

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 51027 Of 2017

[Arising out of Order-in-Original No. 03/Commr/ST/UJN/2017 dated 15.03.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Ujjain]

M/s Mangal Trading Company

: Appellant

Opp. New City Kotwali,
M. S. Road, Morena (M.P.)

Vs

**Commissioner of Central Excise,
Service Tax**

: Respondent

29, Bharatpuri, Administrative Area, Ujjain

APPEARANCE:

Shri B. L. Narsimahan and Ms. Shagun Arora, Advocates for the Appellant
Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 58886/2024

Date of Hearing: 02.09.2024

Date of Decision: 17.10.2024

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Mangal Trading Company (hereinafter referred to as the appellant) against the Order-in-Original No. 03/Commr/ST/UJN/2017 dated 15.03.2017 wherein the Commissioner confirmed the demand of Service Tax amounting to Rs. 3,75,43,125/- along with interest and imposed penalty.

2. The brief facts of the case are that the appellant is mainly providing services of "Work Contract Services" and providing services of laying of cable under or alongside road under National Optical Fiber

Network (NOFN) project. During the course of audit and scrutiny of records of the appellant, it was noticed that during the period 2014-15, the appellant had received an amount of Rs. 30,37,46,966/- from M/s BSNL (BBNL) on account of providing services of laying of cable, under or alongside road, under NOFN project. However, this amount was neither shown by the appellant in their ST-3 returns nor had any service tax been paid by them on such services provided by them to M/s BSNL (BBNL). The appellant vide their letter dated 29.10.2015 had submitted that neither had they collected nor received any service tax from BSNL (BBNL) on account of providing service of laying of cable, under or alongside road, under NOFN project nor they deposited any service tax on NOFN project. Accordingly, a show cause notice dated 04.05.2016 was issued to the appellant proposing demand of service tax amounting to Rs. 3,75,43,175/- and the same was adjudicated vide Order-in-Original dated 15.03.2017 wherein the Commissioner has confirmed the demand of Service Tax amounting to Rs. 3,75,43,125/- along with interest and imposed penalty @50% amounting to Rs. 1,87,71,562/-.

3. Learned counsel for the appellant submitted that the appellant had rendered services to BBNL/BSNL towards execution of the NOFN project, which are exempt from service tax by virtue of Sl. No. 12 of Notification No. 25/2012-ST dated 20.6.2012, the relevant portion of the Notification is extracted below:

"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-

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

The definition of Governmental authority is given below:

"(s) governmental authority" means an authority or a board or any other body,

- (i) set up by an Act of Parliament or a State Legislature, or
- (ii) established by Government,

(ii) with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

(y) "original works" has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;"

3.1 The Ld. Counsel contended that the eligibility of exemption under Sl. No. 12 to Notification No. 25/2012-ST requires the collective fulfilment of the following conditions:

The services must involve construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of.

- i. A civil structure; or
- ii. Any other original works

3.2 The Ld Counsel for the appellant submitted that the activity undertaken by the Appellant satisfies all three conditions. He submitted the following:

Condition 1: Services by the Appellant are rendered to a governmental authority.

Learned Counsel submitted that in the present case, the appellant has been appointed as a contractor by BSNL on behalf of BBNL and that BSNL qualifies as a 'governmental authority'. The term 'Governmental Authority' has been defined to mean an authority or a board or any other body, which has either been set up by an Act of Parliament or a State Legislature; or has been established by Government having 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the

Constitution. In the present case, the appellant has rendered services to BSNL, which is a 100% Government of India owned Public Sector Undertaking with an authorized share capital of approximately Rs. 1,50,000 Crores. He further submitted that the scope of services rendered by BSNL envisage development of telecommunication network in India, as evident from the 'aspiration' page of BSNL on its website. The Learned Counsel contended that the nature of operations performed by the company, would qualify BSNL as a governmental authority. There was no doubt that BSNL had been established by the GOI, wherein 100% shareholding also lay in the hands of GOI. BSNL is engaged in functions involving economic development, which is covered under Article 243(a)(i) of the Indian Constitution, as also in clause 3 to the Twelfth Schedule of the Indian Constitution. Hence, the first condition to Sl. No. 12 of Notification No. 25/2012-ST has been satisfied inasmuch as the services by the Appellant have been rendered to a governmental authority.

Condition 2: Services are by way of installation and commissioning of original works.

Learned counsel submitted that on a combined reading of Sl. No. 12 to the notification along with the definition of 'original works', it can be inferred that an activity would be exempt from service tax if it involves, inter alia, installation or commissioning of plant, machinery or equipment. Hence, he submitted that the activity undertaken by the Appellant involves installation of installation of necessary equipment in respect of the NOFN project. For this reason, the condition pertaining to installation of 'original works' is satisfied.

Condition 3: Such original work is not meant for commerce industry, or any other business or profession.

Learned counsel submitted that the last condition is in respect of the intent behind the carrying out of the original work. As per Sl. No. 12 to Notification No. 25/2012-ST, the exemption in respect of, inter alia, installation of original work would be available only if such original work is not intended for commerce industry or any business or profession. It is further submitted that the NOFN project (now, BharatNet project) is aimed bringing broadband connectivity to the Gram Panchayats. This is clear from the MOU between the Department of Telecommunications, GOI and BBNL for the year 2015-16. Hence, there is no commercial or business relation involved in the NOFN project, and consequently, the original work executed by the Appellant is also not meant for commerce, industry business or profession.

3.1 Learned counsel further contended that the demand proposed in the show cause notice and confirmed in the impugned order are based on an incorrect understanding of facts and legal provisions. In this regard, the appellant's assertion is that BSNL qualifies as a 'Government Authority' which has been defined in Notification No. 25/2012-ST. Hence, reference to the meaning of 'Government' under the General Clauses Act is unwarranted. In light of the above submission, it is prayed that the appeal may please be allowed.

3.2 Learned counsel further submitted that vide the impugned order, the exemption under Sl. No. 12 to Notification No. 25/2012-ST has been denied by holding that the meaning of 'original work' includes all new constructions. He stated that the meaning of the term 'construction' has to be taken from Section 66E of the Act to mean

Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for a sale to a buyer. Learned counsel stated that Section 66E(b) stipulates the scope of a declared service, involving construction activities. The said provision does not define the term 'Construction' and accordingly, the provision has been incorrectly interpreted in the impugned order.

4. Learned Authorized Representative for the Department reiterated the findings in the impugned order and submitted that the exemption under Sl. No. 12 of Notification No. 25/2012 is available, if the specified services are provided to a Government, Local Authority or a Governmental Authority. He submitted that the Adjudicating Authority had held that the appellant provided their services of laying of cables under or alongside roads to the BSNL for a consideration, thus, such activities was for commerce and industry. Further, the impugned order has held that the BSNL is not a Government, Local Authority or a Governmental Authority, and therefore, exemption is not available.

4.1 With regard to the imposition of penalty under Section 78 of the Finance Act, 1994, Authorized Representative submitted that the Adjudication Authority was correct that the appellant had not disclosed the value of services provided to M/s. BSNL under NOFN project, in their ST-3 returns it was due to that this was discovered and otherwise would have escaped the attention of the Department. This clearly establishes that the appellant had suppressed the facts with an intent to evade payment of service tax and therefore rendered themselves liable for penalty under section 78 of the Finance Act, 1994. In light of the above submission, he prayed that the appeal may be dismissed.

5. We have heard the Learned Counsel appearing for the appellant and the Learned Authorized Representative appearing for the Department and also perused the case records.

6. The core question before us is whether the appellant is eligible for the exemption under Notification 25/2012-ST dated 20.06.2012. The relevant clauses of the notification are reproduced for ease of reference hereinafter:

“

**Government of India
Ministry of Finance
(Department of Revenue)**

United States **New Delhi, the 20th June, 2012**

G.S.R. 467(E).- In exercise of the powers conferred by [sub-section \(1\) of section 93](#) of the [Finance Act, 1994 \(32 of 1994\)](#) (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. Services provided to the United Nations or a specified international organization;

.....

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

-(a) **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 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; or

(f) a residential complex meant predominantly for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;”

6.1 In the instant case, it has been submitted before us that BSNL is a 100% Government of India owned Public Sector Undertaking with an authorized share capital of approximately Rs. 1,50,000 Crores. The LD Counsel also submitted that the scope of services rendered by BSNL envisage development of telecommunication network in India, as was evident from the 'aspiration' page of BSNL website. Consequently, the Learned Counsel contended that the nature of operations performed by the company, would qualify BSNL as a governmental authority. However, one needs to carefully read the scope the exemption provided in the said notification. At the outset, it is important to consider whether the recipient of service can be called a governmental authority. From its website, we note the following:-

“Bharat Sanchar Nigam Limited (BSNL) was formed by corporatization of the erstwhile Department of Telecom Services & came into being on 15th September 2000. The company has taken over w.e.f. 01.10.2000 the erstwhile functions of the Department of Telecom in respect of provision of telecom services across the length and breadth of the country excluding Delhi & Mumbai. At the time of corporatization of BSNL, the Cabinet decision stipulated that Government shall provide a package of measures to ensure that the viability of BSNL is not impaired by

providing uneconomic but socially desirable services at the behest of the Government. BSNL is a 100% Govt. of India owned Public Sector Undertaking with an authorized share capital of Rs. 1,50,000 Crores and paid-up capital of Rs. 38,886.44 Crores comprising of Rs. 31,386.44 Crores of Equity and Rs. 7,500 Crores of Preference shares capital. Its total income during FY 2022-23 is Rs.20,699 Crores (audited). However, the share capital of BSNL will be increased from Rs. 1,50,000 to Rs. 2,10,000 Cr, as a result of approved capital infusion on account of spectrum charges.

.....
BSNL is a technology-oriented integrated telecom service providing company which provides complete bouquet of telecom services viz:

- Wire line Services
- GSM Mobile Services including 2G, 3G, 4G & Value-added Services (VAS)
- Internet and Broadband services including Fiber to the Home (FTTH)
- Wi-Fi services
- Data Center services
- Enterprise Data services such as Leased circuits, MPLS VPN etc
- National Long-Distance services
- International Long-Distance Services

Objectives

- **Increase sales revenue with focus on subscriber retention & acquisition by way of strengthening marketing, quality of service and customer delivery.**
- Accelerate the pace of expansion of mobile & data services with up-gradation of technology.
- Leverage data services to increase BSNL's customer's base & revenues by providing higher bandwidths capabilities for wire line and wireless broadband customers.

- Adopt policies and processes to enable transparent, quick and efficient decision making.
- Developing marketing team with attitude towards customer care.

.....”

6.2 From the above, it is apparent that even though BSNL is wholly owned by the Government, but it is a State-run Telecom company, whose primary objective is to increase sales revenue with focus on subscriber retention & acquisition by way of strengthening marketing, quality of service and customer delivery. Consequently, any activity undertaken for BSNL would also be for the same purpose, viz., expanding its subscriber base and increase revenues. Therefore, it cannot be said that the NOFN project (now known as Bharat Net project) aimed at bringing broadband connectivity to the Gram Panchayats was only towards planning for economic and social development. Such network was laid in recognition of the fact that expansion was important to increase their subscriber base, thus providing an opportunity to increase their revenues. Hence, the activity undertaken by the appellant is for use for commerce.

6.3 The term ‘Commerce’ as understood by layman refers to the activity of buying and selling goods and services, between businesses or individuals, and can occur domestically or internationally. Commerce is a key component of the economy, encompassing various activities such as trade, logistics, advertising, customer interactions, & also includes different channels like traditional retail, online transactions (e-commerce), and wholesale trade etc. The term

'commerce' has been interpreted by various Courts, especially in the United States, which have provided detailed interpretations of what constitutes commerce through rulings in notable cases. In the context of the power of the United States Congress to regulate '*Commerce with foreign Nations.....*' Chief Justice John Marshall in the case of *Gibbons v. Ogden* (1824) broadly defined commerce to include not only the exchange of goods but also the transportation of goods and services. The ruling established that interstate commerce included all forms of commercial interactions crossing state lines, not just the buying and selling of goods. Similarly, in the case of *Rohit Chaudhary v. Vipul Ltd.*, [2023 SCC On-line SC 1131, decided on 06-09-2023], the Hon'ble Supreme Court of India in the context of the Consumer Protection Act, 1986 held that while going by the ordinary meaning of the expression 'commercial purpose', denotes "pertaining to commerce". The Hon'ble Court relied on *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*, [(2020) 2 SCC 265] wherein it was held that a straight-jacket formula cannot be adopted in every case and the broad principles which can be curled out for determining whether an activity or transaction is for a commercial purpose would depend on facts and circumstances of each case. In the instant case, it stands established that the appellant undertook the activity of laying cables for M/s BSNL, which was for the purpose of providing broadband connectivity was for connecting the areas of India for the purpose of increasing their business, sales revenue which would clearly fall within the ambit of commerce.

6.4 We now consider the wordings of the said Notification. We note the Notification exempts a civil structure or any other original works meant predominantly for use **other than for commerce, industry, or any other business or profession**. The term used in the said notification is that 'other than commerce, industry or any other business or profession', which is required to be interpreted strictly, as held consistently by the Hon'ble Supreme Court. Exemption notification should not be liberally construed and the beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication. The relevant paras of some of the notable judgments in this regard are reproduced hereinafter:

(i) Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company – 2018 (361) ELT 577 (S.C.)

"41. *After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.*

.....
52. *To sum up, we answer the reference holding as under -*

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show

that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue....."

(ii) Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal 2010 (260) ELT 3 (S.C.)

"22. *The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should*

be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

(iii) Novopan India Limited vs. Collector of Central Excise & Customs, 1978 (2) ELT J 350

"18. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals - and in Union of India v. Wood Papers* referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in *Mangalore Chemicals* and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave* [1978 (2) E.L.T. (J 350) (SC) = 1969 (2) S.C.R. 253] that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

(iv) Gordhandas vs. H.H. Dave, Assistant Collector of Central Excise, Customs 1978 (2) ELT J 350 (S.C.)

"5. *The main contention on behalf of the appellant is that the case fell within the language of two notifications dated July 31, 1959 and April 30, 1960 and the appellant was entitled to exemption from payment of excise duty on the cotton fabrics. The argument was stressed that the exemption applied to all cotton fabrics which were produced on power-looms owned by the Cooperative Society or on power-looms allotted to its members and it was not a relevant consideration as to who produced or manufactured such fabrics, whether it was the Society itself or its members or even outsiders. It was conceded by the appellant that it was the owner of the cotton fabrics. But even upon that assumption the claim of the appellant is that it was entitled to exemption from excise duty as it was covered by the language of the two notifications already referred to. In our opinion the argument of the appellant is well founded and must be accepted as correct. The notification dated July 31, 1959 grants exemption to "cotton fabrics produced by any co-operative society formed of owners of cotton power-looms which is registered or which may be registered on or before March 31, 1961" subject to four conditions set out in the notification. In the next notification dated April 30, 1960 exemption was granted to "cotton fabrics produced on power-looms owned by any co-operative society or owned or allotted to the members of the society, which is registered or which may be registered on or before March 31, 1961" subject to the conditions specified in the notification. It was contended on behalf of the appellant that under the contract between the appellant and the Society there was no relationship of master and servant but the appellant supplied raw material and the contractor i.e., the Society produced the goods. But even on the assumption that the appellant had manufactured the goods by employing hired labour and was therefore a manufacturer, still the appellant was entitled to exemption from excise duty since the case fell within the language of the two notifications dated July 31, 1959 and April 30, 1960, and the cotton fabrics were produced on power-looms owned by the co-operative society and there is*

*nothing in the notifications to suggest that the cotton fabrics should be produced by the co-operative society "for itself" and not for a third party before it was entitled to claim exemption from excise duty. It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of co-operative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the co-operative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the co-operative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the co-operative society on the power-looms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here. In this connection we may refer to the observations of Lord Watson in *Salomon v. Salomon and Co.*, 1897 AC 22 at p. 38:*

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner, (1846) 6 Moo PC 1(9):

"..... we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there."

Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power-looms by constituting themselves into co-operative societies. But the operation of the notification has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. Applying this principle we are of opinion that the case of the appellant is covered by the language of the two notifications dated July 31, 1959 and April 30, 1960 and appellant is entitled to exemption from excise duty for the cotton fabrics produced for the period between October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 3, 1961. It follows therefore that the appellant is entitled to the grant of a writ in the nature of certiorari to quash the order of the Assistant Collector of Central Excise of Baroda dated November 26, 1962 and the appellate order of the Collector of Central Excise dated November 12, 1963."

In view of the above discussions, we hold that the appellant is not entitled to the benefit of the Notification no. 25/2012-ST dated 20.06.2012. We find no infirmity in the impugned order.

7. However, we note that the appellant has submitted that the benefit of cum-duty should be extended to them. It is seen from the show cause notice that the appellant had vide their letter dated 29.10.2015 submitted that neither had they collected/received the service tax from M/s BSNL(BBNL) on account of providing the service of laying cable, under or along side the road under NOFN project or did they deposit any service tax. In this context, we note non-recovery of service tax is an offence under Sec 73 of the Act. We note that the Tribunal in M/s Panther Detective Services V. Commissioner of Central Excise, Kanpur [2006 - TMI - 647 - CESTAT, NEW DELHI] held that the only relief in regard to valuation that the appellants would be entitled to treat the total receipts as inclusive of service tax. It was accordingly ordered that the Revenue shall recompute the tax amount in these appeals treating the total receipts as cum-tax. Similarly, in Bhagawati Security Services V. Commissioner of Central Excise, Meerut – I [2006 (3) STR 763 (Tri. Del)], the Tribunal noted that the appellants have not raised any service tax bill to their service receivers. They have paid service tax calculated on these invoices they have not received any payment of this from their client. The Tribunal found that there was a force in the appellant's contention that if service tax is to be paid, it has to be worked out on the basis of gross amount received by them as being inclusive of service tax. We also take note of the Supreme Court's decision in the case of Commissioner of Central Excise V. Maruti Udyog Ltd., [2002 (141) ELT 3 (SC)] wherein the

Court granted the cum-duty benefits to the assessee. The Hon'ble Court noted that the service tax is on the value of taxable services rendered and therefore service tax has to be collected on that value only and the value of taxable services cannot be said to include the tax also. The Court went on to note that the Finance Act, 2006 inserted clause 2 to Sec. 67 with effect from 18.04.2006 provides that where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.

8. In view of the settled position of law, we find it appropriate to remand the matter to the original authority for recalculation of the demand extending the benefit of cum-tax on the gross amount charged by the appellant. Accordingly, the penalty under section 78 would be appropriately recalculated, based on the demand.

9. Consequently, we uphold the impugned order to the extent indicated above, and the appeal is allowed to the extent indicated above.

(Order pronounced in the open Court on 17.10.2024)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)