

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II**

Service Tax Appeal No.50791 of 2019 (SM)

[Arising out of Order-in-Appeal No.1410(CRM)ST/JDR/2018 dated 26.12.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

M/s. Vivek Constructions,
118-A, Behind Andra Check Post-Rampura,
Shanti Nagar,
Sirohi-307 001, (Rajasthan).

Appellant

VERSUS

**Commissioner of Central Excise and
Central Goods & Service Tax,**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur, Rajasthan-342 001.

Respondent

With

Service Tax Appeal No.50750 of 2019 (SM)

[Arising out of Order-in-Appeal No.1411(CRM)ST/JDR/2018 dated 26.12.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

**M/s. Shree Ram Construction Co.,
Prop. Vivek Constructions,**
118-A, Behind Andra Check Post-Rampura,
Shanti Nagar,
Sirohi-307 001, (Rajasthan).

Appellant

VERSUS

**Commissioner of Central Excise and
Central Goods & Service Tax,**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur, Rajasthan-342 001.

Respondent

With

Service Tax Appeal No.50751 of 2019 (SM)

[Arising out of Order-in-Appeal No.1412(CRM)ST/JDR/2018 dated 26.12.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

**Shri Arvind Pania,
Prop. Vivek Constructions,**
118-A, Behind Andra Check Post-Rampura,
Shanti Nagar,
Sirohi-307 001, (Rajasthan).

Appellant

VERSUS

**Commissioner of Central Excise and
Central Goods & Service Tax,**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur, Rajasthan-342 001.

Respondent

And

Service Tax Appeal No.50792 of 2019 (SM)

[Arising out of Order-in-Appeal No.1409(CRM)ST/JDR/2018 dated 26.12.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

M/s.Ashapura Construction Company

Appellant

Prop. Vivek Constructions,

118-A, Behind Andra Check Post-Rampura,
Shanti Nagar,
Sirohi-307 001, (Rajasthan).

VERSUS

**Commissioner of Central Excise and
Central Goods & Service Tax,**

Respondent

G-105, New Industrial Area,
Opp.Diesel Shed, Basni,
Jodhpur, Rajasthan-342 001.

APPEARANCE:

Shri Pradeep Jain, Chartered Accountant for the appellant.

Shri Pradeep Gupta, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOS.51852-51855/2021

DATE OF HEARING:01.04.2021

DATE OF DECISION:05.10.2021

ANIL CHOUDHARY:

A) ST Appeal No.50791 of 2019 (SM) M/s. Vivek Constructions

This appeal is heard along with other three appeals involving the similar issue on similar facts. Hence, these appeals are taken up together for disposal.

2. The appellants are registered with the Service Tax Department and are engaged in providing works contract services, *inter alia*, to Rajasthan Rajya Vidyut Prasaran Nigam Ltd., a State PSU (in short, RRVPNL). It appeared to Revenue that the appellant have not paid or short paid service tax for the taxable services provided during the period 2010-2011 to 2014-2015 and thus, the short paid tax is Rs.7,75,082/-. On requisition, the Revenue

received the details of payment made to various contractors, including the appellant, from RRVPNL. It further appeared that in terms of Section 68(1) read with Section 68(2) read with Notification No.30/2012-ST, Sl.No.9 of the Notification provides that in respect of services provided or agreed to be provided, service portion in the execution of the works contract – 50% of the service tax is payable by the person providing services and balance 50% is payable by the person receiving the services. Further, it appeared that the appellant had not taken registration earlier for payment of tax and filing the returns, and have taken registration subsequently on 18.12.2013. Accordingly, by show cause notice dated 23.10.2015, service tax of Rs.7,75,082/- was demanded for the period 2010-2011 to 2014-2015, invoking the extended period of limitation along with interest and further penalty was proposed.

3. The appellant contested the show cause notice by filing reply, inter alia, stating that the demand is time barred. Further, RRVPNL is wholly a Public Sector Company of the Government of Rajasthan, which has been set-up for public welfare and public interest (after disintegration of State Electricity Board). As per Circular No.80/10/2004-ST, only commercial nature of building constructed are taxable. Admittedly, RRVPL is not engaged in any commerce or industry, hence, no service tax is chargeable. It is further urged that as per negative list of services vide circular no.12/2012-ST read with exemption notification no.25/2012-ST, services provided to the Government and Government Companies are exempt and only those services were taxable, which are used primarily for commerce or industry, or work intended for commerce or industry. Reliance was placed on the ruling of the Hon'ble Supreme Court in the case of **Universe Textile Ltd.Vs. CCE – 2013 (31) Taxman.com 67**. The show cause notice was

adjudicated by the Asstt. Commissioner, who confirmed the proposed demand along with equal amount of penalty under Section 78. Further, penalty was imposed also under Section 77 (1a) and (c), and also under Section 77 (2) of the Finance Act.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals)

5. The appellant, inter alia, urged that exemption notification no.11/2010-ST dated 27.12.2010, provides that the services provided by any person to any other person for 'transmission of electricity' is exempt from service tax. They have provided services to RRVPNL, which is engaged in transmission of electricity. Further, reliance was placed on the notification no.45/2010-ST dated 20.07.2010, which provided 'retrospective exemption' for all taxable services in relation to the 'transmission and distribution of electricity'. Reliance was placed on the ruling of **Noida Power Co. Ltd. - 2014 (33) STR 383 (Tribunal-Delhi)**. Thus, there is no case of short payment of service tax or non-payment of service tax.

6. The Commissioner (Appeals) framed the issue – whether the appellant is liable to pay service tax on the services provided to RRVPNL. The Commissioner held that prior to the period 30.06.2012, the service tax demand is fit to be set aside as the appellant is entitled to exemption under notification nos.11/2010 read with 45/2010-ST as services are provided to RRVPNL, which is engaged in transmission of electricity. Thus, it is observed that the services provided prior to 30.06.2012 are fully exempt. For the period from 1.7.2012, as the appellant is proprietorship concern and the services have been rendered to a Corporate Body–RRVPNL, therefore, the appellant is liable to pay only 50% of the tax as per Notification

No.30/2012-ST dated 20.06.2012, for the period 1.7.2012 to 31.03.2015. Ld. Commissioner (Appeals) computed the tax payable or demand at Rs.1,71,305/-, against which the appellant has already deposited Rs.2,15,523/-. Thus, the demand for the period prior to 01.07.2012 was dropped, along with equal amount of penalty under Section 78. Further, penalty under Section 77 was also upheld.

7. Being aggrieved, the appellant is before this Tribunal on the ground that the penalty imposed under Section 78 is unreasonable and bad in the facts and in law. Further urges, admittedly, the appellant was entitled to exemption of service tax as found by the Commissioner (Appeals) i.e. prior to 30.06.2012. Further, the appellant was entitled to exemption under Mega Exemption under Notification No.25/2012 (S.No.12), as services have been provided to a Government Company for transmission and distribution of electricity. Further also entitled to SSI exemption during 01.07.2012 to 31.03.2014. Further, in the facts and circumstances, there is no intention to evade payment of service tax. Ld. Counsel has filed a copy of letter dated 28.08.2012, addressed to the Chairman-cum-Managing Director of RRVPNL, from the Contractor Association (Civil), wherein they have raised the issue of improper deduction of service tax from their bills, which was in conflict with the agreement and the law. The provisions for deduction of tax at source was with respect to the Sales Tax/VAT. And also referred to correspondence with the officers of RRVPNL, wherein the contractors' Association was trying to sort out the issue of service tax. He also refers to the Circular dated 30.07.2012 issued by RRVPNL, which was in accordance with the Notification No.30/2012-ST, specifying the liability of the service tax on the principal and the contractor. He further urged that the appellant has already deposited more amount than the tax liability, as worked out by the Commissioner

(Appeals), and the penalties imposed are fit to be set aside. He further urges that for some venial breach of law, penalty should not be imposed as held by the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. Vs. State of Orissa (1978) 2 (ELT) J 159 (SC)**.

B. Appeal No.ST/50750 of 2019(SM) M/s.Shree Ram Construction

8. Under the similar facts and circumstances, this appellant has also done work for RRVPNL and similarly the demand was raised and confirmed for the period 2010-2011 to 2014-2015 at Rs.5,53,03/- along with equal amount of penalty under Section 78 of the Finance Act, 1994 as well as penalty under Section 77 (1)(c) and Section 77 (2) of the Finance Act, 1994.

In the first appeal, the Commissioner (Appeals) dropped the demand for the period up to 30.06.2012 and confirmed the demand for the balance period, of Rs.,1,31,331/- along with interest and equal amount of penalty and thus, dropped the proportionate penalty under Section 78. The appellant is in appeal against the confirmation of tax and penalties.

C. Appeal No.ST/50751 of 2019 (SM) – Arvind Pania

9. Under the similar facts and circumstances, this appellant has also done work for RRVPL and similarly the demand was raised and confirmed for the period 2010-2011 to 2014-2015, of Rs.19,71,307/- along with interest and equal amount of penalties under Section 78 of the Finance Act, 1994 as well as penalty under Section 77 (1)(c) and Section 77 (2) of the Finance Act, 1994.

In the first appeal, the Commissioner (Appeals) dropped the demand for the period up to 30.06.2012 and confirmed the demand for the balance period of Rs.11,06,154/- along with interest and equal amount of penalty

imposed under Section 78 of the Act, and also upheld the penalty under Section 77 of the Act. The appellant is in appeal against the confirmation of tax and penalties.

D. Appeal No.ST/50792 of 2019 (SM) – M/s.Ashapura Construction Co.

10. Under the similar facts and circumstances, this appellant has also done work for RRVPL and similarly the demand was raised and confirmed for the period 2010-2011 to 2014-2015 of Rs.23,41,202/- along with interest and equal amount of penalties under Section 78 of the Finance Act, 1994 as well as penalty under Section 77 (1)(c) and Section 77 (2) of the Finance Act, 1994.

In the first appeal, the Commissioner (Appeals) dropped the demand for the period up to 30.06.2012 and confirmed the demand for the balance period of Rs.7,25,532/- along with interest and equal amount of penalty imposed under Section 78 of the Finance Act along with penalty imposed under Section 77 of the Act. Thus, the appellant is in appeal against the confirmation of tax and penalties.

11. Ld. Departmental Representative for the respondent-Department relied upon the impugned order (s).

12. Having considered the rival contentions, I find, no case of contumacious conduct or conscious breach of law is made out in the facts and circumstances. Revenue has raised the demand in the show cause notice, which has been found to be misconceived by the Commissioner (Appeals), as the appellant was entitled to exemption. Further, the services rendered to the Government Companies post 30.06.2012, being of non-commercial nature, was also exempt under Notification No.25/2012-ST. In

this view of the matter, I hold that all the demand of tax and penalties are fit to be set aside. Accordingly, these appeals are allowed. The appellants are entitled to consequential benefits in accordance with law.

13. Appeals are allowed. To sum up:-

- a) Amount paid as tax is Revenue deposit, and directed to be refunded with interest (from the date of deposit till date of refund @ 12% P.A)
- b) All penalties are set aside.

[Order pronounced on 05.10.2021]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.