CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 50683 OF 2019

[Arising out of Order in Appeal No. 1255(CRM)ST/JDR/2018 dated 15.11.2018 passed by the Commissioner (Appeals), CGST, Jodhpur]

M/S SURENDRA KUMAR GUPTA **Appellant**
14/174, Mangrol Gate, Baran-325205 (Raj.)

Vs.

COMMISSIONER, CGST, UDAIPUR **Respondent**
142-B, Sector-11, Hiran Magri, Udaipur (Raj.)

Appearance:
Present for the Appellant : Shri Vijai Kumar, Advocate
Present for the Respondent: Shri Manoj Kumar, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/ Decision : 07/04/2025

FINAL ORDER NO.50534/2025

DR. RACHNA GUPTA:

The present appeal has been filed to assail the order-in-appeal no. 1255 of 2018 dated 15.11.2018. The facts in brief which have culminated into the said order are as follows:

(i) That the appellant was registered for providing the taxable service of construction of complexes. Based on the scrutiny of third party information received from the Income Tax Department, the revenue observed that the appellant has rendered construction services and

Works Contract Service (WCS) to M/s. Rajasthan State Agricultural Marketing Board[1] (RSAMB) during the period from 01.04.2011 to 30.06.2012. It has also provided services to M/s. Rajasthan State Warehousing Corporation Ltd[2] during the period from 01.04.2011 to 30.03.2015 the work was covered under the category of Works Contract services.

(ii) Department formed the opinion that RSWC is a paid corporate and as such in terms of notification no.30/2012 dated 20.06.2012 (w.e.f. 01.07.2012) the assessee is liable to pay 50% of the total service tax on the works contract services and the remaining 50% is the liability of the service recipient under reverse charge mechanism.

(iii) from the other documents as were provided by the appellant during investigation, the department observed that the appellant has failed to comply with the said notification and despite declaring the taxable value of Rs.3,64,51,729/- the service tax of Rs.1,12,24,094/- has not been paid by the appellant.

(iv) Accordingly a show cause notice bearing no.82/2016 dated 09.12.2016 was served upon the appellant purposing the recovery of said amount of service tax (Rs.1,12,24,940/-) along with the proportionate interest and the appropriate penalties.

(v) The original adjudicating authority while deciding the said show cause notice has confirmed the said proposal vide order-in-original bearing no.56/2017 dated 09.06.2017. In an appeal against the said order, the Commissioner (Appeals) had partly allowed the appeal of the

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1. RSAMB
2. RSWC

appellant by dropping the service tax demand of Rs.6,49,221/- for the period from 01.04.2011 to 30.06.2012 on the ground that the construction got done for RSAMB is not for business or commerce. However, the demand of Rs.4,73,272/- for the remaining period till 31.03.2015 has been confirmed with interest and the penalty of Rs.10,000/- under section 77(2) of Finance Act, 1994 and a penalty of equivalent amount of demand confirmed has also imposed under section 78 of the Finance Act. Still being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Vijai Kumar, learned counsel for the appellant and Shri Manoj Kumar, Authorised Representative for the Department.

3. Learned counsel for the appellant has mentioned that the appellant construct warehouses for RSWC for storage of products for Food Corporation of India. The construction of warehouse for storage of agricultural products is mentioned to have been exempted from service tax under notification no.25/2012 dated 20.06.2012. Learned counsel further mentioned that the activity of appellant is also covered in negative list of the services under section under 66 (d) (v) of the Finance Act. Hence, even the partial demand confirmed is liable to be set aside. Notification no.30/2012 is wrongly being invoked by the Department. Learned counsel has relied upon the Government documents showing the scheme for getting the warehouse construction. The order is, accordingly, prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting the submissions, learned authorized representative for the department has mentioned that the impugned activity of the appellant

wrongly mentioned to be have been covered under the negative list. The emphasis has been laid down upon the notification no.30/2015 according to which appellant was liable to pay service tax @50%. Impressing upon no infirmity in the order under challenge. The Order-in-Appeal dated 15.11.2018, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the records. We observe that the demand dropped by Commissioner (Appeals) with respect to WCS being provided to M/s. RSAMB has not been challenged by the department. The impugned order, to that extent, sustains.

6. Coming to the demand confirmed with respect to WCS being provided to M/s. RSWC, we observe that there is no denial of the department about the fact that the appellant has rendered construction of complexes services to RSWC for constructing the warehouse which was meant to store the foodgrains. The letter of Rajasthan State Warehousing Corporation dated 20.06.2012 is perused along with the copy of the PEG Scheme to augment foodgrains storage dated 12.03.2013 which corroborates the said admissions which supports the said admitted facts. We further peruse that the Commissioner (Appeals) has confirmed the demand. Commissioner (Appeals) while referring to the mega exemption notification no.25/2012 as was relied upon by the appellant, has held that apart from the providing post harvesting storage, infrastructure for agricultural produce RSWC may also provide storage facility for seeds, manures, fertilizers, agricultural implements and notified commodities based on these observations the benefit of notification has been denied and the demand has been confirmed.

We have perused the said notification at entry no.14 thereof, which reads as follows:

> "14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
>
> a) an airport, port or railways, including monorail or metro;
>
> (b) a single residential unit otherwise than as a part of a residential complex;
>
> (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
>
> **(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or**
>
> (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages."

7. We have also perused the negative list in section 66(d) sub-clause (v), which reads as follows:

> "66D.(d) services relating to agriculture or agricultural produce by way of :—
>
> (v) loading, unloading, packing, storage or warehousing of agricultural produce."

8. From perusal of these provisions, it is clear that the activity of the appellant is of construction of such warehouses as are meant for agricultural produce and not of such nature as mentioned in said clause of section 66D. However, admittedly, it is an activity of construction of warehouse under PEG Scheme to Augment Foodgrains Storage as apparent from work order dated 28.06.2012 issued by RSWC in favour of appellant. Hence, the activity in question is an activity covered under entry no.14 of notification no.25/2012 dated 20.06.2012.

9. In the light of above discussion though the department contention that the activity is not covered under the negative list is accepted. However, as observed above, the activity/services rendered by appellant gets fully covered under the mega exemption notification serial no.25/2012 dated 20.06.2012. We also do not find any evidence contrary to the admitted fact for storage of post storage harvest articles. Resultantly, we held that there is no base in the impugned order for confirming even the partial demand. With these observations, the order under challenge is hereby set aside. Consequent, thereto, the appeal is allowed.

(Dictated and pronounced in open court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana