CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL NO. 53724 OF 2018

(Arising out of Order-in-Original No. 12/PK/GST/DE/2018-19 dated 31.08.2018 passed by the Commissioner of CGST, Delhi East)

M/s Toshiba Water Solutions Pvt. Ltd. ……..**Appellant**
D-19, Kalkaji
New Delhi – 110 019

Versus

Commissioner of CGST (Delhi East) ……**Respondent**
CR Building, I.P. Estate
New Delhi – 110 009

APPEARANCE:

Shri Kunal Agarwal, Advocate for the Appellant
Dr. Radhey Tallo, Authorised Representative of the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51133/2022

Date of Hearing/Decision : November 23, 2022

JUSTICE DILIP GUPTA :

This appeal is directed against the order dated August 31, 2018 passed by the Commissioner, CGST, Delhi East[1], by which the demand of service tax has been confirmed by invoking the extended period of limitation contemplated under the proviso

1 **the Commissioner**

to section 73(1) of the Finance Act, 1994[2] with penalty and interest.

2. The appellant is engaged in the construction of Sewage Treatment Plant[3], Effluent Treatment Plant[4] and laying down of sewage pipelines for various customers, including several government bodies.

3. In the year 2009, an investigation was initiated with respect to the activities undertaken by the appellant on which service tax was not discharged. These activities related to construction of STP, ETP and sewage systems, in respect of which a demand of service tax was made by alleging that the construction undertaken was commercial in nature and would qualify as a taxable service under the category of 'commercial or industrial construction service'[5], defined under section 65(25b) of the Finance Act and made taxable under section 65(105)(zzq) of the Finance Act. Accordingly, three show cause notices were issued to the appellant for the period prior to 30.06.2012. The demands were confirmed by the Adjudicating Authority and the appeal is pending in the Tribunal.

---

2 **the Finance Act**
3 **STP**
4 **ETP**
5 **CICS**

4. A show cause notice dated 22.05.2014 was thereafter issued for the subsequent period from July 2012 to March 2013 in continuation of the previous show cause notices. It proposed a demand of service tax of Rs. 17,92,08,222/- on services, which include construction of STPs, ETPs, and laying of sewage pipes, rendered to Government bodies and other entities. The appellant filed a detailed reply contesting the demand on the ground that the services rendered by it were exempt by virtue of a Notification dated 20.06.2012 that was issued in exercise of the powers conferred by section 93(1) of the Finance Act.

5. The demand of service tax, where the services were rendered to Governmental authorities, was dropped by the Commissioner on the basis of the exemption available under Serial No. 12 of the aforesaid Notification dated 20.06.2012. However, demands in respect of three entities were confirmed and the benefit claimed by the appellant under Serial No. 13(d) of the said Notification was denied.

6. The relevant portion of this Notification dated 20.06.2012 is reproduced below:

> **"Notification No. 25/2012-ST, Dated 20-6-2012**
>
> In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of the 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210(E), dated the 17th March, 2012, **the Central Government,**

being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1 to 12 xxxxxxx

13. Service provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) xxxxxxx
(b) xxxxxxx
(c) xxxxxxx
(**d**) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;"

(emphasis supplied)

7. In terms of the Notification dated 20.06.2012, the services provided by way of construction of a pollution control or effluent treatment plant, except located as a part of a factory, has been exempted from the whole of the service tax leviable thereon under section 66B of the Finance Act.

8. The three services, in respect of which the demands were confirmed, are tabulated below:

S.No.	Service Recipient	Activity undertaken by the appellant	Service Tax (in Rs.)
1.	ONGC Assam	Construction of ETPs in the oil fields of ONGC, registered under the Mines Act, 1952	26,49,982
2.	ONGC Ahmedabad		2,06,54,736
3.	National Building Construction Company	Construction of Sewage Treatment Plant	1,74,839

7. An appeal, being ST/50293 of 2016 (M/s UEN India Limited vs Commissioner of Service Tax), was filed before the Tribunal which was decided on August 12, 2021. In respect of

ETPs constructed for ONGC, the Tribunal observed that the oil fields of ONGC where only extraction of crude oil takes place, would not qualify as a factory and, therefore, the Commissioner committed an error in denying the benefit of Sl. No. 13(d) of the Notification dated 20.06.2012. In respect of STPs constructed for NBCC, the Tribunal held that the exemption benefit provided by Notification dated 20.06.2012 at Serial No. 13(d) would be available to the appellant. It has been pointed out by the learned authorized representative appearing for the Department that the said decision of the Tribunal in **UEM India Limited** has been accepted by the Department and no appeal has been filed.

8. The present appeal relates to the subsequent period from 2013-14 to 2015-16 for which a show cause notice dated 14.11.2017 was issued.

9. The issues involved in the present appeal are –

(a) Whether onshore oil fields of "ONGC Ahmedabad of the appellant, which have been registered under the Mines Act, 1952, wherein only extraction of crude oil is done, qualify as a factory in terms of section 2(e) of the Central Excise Act, 1944? And thus, activity of construction of Effluent Treatment Plants ("ETPs") by appellant in such fields not eligible for exemption under Sl. 13(d) of the Notification No. 25/2012-ST dated 20.06.2012?

(b) Whether extraction of crude oil amounts to manufacturing?

10. This issue has already been decided by the Tribunal in the aforesaid decision rendered in **UEM India Limited**. Thus, for all the reasons stated in the aforesaid order of the Tribunal, it would not be possible to sustain the order dated 31.08.2018.

11. The order passed by the Commissioner cannot, therefore, be sustained and is, accordingly, set aside. The appeal is, accordingly, allowed.

(Dictated & pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Golay