

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.**

Appeal No. ST/85236/2015

(Arising out of Order-in-Original No. 74-77/ST-II/RS/2014 dt. 28.8.2014 passed by the Commissioner of Service Tax, Mumbai-II)

M/s. Sai Shradha Plumbing Pvt. Ltd. : Appellant

VS

Commissioner of Service Tax, Mumbai-II : Respondent

Appearance

Shri Anil Balani, Advocate for Appellant

Shri M. Suresh, Dy. Commr. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of hearing : 10/12/2018

Date of decision : 10/12/2018

ORDER NO. A/88093/2018

Per : Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 74-77/ST-II/RS/2014 dt. 28.8.2014 passed by the Commissioner of Service Tax, Mumbai-II.

2. Briefly stated the facts of the case are that the appellant are engaged in providing plumbing services to various builders during the relevant period from 2006-07 to 2012-13. Periodical show

cause notices were issued to the appellant alleging short payment of service tax and consequently proposed to be recovered the same with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. Ld. Advocate Shri Anil Balani for the appellant submits that even though many grounds are raised in the present appeal, the appellants would press the eligibility of the benefit of exemption Notification No. 01/2006-ST dt. 01.3.2006, as the gross value of the service received include both value of the material supplied as well as services rendered. It is his contention that initially they claimed that the plumbing work rendered by the appellant at the commercial as well as residential premises of various builders are in the nature of erection, commissioning or installation service, hence they are eligible to the benefit of abatement to the extent of 67% value of the taxable service in accordance with Notification No. 01/2006-ST dt. 01.3.2006. The Ld. Commissioner, however, classified the said plumbing services rendered at the premises of the builders under the taxable category of 'commercial or industrial construction service', and 'construction of complex service', and denied the benefit of the said Notification No. 01/2006-ST dt. 1.3.2006 on the ground that the services rendered by the appellants are in the nature of completion and finishing services being excluded from the scope of the said notification. Referring to the meaning of completion and finishing services in relation to commercial and industrial construction services

provided at Section 65 (25b) and construction of complex service defined at Section 65(30a) of the Finance Act 1994. The Ld. Advocate has submitted that reading the meaning of completion and finishing services explained under the aforesaid definition, it is clear that the same relates to glazing, plastering, painting, floor and wall tiling, wall covering and papering etc. whereas in the present case, the appellant had provided piping system for inlet and outlet of water, rain water harvesting systems, drainage system etc. to the newly constructed building, which are essential for getting occupancy for the said premises. It is his contention that therefore laying down the pipeline in the building cannot be considered as finishing work, but essential for construction of the building, hence, the benefit of the Notification No. 01/2006-ST dt. 1.3.2006 is admissible to them.

4. Per contra, Ld. AR for the Revenue reiterates the findings of the Ld. Commissioner.

5. Heard both sides and perused the records.

6. The only issue involved in the present appeal for determination is: whether the appellant are eligible to the benefit of notification No. 01/2006-ST dt. 1.3.2006. There is no dispute of the fact that the appellant had provided materials along with the services to the customers and accordingly claimed abatement under the said notification. The Ld. Advocate for the appellant

submits that the plumbing services rendered by them even if classified under the taxable categories of 'commercial or industrial construction service' or 'construction of complex service', but being the piping net work in the new buildings for Installation of Drainage Systems, Rain Water Harvesting Systems, Hydromatic System etc., hence cannot be considered as finishing and completion work but essential and part and parcel of the building construction work, without which occupancy of the building will not be allowed. The notification reads as follows :

“Effective rate of Service tax for specified services — Percentage of abatements

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (3) of the Table below and specified in the relevant sub-clauses of clause (105) of section 65 of the Finance Act, specified in the corresponding entry in column (2) of the said Table, from so much of the service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (5) of the said Table, of the gross amount charged by such service provider for providing the said taxable service, subject to the relevant conditions specified in the corresponding entry in column (4) of the Table aforesaid :

Table

S. No.	Sub-clause of clause (105) of Section 65	Description of taxable service	Conditions	Percentage
(1)	(2)	(3)	(4)	(5)
1.	(m)	(1) The use of mandap, including the facilities provided to the client in relation to such use and also for the catering charges.	This exemption shall apply only in such cases where the mandap keeper also provides catering services, that is, supply of food and the invoice, bill or challan issued indicates that it is	60

		(2) Taxable service provided by a hotel as mandap keeper in such cases where services provided include catering services, that is, supply of food alongwith any service in relation to use of a mandap.	<p>inclusive of the charges for catering service.</p> <p>The invoice, bill or challan issued indicates that it is inclusive of charges for catering services.</p> <p><i>Explanation.-</i> The expression "hotel" means a place that provides boarding and lodging facilities to public on commercial basis.</p>	60
2.	(n)	<p>(a) Services provided in relation to a tour, by a tour operator, -</p> <p>(1) where the tour operator provides a package tour;</p> <p>(2) where the services provided are other than in relation to a package tour.</p> <p>(b) Services provided in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.</p>	<p>The bill issued for this purpose indicates that it is inclusive of charges for such a tour.</p> <p>The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.</p> <p><i>Explanation.-</i> The expression "package tour" means a tour in which the provisions for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator.</p> <p>(i) The invoice, bill or challan issued indicates that it is towards charges for such accommodation, and</p> <p>(ii) this exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator to the client only includes the service charges for</p>	40
				10

			arranging or booking accommodation for any person in relation to a tour and does not include the cost of such accommodation.	
3.	(o)	Renting of a cab.	-	40
4.	(zc)	Holding of a convention, where service provided includes catering service.	The gross amount charged from the client is inclusive of the charges for the catering service.	60
5.	(zzd)	Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.	This exemption is optional to the commissioning and installation agency. <i>Explanation.</i> - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	33
6..	(zzp)	Transport of goods by road in a goods carriage.	-	25
7.	(zzq)	Commercial or industrial construction service.	This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act. <i>Explanation.</i> - The gross amount charged shall include the value of goods and materials	33

			supplied or provided or used by the provider of the construction service for providing such service.	
8.	(zzt)	Catering.	This exemption shall apply in cases where, - (i) the outdoor caterer also provides food; and (ii) the invoice, bill or challan issued indicates that it is inclusive of charges for supply of food.	50
9.	(zzw)	Services in relation to pandal or shamiana in any manner, including services rendered as a caterer.	This exemption shall apply only in cases where,- (i) the pandal or shamiana contractor also provides catering services, that is, supply of food; and (ii) the invoice, bill or challan issued indicates that it is inclusive of charges for catering service.	70
10.	(zzzh)	Construction of complex.	This exemption shall not apply in cases where the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act. <i>Explanation.</i> - The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	33

Provided that this notification shall not apply in cases where, -

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20th June, 2003].

Explanation. - For the purposes of this notification, the expression "food" means a substantial and satisfying meal and the expression "catering service" shall be construed accordingly."

7. The aforesaid exemption is applicable to both taxable category viz. 'Commercial or Industrial Construction Service' & 'Construction of Complex Service' except when the services related to completion and finishing work. The central point of dispute is thus whether the piping system installed in the constructed building by the appellant would be treated as completion and finishing work. Needless to emphasise, the water piping or plumbing service rendered by the appellant to the newly constructed building is part and parcel of the construction of building without which necessary completion certificate to the building would not be issued by the local authorities. In other words, completion of the piping network is mandatory to obtain occupancy certificate of the building. Hence, in our opinion, it cannot be considered as finishing and completion work, in the sense used in the notification number 01/2006 ST dt. 01.3.2006. Besides, it is also clear when one reads the meaning and scope of 'completion and finishing service' mentioning the activities which are to be considered as completion and finishing work under the scope of 'commercial or Industrial construction' and 'construction

of 'complex service' as defined under Sec.65(25b) and (30a) of the Finance Act, 1994, respectively.

7. In the result, the Appellant are eligible to the benefit of the Notification No.01/2006 ST Dt.01.3.2006. The impugned order is modified accordingly and the appeal is allowed to the said extent.

(Operative portion of the order pronounced in court)

(C.J. Mathew)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

SM.