CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

Service Tax Appeal No. 51298 of 2016

(Arising out of Order-in-Appeal No. UDZ-EXCUS-000-COM-057-15-16 dated 27.01.2016 passed by the Commissioner, Central Excise & Service Tax, Udaipur)

M/s. A. S. Construction Co. Ltd. **...Appellant**
12, Mursheed Nagar, Sector-12
Savina Khera, Udaipur,
(Rajasthan)

VERSUS

The Commissioner, Central Excise **...Respondent**
& Service Tax, Udaipur,
(Rajasthan)

APPEARANCE:

Shri Prashant Srivastava, Advocate for the appellant.
Shri Manoj Kumar, Authorized Representative for the Department

CORAM:

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

Date of Hearing: 21.10.2024
Date of Decision: 01.04.2025

FINAL ORDER No. 50456/2025

JUSTICE DILIP GUPTA:

M/s. A.S. Construction Co.[1] has sought the quashing of the order dated 27.01.2016 passed by the Commissioner confirming the demand of service tax with penalty.

2. It is alleged the appellant provided services of "construction of complex, building, civil structure or a part thereof" and "works contract service" to Rajasthan Housing Board during the period 2013-14, which services are declared services under section 66E(b) and 66E(h) of the

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1. the appellant

Finance Act, 1994[2] but service tax was not paid. A show cause notice dated 26.03.2015 was, therefore, issued to the appellant alleging that though the appellant provided the aforesaid two services to Rajasthan Housing Board, but it did not pay service tax. The appellant filed a reply to the show cause notice contending that the service provided to Rajasthan Housing Board would not be taxable as they are covered under Serial No. 12 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012[3].

3. This contention was not accepted by the Commissioner in the impugned order and the findings are reproduced below:

> 22. On going through the S.No.12 of the said mega exemption notification No. 25/2012 it is established that the exemption are available if the services are 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. Further, from clause (a) to (f) there is specifically mentioned the nature of work which are exempt under the said notification. **In this case, first of all it is to be seen whether the works in relation to residential complexes has been provided to Government, a local authority or a governmental authority.** I find that the works contract services have been provided to Rajasthan Housing Board. **The Rajasthan Housing Board is a 'Body Corporate' established by the Government of Rajasthan under the provisions of Section 4 of the Rajasthan Housing Board Act, 1970 (received the assent of The Governor on the 18th day of April, 1970) by the Government of Rajasthan as an autonomous body to provide for measures to be taken to deal with & satisfy the need of Housing accommodation in State of Rajasthan. In this case, the Rajasthan Housing Board is not a**

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2. the Finance Act
3. the Exemption Notification

> **Governmental or a local authority but a body corporate. Now, the question arises whether the same is."**
>
> **(emphasis supplied)**

4. After referring to the definition of a **'**governmental authority**'** and article 243W of the Constitution, the Commissioner observed:

> "**From the above it is clear that Rajasthan Housing Board is not Governmental Authority as it is not entrusted the function as mentioned in Article 243W of the Constitution of India.** Since, the Rajasthan Housing Board is not Government, Local authority or Governmental Authority, therefore the said exemption Notification No. 25/2012-ST is not available to them. **Legally, bodies which are established or constituted "under a statute" are different from bodies which are "formed and registered" under a statute.** Companies and Societies registered under the respective Acts are merely bodies "formed and registered" under these Acts and cannot be treated as "established or constituted" under these Acts. Therefore companies or societies or Board would fall outside the scope of Governmental Authority. **In other words, any body formed and registered as a company or society or board which provides services, facilities or advantages to its members/clients are rightly liable to be covered for payment of service tax in terms of the provisions of the Finance Act, 1994.**"
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> **(emphasis supplied)**

5. This appeal has been filed to assail the aforesaid order dated 27.01.2016 passed by the Commissioner.

6. Shri Prashant Srivastava, learned counsel for the appellant submitted that the issue that is required to be decided in this appeal is whether Rajasthan Housing Board is a **'**governmental authority**'** for the purpose of providing exemption under the Exemption Notification. The submission is that Rajasthan Housing Board has been constituted under the Rajasthan Housing Board Act 1970, which is a State Act and,

therefore, it would be a **'**governmental authority**'**. In support of this contention learned counsel placed reliance upon the judgment of the Supreme Court in **Commissioner of Cus., C. Ex. & S.T., Patna** vs. **Shapoorji Pallonji & Company Pvt. Ltd**[4].

7. Shri Manoj Kumar, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

8. The submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

9. To appreciate the contention that have been advanced it would be appropriate to examine the Exemption Notification dated 20.06.2012. It exempts the taxable services mentioned therein from the whole of the service tax leviable thereon under section 66B of the Finance Act. At Serial No. 12 services provided to the government, a local authority or a government authority by way of construction or erection commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of structures are mentioned.

10. The appellant has placed emphasis on the fact that Rajasthan Housing Board is a **'**governmental authority**'**. **'**Governmental authority**'** has been defined in (s) of the Exemption Notification dated 20.06.2012 in the following manner:

> "(s) "governmental authority " means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;"

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4. 2023 (79) G.S.T.L. 145 (S.C.)

11. The aforesaid definition of **'**governmental authority**'** was amended by Notification No. 2/2014 dated 30.01.2014 and it is as follows:

> "(s) "governmental authority" means an authority or a board or any other body;
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> (i) set up by an Act of Parliament or a State Legislature; or
>
> (ii) established by Government,
>
> 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."

12. The period involved in this appeal is from 01.04.2013 to 31.03.2014. Thus, clause (s) as it stood when the Exemption Notification was issued on 20.06.2012, and as it stood when it was amended on 30.01.2014 would be relevant.

13. Learned counsel for the appellant has placed reliance upon the decision of the Supreme Court in **Shapoorji Pallonji**. This decision interpreted the amended clause (s) of the Exemption Notification, which amendment came into effect w.e.f. 30.01.2014. The Supreme Court placed emphasized on the **'**semicolon**'** and **'**comma**'** used in the amended definition and observed that the conjunction **'**or**'** between sub-clauses (i) and (ii) divides the clauses into two parts and, therefore, both the parts would be independent of each other. Thus, a **'**governmental authority**'** would mean either an authority or a board or any other body set up by an Act of the Parliament or a State Legislature **or** an authority or a board or any other body established by government, with 90% or more participation by way of equity or control by the Government, to carry out any function entrusted to a municipality under article 243W of the Constitution.

14. It would, therefore, have to be examined whether either of the two conditions is satisfied by Rajasthan Housing Board.

15. Rajasthan Housing Board has not been **set up** by an Act of a State Legislature. This is clear from the State Act. Section 4 deals with the **establishment** of the Rajasthan Housing Board. It provides that the State Government may, by the notification in the official gazette, establish, for the purposes of the Act, a board to be called, the Rajasthan Housing Board with effect from such date as may be specified in the notification. The State Government had, therefore, to issue a notification in the official gazette to establish the Rajasthan Housing Board and indeed such a notification was issued by the State Government. The Rajasthan Housing Board has not been constituted or set up by a State Act.

16. The appellant is, therefore, not justified in placing reliance upon (i) of clause (s) to contend that the Rajasthan Housing Board would be a **'**governmental authority**'** because Rajasthan Housing Board has not been **set up** by a State Legislature. The notification itself distinguishes between a board **set up** by an Act of a State Legislature **or** a board **established** by the State Government. Thus, for the period w.e.f. 30.01.2014 the appellant cannot contend that the Rajasthan Housing Board is a **'**governmental authority**'**.

17. Thus, (ii) of clause (s) would be relevant in such a situation. It was, therefore, for the appellant to substantiate that the Rajasthan Housing Board was established by the government 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 but the appellant did not do so and merely relied upon (1) of clause (s).

18. What remains to be examined is whether Rajasthan Housing Board would be a **'**governmental authority**'** under the unamended notification dated 20.06.2012. This unamended clause (s) is more or less the same as (ii) of clause (s) of the amended definition. It again emphasises that the board must be **established** with 90% of more participation by way of equity or control by the Government.

19. As noticed above, the Rajasthan Housing Board has been **established** under a State Act and has not been **set up** by an Act of the State Legislature.

20. The appellant did not lead any evidence to substantiate that the Rajasthan Housing Board was established by the State Government with 90% or more participation by way of equity or control by the Government, to carry out any function entrusted to a municipality under article 243W of the Constitution.

21. There is, therefore, no error in the order dated 27.01.2016 passed by the Commissioner holding that Rajasthan Housing Board is not a **'**governmental authority**'**.

22. The appeal, therefore, deserves to be dismissed and is dismissed.

(Order pronounced on **01.04.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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