CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No.50302 of 2021 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-034-20-21 dated 10.08.2020 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Bhopal (M.P.)]

M/s.Pawan Jethwani, **Appellant**
34, Shakkar Colony, Nai Sadak,
Gwalior (M.P.).

VERSUS

Commissioner of Central Goods & **Respondent**
Service Tax, Customs, Central Excise and Service Tax,
48, Administrative Area, Arera Hills,
Bhopal.

APPEARANCE:

Shri Awadesh Kumar Pandey, Advocate for the appellant
Shri Ravi Kapoor, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50074/2021

DATE ON HEARING/DECISION:11.01.2022

ANIL CHOUDHARY:

Heard the parties.

2. The appellant, who is engaged in providing various taxable services including works contract services, have provided repair and maintenance services, which includes white washing for the buildings of Maulana Azad National Institute of Technology (MANIT), Bhopal.

3. Vide show cause notice dated 6.3.2019, invoking extended period of limitation, service tax demand was proposed on the said activity of the appellant for the period 2013-2014 upto 30.06.2017 and accordingly, service

tax was proposed at Rs.21,43,398/- with interest and further penalty was also proposed.

4. The show cause notice was adjudicated on contest and the proposed demand was confirmed alongwith interest and equal amount of penalty was imposed under Section 78, upholding the allegation of suppression of facts from the Revenue and further penalty of Rs.10,000/- was imposed under Section 77(1).

5. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals).

6. Before the Commissioner (Appeals) also, the appellant raised the ground that MANIT is an Educational Institute of National Importance established by an Act of Parliament - The National Institute of Technology Act, 2007 (29 of 2007), which is wholly owned and controlled by the Central Government, through the Ministry of Human Resource and Development. Further, source of fund of the institute is from the fees and the budget allocation out of the consolidated fund of India.

7. Ld. Counsel urges that the Commissioner (Appeals) was pleased to hold that the appellant under Sl.No.12 of Notification No.25/2012–ST, is entitled to exemption for the said activity for the period after 30.01.2014, in view of the amendment in definition of Government Authority vide Notification No.02/2014-ST, observing that the dispute in this case is whether MANIT can be considered as a governmental authority or not. According to the ld. Commissioner from the perusal of the definition of the "Government Authority", it is clear that the following 3 ingredients have to

be simultaneously present, in order to consider any entity as a governmental authority:-

i) it should be a board, or an authority or any other body established with 90% or more participation by way of equity or controlled by Government and;

ii) set up by an Act of the Parliament or a State Legislature;

iii) to carry out any function entrusted to a municipality under Article 243 W of the Constitution.

8. Ld. Commissioner has recorded a finding that MANIT have been providing higher technical education and such functions are not covered by Article 243 W of the Constitution of India. Hence, MANIT cannot be considered as a governmental authority during the period prior to 30.01.2014. Accordingly, he was pleased to confirm the demand for the period April, 2013 to Jan. 2014 amounting to Rs.3,51,897/- and was pleased to drop the remaining demand of Rs.17,91,501/- for the period 1.2.2014 to 30.06.2017.

9. He further confirmed the proportionate penalty under Section 78 and also confirmed the penalty under Section 77.

10. Being aggrieved, the appellant is before this Tribunal.

11. Having considered the rival contentions, I find that the issue is no longer *res integra* and the same has been decided by the Hon'ble Patna High Court in the case of **Shapoorji Paloonji & Company Pvt. Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax, Patna – 2016 (42) STR 681 (Patna),** wherein Shapoorji Paloonji & Co. constructed the buildings for the IIT, Patna. The Hon'ble High Court held that the

Governmental Authority as defined under the said notification, wherein, if an institute or body is set up by an Act of Parliament or State Legislature, then the other conditions i.e. 90% or more participation by way of equity or control by Government will not be applicable. I find that facts herein are similar to the facts in the case of **Shapoorji Paloonji & Company Pvt. Ltd. (supra).**

12. I further hold that as the substitution vide Notification No.02/2014-ST dated 30.01.2014, of the definition of 'Governmental Authority' is made, the same shall have the retrospective effect, as substitution relates to the date of original notification as per the Rules of the Interpretation. Accordingly, I hold that the Commissioner (Appeals) has erred in holding that substituted definition of Governmental Authority shall not have the retrospective effect.

13. Accordingly, this appeal is allowed. The impugned order is set aside, so far it confirms the demand and penalty for the period April, 2013 to Jan./June, 2014. The appellant shall be entitled to consequential benefit in accordance with law.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.