CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

E-hearing

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 52604 Of 2019

[Arising out of Order-in-Appeal No. 655 (CRM)ST/JDR/2019 dated 09.07.2019 passed by the Commissioner (Appeals) of Central Excise and CGST, Jodhpur]

Manohar Construction Company : **Appellant**
VPO Phulasar, Tehsil-Kolayat, Distt. Bikaner
Rajasthan, 334302

Vs

Commissioner of Central Goods : **Respondent**
Service Tax, and Central Excise, Jodhpur
G-105, New Industrial Area, Basni
Nar Diesel Shed, Jodhpur-Rajasthan-342003

APPEARANCE:
Shri Arun Goyal, Advocate for the Appellant
Shri Rajeev Kapoor, Authorised Representatives for the Respondent

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

FINAL ORDER No. 50683/2026

Date of Hearing:12.03.2026

Date of Decision: 06.04.2026

DR. RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Appeal No. 655/2019 dated 09.07.2019 vide which the order confirming demand of service tax along with interest and penalties has been upheld.

2. The facts relevant for the present adjudication are that M/s Manohar Construction Company, the appellant herein are not being registered with the Service Tax Department. However, on information received from the Income Tax Department, it was observed that in their income tax returns under Section 194 (c), the appellant had

disclosed the receipt of income for rendering 'Works Contract Services'. The matter was investigated, the appellant was enquired. The appellant mentioned to be engaged in executing work of construction and repair relating to road and canal for M/s Jain Irrigation Systems Limited and also for M/s Parth Infrastructure Private Limited under MOU dated 17.01.2013 and an agreement dated 11.08.2012 respectively. The copy of the said MOU/Agreement was submitted. However, the work orders and work receipts were not submitted. The Department formed the opinion that the activity of the appellant rendered during the financial year 2012-13 to 2015-16 amounts to 'Service' as defined under Section 65B (44) of the Finance Act, 1994. Nothing was produced about any exemption in favour of the appellant but the service tax was not paid.

1.1 Accordingly, vide show cause notice bearing No. 69/2017 dated 21.11.2017, service tax amounting to Rs. 1,12,83,551/- was proposed to be recovered along with the proportionate interest and the appropriate penalties. The said proposal was initially confirmed vide Order-in-Original No. 05/2018-19 dated 31.01.2019. However, the demand of service tax amounting to Rs. 58,24,726/- was confirmed. The remaining demand was dropped holding that services provided to M/s Parth Infrastructure Private Limited are exempted from the service tax under Entry No. 12(d) of Notification No. 25/2012 – ST dated 20.06.2012. The demand for the services rendered to M/s Jain Irrigation Systems Limited has been confirmed for the fact that the payment has been received from M/s ECP Housing (India) Private Limited and not from the service recipient/M/s Jain Irrigation Systems. The said order has been confirmed vide the impugned Order-in-

Appeal/Order under challenge. Being aggrieved, the appellant is before this Tribunal.

2. Learned counsel for the appellant has submitted that the appellant has provided service of construction of roads/canals for the governmental authorities through their main contractor, namely, M/s Parth Infrastructure Private Limited and M/s Jain Irrigation Systems Limited. The activity of the said construction is exempted under entry No. 12 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and the sub-contractor is also eligible for the said exemption in terms of entry No. 29(h) of the said notification. The said submission has been considered by the adjudicating authority below when the said services are provided to M/s Parth Infrastructure Private Limited. However, similar activity has been denied exemption when it was provided to the main contractor M/s Jain Irrigation Systems Limited for the sole reason that the payment has not come from the said recipient but from M/s ECP Housing (India) Private Limited.

2.1 Learned counsel submitted that later company is the sister concern of M/s Jain Irrigation which was entrusted with the entire work/payment system on behalf of M/s Jain Irrigation. The evidences to this effect were also produced. Thus, there was sufficient evidence on record to show that the payment from M/s ECP Housing is in lieu of the services rendered by the appellant to M/s Jain Irrigation. The services are otherwise exempted. It is submitted that the confirmation of demand holding absence of any documentary evidence is a finding beyond the facts and evidences on record. The findings are, therefore, liable to be set-aside. It is also submitted that show cause notice dated 21.11.2017 proposing the demand for the financial year 2012 onwards, the part demand thereof is barred by the period of limited. The extended period has wrongly been invoked. The appeal is prayed to be allowed.

3. While rebutting the submissions, learned DR submitted that the appellant had disclosed their income in their income tax returns received for rendering the service but still the appellant was not registered as a service provider. This amounts to the suppression of fact with an intent to evade tax, hence, the extended period has rightly been imposed upon the appellant. Learned DR has relied upon the decision of **Warsi Buildcon** versus **Principal Commissioner, Customs, Central Excise & Service Tax, Indore** reported as 2024 (3) TMI 286-CESTAT NEW DELHI.

3.1 While submitting on merits, the finding in the impugned order have been reiterated. In addition, it is submitted that the appellant did not produce any evidence as that of contract or agreement with M/s Jain Irrigation who had sub-contracted the relevant contract to the appellants. Thus, there can be no infirmity in the findings of the impugned order where particular demand against M/s Jain Irrigation Systems has been confirmed. The partial demand has been dropped while giving due consideration, the exemption available with the contractors as well as the sub-contractors while providing services to the governmental authorities. With these submissions, the order under challenger is prayed to be upheld and the appeal is prayed to be dismissed.

4. Having heard both the parties and perusing the entire records, we observe following to be admitted facts:-

(i) The appellant, as sub-contractor, was constructing canal/roads for two main contracts M/s Parth Infrastructure Private Limited and M/s Jain Irrigation Systems

(ii) Both the said main contractors/service recipients of the appellant had agreed with the governmental authorities for the provision of construction of canal/roads.

(iii) Thus, the service recipient of the main contractors is the governmental authorities.

The appellant in addition has relied upon the Mega Exemption No. 25/2012 dated 20.06.2012 the adjudicating authority below has accepted the same, however, only with respect to the services rendered to M/s Parth Infrastructure Private Limited. The benefit is denied in case of M/s Jain Irrigation Systems for the reason that amount of consideration has came from another than the recipient entity, namely, M/s ECP Housing India Private limited. We have perused the relevant entry of the said notification i.e. entry No. 12. According to which services of construction of canal/dam or other irrigation works when provided to the Government, a local authority or a Government Authority, there is no liability to pay service tax. Entry No. 29(h) of the said notification extends the said exemption to the sub-contractors who are providing services by way of works contract to another main contractor providing exempted works contract services.

5. In the light of these observation, the only controversy in the present case is:

Whether the amount of consideration for rendering the exempted services received by the appellant from M/s ECP Housing (India) Private Limited instead of it from the service recipient of appellant viz. M/s Jain Irrigation Systems Limited will render appellant not eligible for the said exemption.

6. We have perused Section 65 B (44) of the Finance Act which defines 'Service' to mean any activity to be carried out by a person for another for consideration. Apparently for any activity to be called as service, the source of payment of consideration is not expressly mention in the aforesaid definition. Otherwise also the payment from M/s ECP Housing (India) Private Limited is mentioned to be payment on behalf of service recipient M/s Jain Irrigation Systems. The adjudicating authority has nowhere denied the mode as acceptable, however, has declined exemption for want of any documentary evidence. We observe that the certificate of M/s Jain Irrigation Systems Limited is on record wherein it has been certified that the work for execution of earth work, single PCC block lining etc. of Narmada Mill Canal has been awarded to M/s Manohar Construction. It has also been certified that said work shall be executed by the sister concern i.e. M/s ECP Housing (India) Private Limited with material and M/s ECP Housing is being authorized by M/s Jain Irrigation Systems Ltd to make all the payments related to the said work.

7. Department has not produced any evidence on record to falsify the said submission. In absence thereof, we have no reason to doubt veracity of the contents of the said certificate which proves the activity

to be a 'Works Contract Service' being provided to the main contractor and ultimately to the governmental authority against receiving the consideration from the sister concern of one of the main contractor. The certificate is held admissible in evidence. We draw out support from the decision in the case of **Akasha Electronics Limited** vs. **Commissioner of Customs, Mumbai** reported as 2016 (343) ELT 362 wherein the CA Certificates are held admissible documents for the proof of the contents therein. The findings in the case of **Warsi Buildcon** are held not applicable to the given facts and circumstances of the present appeal.

8. Resultantly, we hold that the payment received from M/s ECP Housing (India) Private Limited was as good as the payment from M/s Jain Irrigation Systems Limited, the service recipient. The appellant, the sub-contractor for providing 'Works Contract Service' for roads and canals is exempted from paying tax in terms of entry at Sr. No. 29 of Mega exemption notification No. 25/2012; The main contractor being eligible for exemption under entry No. 12 of the said Mega exemption notification. Receipt of amount of consideration by the appellant for rendering said exempted service is an admitted fact. Just because, it is received from the sister concern of the service recipient/ the main contractor cannot be the ground to deny the benefit of exemption available to the appellant while rendering 'Works Contract Service' for constructing canal/roads, as sub contractor, for the government/governmental authorities.

9. In the light of entire discussions, the issue framed above stands decided in favour of the appellant. The findings in the order under challenge, being otherwise, are hereby set-aside. Consequent thereto, the appeal is hereby allowed.

(Order pronounced in the open Court on 06.04.2026)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.