IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

<u>Service Tax Appeal No.76078 of 2016</u>

(Arising out of Order-in-Original No.37/S.Tax/Commr./2016 dated 22.03.2016 passed by Commissioner of CGST & Central Excise, Ranchi)

M/s Gupta & Company Developers Pvt. Ltd.
(Main Road, Simaria, Chatra, Jharkhand)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Ranchi
(C.R.Building, 5A Main Road, Ranchi, Jharkhand)

Respondent

<u>APPERANCE :</u>

Shri Jay Narayan Kumar, Director, for the Appellant
Shri R.K.Agarwal, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76871/2025

<u>DATE OF HEARING : 03 JULY 2025</u>

<u>DATE OF PRONOUNCEMENT : **10 JULY 2025**</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order where demand of service tax has been confirmed against the appellant.

2. The facts of the case are that by way of show-cause notice dated 08.10.2013, it has been alleged that the appellant has not paid service tax amounting to Rs.3,61,25,889/-.

2.1 Further, an information was gathered that the appellant has provided site formation and clearance, excavation and earthmoving and demolition services to M/s Jindal Steel & Power Limited (JSPL), Patratu.

2.2 Investigation was started. The appellant did not response. Thereafter, the appellant furnished certain documents and on scrutiny of the said documents, it reveals that the appellant has received taxable amount of Rs.4,51,80,553/- and Rs.2,94,74,195/- during the period 2008-09 and 2009-10 whereas they declared taxable amount of Rs.1,80,570/- and paid service tax of Rs.18,567/-.

2.3 Therefore, summon was issued to the appellant. But the appellant did not appear and submits that they are engaged in construction of work of JSPL during the period 2008-10 and after deduction of TDS, it was also stated that JSPL had refused to pay the service tax and they have received the amount from the customer upto 31st March, 2011. Even then receipt of payment for service was not taxable.

2.4 Again, summon was issued to the appellant. Finally, Shri Jaynarayan Kumar, Managing Director, appeared on 22.02.2013, wherein his statement was recorded.

2.5 Thereafter, summon was also issued to JSPL and Shri Parmeshwar Rai, Assistant Manager appeared on behalf of JSPL on 20.03.2013 and he submitted that they have received services from the appellant under Agreement No.JSPL/PROJ/WO:028/08-09 dated 29.05.2008. During the period 2008-2010, they have paid Rs.6,96,84,826/ to the appellant including service tax amounting to Rs.74,43,472/-.

2.6 Thereafter, balance sheet was examined for the period 2010-2011 and 2011-2012 and there was a receipt of Rs.11,06,55,933/- and Rs.13,59,18,440/- respectively whereas in their ST-3 Returns for the said period, the appellant has declared their taxable amount as "Nil" with sole intent to avoid payment of service tax. Even, they have not deposited any service tax received by them.

2.7 On the said basis, the service tax was demanded along with interest and penalty was also proposed.

2.8 By way of the impugned order, the demand of Service Tax of Rs.3,61,25,889/- was confirmed along with interest and equivalent amount of penalty was also imposed and a penalty of Rs.10,000/- was also imposed under the provisions of Section 77 of the Finance Act, 1994.

2.9 Against the said order, the appellant is before us.

3. Shri Joy Narayan Kumar, Director of the Appellant Company, appeared on behalf of the appellant and filed a written submission. In the written submissions, it is stated that the appellant has executed work for JSPL in FY 2008-09 and 2009-10 and in 2010-11 and 2011-12 under the Pradhan Mantri Grameen Sadak Yojna ("PMGSY"). He also submits that the work under PMGSY is beyond the purview of service tax. The impugned order has included work under PMGSY also for calculation of service tax, which is ex-facie erroneous and bad in law.

3.1 It is further submitted that the appellant also executed work for JSPL vide Work Order dated 29.05.2008 and JSPL awarded the earth enabling work of cast house of blast furnace area for an amount of Rs.5,55,37,143/- and as per Clause 10(j) of the said Work Order, it is submitted that the said service tax liability is to be borne by JSPL on production of requisite documents. Therefore, the appellants are not liable to pay service tax. It is the liability of JSPL to pay service tax. In that circumstances, the work executed by the appellant for JSPL was for an amount of Rs.7,46,22,386/- wherein the amount of service tax worked out at Rs.92,23,327/-, is to be borne to JSPL and the same has not been paid to the appellant. In view of this, it is submitted that they are not liable to pay service tax.

4. One the other hand, the ld.A.R. for the Revenue, supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that it is the case of non-payment of service tax by the appellant and the same has been detected during the course of investigation, wherein various summons have been issued to the appellant and in response to the said summons, various documents were furnished by the appellant and a show-cause notice was issued to the appellant. The appellant has admitted in their written submissions itself that they have executed the work amounting to Rs.7,46,22,386/-, on which TDS has been deducted by JSPL.

7. The sole contention of the appellant is that as per Clause 10(j) of the Agreement, if any service tax is payable, the same shall be borne by JSPL on production of requisite documents. Admittedly, neither the appellant paid the service tax to the Department nor any documents have been produced for payment of service tax by the appellant. In that circumstances, JSPL has rightly not paid the service tax. In fact, it is the liability of the appellant to pay the service tax and raise invoices for payment of service tax on the service recipient, which the appellant has failed to do so. Further, the appellant's claim is that they have executed the work under Pradhan Mantri Grameen Sadak Yojna, which was awarded to the appellant by way of Hindustan Steel Works

Construction. The said issue has not been dealt by the adjudicating authority in the impugned order, which is required to be verified on production of the Works Order for execution of works by the appellant under Pradhan Mantri Grameen Sadak Yojna.

8. Therefore, though the issue will be examined by the adjudicating authority afresh, but with regard to the work executed for JSPL, the amount received by the appellant shall be treated as cum-tax amount and the appellant is liable to pay service tax thereon as it is for the appellant to make payment of service tax on receipt of the amount of remuneration of service provided by them.

9. In that circumstances, we remand the matter back to the adjudicating authority for computation of demand considering the claim of the appellant where the appellant has executed any work under the Pradhan Mantri Grameen Sadak Yojna, if the same has been executed by the appellant on the said work, the appellant is not liable to pay service tax but on the work executed for M/s JSPL, the appellant is liable to pay service tax and the amount received from JSPL be treated as cum-tax. Accordingly, the same is demanded from the appellant along with interest and the appellant is liable to penalize accordingly.

10. In view of the above, the appeal is disposed by way of remand as directed above.

(Pronounced in the open court on **10.07.2025**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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