CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV…..

Service Tax Appeal No. 51057 of 2021 [SM]

[Arising out of Order-in-Appeal No. RPR-EXCUS-000-APPL-077-20-21 dated 22.02.2021 passed by the Commissioner (Appeal), Central Goods and Service Tax, Raipur]

M/s. Kishor Jaiswal **…Appellant**
House No. 200, Near Aama Bagicha,
Dhamtari (C.G.) - 493773

VERSUS

Commissioner of Central Excise
& CGST – Raipur **…Respondent**
GST Bhawan, Tikrapara,
Raipur, Chattisgarh-492001

APPEARANCE:

Mr. Bimal Jain, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

Coram: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:19.05.2022

FINAL ORDER No. 50466 / 2022

DR. RACHNA GUPTA

The appellant herein is engaged in providing the construction services to various Departments/Local Authorities. Based upon an information received from Income Tax Department that a query was raised by the Revenue Department vide letter dated 09.10.2018. Pursuant to the response thereof the department formed an opinion that the appellant has received an amount of Rs.5,20,01,460/- during the period 2013-14 to 2014-15 as consideration towards the provision of services made by them to service receivers. Alleging that the services provided by the appellant were the taxable services, Show Cause Notice No. 14249 dated 17.10.2018 was served upon the appellant proposing demand of service tax of Rs.64,27,380/- to be recovered from the appellant along with the interests at the appropriate rates and the proportionate penalties. This proposal was partially confirmed vide Order-in-Original No. 28/2020-21 dated 21.09.2020 vide which the demand for an amount of Rs.24,34,887/- out of the proposed demand of Rs.64,27,380/- was confirmed. Being aggrieved, the appeal was filed before Commissioner (Appeals) who vide Order No. RPR-EXCUS-000-APPL-077-20-21 dated 22.02.2021 has also partly allowed the appeal thereby dropping the demand of Rs.22,17,534/-. However, demand of service tax of Rs.2,17,353/- has still been confirmed by the Commissioner (Appeals) holding that construction of 'Hut Bazaar' is a service for Commerce and Industry and as such is not covered in the exemption notification. Still being aggrieved of the said order the appellant is before this Tribunal.

2. At the onset, learned DR has objected the jurisdiction of Single Member Bench submitting that the issue involved in the present appeal is that of taxability. However, the same has been vehemently objected by learned Counsel for the appellant who has submitted that the issue involved in the present case in only about the nature of the 'Hut Bazaar' as was constructed by the appellant for Nagar Palika Parishad, Dhamtari as to whether it was the construction for the purpose of Commerce and Industry.

3. The learned Counsel to elaborate about the said controversy has submitted that appellant has been providing construction services to various Governmental Authorites/Departments and to

the Local bodies. The impugned show cause notice had alleged all services of the appellant to be the taxable services. However, the original adjudicating authority has held that contract of all the service recipients as were shown to the original adjudicating authority were related to the construction of Civil structure, road, schools etc., related to the public welfare authority hence were covered under the mega exemption notification except for the services of construction provided for CG Police Housing Corporation Ltd. and for sunday market of Nagar Palika Parishad, Dhamtari. Commissioner (Appeals) while partly allowing the appeal has held that the construction of quarters and houses to CG Housing Corporation Ltd. also to be a welfare activity with no element of commerce and Industry. Hence, the demand to that extent has also been dropped by Commissioner (Appeals) (amounting to Rs.22,17,534/-). Learned Counsel has impressed upon that the minuscule demand as against the huge proposal is being wrongly confirmed by Commissioner (Appeals), the said demand is also prayed to be set aside on the same principle as has been applied for the construction services given to CG Police Housing Corporation Ltd. Finally, impressing upon that the above facts and submissions are sufficient to reflect that the controversy to be adjudicated by this Bench is only to the effect as to whether the services provided for construction of 'Hut Bazaar' has any element of commerce and industry and there is no other issue of taxability as has been mentioned by learned DR. The order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. To rebut these submissions learned DR has reiterated her objection about issue of taxability to have been involved in the impugned appeal. On merits she has laid emphasis upon the findings in Para 7.3 of the order under challenge and has also relied upon Para 8.5 thereof. Impressing upon no infirmity in those findings, the appeal in hand is prayed to be dismissed.

5. After hearing the rival contentions, perusing the entire records, it is observed that there is no denial that the appellant is involved in providing construction services to various Governmental Departments/Authorities and even to the local bodies as that of *Adim Jati Jila Sanyojak, Dhamtari, CG Police Housing Corporation Ltd., PWD Chhattisgarh State, Nagr Palik Paishad, Dhamtari, EE, Rural Engineering Services, Dhamtari and CG Rajya Mandi Board, Raipur*. Relying upon Entry No. 12 and 13 of Notification No. 25/2012-ST dated 20.06.2012, Original Adjudicating Authority itself has held that different Departments of Chhattisgarh Government and Nagar Palika Nigam are covered under Governmental/Local Government and the services provided to any of these departments shall be covered under the aforesaid Entry no. 12 and 13 and as such shall be exempted from the liability of tax. However, the services for construction of houses and quarters for CG Police Housing Corporation Ltd. and for construction of 'Hut Bazaar' for Nagar Palika Parishad, Dhamtari were held to be out of the scope of being the governmental bodies. Commissioner (Appeals) though has considered the services provided to CG Police Housing Corporation Ltd. also to be the services covered under clause 12 and 13 of Notification No. 25/2012, however, the services of

construction of 'Hut Bazaar' are still held to be taxable, holding the services being provided for commerce & industry activity which is specifically excluded from the exemption notification.

6. To decide the moot controversy in the issue it is foremost required to have a look on clause 12 and 13 of Notification No. 25/2012 dated 20.06.2012. It reads as follows :

> *"12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –*
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> *(a) a civil structure of any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
> *(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*
> *(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*
> *(d) canal, dam or other irrigation works;*
> *(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal;*
>
> *13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -*
>
> *(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;*
> *(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;*
> *(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;*
> *(d) a pollution control or effluent treatment plant, except located as a part of a factory; or*
> *(e) a structure meant for funeral, burial or cremation of deceased;*

7. The perusal thereof makes it clear that any construction services if provided to any Governmental or Local Authority for the purpose of use by general public the construction and even the renovation or maintenance thereof shall be out of the scope of tax liability of the service provider. However, if the construction services though are provided to the governmental authority but are meant for commercial purposes/commercial gains to that authority, such constructions services shall be covered under the tax net and the service provider shall be liable to pay the service tax. This particular perusal makes it abundantly clear that the core issue to be decided herein is not precisely the issue of taxability but the issue of the nature of the services provided by the appellant with respect to 'Hut Bazaar' that is:

> Whether 'Hut Bazaar' was intended was Nagar Palika Parishad, Dhamtari to be used for any commercial gains instead that of the welfare use thereof.

8. As submitted by the appellant that the 'Hut Bazaar' was constructed in the form of small stalls to be given to the farmers for the sale of their produce against nominal fee to be paid by those farmers to Nagar Palika. It is important to understand as to whether the payment of nominal fee to a Governmental /Local Authority for facilitating the farmers to sale their produce is the activity of commerce by that Government Authority or the local authority. I observe that the issue stands already covered by the following decisions:

> *(i) Judgment of Hon'ble High Court of Patna is the case of Shapoorji Paloonji & Company Pvt. Ltd. Vs. CCE & ST, Patna reported in 2016 (42) S.T.R. 681 (Pat.).*

(ii) Judgment of this Tribunal in the case of A.B. Projects Pvt. Ltd. Vs. CCE, Nagpur reported in 2017 (8) TMI-518-CESTAT Mumbai = 2017 (5) G.S.T.L. 195 (Tri.-Mum.).

(iii) This Tribunal in the case of Shri Sanjeev K. Gaddamwar Vs. CCE, Nagpur reported in 2017 (8) TMI 313-CESTAT, Mumbai=2017 (5) G.S.T.L. 206 (Tri.-Mum.) held:

It is seen that the appellants have pointed out that only farmers charges are collected for the maintenance of the property and the said property is not registered out or sold to anybody. In view of above, it is apparent that the use of the said property is of non-commercial nature for the facilitation of the farmers. In this regard, ld. Counsel has also pointed out that Circular No. 80/10/2004-S.T., dated 17.-09-2004

"Construction services (commercial and industrial buildings or civil structures)

13.2. The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, Government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax."

When the property in question is not used by owner for commercial purpose then it cannot be liable for payment of service tax under commercial and industrial construction service as is apparent from Circular dated 27.04.2012. It is apparent that C.B. E. & C. circulars considered the use of the said property as non commercial in nature. In these circumstances service tax under the head of Commercial and Industrial Construction cannot be levied on such properties. In view of above, the demand of Service Tax cannot be sustained and is set aside. Consequently the appeal is allowed.

Krishi Upaj Mandi Samiti V. Commissioner of C. Ex. & S.T., Jaipur, 2017 (4) G.S.T.L. 346 (Tri.-Del.). Wherein Paras 10 & 11 it is held herein with the introduction of Negative List Regime of Taxation w.e.f. from 1st July, 2012, the Mandi Parishad is excluded from tax liability. Under Section 66D(d) provides exemptions for services relating to agriculture or agricultural produces by way of renting or leasing of agro machinery, shorting, grading, cooling or bulk packaging, loading, unloading, packaging, storage or warehousing of agricultural produce agricultural extension services by any Agricultural Produce Marketing Committee or Board for sale or purchase of agricultural produce. Accordingly, this Tribunal held that Mandi Samiti or Board are not liable to Service Tax on renting of immovable property used for storage of agricultural produce in the market area.

9. Clause No. 14 (d) of the Mega Exemption Notification further clarifies that any infrastructure provided for the agricultural produce, the services of construction thereof shall be exempted from the tax liability. The department has not produced any document to show that the stalls of 'Hut Bazaar' were rented out or auctioned to the farmers. Though the show cause notices alleges the amount proposed to be recovered as a liability towards an amount received after auction of 'Hut Bazaar' but there is no single document to support those allegations. The Adjudicating Authority below has denied the money collected by the Government Authorities to whom the services have been provided by the appellant, to be an amount of auction. It is rather mentioned by Commissioner (Appeals) in the order under challenge that the 'Bazaar Shulk' / the nominal fee was lifted w.e.f. 01.04.2018. As already observed above that the issue of collection of nominal fee with respect to the stalls for facilitating the farmers is not an activity of commerce. It is held that Commissioner (Appeals) though had been thoroughly meticulous about the entire demand proposed in the show cause notice but has been wrong while

considering the construction of ‘Hut Bazaar’ as an activity of commerce and industry.

10. Resultantly, the findings to that effect also are hereby set aside. The demand confirmed on that account stands set aside. Consequent thereto the appeal stands allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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