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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75848 of 2025

(Arising out of Order-in-Appeal No. 34/JSR/2023 dated 03.02.2023 passed by Commissioner of CGST & Central Excise, Jamshedpur).

M/s Prasad Engineering,
(H. No.-95, Zone No.-5, Birsa Nagar, Jharkhand-831017.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Jamshedpur,
(GST, Bhawan, Outer Circle Road, Bistupur, Jamshepur)

.. ...**Respondent**

APPERANCE :

Mr. Aditya Dutta, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER No…75242/2026

DATE OF HEARING : 13.02.2026

DATE OF PRONOUNCEMENT : 16.02.2026

PER R. Muralidhar :

This appeal is directed against the Order-in-Appeal whereby the demand of Service Tax amounting to Rs.6,65,529/- was confirmed against the appellant on the basis of alleged differences between Form 26AS and ST-3 returns.

2. Brief facts of the case are that a Show Cause Notice dated 11.03.2020 was issued to the appellant for the period 2014–15 proposing demand of Service Tax of Rs. 6,65,529/- along with interest and penalty. The demand was confirmed by the lower authorities. Aggrieved by the same, the appellant has preferred the present appeal.

3. The learned Counsel for the appellant submits that the appellant was engaged in providing horticulture services such as upkeep of gardens by watering, sweeping, fertilization, spraying of insecticides, etc., which are exempt from payment of Service Tax. In support, reliance is placed on the decision of the Tribunal in the case of **CCE & ST Ahmedabad-III v. Murlidhar Horticulture Pvt. Ltd**. It is submitted that out of the total turnover of Rs.57,01,589 considered in the SCN to issue the demand, the turnover of Rs.40,16,924/- pertains to horticulture services and is therefore not taxable as submitted above. If this amount of turnover is excluded, the substantial portion of the demand would not survive.

4. With regard to the balance turnover of Rs.16,84,665/-, the learned Counsel submits that the same relates to manpower supply/recruitment services. Under the applicable provisions, Service Tax was payable only on 25% of the gross amount. Accordingly, the taxable value works out to Rs.4,21,166/- and the Service Tax liability thereon to Rs.52,056/-. Out of this, the appellant has already discharged Service Tax amounting to Rs.31,186/- in the normal course. The remaining amount of Rs. 12,870/- is disputed primarily on the ground of limitation, as the Show Cause Notice dated 11.03.2020 covers services rendered during 2014-15.

5. The learned Authorized Representative submits that the appellant has not produced adequate evidence to establish that the services rendered were towards horticulture services only. It is further contended that the appellant failed to discharge full tax liability under manpower supply services and therefore invocation of the extended period is justified.

6. I have heard both sides and perused the records, including copies of sample invoices placed on record. Sample copies of the Invoices are reproduced below:

PRASAD ENGINEERING

BILL

TO Flora Horticulture Society. Telco, Jamshedpur-4.	Date:	4/2/2015
	Inv. No.	14
	P.O. No.	
	P.O. Date	

DESCRIPTION	Amount.
Upkeep of garden by watering, sweeping, fertilization, spraying of insecticides pesticides, hedge trimming, preparation of bed etc. and other horticulture activities as and when required for the month of JAN-2015.	
1. NILDIH, HUDCO, M & R PARK	343,741.00
2. Office Expenditure	99,211.00
3. Management Fee @ 8%	35,436.16
Sub Total Amount	478,388.16
TDS @ 2%	9,567.76
Round off Amount	468,820.00
Rupees Four Lakh SixtyEight Thousand Eight Hundred Twenty Only	

PRASAD ENGINEERING

M/s. PRASAD ENGINEERING
Partner

ZONE NO: 5, BIRSANAGAR, JAMSHEDPUR-831004. Email: p.eng.jsr@gmail.com, Ph: 9204551001, 995519870

PRASAD ENGINEERING

BILL

TO Flora Horticulture Society. Telco, Jamshedpur-4.	Date:	5/5/2014
	Inv. No.	PE/FHS/01/14
	P.O. No.	
	P.O. Date	

D E S C R I P T I O N	Amount.
Upkeep of garden by watering, sweeping, fertilization, spraying of insecticides pesticides, hedge trimming, preparation of bed etc. and other horticulture activities as and when required for the month of APRIL-2014.	
1. Nursery, ISWP, NILDIH	521,992.00
2. Office Expenditure	80,259.00
3. Extra Expenditure	2,889.00
4. Management Fee @ 8%	48,180.08
Sub Total Amount	653,320.08
TDS @ 2%	13,066.40
Round off Amount	640,254.00

PRASAD ENGINE[illegible]

Partne

M/s. PRASAD ENGINEERING

ZONE NO: 5, BIRSANAGAR, JAMSHEDPUR-831004. Email: p.eng.jsr@gmail.com, Ph: 9204551001, 9955198700

7. On perusal of the invoices, it is evident that the appellant was engaged in horticulture activities such as garden maintenance, watering, and allied services. I find that the issue is no longer res integra. The Ahmedabad Bench of the Tribunal in the case of **CCE & ST Ahmedabad-III v. Murlidhar Horticulture Pvt. Ltd.** ***2019(27) GLST 377 (Tri-Ahmd)***, has held as under :

> "5. Heard both the sides and perused the records and documents. We find that in the present case the respondent were undertaking activity of Plantation of trees, shrubs etc., Horticulture cleaning daily of garden and removal of leaves and unwanted vegetation, application of farm yard manure, application of fertilizers, edging of lawn, flower beds and weeding regularly, plant protection by using suitable insecticides and pesticides, pruning of trees when required. The Revenue has demanded service tax under the category of "Management, Maintenance and Repair Services" on the ground that since the services are for maintenance of immovable property and not for cultivation for food, fiber, fuel, raw material or similar product, hence not covered under Agriculture and does not qualify for exemption.
>
> Coming to the period 1-7-2012 we find that Section 66D(d) of the Finance Act states as under :
>
> "66D. Negative list of services:- The negative list shall comprise of the following services, namely :-
>
> (d) Services relating to agriculture or agricultural produce by way of -
>
> (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
>
> (ii) Supply of farm labour;
>
> (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying,

fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) Loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) Agricultural extension services;

(vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce,“

The word Agriculture has been defined in Section 65B(3) of the Finance Act, 1994 as - “Agriculture” means the cultivation of plants and rearing of all life forms of animal, except the rearing of horses, for food, fiber, fuel, raw material or other similar products. <u>Section 66D(d) exempts the services related to production of any agriculture produce including cultivation, harvesting, threshing plant protection. Thus the cultivation of plants and its protection is also included in Agriculture. The term “Horticulture” means to provide for plant conservation, landscape restoration, landscape and garden designing, maintenance etc. The Horticulture is part of agriculture and has been defined in various dictionary and law lexicon as under :</u>

• Mitra’s Legal and Commercial Dictionary, 6th edition :

“Horticulture : The science and art of growing fruits, vegetables, flowers or ornamentals plants; that department of the science of agriculture which relates to the cultivation of gardens or orchards, including the growing of vegetables, fruits, flowers and ornamental shrubs, and trees,.”

• The New Shorter Oxford English Dictionary on Historical Principles, Volume 1 :

“Horticulture : The art of garden cultivation or management.”

• Bloomsbury English Dictionary, New Edition :

“Horticulture: The cultivation of a garden, orchard or nursery; the cultivation of flowers, fruits, vegetables, or ornamental flowers.

The science and art of cultivating such plants."

- Capital's : Legal Dictionary, Volume 1 :

"Horticulture: The science and art of growing fruits, vegetables, flowers, or ornamental plants."

- The Encyclopedic Law Lexicon, Volume 2 by Justice CK Thakker:

"Horticulture: Horticulture means the art of gardening."

- The Random house Kernerman Webster's college Dictionary:

"Horticulture : The science or art of cultivating flowers, fruits, vegetables or ornamental plants, esp. in a garden, orchard, or nursery."

Thus the term "agriculture" is of wide compass and it covers horticulture which in turn cover the gardening also. In case of Puran Singh M. Verma v. CIT the Hon'ble Gujarat High Court while interpreting the term "agriculture income" has held that if the basic operation such as cultivation of land weeding, watering, manuring etc. are undertaken, the same would qualify under the term "agriculture". In our view looking to the nature of activity performed by respondent as described above since they have undertaken such operations hence their activity would fall under the definition of "Horticulture". In case of Kasturi (Dead) by Lrs v. Gaon Sabha - (1989) 4 SCC 45, the Hon'ble Apex Court has held that - "The definition of land in the Act is wide and in paragraph 4(d) the admitted position is "fuelwood" was being grown on the property. "Horticulture", 'Garden' and 'Groveland' in the absence of statutory definition, would have the common parlance meaning. 'Horticulture' means 'the cultivation of garden'. 'Garden' means "an area of land, usually planted with grass, trees, flower beds, etc. an area of land used for the cultivation of ornamental plants, herbs, fruit, vegetables, trees, etc."

<u>8. In view of above discussion and findings we thus hold that the activity undertaken by the respondent since falling under the definition of 'Horticulture' which is part of agricultural activity only and not liable for any service tax. We therefore hold that the respondent is not liable for payment of service tax on activity undertaken by them. s</u>We also find

> that the demands were raised by invoking extended period. However in the present case the issue involved is of interpretation. It is coupled with fact that even as per the C.B.E. & C. Guide the service tax was not payable. Also the Tribunal judgment on similar issue was in assessee's favour. The Revenue has not adduced any evidence that there was deliberate intention for non-payment of service tax by the respondent and the demands made by invoking extended period are not sustainable on time bar ground also.

8. I find that the ratio of this case law is squarely applicable to the facts of the present case. Following the ratio of the said decision, I hold that no Service Tax is payable on the turnover of Rs. 40,16,924/-. The appellant succeeds both on merits as well as on account of time bar to this extent.

9. Coming to the turnover of Rs. 16,84,665/- relating to manpower supply services for the period October 2014 to March 2015, I find that the appellant has partly discharged the tax liability during the relevant period. However, there remains a short payment of Rs. 12,870/-. I hold that the plea of limitation is not acceptable in respect of this amount, since this emanates from improper calculation of the tax by the appellant and they have been paying the Service Tax in the normal course for rendering this service. At the same time, I do not find any evidence on record establishing deliberate suppression or wilful misstatement with intent to evade payment of tax. Therefore, while the appellant is liable to pay Service Tax of Rs. 12,870/- along with

applicable interest, imposition of penalty is not warranted. Hence, I set aside the penalty on this amount of Service Tax.

10. To summarize:

A. The demand of Service Tax on turnover of Rs. 40,16,924/- relating to horticulture services, is set aside on merits and on account of time bar.

B. In respect of turnover of Rs. 16,84,665/- relating to manpower supply services, the appellant is liable to pay the balance Service Tax of Rs. 12,870/- along with applicable interest.

C. All penalties imposed on the appellant are set aside.

11. The appellant shall be entitled to consequential relief of pre-deposit, after adjustment of payable Service Tax of Rs.12,870/- along with applicable interest.

12. The appeal is disposed off in the above terms.

(Pronounced in the open court on……16.02.2026.)

Sd/-
(R. Muralidhar)
Member (Judicial)

T.K.