CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53612 of 2014-CU(DB)

(Arising out of order in appeal No. 15/SM/ST/D-II/14 dated 26.03.2014 passed by the Commissioner of Central Excise (Appeals), Delhi-II).

M/s SGS Construction & Developers Private Limited **Appellant**
R-10, SGS House, Green Park Main
New Delhi-110016.

VERSUS

Commissioner of Service Tax **Respondent**
17B, IAEA House, M.G. Marg
IP Estate, New Delhi-110002.

APPEARANCE:

Shri Puneet Agrawal, Shri Gaurav Gupta and Shri Chetan Kumar Shukla, Advocates for the appellant.

Shri Sanjay Jain, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51255/2019

DATE OF HEARING/DECISION: 15.01.2019

ANIL CHOUDHARY:

M/s SGS Construction & Developers Pvt. Ltd. (*hereinafter referred to as the 'Appellant'*) is registered with the Service Tax Department vide registration no. AAHCS7169QSD001 for legal consultancy services, etc. The appellant's primary business is development of properties for sale.

2. The Appellant paid Service tax on reverse charge basis, in the F.Y. 2012-13 upon receiving legal consultancy services, even though the Appellant was eligible for exemption under the Notification 25/2012-ST (at Sl. No. 6) which exempted a business entity from Service Tax, if the turnover in the

previous financial year was equal to or less than 10 Lakhs rupees. As per the Appellant, his turnover for the F.Y. 2011-12 was Rs. 2.04 Lakhs and for F.Y. 2012-13 was Rs. 6.78 Lakhs which was below Rs. 10 Lakhs, and he was eligible for exemption under Notification 25/2012-ST.

3. Pursuant to above, the Appellant filed a refund application dated 29.08.2013 for claiming refund of Service Tax wrongly paid on receiving legal consultancy services, for the period of October 2012 to December 2012, along with all relevant documents including its profit and loss account for the year ending 2011-12.

4. Both the lower authorities took the view that the exemption is not available to the Appellant. The lower authorities were of the view, that the turnover of the Appellant is more than Rs. Ten lakhs. The appellate authority whose order is assailed before us, also went on to hold that the exemption is available only to the service provider, and not to the service receiver, paying tax under reverse charge basis.

5. For the purpose of ascertaining the turnover of the Appellant, the Adjudicating Authority has placed reliance on Section 43A of Companies Act, 1956. According to the Adjudicating Authority, the following figures were picked from the Profit and Loss account for the purpose of ascertaining the turnover of the appellant:

Other Income	Rs. 26, 29.257.26 (*Interest received* – *Rs. 2,425,257* + *Rent received* – *Rs. 2, 04,000)*
Changes in Inventory of work in progress	Rs. 145,96,71,568
Total	Rs. 146,23,00,825

6. It is the grievance of the Appellant that the above reference to Section 43A of the Co's Act is incorrect. Even going by the said section 43A, the turnover has been wrongly computed. It is also his grievance that the

Adjudicating Authority did not give any finding in regards to Notification No. 25/2012 dated 20.06.2012, under which the Appellant claimed the exemption.

7. The instant appeal is preferred against the Impugned Order dated 28.02.2014. The Appellant have has taken us through the Notification No. 25/2012-ST. it is submitted that Serial No. 6 of the said notification exempts the services provided by ***an individual as an advocate or a partnership firm of advocates by way of legal services*** *to,* ***a business entity with a turnover up to rupees ten lakh, in the preceding financial year.***

8. The Ld. Counsel for the Appellant Sh. Puneet Agrawal submits that definition clause provided in the said Notification, nowhere defines the term *'Turnover',* neither does Finance Act, 1994 defines the said expression. It is therefore his submission that the expression turnover must have its ordinary meaning as understood in common parlance by the trade, industry and professionals.

9. For this purpose, our attention was drawn to the following judgments and authoritative texts issued by the professional bodies dealing with accountancy profession:

a. ***Commr. of Income Tax V-II, New Delhi V. Punjab Stainless Steel Indus 2014 (37) ELT 214 (SC), in which the Hon'ble Supreme Court held as under:-***

The Ld. Counsel submits that in the said judgment it has been held that normally, the term 'turnover' would show the sales effected by a business unit. It was also submitted that in the said judgment, the Supreme Court held that for a more accurate meaning of the term turnover, one can also look into the dictionary meanings or to the materials which are published by bodies of accountants, and our reference was invited to the said references which the Hon'ble Apex Court had itself relied in the said judgment.

b. The statement issued by ICAI on companies (Auditor report) 2003 wherein the word 'turnover' has been defined as under:

'The term turnover for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise.'

c. ***Accounting standards interpretation (ASI) 29*** which provided an interpretation of ***Accounting Standards*** - 7. Para 5 of AS-29 states the following:

> 'The term turnover is used in relation to the source of revenue that arises from the principal revenue generating of an enterprise'. In case of a contractor the construction activity is its principal revenue generating activity. Hence the revenue recognized in the statement of profit and loss of a contractor in accordance with the principles laid down in AS-7, by whatever nomenclature described in the financial statements, is considered as 'turnover'

10. In light of the above, the appellant seeks to submit that the authorities below have erred in relying upon the definition provided in Companies Act, 1956, without any justification whatsoever. The Appellant therefore submits that ***changes in inventory of work in progress*** as appearing in the Financial Statement cannot be included in the turnover, as the amount reflects purchases and not sales. To further elaborate, it has been explained that the opening and closing balance of ***changes in inventory of work in progress,*** represents purchased inventories during the year. It is therefore submitted that the purchase of stocks cannot be considered as turnover, and the lower authorities have erred in holding otherwise. The Appellant submits that if the said increase in inventory is excluded, the balance turnover would be less than Rs. 10 lakhs and hence the Appellant would be eligible to claim the exemption.

11. Per contra the Ld. DR has supported the findings in the orders passed by the lower authorities.

12. We have heard both sides and have perused the appeal paper book. We have also gone through the judgment of the Apex Court and the publications of the ICAI.

13. The appellant has claimed exemption under the following entry of Notification No. 25/2012-ST:

> *"….. 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, namely :-*
>
> *..*
>
> *6. Services provided by-*
>
> *i. …*
>
> *ii. …*
>
> *(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-*

(i) an advocate or partnership firm of advocates providing legal services ;

(ii) any person other than a business entity; or

(iii) <u>a business entity with a turnover up to rupees ten lakh in the preceding financial year</u>; or (emphasis supplied).

….

….”

14. We find that the expression “turnover” is not defined in the Notification No. 25/2012-ST or in the Finance Act, 1994, and hence in order to interpret the meaning of the said term, in Serial No. 6 of notification 25/2012-ST, the common parlance meaning of the said term as understood by those dealing in accounts and taxation would have to be taken.

15. We find that the meaning of the said term has already been authoritatively explained by the Hon’ble Apex Court in the in CIT V. Punjab Stainless Steel Indus 2014 (37) ELT 214 (SC), in which the Hon’ble Supreme Court held as under:

> ***18. In the aforestated circumstances, one has to look at the meaning of the term ‘turnover’ in ordinary accounting or commercial parlance.***
>
> *19. Normally, the term ‘turnover’ would show the sale effected by a business unit. It may happen that in the course of the business, in addition to the normal sales, the business unit may also sell some other things. For example, an assessee who is manufacturing and selling stainless steel utensils, in addition to steel utensils, the assessee might also sell some other things like an old air conditioner or old furniture or something which has outlived its utility. When such things are disposed of, the question would be whether the sale proceeds of such things would be included in the ‘turnover’. Similarly in the process of manufacturing utensils, there would be some scrap of stainless steel material, which cannot be used for manufacturing utensils. Such small pieces of stainless steel would be sold as scrap. Here also, the question is whether sale proceeds of such scrap can be included in the term ‘sales’ when it is to be reflected in the Profit and Loss Account.*

16. The Hon’ble Supreme Court also held that for a more accurate meaning of the term turnover one can also look into the dictionary meanings or to the materials which are published by bodies of accountants. This is clear from Para 25 of the judgment***:***

> *25.* ***So as to be more accurate about the word “turnover”, one can either refer to dictionaries or to materials which are published by bodies of Accountants. The Institute of Chartered Accountants of***

> ***India (hereinafter referred to as the 'ICAI') has published some material under the head "Guidance Note on Tax Audit Under Section 44AB of the Income Tax Act****". The said material has been published so as to guide the members of the ICAI. In our opinion, when a recognized body of Accountants, after due deliberation and consideration publishes certain material for its members, one can rely upon the same.* ***Para 5 of the said Note deals with "Sales", "turnover" and "gross receipts".*** *Paras 5.2 and 5.3 of the said Note are reproduced hereinbelow, which pertain to the term "turnover".*
>
> > *"5.2 In the "Guidance Note on Terms Used in Financial Statements" published by the ICAI, the expression "Sales Turnover" (Item 15.01) has been defined as under:-*
> >
> > *"The aggregate amount for which sales are effected or services rendered by an enterprise. The term 'gross turnover' and 'net turnover' (or 'gross sales' and 'net sales') are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts".*
> >
> > *5.3 The Guide to Company Audit issued by the ICAI in the year 1980, while discussing "sales", stated as follows :*
> >
> > *"Total turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately.*
> >
> > *Note (i) The term 'turnover' would mean the total sales after deducting therefrom goods returned, price adjustments, trade discount and cancellation of bills for the period of audit, if any. Adjustments which do not relate to turnover should not be made e.g. writing off bad debts, royalty etc. Where excise duty is included in turnover, the corresponding amount should be distinctly shown as a debit item in the profit and loss account."*
> >
> > *1. The aforestated meaning given by the ICAI clearly denotes that in normal accounting parlance the word "turnover" would mean "total sales" as explained hereinabove. The said sales would definitely not include the scrap material which is either to be deducted from the cost of raw material or is to be shown separately under a different head. We do not see any reason for not accepting the meaning of the term "turnover" given by a body of Accountants, which is having a statutory recognition.*

17. Thus, as per the law declared by the Supreme Court, turnover means *the aggregate amount for which sales are effected or services rendered by an enterprise.*

18. Applying the abovesaid principle to the facts of the present case, we find that the amount of increase in inventory, which the lower authorities have treated as turnover, is not a sale by the Appellant. To the contrary it is only

purchase of inventory by the Appellant and by no stretch of imagination the same can be construed as turnover.

19. Once the amount pertaining to “Changes in Inventory of work in progress” is excluded from turnover, admittedly the amount remaining is less than Rs. Ten lakhs, and hence the benefit of the exemption is available to the Appellant.

20. In view of above we allow this appeal. We direct the Respondents to grant the refund with interest as per Rules, within 8 weeks from the receipt of this order.

(Operative part of order pronounced in open Court)

(**Anil Choudhary**)
Member (Judicial)

(**Bijay Kumar**)
Member (Technical)

Pant