IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75626 of 2023

(Arising out of Order-in-Appeal No. 40/SLG-ST/2023-24 dated 18.05.2023 passed by the Commissioner (Appeals), Goods & Service Tax, Siliguri Appeal Commissionerate, C.R. Building, Hakimpara, Haren Mukherjee Road, Siliguri – 734 001)

M/s. Magma Consortium **: Appellant**
Nildari Sikhar Building, Hillcart road,
Siliguri – 734 001

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Siliguri Commissionerate
Haren Mukherjee Road, Hakimpara,
Siliguri – 734 001

APPEARANCE:

Shri Navin Kr. Agrawal, Advocate, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75408 / 2026

DATE OF HEARING / DECISION: 19.03.2026

ORDER:

The present appeal has been filed by M/s. Magma Consortium, Nildari Sikhar Building, Hillcart road, Siliguri – 734 001 [hereinafter referred to as the "appellant"] against the Order-in-Appeal No. 40/SLG-ST/2023-24 dated 18.05.2023 [hereinafter referred to as the "impugned order"] passed by the Ld. Commissioner (Appeals), Goods & Service Tax, Siliguri Appeal Commissionerate, C.R. Building, Hakimpara, Haren Mukherjee Road, Siliguri – 734 001.

2. The brief facts of the case are that the appellant has been registered with the Service Tax Department for rendering works contract services. On the basis of verification of records of the appellant, a Show Cause Notice dated 22.10.2020 was issued to the appellant, proposing to demand Service Tax amounting to Rs.60,49,639/- (inclusive of cess), along with interest and penalty.

3. During adjudication, the ld. adjudicating authority, vide the Order-in-Original No.25/ADJ/ST/JC/SLG/2021-22 dated 15.12.2021 confirmed the demand to the extent of Rs.20,20,554/- (inclusive of cess), along with interest and penalty thereon under Section 78(1) of the Finance Act, 1994, and dropped the remaining port of the demand.

3.1. On appeal, the Ld. Commissioner (Appeals) has upheld the demand confirmed vide the impugned order dated 18.05.2023 has rejected the appeal, thereby upholding the demands confirmed in the Order-in-Original dated 15.12.2021.

3.2. Aggrieved by the confirmation of the above demand, along with interest and penalty, the appellant has filed the present appeal.

4. The demand under dispute in the present appeal has been summarized by the appellant in the following table: -

Sl. No.	Name of Recipient of Service	Service Tax (Including Cess)	Classified in under following heads
1	Department of Tourism	18,75,422/-	Works Contract Service
2	Council Department Engineering Cell	19,273/-	Goods Transport Agency
3	Executive Engineer Special Department Engineering. Division, Darjeeling	1,25,783/-	Works Contract Service

4.1. In respect of the demand of Rs.18,75,422/- confirmed, the Ld. Counsel for the appellant submits that the aforesaid demand has been confirmed in respect of the services of construction and beautification of tourist spot at Meghaytar which is exempt from the purview of Service Tax as per Sl. No. 12A of the Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012. It is submitted that the above services have been rendered to M/s. Gorkhaland Territorial Administration, which is a Government authority eligible for the exemption provided under Notification No. 25/2012-S.T. dated 20.06.2012. Accordingly, the appellant contends that there can be no Service Tax liability on their part in respect of the above construction and beautification services of tourist spot rendered by them to the Government Authority, viz. M/s. Gorkhaland Territorial Administration. Accordingly, the Ld. Counsel for the appellant submits that the demand of Rs.18,75,422/- confirmed in the impugned order is liable to be set aside.

4.2. Next, with regard to the demand of Rs.19,723/- under the category of Goods Transport Agency (GTA) service, the appellant's contention is that the said services have been rendered to M/s. Gorkhaland Territorial Administration, which is a body corporate; that in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, Service Tax is liable to be paid by the service receiver in respect of Goods Transport Agency services rendered if the consignor or consignee falls under the categories specified therein; that therefore, M/s. Gorkhaland Territorial Administration, being a body corporate, is liable to pay Service Tax in respect of the Goods Transport Agency services received by them. Accordingly, the appellant contends that the confirmation of demand of Service Tax under the category of Goods Transport Agency Service in the impugned order to the tune of Rs.19,273/- against them cannot be sustained.

4.3. With regard to the demand of Service Tax of Rs.1,25,783/-, it has been submitted by the Ld. Counsel for the appellant that they have rendered works contract services in respect of development and local 'haat' and services has been provided to the Executive Engineer, Special Department Engineering Division, Darjeeling, which is a Government authority. Accordingly, it is the appellant's contention that the said services are exempted in terms of Sl. No. 12A of Notification No. 25/2012-S.T. dated 20.06.2012. Accordingly, the appellant submits that the demand in the impugned order under the category of works contract service of Rs.1,25,873/- is not sustainable in law.

4.4. The appellant has also challenged the confirmed demand on the ground of limitation. It has been submitted by them that the issue has been raised on the basis of data available in Form 26AS and ST-3 Returns; that there is no dispute that they were filing their ST-3 Returns for the concerned period and the demands have been raised on the basis of an alleged mismatch in the value of gross receipts as reflected in the ST-3 Returns and Form 26AS during the said period. Thus, it is contended by them that there is no intention to evade payment of Service Tax existing in this case. Accordingly, the appellant argues that the demand confirmed in the impugned order is barred by limitation as well.

5. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order. In particular, he submits that the activities of construction and beautification of tourist spot at Meghaytar is meant for commercial purposes and hence, the benefit under Notification No. 25/2012-S.T. dated 20.06.2012 [Sl. No. 12A] cannot be extended to the appellant. Accordingly, he submits that the demands have been rightly confirmed and prayed for rejection of the instant appeal.

6. Heard both sides and perused the appeal records.

7. In respect of the demand of Service Tax of Rs.18,75,422/-, I find that the appellant has rendered works contract service i.e., erection and beautification of tourist spot at Meghaytar to M/s. Gorkhaland Territorial Administration.

7.1. I take note of the fact that M/s. Gorkhaland Territorial Administration is a Government authority set up by the State Legislature. M/s. Gorkhaland Territorial Administration is a self-governing body which administers the region so that the socio-economic, infrastructural, educational, cultural and linguistic development is expedited and the ethic identity of Gorkhas established, so as to achieve all round development of the people in the region. It operates under the framework of the State of West Bengal and the Constitution of India. It was established under the Gorkhaland Territorial Administration Act, 2011 passed by the West Bengal Legislature. Thus, I agree with the submission of the appellant that M/s. Gorkhaland Territorial Administration falls within the scope of the definition of Government authority, as provided under Notification No. 25/2012-S.T. dated 20.06.2012. Accordingly, I do not find any force in submission of the Revenue that the said services were meant for commercial purposes for denying the benefit of exemption under the aforesaid Notification.

7.2. Sl. No. 12A of Notification No. 25/2012-S.T. dated 20.06.2012 specifically exempts the works contract services rendered to a government or local authority or a governmental authority by way of services such as construction, erection, commissioning, installation, etc. For better appreciation of the facts, the relevant entry of the aforesaid Notification is reproduced below: -

> *"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning,*

installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or after the 1st April, 2020; "Inserted vide Notification 9/2016- Service Tax to be in effect from 1 March 2016."

7.3. I find that the above works contract services rendered by the appellant fall within the scope of Sl. No. 12A of Notification No. 25/2012-S.T. dated 20.06.2012. Accordingly, the works contract services rendered by the appellant are exempted in terms of Notification No. 25/2012-S.T. dated 20.06.2012. Thus, I hold that the demand of Rs.18,75,422/- confirmed in the impugned order under the category of works contract service is not sustainable and hence, the same is set aside.

8. With regard to the demand of Rs.19,273/- confirmed under the category of Goods Transport Agency Service, I find that the appellant has rendered the said services, as a Goods Transport Agent, to M/s. Gorkhaland Territorial Administration, which qualifies as a body corporate. As the transportation services have been received by a body corporate, I agree with the submission of the appellant on this score that in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the liability to Service Tax is on the recipient of service i.e., M/s. Gorkhaland Territorial Administration. Accordingly, I hold that the demand of Service Tax of Rs.19,273/- under the category of Goods Transport Agency Service on the appellant is not sustainable and consequently, the same is set aside.

9. As regards the demand of Rs.1,25,873/-, it is a fact on record that the said demand has been raised on the amount received by the appellant from the Executive Engineer, Special Department Engineering Division, Darjeeling, for the services provided by the appellant, i.e., Development of local haat. From a perusal of Sl. No. 12A of the Notification No. 25/2012-S.T. dated 20.06.2012, it is clear that the said services rendered to the Executive Engineer, Special Department Engineering Division, Darjeeling are eligible for exemption contained therein. Thus, I do not find any justification in the denial of exemption as provided under Notification No. 25/2012-S.T. dated 20.06.2012 in respect of the above services. Accordingly, the demand of Rs.1,25,873/- confirmed vide the impugned order is set aside, being unsustainable in law.

10. I have also examined the contentions of the appellant on the ground of limitation. On this score, it is observed that the demand has been raised on the basis of the ST-3 Returns and Form 26AS of the appellant as available during the said period. I also do not find that any evidence has been brought on record by the Revenue to show that the appellant has indulged in any activity amounting to suppression or wilful mis-statement with the intent to evade Service Tax. Under such circumstances, I find that the conditions for invocation of the extended period of limitation have not been fulfilled in this case. Accordingly, I hold that the demand raised and confirmed against the appellant by invoking the extended period of limitation is liable to be set aside.

11. In view of the above, I hold that the entire demand confirmed vide the impugned order is not sustainable on merits as well as on limitation and therefore, the same stands set aside.

12. As the demand itself cannot be sustained, the question of demanding interest or imposing penalty does not arise. Accordingly, the said demands are also set aside.

13. In view of the above discussion, I set aside the impugned order to the above extent and allow the appeal, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd