CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 54989 of 2023 [SM]

[Arising out of Order-in-AppealNo. IND-EXCUS-000-APP-127-2022-23 dated17.03.2023 passed by the Commissioner of Customs, CGST & Central Excise (Appeals), Indore]

M/s. Raj Kumar Verma **...Appellant**
Santoshimata ward,
Santosh Nagar,
East Nimar
Madhya Pradesh
450001

VERSUS

Commissioner f Central Excise
& CGST-Ujjain **...Respondent**
Administrative Area,
Haratpur, Ujjain,
Madhya Pradesh-456010

APPEARANCE:
Ms. Priyanka Goel, Advocate for the Appellant
Mr.Rohit Issar, Authorized Representative for the Respondent

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

DATE OF HEARING: 01/07/2024
DATE OF DECISION: 19/09/2024

FINAL ORDER No.58606/2024

DR. RACHNA GUPTA

Facts, in brief, which have culminated into the present adjudicationare that the appellant M/s Raj Kumar Verma, is registered with the Service Tax department for rendering Works Contract Services (W.C.S). Based on third party data the appellant was asked to submit certain documents. Those were supplied vide appellant's letter dated 03.12.2024, From the scrutiny of those documents department observed that the appellant had received a total sum of Rs.2,03,37,152/- for rendering W.C.S to Public Works Departments (P.W.D) Khandwa, Nagar Palika, Nigam Khandwa and Nagar Panchayat Bhikangaon by way of constructing a girls hostel and drainage respectively. The appellant was also observed to have received an amount of Rs.28,50,000/- against providing private labour works. Those activities of the appellant are opined to be taxable activities of the appellant rendered in the Financial Year (FY) 2015-16 on which the appellant had not paid the Service Tax nor even filed the ST-3 Returns For FY-2015-16 and filed the nil Returns for FY-2016-17. Same is opined to be an act of suppression. Resultantly vide Show Cause Notice (SCN) number 415 dated 30.12.2020, an amount of Rs.64,83,146/- of Service Tax was Proposed to be recovered along with the proportionate interest and the appropriate penalty.

2. While adjudicating the said SCN, the original adjudicating authority Vide order in original (O-I-O) number 08/2021-22 dated 17.12.2021 The adjudicating authority had dropped the demand of Service Tax of Rs.52,37,406/- along with the demand of interest. However, a demand of Service Tax amounting to Rs.12,09,740/- under proviso to section 73(1) of the Finance Act 1994 was order to be recovered along with the interest Penalty of Rs.10,000/- was also imposed u/s 78(1) of the said Act and penalty of Rs.10,000/- was imposed u/s 77 of the said Act. The appeal against the said order has been disposed of vide Order in Appeal no (O-I-A) bearing no 127-2022-23 dated 17.03.2023 vide which the demand of Service Tax of Rs.9,56,210/- for FY-2015-16 and that of

Rs.538625/- for FY-2016-17 was confirmed along with penalty of same amount. Penalty of Rs.10,000/- was also upheld. The demand of Rs.2,53,530, however, was dropped by Commissioner Appeals. Being aggrieved of this order that the appellant is before this tribunal.

3. We have heard Ms. Priyanka Goel, learned council advocate for the appellant and Mr. Rohit Issar, Authorised Representative for the department.

4. Learned Counsel for the appellant mentioned that no Service Tax is Payable on the activity of the appellant as the same is an exempted Service in view of notification no 25/2012- ST dated 20.06.2012 entry no 12 A(a). This notification exempts the Works Contract Service when provided to the government authorities, local authorities or to the governmental authorities. The W.C.S for construction of drainage is also mentioned to have been exempted under the definition of Construction Services itself. It is further mentioned that the construction of hostel is not construction of residential complex as hostel is a one building. Individual room of hostel building cannot be equated to a residential house or a flat. Findings based on such presumption are alleged as wrong and thus are liable to be set aside, in terms of entry no 14(b) of notification no 25/2012-ST dated 20.07.2012 Thus the construction of hostel, being a single residential unit, is exempted from Service Tax Liability. Learned Counsel has relied upon the decision in the case of Shri. Narender Singh Panwar Shajapur vs. CCE Indore itself and also submitted that the demand in question has been confirmed

based on third party data i.e. ITR/form no 26 A.S which is not even the statuary documents for Service Tax purpose. The demand confirmed based on such documents is therefore liable to be set aside. Learned counsel has relied upon the decision in the case of **Quest Engineer and Consultant Pvt. Ltd. vs CCE Allahabad reported as 2022(58) GSTL 345 Tri.** Finally it is impressed upon that the ST-3 Returns were not required to be filed as services rendered were not taxable. The extended period of limitation is therefore wrongly invoked while issuing the impugned show cause notice. Reliance has been placed on the decision of this tribunal, Bangalore bench in the case of **Secretary, Town Hall Committee vs. CCE M/s reported as 2007(8) STR 170.** With these submissions, the order under challenge is prayed to be said aside and appeal is prayed to be allowed.

5. While rebutting the above submissions learned authorized representative has mentioned that though Girls Hostel is not covered under definition of 'Residential Complex', but the exemption under entry no. 12 A (a) of notification 25/2012 is available to the such constructions services for which the contract had been entered prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. Since in the instant case, the contract has been entered on 19.08.2015 hence exemption under S.no. 12A(a) of Notification No. 25/2012 is not available to the appellant On the issue of limitation and penalty it is submitted that the party either filed the NIL return or didn't file any return. Even if the party is providing the exempted services the party was liable to fill the prescribed columns of the

returns and ST-3 should have been filed Learned AR has relied upon the decision in the case of **Rajesh Vs AC, CGST & CE, Chennai(2023) 11 Centax 62 High Court Madras.**In view of the foregoing Learned AR reiterated the finding of Commissioner (Appeals) and prayed for the appeal to be dismissed.

6. Having heard the rival contentions of the parties and perusing the record including the order under challenge I observe and hold as follows.

The appellant, while replying to the show cause notice,vide their letter/ email dated 24.012.2020, had submitted that appellant is a Government Contractor and he has provided services to the government, local authority and governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation etc. The appellant had also provided the work orders/works contracts Services (WCS) for the period in dispute. The appellant had also mentioned that the activity of appellant is exempted from Service Tax liability in terms of entry no 12 A(a) 14(b) of mega exemption notification number 25/2012-ST dated 20.07.2012. However, the authority below has confirmed the demand holding that there is no evidence to prove that the activity is covered under the mega exemption notification. Also that the Service receiver deductedthe amount paid to the appellant under 194-C of Income Tax Act.

7. Commissioner (Appeal) has extended the benefit of mega exemption notification (entry 12 A (a) with respect to the service rendered by appellant while constructing drainage system for P.W.D

Khandwa. However, the benefit of mega exemption notification entry serial no 12 (a) of notification no 25/2012, has been denied with respect to construction of Girls Hostel on the ground that the benefit of thereof, would have been available had the contract been entered. Prior 01-03-2015 Based on this ground the service tax of Rs.9,56,210/- has still been confirmed while allowing benefit of value abatement and Cum-Tax benefits to the appellant. The contract of the appellant is dated 19.08.2015 (post-01.03.2015).

8. In light of above observations the only question to be decided is as to:

Whether the benefit of entry 12 A (a) of notification 25/2012 was available only for such contracts as were executed before 01.03.2015,

9. For the purpose the said relevant entry is perused which reads as follows:

"12A. 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-

(a)Civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) A structure meant predominantly for use as (i) and educational, (ii) A clinical, or (iii) an art or cultural establishment; or

(c) A residential complex predominantly meant for use self-use or the use of their employees or other persons specified in the Explanation I to clause (44) of section 65 B of the said Act.

Under a contract which had been entered prior to the **1st March. 2015** and on which appropriate stamp duty, where applicable, had been paid prior to that date.

I also observe that Sr. No. 12 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notf. No. 6/2015 dated 01.03.2015 is reported below vide which the entry at serial no. (c) above, was omitted vide notification no 6/2015-ST dated 01.03.2015 with effect from 01.04.2015 This Perusal is sufficient to hold that for the period in dispute, the condition that contracts for rendering construction/WCS services to be executed prior to 01.03.2015 was no more in existence as it was omitted with effect from 1.04.2015. Resultantly the services as that of construction provided to Government/ local authority/Governmental authority remain exempted from entire service tax liability irrespective the date of contract for the purpose is post 01.03.2015 In the present case the contract is 19.08.2015 i.e. post-1.04.2015 hence, the condition of contract to be executed prior 1.03.2015 is held to have wrongly being relied upon/invoked by the adjudicating authority below while confirming the demand of Rs.9,56,210. Admittedly the Service in question has beenrendered to government/ local authority (PWD) In light of the above the discussion the said demand is held liable to be set aside.

10. Coming to the issue of invocation of extended period of limitation while issuing the impugned show cause notice, I observe that the non-filing of ST-3 returns is alleged as the act of suppression. However, it has been observed that even in reply to the show cause notice, the appellant had explained that exemption being arising from notification 25/2012 has been the reason to not to file the returns. The said contention of appellant has been accepted as held already above, I hold that there is no act of suppression being committed by the appellant. Present is not the case of evasion of service tax. Hence, it is held that extended period has wrongly been invoked. The show cause notice itself therefore gets barred by time. The order under challenge, upholding the invocation of extended period is therefore held liable to be set aside. The above observed facts are also sufficient to hold that penalty has also been wrongly imposed. The order to that extent also is held liable to be set aside.

11. In view of entire above discussion, the order under challenge/ O-I-A is hereby set aside. Consequent thereto, the appeal is hereby allowed.

[Pronounced in the open Court on 19/09/2024]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

khushnuma