IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax No. 75511 of 2023

(Arising out of Order-in-Appeal No.47/ST/BBSR-GST/2022 dated 03.03.2022 passed by Commissioner of Central Goods and Service Tax & Central Excise, Bhubaneshwar)

M/s. Shreenibas Pradhan **: Appellant**
Plot No.-687/2417, Jaydev Vihar, near Ekamra Kanan Chhack,
Bhubaneswar, Odisha-751020.

VERSUS

Commissioner of Central Goods & Service Tax, **: Respondent**
Central Excise & Customs, Bhubaneswar
Central Revenue Building, Rajaswa Vihar, Bhubameswar-751007, Odisha.

APPEARANCE:

Ms. Shreya Mundhra, Advocate for the Appellant

Shri S.K.Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 77444/ 2025

DATE OF HEARING :15.09.2025

DATE OF DECISION: 18.09.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein demand of Service Tax of Rs. 19,08,872/-has been confirmed against the appellant alongwith interest and equivalent amount of penalty was also imposed under Section 78 along with penalty under Sections 77(1)(c)(ii) and 77(2) of the Finance Act, 1994.

2. The facts of the case are that the appellant is engaged in providing works contract services during the Financial Year 2014-15 . The appellant undertook various construction works for multiple government departments and governmental organizations. According to the Form 26AS statement filed by the

Appellant, the total gross receipts from services amounted to Rs. 11,31,35,737/- received from various parties including including Odisha Tourism Development Corporation (OTDC) and Central Warehousing Corporation (CWC) and other government departments such as Odisha State Disaster Management Authority, Rural Works Division-II Ganjam, OPWD Ganjam R & B Divisions and others. The appellant did not pay Service Tax by claiming exemption under Notification No. 25/2012-ST dated 20.06.2012.

3. As appellant has declared in their ST 3 returns as taxable turnover as NIL. On the basis of the statement received from the Income Tax Department in Form of 26AS, a Show Cause Notice dated 07.11.2019 was issued to the appellant for the period 2014-15 to demand Service Tax amounting to Rs. 1,39,83,577 by invoking extended period of limitation. The appellant contested the Show Cause Notice and the Adjudicating Authority considering the submission made by the appellant dropped the entire demand. The said order was reviewed by the Revenue and the Commissioner (Appeal) denied the benefit of notification No. 25/2012 ST dated 20th June, 2012 for the works executed by the appellant for OTDC and CWC relying on the CBEC Circular No. 80/10/2004-ST dated 17.09.2004 alleging that OTDC operates in tourism industry with profit motive and CWC provides warehousing service on commercial basis.

4. Aggrieved from the said order, the appellant is before me.

5. The Ld. Counsel appeared on behalf of the appellant submits that services provided to OTDC are

purely for public use and not for commercial purposes, therefore, they are entitled for exemption under Sl. No. 12(a) of Notification No. 25/2012 ST dated 28.06.2012. To that extent, the appellant has obtained a certificate from OTDC indicating that the said services which has been provided by the appellant to OTDC is purely for public use which has been handed over to district administration and there is no service provided by the Department to tourism for generation of revenue.

6. Further, with regard to services rendered to CWC for construction of warehousing it is the submission that same was used for storage of agriculture produce and same is admissible exemption at Sl. No. 14 (d) of Notification No. 25/2012-ST dated 28.06.2012.

7. Therefore, it is her submission that both services are not taxable and the Adjudicating Authority has rightly dropped the demand against the appellant. It is further contended that Show Cause Notice has been issued on 07.11.2019 for the period 2014-15 by invoking extended period of limitation. As issued (itself as per the authorities below) is debatable, in that circumstances *mala fide* or suppression of facts cannot be alleged against the appellant. Therefore whole of the demand is barred by limitation.

8. On the other hand Ld. Authorized Representative supported the impugned order and submitted that the services provided by the appellant in OTDC and CWC are of commercial in nature. Therefore, the appellant is not entitled for benefit of the said notification. Accordingly, the demand has been rightly confirmed.

9. Heard the parties and considered the submissions.

10. I find that in this case the appellant was under bonafide belief that all these services are rendered by the appellant to either governmental authorities or to statutory authorities of government only and not paying Service Tax although filing the ST3 returns claiming the benefit of exemption Notification No. 25/201 –ST dated 28.06.2012. Further, the Adjudicating Authority also dropped the demand against the appellant after the examining the documents produced by the appellant during the course of hearing. But the Ld. Commissioner (Appeal) went a step further holding that OTDC is a earning profit on tourism services therefore denied the benefit of exemption Notification No. relying on the CBEC Circular No. 80/10/2004 ST dated 17.09.2004.

11. The appellant has obtained a certificate from OTDC for use of the premises for which works executed by the appellant and the said certificate is annexed here for better appreciation of the facts.

Annexure-2 41

ODISHA TOURISM DEVELOPMENT CORPORATION LIMITED
(A Govt. of Odisha undertaking)
Lewis Road, Bhubaneswar - 751014, Odisha, India
Phone : 0674 - 2430764 / 2435618, Fax : 0674 - 2431053
E-mail : otdc@panthanivas.com, Website : www.panthanivas.com
CIN : U55101OR1979SGC000839

No. 1111 /BP/DIV/OTDC/BBSR dated 21st April, 2023

From
Er. S. K. Behera
Superintending Engineer (I/c)
O.T.D.C.Ltd, Bhubaneswar

To
Shreenibas Pradhan,
Plot No-784/1380, Sampur, Bharatpur,
Bhubaneswar-751003
Odisha.

Sub: :- Exemption of Service Tax on Public utility Works.

Sir,

In inviting a reference to the Subject cited above , this is regarding work executed by O.T.D.C Ltd at your end through contract agreement. The list of works as follows.

1. Balance structure and finishing works of Interpretation Centre and Craft Complex at Puri.
2. Construction Way Side Amenity Centre at Panthika
3. Construction of Amusement park at Barkul under ICZMP.
4. Development of Jetty area at Rambha
5. Development of Bus stand and approach road at Satapada.
6. Construction of Parking Food Kiosks Peripheral, Landscaping, Plantation with fencing, gate and public convenience centre at Sipakud.

The work as indicated above is purely for public use which has been handed over to District Administration. There is no service provided by the Department of Tourism for generation of revenue as per records available.

This is for favour of kind information and necessary action.

Yours faithfully,

Superintending Engineer (I/C)
O.T.D.C, Bhubaneswar

Memo No. 1112 / Date. 21.04.2023
Copy to Steno to M.D, O.T.D.C for kind information of Managing Director.

Superintending Engineer (I/C)
O.T.D.C, Bhubaneswar

P.T.O

PANTHANIVAS - OTDC CHAIN OF HOTELS

11. As per the said certificate, the work executed by the appellant is purely for public use which has been handed over to district administration and there is no service provided by the Department of Tourism for the generation of Revenue as per the records available which means that the work executed by the

appellant were not for the commercial use but for general public use. Therefore, the Adjudicating Authority has rightly dropped the demand against the appellant. Further I find that the warehouse constructed by the appellant for CWC is for storage of agriculture produce and the same is exempt as Sl. No. 14(d) of the Notification No. 25.2012-ST dated 28.06.2012. Therefore, the Adjudicating Authority has rightly dropped the demand against the appellant.

12. In view of this I do not find any merit in the impugned order. Further I take note of the fact that as Adjudicating Authority has dropped the demand in the facts and circumstances of the case and the Ld. Commissioner (Appeal) has confirmed the demand which shows that issue is debatable. Therefore, no *mala fide* or suppression of the facts can be alleged against the appellant and admittedly the Show Cause Notice has been issued by invoking extended period of limitation. In view of the above observations. I hold that extended period of limitation is not invokable. As whole of the demand pertains to the extended period of limitation, the demand is not sustainable, consequently no penalty is imposable.

13. In view of this observations, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in the open court on 18.09.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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