CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 53172 OF 2016

[Arising out of the Order-in-Original No. 44/PR. COMMR/ST/IND/2016 dated 31/08/2016 passed by The Principal Commissioner, Customs, Central Excise & Service Tax, Indore.]

Principal Commissioner, ...Appellant
Customs, Central Excise & Service Tax,
PB-10, Manik Bagh Palace,
Indore – 452 010 (M.P.).

Versus

M/s Show World, ...Respondent
307, 3rd Floor, Ratanmani Complex,
7/1, New Palasia,
Indore (M.P.).

APPEARANCE:

Shri Harsh Vardhan, Authorized Representative for the Department
None for the respondent.

CORAM:
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 51029/2022

DATE OF HEARING : 07.10.2022
DATE OF DECISION: 28.10.2022

P.V. SUBBA RAO

This appeal is filed by the Revenue assailing order-in-original dated 31.08.2016 passed by the Principal Commissioner of Central Excise & Service Tax, Indore, whereby he decided the show cause notice dated 21.10.2015 issued to the respondent and confirmed a demand of Rs. 28,728/- out of Rs. 60,49,457/- demanded in the show cause notice and dropped the remaining.

2. We have heard learned Authorized Representative for the Revenue and perused the records.

3. The respondent is a private firm engaged in providing services. The services in dispute in this case are the provision of Medical Mobile Unit (MMU) to M/s Jagran Solutions, Indore. M/s Jagran Solutions were awarded a contract by the Government of Madhya Pradesh to provide MMUs who, in turn, obtained these MMUs from the respondent. It is undisputed that the MMUs were provided by the respondent on behalf of M/s Jagran Solutions to various locations. The MMU is essentially Mobile Hospital/Clinic in the form of a van along with personnel to provide healthcare services to remote areas within the State. The contract for providing these MMUs was awarded to M/s Jagran Solutions by the Government of Madhya Pradesh who, in turn, obtained them from the respondent. A show cause notice dated 21.10.2015 was issued to the respondent with respect to these services demanding service tax amounting to Rs. 60,49,457/- under the head "Event Management Service" for the period 2010-2011 to 2012-2013 by invoking extended period of limitation under Section 73 (1) of the Finance Act, 1994. Interest was also demanded under Section 75 of the Act and penalties were proposed to be imposed under Sections 77 and 78 of the Act. After following due process the learned Commissioner has, in the

impugned order, found that the services rendered by the respondent were in the nature of "Health Care Services", which were exempted under Notification No. 25/2012-ST dated 20.06.2012. Accordingly, he dropped major portion of the demand. The small portion of the demand confirmed by the Commissioner in the impugned order has not appealed before us by the respondent.

4. Revenue has filed this appeal for the following reasons :-

(i) The Principal Commissioner has categorically considered the service provided by the notice to be covered under Sl. No. 2 of Notification No. 25/2012-ST dated 20.06.2012 which was available only to "healthcare services by a clinical establishment, an Authorized Medical Practitioner or para-medics". It does not cover all the healthcare services ;

(ii) The notification also does not refer to "services rendered in relation to ….." Therefore, the notification cannot be extended to anybody other than the three categories of service providers namely clinical establishments, Authorized Medical Practitioners or para-medics. The respondent is none of the three and this fact is not in dispute. Therefore, the respondent was not entitled to the benefit of Notification No. 25/2012-ST dated 20.06.2012.

5. Learned Authorized Representative for the Revenue reiterated the above grounds of appeal.

6. Learned Counsel for the respondent, on the other hand has pointed out that the benefit of the notification was correctly given to the respondent. He further submits that even otherwise the show cause notice was issued to the respondent under the category of "event management services" and the Principal Commissioner has found that these services are not covered under the head of "event management services". No show cause notice has been issued to them demanding service tax under "healthcare services". Therefore, the demand cannot be confirmed under healthcare services.

7. We have considered the submissions of learned Authorized Representative for the Department and perused the records.

8. It is undisputed that the show cause notice demanded service tax from the respondent under the head "event management services". There is no demand under the head "healthcare services". The Principal Commissioner has, in the impugned order, examined the nature of the services provided by the respondent has come to the conclusion that provision of MMUs by the respondent would qualify as "healthcare services" and NOT as "event management services". This finding of the Commissioner has not been disputed in the appeal by the Revenue. After concluding that the respondent has not provided "event management services", the Principal Commissioner has

examined the taxability under the head "healthcare services" and came to the conclusion that they were exempted by virtue of Notification No. 25/2012-ST dated 20.06.2012. Revenue's contention is that the respondent does not qualify for the exemption under this notification because it is neither a clinical establishment nor an authorized medical practitioner nor a para-medic and the exemption has not covered all services rendered in relation to healthcare services but specifically the healthcare services provided by the aforesaid three noticees/persons. Since an exemption notification must be strictly construed against the person who claims it, the respondent is not entitled to the benefit of exemption notification. We, however, find that the tax liability under healthcare services cannot be fastened on the respondent at all because no notice has even been served upon the respondent under this head. The respondent was put to notice asking as to why a demand cannot be made under the head "event management services". No service tax can be levied under the head "event management services" as per the finding of the Principal Commissioner in the impugned order which is not disputed by the Revenue, therefore, the question as to whether an exemption notification under the head "healthcare services" is available to the respondent or not is a moot question. The exemption notification will be relevant if tax liability can be fastened on the respondent in the first place. In the absence of any notice under the category of healthcare services no tax liability can be fastened on the respondent. Therefore, the demand under the head event management services made in the show cause notice has been correctly dropped in the impugned order. In our considered view, the Principal Commissioner should not have even considered fastening the liability under the head "healthcare services" because no notice was served upon the respondent. For these reasons, we find that the Revenue's appeal deserves to be rejected. The appeal is rejected and the impugned order is modified to the extent that the demand stands dropped for the reason that no notice was served upon the respondent under the category of healthcare services.

(Order pronounced in open court on 28/10/2022.)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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