CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 53061 of 2016

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-07-08-16-17 dated 29.08.2016 passed by the Commissioner of Central Excise, Jaipur]

M/s. Prehari Protection Systems Pvt. Ltd. **...Appellant**
150, Devi Nagar, New Sanganer Road,
Jaipur, Rajasthan

VERSUS

Principal Commissioner of CGST
& Central Excise, Jaipur **...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

WITH

Service Tax Appeal No. 53184 of 2016

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-07-08-16-17 dated 29.08.2016 passed by the Commissioner of Central Excise, Jaipur]

Principal Commissioner of CGST
& Central Excise, Jaipur **...Appellant**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005,

VERSUS

M/s. Prehari Protection Systems Pvt. Ltd. **...Respondent**
150, Devi Nagar, New Sanganer Road,
Jaipur, Rajasthan

APPEARANCE:
Dr. Surender Singh Hooda, Advocate for the Appellant-Assessee
Shri Rajeev Kapoor, Authorized Representative for the Respondent

WITH

Service Tax Appeal No. 52918 of 2016

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-07-08-16-17 dated 29.08.2016 passed by the Commissioner of Central Excise, Jaipur]

Shri Kamal Jit Singh **...Appellant**
150, Devi Nagar, New Sanganer Road,
Jaipur, Rajasthan

VERSUS

Principal Commissioner of CGST
& Central Excise, Jaipur **...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

WITH

Service Tax Appeal No. 52919 of 2016

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-07-08-16-17 dated 29.08.2016 passed by the Commissioner of Central Excise, Jaipur]

Shri Deepak Jain **...Appellant**
150, Devi Nagar, New Sanganer Road,
Jaipur, Rajasthan

VERSUS

Principal Commissioner of CGST
& Central Excise, Jaipur **...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

APPEARANCE:
None for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 03.03.2026
DATE OF DECISION: **02.07.20026**

FINAL ORDER NO. 51140-51143/2026

DR. RACHNA GUPTA

Present order disposes of 4 appeals, one is of the assessee, another is the cross appeal filed by the department and remaining two appeals are filed by the authorized persons of the assessee company, all arising out of common Order-in-Original bearing No. 07-08-16-17 dated 29.08.2016, however, with respect to 2 separate show cause notices. The facts in brief are as follows:

1.1 M/s. Prehari Protection Systems Pvt. Ltd., the appellant in Appeal No. ST/53184/2016 and ST/53061/2016 was engaged in providing Manpower Supply Services to Nagar Nigam, Jaipur. Department got an intelligence that the appellants have been collecting service tax, ESI and PF from Nagar Nigam, Jaipur. However, the said amount was not deposited by the appellant. Based on the said investigation, searches were conducted in the premises of the Authorized Signatory of the appellant's company namely Shri Deepak Jain who is the appellant in Appeal No. ST/52919/2016. Certain documents in the form of note sheets/calculation and the negotiation sheets with respect to the rates per day for sanitation purposes were recovered. From the examination thereof, it was observed that the appellant had entered into two contracts with Nagar Nigam, Jaipur. One is dated 03.02.2009 and another dated 12.12.2013, for providing the impugned services. The appellant agreed to provide the same services to SMS Medical College also vide separate agreement. The appellant however was found not registered with the service tax department. The activity of the appellant was alleged as of 'Manpower Supply Service'. Since the appellant had failed to deposit the service tax with the department despite collecting the same from Nagar Nigam, Jaipur and despite rendering the taxable services that two show cause notices were served upon the appellant, as follows:

(i) Show cause notice bearing No. 23/2015 dated 16.04.2015 proposing the demand of service tax of Rs.3,37,20,192/- in terms of Section 73A of the Finance Act, 1994 and service tax amounting to Rs.76,50,431/- under Section 73(1) of the Finance Act. The interest at the appropriate rate and the proportionate penalty was also proposed to be recovered. The amount of Rs.1,13,35,000/- as was already deposited by the appellant was proposed to be appropriated.

(ii) Show cause notice No. 74/2016 dated 08.04.2016 proposing the demand of service tax amounting to Rs.3,09,17,430/- along with interest at appropriate rates and the proportionate penalties.

2. Both the said show cause notices have been adjudicated vide impugned Order-in-Original. The demand of service tax of Rs.3,37,20,192/- along with interest has been confirmed with respect to show cause notice dated 16.04.2015. Penalties have also been imposed upon Shri Deepak Jain, the Authorized Signatory and Shri Kamal Jeet Singh, the Managing Director of M/s. Prehari Protection Systems Pvt. Ltd.. However, the demand of service of Rs.76,50,431/- has been dropped. With respect of show cause notice dated 08.04.2016, the entire demand has been confirmed and the penalties upon both the persons of the appellant company have been imposed. Being aggrieved, the authorized persons as well as the company are in appeal.

3. We have heard Shri Surender Singh Hooda, learned Advocate for appellant-respondent and Shri Rajeev Kapoor, learned Authorized Representative for the department.

4. Learned counsel for the appellant has submitted that the appellant provided cleaning services to Nagar Nigam, Jaipur as well as to the SMS Medical College, Jaipur along with the supply of manpower, however, the main activity performed was cleaning services. The said services provided to the governmental authority as well as to the educational institute are exempted under Mega Notification No.25/2012. Based on these observations, the demand as was proposed under Section 73(1) amounting to Rs.76,50,431/- has been dropped. The rest of the demand has been wrongly confirmed. Learned counsel has mentioned that the findings confirming the said demand are contradictory to the findings based whereupon the partial demand was dropped.

4.1 Further, learned counsel has referred to the contracts with Nagar Nigam, Jaipur and with the SMS Medical College. The clause thereof clearly establishes that the services provided by the appellant were in the nature of cleaning services. The same has been accepted by the adjudicating authority also. Still the demand proposed under Section 73A has been confirmed. It has been confirmed on the basis of calculation sheets and the note sheets provided by the Nagar Nigam and recovered from the premises of Shri Deepak Jain during search proceedings dated 01.07.2014. But the invoices raised by the appellant falsify those sheets as the service tax has not been mentioned separately in the invoices. Para 17 of the agreement with Nagar Nigam, Jaipur has also been impressed upon where the parties have agreed that Nagar Nigam will not pay service tax. Based on these submissions, the confirmation of even partial demand is prayed to be set aside. The demand which has been dropped is impressed upon to be the correct finding. The services in nature being exempted. With these submissions, the appeals filed on behalf of the appellants are prayed to be allowed and the appeal filed by the department is prayed to be dismissed.

5. While rebutting these submissions, learned Departmental Representative has impressed upon the note sheets recovered from Nagar Nigam and the calculation sheets recovered from the appellant's premises. The letter of Nagar Nigam dated 15.07.2014 is also impressed upon, wherein the liability about service tax has been clarified. The adjudicating authority below has failed to consider these documents and thus the demand has wrongly been dropped. There is sufficient evidence that the appellant was collecting certain amount in the name of service tax but was not paying it to the government. The appellant was not even registered with the service tax department. Section 73A(2) has rightly been invoked. With these submissions, the appeal filed by the assessee are prayed to be dismissed whereas the one file by the department is prayed to be allowed.

6. Having heard both the parties and perusing the entire records, including the impugned order i.e. Order-in-Original dated 29.08.2016, it is observed that the original authority has already held that the services provided by the appellant are that of 'Cleaning Services' defined under Section 65(24b) of the Finance Act, 1944 instead of being 'Manpower Supply Service.' Since the services are provided to the government authority and the education institution, the services are exempted in terms of Mega

Exemption Notification No. 25/2012 dated 20.06.2012 and Entry No. 9 of the said notification (with respect to educational institutes). Accordingly, the demand of service tax of Rs.76,50,431/- has been dropped for the period from October 2009 to June 2014 (first show cause notice) and for Financial Year 2014-15 (second show cause notice). The department is against this drop of demand.

7. The adjudicating authority has examined the scope of cleaning activity defined under Section 65(24b) of the Finance Act, has also discussed the terms and conditions of both the agreements dated 03.02.2009 and 12.12.2013 as executed between appellant and Nagar Nigam. It has been observed that the underline objective of the contracts, the essential character of the service provided by the appellants is the cleaning activity [findings in Para 34 (34.1 to 34.5)]. It has also been observed that the superintendence and control of the manpower as sent by the appellant for performing those cleaning activities did not shift to Nagar Nigam. We do not find anything contrary to the said observations. Hence, it is held that activity rendered by the appellant has rightly been denied to be the 'Manpower Supply Agency' but that of cleaning activity.

8. Similarly, we are in agreement with the findings with respect to the same activity rendered by the appellant but to the SMS Medical College that the service provided is that of cleaning activity. Apparently the services provided to the governmental authorities (Nagar Nigam in this case) and the educational institutes (SMS Medical College) are exempted under Mega Exemption Notification No. 25/2012 dated 20.06.2012, the respective entries are 25 and 9.

Hence, we hold that the demand of service tax of Rs.76,50,431/- has rightly been dropped by the adjudicating authority.

8. Coming to the part of the demand as has been confirmed in terms of Section 73A of the Finance Act, 1994 (Rs.3,37,20,192/- and Rs. 3,09,17,430/-), it is observed that the said demand has been confirmed observing that the appellants have collected service tax from Nagar Nigam as well as from the medical college. The documents, calculations sheets and note sheets recovered from the premises of Shri Deepak Jain sufficiently reflect that service tax has been charged at the rate of 20% and an amount of Rs.11 lacs is received by the appellant from its service recipient in the name of service tax during the relevant period. Since the amount has been collected in name of service tax but not paid to the exchequer, that the demand has been confirmed invoking Section 73A of the Finance Act. The section is perused. It reads as follows:

> ***"Section 73A. Service Tax collected from any person to be deposited with Central Government****.*
>
> *(1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made there under from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.*
>
> *(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.*
>
> *(3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.*
>
> *(4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is*

served under sub- section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.

(5) The amount paid to the credit of the Central Government under sub-section (1) or subsection (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

(6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount."

9. The bare perusal of 73A clause (2) makes it clear that the Section is invokable in case any person who has collected any amount which was not required to be collected, representing the same as service tax, such amount was to be deposited forthwith, with the government else a notice of demand shall be served on such person, who shall pa the such amount to the government.

10. There is the sufficient evidence as discussed by the original adjudicating authority in Para 43 to 46 thereof that the service tax was otherwise collected by the appellant. But simultaneously it has already been held that the appellant is not liable to pay service tax due to exemption available under Notification No. 25/2012 dated 20.06.2012. We hold that the appellant cannot be allowed to be unjustly enriched. Hence the appellant is directed to return the said amount (Rs.11 lacs in total) to both the service recipients with an intimation of compliance to the concerned commissionerate within 3 months of receiving the copy of the present order. Despite being no liability, the appellants and both its authorized persons (the co-

appellants) have collected the service tax but not paid the same. The intention of getting unjustly enriched is very much evident. Hence, we do not find any infirmity when penalty has been imposed.

11. In totality of the entire above discussion above, the order under challenge is upheld vis-à-vis the drop of demand of Rs.76,50,431/-. The order to the extent of imposition of penalty/penalties is also upheld. However, the order confirming demand of Rs.3,37,20192/- and Rs.3,09,14,430/- is modified in such terms as mentioned above.

In view of the entire above discussion, the appeal filed by the department, Shri Kamal Jit Singh and Shri Deepak Jain are hereby dismissed. The appeal filed by the Company (M/s. Prehari Protection Systems Pvt Ltd.) is disposed of with the directions that aforesaid both the amounts collected by appellant from Nagar Nigam and SMS Medical College be deposited with the government exchequer in terms of Section 73A of the Finance Act, 1994. The deposit be made within one month of the receipt of the present order with the intimation to the concerned commissionerate. These appeals stand disposed of accordingly.

[Order pronounced in the open court on **02.07.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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