CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.50378 of 2018

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-376-17-18 dated 24.10.2017 passed by the Commissioner (Appeals), GST, Customs & Central Excise, Bhopal (M.P.)]

M/s.N.K.K. Infrastructure & Developers, **Appellant**
Shop No.22, Ist Floor,
Platinum Plaza, Mata Mandir, T.T. Nagar,
Bhopal, M.P.

VERSUS

Commissioner of GST, Customs & Central Excise, GST Bhawan, **Respondent**
35, Arera Hills, Jail Road,
Bhopal (M.P.).

AND

Service Tax Appeal No.50630 of 2018

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-462-17-18 dated 23.11.2017 passed by the Commissioner (Appeals), GST, Customs & Central Excise, Bhopal, (M.P.)]

Noor Kamaal Khan, **Appellant**
Shop No.22, Ist Floor,
Platinum Plaza, Mata Mandir, T.T. Nagar,
Bhopal, M.P.

VERSUS

Commissioner of CGST, Customs & Central Excise, GST Bhawan, **Respondent**
Near Paryawas Bhawan, Arera Hills, Jail Road,
Bhopal (M.P.).

APPEARANCE:

Shri Abhas Mishra, Advocate for the appellant.
Ms. Jaya Kumari , Authorised Representatives for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.50464-50465 /2025

DATE OF HEARING:05.03.2025
DATE OF DECISION:04.04.2025

BINU TAMTA:

1. M/s. N.K.K. Infrastructure & Developers[1] has assailed the Order-in-Appeal No.BHO-EXCUS-001-APP-376-17-18 dated 24.10.2017 confirming the demand of service tax along with interest and penalty as the services provided by them related to development of residential complex, which is taxable under "Works Contract Service"[2].

2. The appellant is engaged in providing taxable service of "WCS", as defined under Section 65(105) (zzzza) of the Finance Act, 1994 [3]**.** An intelligence was gathered by Preventive Branch, Bhopal that service tax liability was not being discharged by the appellant. As per the balance sheet for the year 2013-2014 and 2014-2015 and the copies of the agreement with their customers, the appellant was providing taxable services to various builders for providing civil work like construction of WBW road, CC Road, sewer line, Water Supply drainage, Sump Well, Overhead Tank,

---

[1]The Appellant
[2]WCS
[3] The Act

Septic Tank, Boundry Wall, Entrance Gate and garden, etc. These services were provided in the private colonies developed by such builders. As per agreement, the appellant provided WCS for construction of the above stated work for the builders within a residential complex/commercial premises. On scrutiny of Balance Sheet for the period from 2011-2012 to 2014-2015, it revealed that appellant had received 27,17,19,803 (inclusive of service tax) from their customers for which they had failed to discharge their service tax liability on net amount of Rs.25,90,51,658/- received by them out of which total taxable value was calculated to tune of Rs.10,36,20,663/- on which service tax of Rs.1,26,68,147/- (including cess) had been short paid by the appellant. Accordingly, show cause notice dated 28.10.2016 was issued to the appellant and subsequently proceedings were finalized by the Adjudicating Authority vide order-in-original dated 29.03.2017 wherein service tax of Rs.1,26,68,147/- was confirmed under Section 73(1) of the Act, interest as applicable at appropriate rate under Section 75, imposition of penalty of Rs.1,26,68,147/- including cess under Section 78, imposition of penalty of Rs.10,000/- under Section 77(c)(i), imposition of penalty of Rs.10,000/- under Section 77(c)(iii), imposition of penalty of Rs.10,000/- under Section 77(c)(d) and imposed late fee of Rs.20,000/- for late filing of each of the 8-ST Returns for the period from April,2011 to March, 2015 (Total Rs.1,60,000/-) under Rule 7C of the Service Tax Rules, 1944 read with Section 70 of the Act.

3. The appeal filed by the appellant was, however, rejected except that the late fee for filing the returns was set aside. Hence, the present appeal before this Tribunal.

4. Heard both the sides and perused the records.

5. The main issue, which falls for consideration is whether the services of works contract provided by the appellant within the residential complex/commercial premises qualify for exemption under Sl.No.13 of the Notification No.25/2012-ST dated 20.06.2012. For considering the issue, it is necessary to quote the relevant provisions of the aforesaid notification, which reads as under:-

> **"Notification No.25/2012-Service Tax**
> G.S.R…..(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 suppression of notification no.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."
>
> 13 "Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alternation of,--
>
> **(a) a road, bridge, tunnel, or terminal for road transportation for use by general public."**
>
> 2………………
>
> **(q)"general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;**

6. The submission of the learned counsel for the appellant is that the roads constructed within a residential/commercial premises would be used by the residents as well as by the outsiders visiting the premises. Therefore, it is not correct to say that the roads constructed were not meant for use by "General Public" as enunciated in the notification and further as per the definition of the term 'General Public'. According to the learned counsel, the appellant is entitled to exemption under the aforesaid notification. The learned counsel has also referred to the decisions in the following cases:-

(a) **United Rail Road Consultants Pvt. Ltd. Vs. CCT, Secuderabad**[4]
(b) **Murari Lal Singhal Vs. CCE & ST, Jaipur-I**[5]
(c) **Commissioner of Customs & C.Ex, Raipur Vs. National Project Construction Corpn. Ltd.** [6]

7. Per contra, the learned Authorised Representative for the Department has submitted that the appellant is not entitled to the exemption inasmuch as the same is restricted to the nature of its use being for "General Public". She has also relied on the decision of this Tribunal in the case of **Warsi Buildcon Vs. Principal Commissioner, Customs, Central Excise & Service Tax, Indore**[7], where the activity of construction of roads for development of colonies/township and construction of residential complexes was held to be exigible to service tax as it did not satisfy the criterion of exemption, i.e., "for use by general public".

8. The execution of "WCS" was brought under the net of service tax by the Finance Act, 2007 w.e.f. 01.06.2007 under Section 65(105)(zzzza) of the Act, which defines the taxable services as under:-

---

[4] 2021 (45) GSTL 290 (Tri.-Hyd.)
[5] 2019 (25) GSTL 45 (Tri.-Del)
[6] 2020 (42) GSTL 75 (Tri.-Del.)
[7] 2024 17 Centax 37 (Tri.Del.)

> **"Works Contract –** to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.
>
> **Explanation** — For the purposes of this sub-clause, "works contract" means a contract wherein,—
> (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
> (ii) such contract is for the purposes of carrying out,— (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or airconditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
> (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
> (c) construction of a new residential complex or a part thereof; or
> (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
> (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

9. The service tax regime w.e.f. 1.7.2012 shifted from selective taxation to comprehension taxation and, therefore, "WCS" became taxable as 'service' without reference to the specific head 'WCS'. The expression 'Works Contract' has been defined under Section 65B(54) as under:-

> "(54) "Works Contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as

> sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alternation of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property."

10. Considering the provisions of Section 65B(54) defining "Works Contract", it is clear that the construction of roads are not specifically excluded therein. It is by virtue of notification no.25/2012 that the construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of roads is exempted from levy of service tax, provided, which are used for 'general public' since the exemption provided under the notification for construction of roads is very specific, we need to examine whether the "WCS" rendered by the appellant fall within the exemption clause requiring the construction for the use of "general public". The services provided by the appellant to the builders were in respect of private colonies, which were to be developed by such builders. Therefore, the construction activity performed by the appellant was within the residential complex/commercial premises. The interpretation placed by the appellant by relying on the definition of "general public" that it refers to body of

people which in the present case are the residents of the complex and also the visitors to the residents and is defined by that common quality of public, has not merits. The factors stated in the definition are not satisfied when the roads are built for any residential or commercial complex in as much as by its very nature, the access to the roads built within the complex has restricted access and is not open to the public at large. The reliance placed by the learned Authorised Representative on the decision in **Warsi Buildcon** is squarely applicable and the plea taken by the appellant by relying on the definition of 'general public" has also been dealt with in the following terms:-

> "**10.** The Notification No. 25/2012-ST dated 20.06.2013 w.e.f. 01.07.2012 granted exemption on services, provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of road, bridge, tunnel, or terminal for road transportation for use by general public. **By virtue of the said notification the exemption on payment of service tax in respect of services relating to the construction of roads was limited only in respect of those roads which were meant to be used by general public. In other words the utility of the roads was linked with general public. The very clause of the exemption notification when it uses the words road, bridge, tunnel or terminal for road transportation implies the common services to be used by the general public and cannot be restricted, which is constructed for development of any township or residential complexes by a builder/developer/coloniser for the utility of the occupants therein.** The two has to be distinguished on account of the nature of utility, whether the same is meant for common public or for private use by the buyers of the builders. Also, the definition clause (q) of the notification defines ―general public‖ meaning the body of people at large

> sufficiently defined by some common quality of public or impersonal nature. We have no doubt on the intent and the scope of the notification exempting the construction of roads for use by general public and as per the Rules of interpretation the exemption notification has to be construed strictly. **Considering the activity of construction of roads by the appellant for the development of the township/residential complexes on behalf of the builders/ developers is specifically meant for the buyers of the plots/residential/commercial complexes and the same cannot be termed for the use of the general public in the sense it has been provided in the notification. Hence the appellant is not entitle to claim exemption from levy of service tax under the notification.**
>
> **11.** In addition to the notification, we find that CBEC had issued Master Circular D.O.F. No. 334/1/2012-TRU dated 16.03.2012 where it has been clarified that construction of roads for use by general public is exempt from service tax. Construction of roads which are not meant for general public use e.g. construction of roads in a factory, residential complex, etc would be taxable. This itself clarifies that the exemption in respect of construction of roads is not available where they are not meant for general public use whereas the majority of the services rendered by the appellant are —construction of roads within the residential complexes of the builders/developers, which cannot be construed to mean for general public use.**”**

11. Learned counsel for the appellant has also challenged the calculation of service tax liability, which as per balance sheet for the year 2011-2012 to 2014-2015 “gross receipt” or “by-sales” is the amount on which service tax is liable to be paid by them. Peculiarly, in the present case, the Appellate Authority had forwarded the query to the Adjudicating Authority to verify the facts and send a factual verification report. The Adjudicating

Authority vide letter dated 10.10.2017, *inter alia,* submitted as under:-

> "**a.** The case was booked on sharing of information in 65h REIC dated 16.4.2015 by the Additional Commissioner, Commercial Tax, Madhya Pradesh, that the party have not filed statutory returns for the period 2011-12 to 2013-14 and sales assessment tax was calculated on the basis of receipts and heads of sales tax as per VAT audit report.
>
> **b. The party has been non cooperative since inception till finalization of the investigation as evident from the SCN as well as 010 passed upon. They produced incomplete/piecemeal documents/financial records from time to time, causing hindrance in the completion of the enquiry/information shared by Commercial/VAT authorities by service tax angle. This could be termed as utter non cooperation with department.**
>
> **c. The non cooperation was to such an extent that the department had to resort to Income Tax department to procure IT Returns-Balance sheets for the period under consideration. Income Tax authorities denied of filling of returns as well as balance sheets by the party. It refers that the party always kept the department in dark &kept opportunity of manipulating the Balance sheets/Returns with them so that once the Service Tax, VAT cases pending under investigation with different authorities is decided, they may accordingly adjust the financial records with Income Tax while filling Balance sheet and Returns. The present position of Balance sheet and IT Returns was the same and may be verified with the IT department as well as Commercial Tax since the matter originated by Commercial Tax.**
>
> **d. The party could not produce any evidences including invoices /bills/contract raised with their customers to substantiate the activity being undertaken by them (type of service) and to substantiate the liability assessment under Reverse Charge Mechanism. Here also theparty kept the department in dark.**
>
> e. In view of the foregoing facts and reliability of the Balance sheets (No return +Bal Sheet filed with Income

Tax), it was mandatory for the department to safeguard Government Revenue by taking sales figures during the year, Advances received from customers, work inprogress and closing stock together for ascertainment of service tax liability for the years 2011-12 to 2014-15. Moreover, the party had not filed service tax returns (ST 3) at all assessing their own taxable value and liability which was a statutory requirement. The case was found to be an attempt of complete eyewash.

f. The department exhausted all steps and actions to procure the documents required for the completion of the investigation. The party was so elusive that no reply to the SCN was filed by them and on being given Personal Hearing for 15.2.17, 23.2.17, 9.3.17 and 27.3.2017 (different dates) they neither attended hearing nor sought any adjournment.

g. It has been held in the 010, that (i) the party refused to honour the summons issued to them under Section 14 of the CEA, 1944 read with Section 83 of the Finance Act, 1994 & (ii) the auditors of the party have certified that indirect taxes other than sales tax etc. have been passed through profit and loss account. It clearly indicates that the party has collected service tax from the clients but failed to credit the service tax to the Government Exchequer as provided in Section 68 of the Finance Act., read with Rules 6 of the Service Tax Rules. The intention of the party was to misguide the department and evade service tax intentionally to erode Government Exchequer."

12. In view of the aforesaid findings, the appellant cannot claim that there is any error. On the other hand, the appellant had deliberately avoided the proceedings. The plea taken by the appellant in this regard is a lame plea and do not merit consideration.

13. On the issue of penalty imposed under Section 78 and 77 of the Act, the submission of the learned counsel for the appellant is

that they had deposited a certain amount before issuance of the show cause notice and hence, short payment of service tax, if any, can be termed as ‘non-payment’ within the period prescribed for payment of service tax. It is not a case of suppression of facts merely because the appellant had not responded to the show cause notice or to the summons for personal hearing. We find that the appellant was registered with the Service Tax Department, however, they had not filed the service tax returns (ST-3). It is also on record that the appellant had collected service tax from the clients but failed to credit the service tax to the Government exchequer. The conduct of the appellant clearly reveals the intent to evade the service tax liability by suppressing the assessment of the taxable value and the liability under the provisions of the Act. We have no reason to differ with the Authorities below in imposing penalty under Section 77 and 78 of the Act. On the same considerations, the extended period has been rightly invoked.

14. The submission of the learned counsel that the appellant had deposited an amount of Rs.41,44,054/- during investigation prior to the issue of show cause notice, however, the same has not

been taken into consideration by the authorities below. The said amount, if stands deposited, by the appellant, the same may be appropriated towards the service tax liability as determined.

<u>Appeal No.ST/50630 of 2018</u>

15. The facts and the issue involved in the said appeal is absolutely identical to the Appeal No.ST/50378 of 2018. In the present case also, the appellant was engaged in providing services of 'Works Contract Services' and had provided taxable services of alike nature as in the above appeal. On the allegations that the said services provided by the appellant being beyond the purview of Sl.No.13 of Notification No.25/2012-ST dated 20.06.2012, as they have provided these services to various residential complex services providers and are not for use of general public. Show cause notice dated 17.01.2017 was affirmed by the Order-in-Original dated 22.05.2017. The appeal filed by the appellant was rejected by the Order-in-Appeal No.23-24/TPS/PC/CGST/DSC/2020-21 dated 21.10.2020. Hence, this appeal has been filed.

16. In view of our discussion above and the conclusion arrived at, the present appeal also deserves to be dismissed. The appeal is, accordingly dismissed.

17. We, therefore, affirm the findings arrived at in the impugned order. Accordingly, both the appeals are dismissed.

[Order pronounced on 4th April, 2025]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

Ckp.