it can be seen that the appellant is party to the JV and is entrusted with certain responsibilities to carry out the establishment of JV. Though the agreement is named as ‘Service Agreement’ it can be seen in Para-1 that the appellant has agreed in principle to assist the project and to invest upto Rs.49 lakhs in the form of equity. This essentially means that the appellant holds share and is part of the JV. Such equity participation of the appellant is agreed to by the parties to the JV. So also, the responsibilities of the appellant which are in the nature of getting approvals, permissions etc. are enlisted in the agreement. So also, the agreement itself stipulates that the appellant is entitled to receive service charges. Merely because the agreement states that the appellant is to be paid charges for getting approvals / permissions, it cannot be said that the appellant is providing services to the JV, for the simple reason that appellant is part of the JV and there cannot be service to oneself.

26. It requires to be noted that prior to 1.7.2012, the Finance Act, 1994 did not have the definition of word 'person'. So also, Explanation 3 (a) was inserted in the definition of 'service' under Section 65B (44) only w.e.f. 1.7.2012. The said explanation 3(a) of Section 65B (44) states that '*constituents of joint venture and the joint venture shall be treated as distinct persons*'. The period involved in the present dispute is prior to 1.7.2012 and there is no machinery in the Finance Act, 1994 to treat members of the joint venture as 'distinct persons' from the joint venture. For this reason itself, it cannot be said that appellant has provided services to JV as there can be no rendition of services to one self.

27. We have perused another agreement entered by the appellant with M/s.ETA Star Properties Ltd. (as second party) and M/s.ETA Startech City Private Ltd. (as third party) on 18.08.2007. This agreement is also named as 'Service Agreement'. In Para-1, the agreement refers to an earlier JV Agreement executed by the appellant and the second party dt. 25.05.2007. The said JV Agreement is to develop Township in Tirumangalam, Mambakkam, Vadamangalam etc. The service Agreement clearly evidences that there is already a JV Agreement of which TIDCO is a party. The relevant part of the agreement reads as under :

SERVICE AGREEMENT

This Agreement entered into this Eighteenth day of August, 2007 at Chennai among **Tamilnadu Industrial Development Corporation Limited (TIDCO)**, a Company incorporated under the Indian Companies Act, 1956 and a Government of Tamilnadu Enterprise, having its registered office at 19-A, Rukmini Lakshmipathy Road, Chennai 600 008, India, hereinafter referred to as "**First Party**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the **FIRST PART**:

ETA Star Property Developers Limited, Company incorporated under the Indian Companies Act, 1956 having its Registered Office at 501 & 502, 5th Floor, North Block, Front Wing, "Manipal Centre, # 120 (Old No.47). Dickenson Road Bangalore 560 042, Karnataka, India, hereinafter referred to as "**Second Party**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the **SECOND PART**, and

ETA Startech City Private Limited, a Company registered under the provisions of the Companies Act 1956, having its registered office at Crown Court, 3rd Flor, No.34, Cathedral Road, Chennai 600 086, Tamil Nadu, India, hereinafter referred to as "**Company**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the **THIRD PART**.

WHEREAS

1. An agreement was executed among the First Party, Second Party and the Company on May 25, 2007 (hereinafter referred to as "the Joint Venture Agreement") to develop a Township in Thirumangalam, Mambakkam, Vadamangalam, Vasinampattu, Thiruppanthiyur, Agaram, Karumankalani, Thirumenikuppam and Beemapuram Villages near Sriperumbudur, Kanchipuram District, in an area of around 350 acres (hereinafter referred either as the "Projects" or "Township" or "Special Economic Zone" [SEZ]) at a estimated cost of about Rs.3,750 crores and the township / SEZ is proposed to be developed in periods as noted and the parties hereby agree to participate in the establishment of the Township / SEZ. The area as noted above may be increased / decreased according to the availability of lands in the identified villages.
2. As per Clause 4 of the joint Venture Agreement the First Party warranted and represented to the Second Party and to the Company for certain services for which the TIDCO is entitled for service charges and separate agreement for details of services and the terms for the service charges shall be determined among the parties.

AND WHEREAS the parties hereto are desirous of recording the terms and conditions agreed by and among between them for this purpose, which will include for the entire area of 1227 acres and comprises partly of 50 to 100 acres of Special Economic Zone & balance with integrated Township.

... ..

4. The First Party will assist the Company on best effort basis in respect of following activities subject to the condition that the Company shall comply with the terms and conditions imposed by the concerned authorities / agencies and also subject to payment of required charges and other fees by the Company levied by the concerned authorities / agencies

(i) In getting permission / exemption for holding land acquired and proposed to be acquired further for the Project from the Revenue, the Land Reforms Commissioner and other state authorities.

(ii) In obtaining permission for converting the agricultural land for the development of the Project from the Revenue, the Commissioner for Land reforms and Developmental Authorities.

(iii) In getting environmental clearance from the state pollution control board and the Ministry of Environment and Forests, Government of India.

(iv) In obtaining Project approval, layout approval, building plan approvals, No Objection certificates and all other statutory approvals from Local Panchayats Town Planning Authorities, Central and State Governments and other authorities related for the implementation of the Project.

(v) In obtaining permission and clearances with all State and Central Government for Special Economic Zone approval.

(vi) To extend all required assistance and support to secure all eligible Central and State incentives, concessions and subsidies for the Project.

(vii) In seeking tax rebate and rate concessions and exemptions from various State and Central Government and other authorities.

(viii) In obtaining electrical power for the Project and for putting up its Captive Power supply and its distribution from the Tamil Nadu Electricity Board and Statutory Authorities.

- (ix) In obtaining water supply, drainage and sewerage connection for the Project from TAMILNADU WATER SUPPLY & DRAINAGE BOARD (TWAD), and other related authorities.
- (x) In obtaining fuel linkage from appropriate authorities.
- (xi) In obtaining broad band, tele-communication and It links for the Project.
- (xii) In providing multiple connectivity to the project including Highway punctures and road map to Sriperumpudur and connectivity / linkage to the Chennai City.
- (xiii) In providing Fire and Rescue Service, post office, banks, police station / out post etc.
- (xiv) In getting completion certificate of the project (s).

28. We have to say that the Department has been carried away by the nomenclature of the agreement which is 'Service Agreement'. The nomenclature of an agreement is not decisive of its' nature. An Agreement has to be understood on the intentions of the parties and not on the nomenclature. The intention of the parties to the agreement is to include the appellant as a party to the JV so as to facilitate the establishment and implementation of the project. The revenue earned by the appellant from the JV is decided in the agreement itself which is in the form of service charges for undertaking the responsibilities of obtaining permissions / approvals etc.

29. The expression "Joint Venture" connotes a legal entity engaged in the joint undertaking of a particular transaction for mutual profit. The parties to JV may contribute assets and share the risks. A joint venture evidences a community of interest in the performance of

project for which it is formed. The parties may have the right and discretion in the governance of the joint venture. In most cases, duties and responsibilities of the constituents are agreed and stipulated in the agreement. A party to the JV has to be considered as a co-adventurer in the venture with control and participation and jointly sharing profit and losses. It is a legal entity by which the parties come together with volition to make a business to achieve out of the enterprise. The nature of a JV may be revenue sharing modal, profit sharing modal or similar arrangements wherein there is mutuality of understanding to contribute in the form of resource or participation in the furtherance of the business of the joint venture. The responsibilities of each parties are clearly mentioned in the agreement and the participation in capital or participation by other means are stipulated and agreed upon. The agreement provides for a common pool of resources of different kind for starting and running the business. It is clear from the agreement that though the agreement is named as "Service Agreement", the appellant being a constituent of the JV, cannot be said to be providing services to JV. The doctrine of mutuality applies and the JV cannot be treated as client of the appellant.

30. The Ld. Counsel has also advanced arguments contending that in any case, the activity will not fall under the definition of "Business Auxiliary Services". We have already concluded that JV cannot be considered as client of the appellant. The definition of 'Business

Auxiliary Service' under Section 65 (19) has already been reproduced in para 14 above. The show cause notice does not mention as to which of the limbs of the definition would be attracted for levy of service tax under 'Business Auxiliary Service'. However, the adjudicating authority in para 6.2 has held that the activities carried out by appellant is covered under clause (iv) (vi) and (viii) of the definition of "BAS". We have examined this in detail. The activities carried out by the appellant do not fall under the category of "Business Auxiliary Services" for the simple reason that these are in the nature of getting approvals and permissions for the JV itself and not for a client. So, also the appellant has not rendered any services falling under incidental or ancillary to the services under clause (i) to (vi) of the definition. We have no hesitation to conclude that the demand of service tax raised under 'Business Auxiliary Services' cannot sustain and requires to be set aside. Ordered accordingly.

31. The demand has been raised under MRSA alleging that the appellant has deputed one Director to M/s.Tamil Nadu Road Development Corporation (TNRDC) for acting as its Director in charge of the company. The deputation was initially provided for a period upto 15.11.2006. M/s.TNRDC agreed to pay an amount of Rs.6 lakhs per month as service charges inclusive of salary to the above person. The Ld. Counsel pointed out that in the SCN, the demand has been raised under 'Management Consultancy Service'. However, the

adjudicating authority has confirmed the demand under MRSA service. The Show Cause Notice is a foundation of the proceedings initiated. When the demand has been raised under 'Management Consultancy Service', the adjudicating authority ought not to have confirmed the demand under MRSA service. For this reason itself, the demand under MRSA service cannot sustain and requires to be set aside. Ordered accordingly.

32. The Ld. Counsel has submitted that the appellant is not contesting the demand of service tax under Renting of Immovable Property Service. The same is upheld along with interest.

33. Ld. Counsel has argued on the ground of limitation also. The demand is raised invoking the extended period. The appellant being a State Government Enterprise and its Board of Directors consists of persons who are Government officers and specialists in the industry, we are of the opinion that the allegation that they have suppressed the facts with intent to evade payment of service tax is without any legal basis. There is no positive act of suppression brought out against the appellant. For this reason, we find that invocation of extended period cannot sustain. The demand raised invoking the extended period requires to be set aside. Ordered accordingly.

34. Moreover, in the present case, the appellant has paid the entire service tax along with interest much before issuance of the show cause notice. Sub-section (3) of Section 73 of the Finance Act, 1994 provides

that when the service tax along with interest is paid on being pointed out by the officers of the department, no show cause notice should be issued to the assessee. The appellant having paid the service tax much before issuance of show cause notice, the penalties imposed cannot sustain as decided by the Hon'ble High Court of Karnataka in the case of *CCE & ST, LTU Bangalore Vs Adeco Flexione Workforce Solutions Pvt. Ltd.* – 2012 (26) S.T.R 3 (Kar.). As the issue on limitation has already been answered in favour of appellant, we hold that the penalty imposed in respect of 'Renting of Immovable Property Service' cannot sustain and is therefore set aside. The appellant succeeds on merits and issue of limitation in respect of BAS and MRSA services.

35. The Ld. Counsel has argued that the activity carried out by the appellant are part of discharging of sovereign function as appellant is a State Government Enterprise. The appellant is managed by Board of Directors, which comprises Government officers and specialist in the industry. As the issue on merits and limitation have already been answered in favour of appellant we do not think it is necessary to delve into this issue.

36. In the result, the impugned order is modified by setting aside the demand, interest and imposition of penalties under BAS, MRSA, without disturbing the confirmation of demand of service tax and interest thereon on 'Renting of Immovable Property Service'. The penalties in respect of RIPS are set aside.

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The appeal is partly allowed with consequential reliefs, if any.

(Order dictated and pronounced in the open court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

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sd/-

(SULEKHA BEEVI. C.S)
Member (Judicial)