

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 87920 Of 2019

(Arising out of Order-in-Appeal No. PVNS/197 to 199/Appeals-II/MC/2019 dated 28.06.2019 passed by Commissioner CGST & Central Excise (Appeals-II), Mumbai.)

Forbes Facility Services Pvt. Ltd.

B1/B2, 701, Marathon Innova, Off Ganpatrao
Kadam Marg, Lower Parel, Mumbai-400013.

.....Appellant

VERSUS

**Commissioner of CGST and
Central Excise, Mumbai Central**

4th Floor, C. Ex. Building, Churchgate,
Mumbai-400020.

.....Respondent

Service Tax Appeal No. 87925 Of 2019

(Arising out of Order-in-Appeal No. PVNS/197 to 199/Appeals-II/MC/2019 dated 28.06.2019 passed by Commissioner CGST & Central Excise (Appeals-II), Mumbai.)

Forbes Facility Services Pvt. Ltd.

B1/B2, 701, Marathon Innova, Off Ganpatrao
Kadam Marg, Lower Parel, Mumbai-400013.

.....Appellant

VERSUS

**Commissioner of CGST and
Central Excise, Mumbai Central**

4th Floor, C. Ex. Building, Churchgate,
Mumbai-400020.

.....Respondent

Service Tax Appeal No. 87926 Of 2019

(Arising out of Order-in-Appeal No. PVNS/197 to 199/Appeals-II/MC/2019 dated 28.06.2019 passed by Commissioner CGST & Central Excise (Appeals-II), Mumbai.)

Forbes Facility Services Pvt. Ltd.

B1/B2, 701, Marathon Innova, Off Ganpatrao Kadam
Marg, Lower Parel, Mumbai-400013.

.....Appellant

VERSUS

**Commissioner of CGST and Central
Excise, Mumbai Central**

4th Floor, C. Ex. Building, Churchgate,
Mumbai-400020.

.....Respondent

Appearance:

Shri S.S. Gupta, Chartered Accountant for the Appellant

Shri Badhe Piyush Barasu, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87170-87172/2023

Date of Hearing: 07.11.2023

Date of Decision: 07.11.2023

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein is engaged in providing the taxable service under the category of "cleaning service" defined under the Finance Act, 1994. During the disputed period, while conducting audit of the records, the department observed that the Appellant had provided such service to G. P. Pant Hospital (GPPH) and Maulana Azad Institute of Dental Sciences (MAIDS) located in New Delhi, but did not pay service tax on account of the exemption provided in the Notification No. 25/2012-ST dated 20.06.2012 (Sr. No. 25). Further, it was also observed by the department that the appellant had also not paid service tax in respect of the taxable services provided to M/s Cummins Technology India Ltd. SEZ Unit. On the basis of the audit objection, the department initiated show cause proceedings against the Appellant by issue of SCN dated 09.10.2014 covering extended period of time from 2009-10 to 2012-13 and two periodical SCNs dated 13.04.2015 and 23.02.2016 for the subsequent period April, 2013 to March, 2015, which culminated into an adjudication order dated 30.05.2018 covering all the 3 SCNs, wherein the original authority had confirmed the Service Tax demands along with interest and also imposed penalties under Section 76 and 78 of the Finance Act, 1994. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 28.06.2019 has upheld confirmation of

the adjudged demands. Feeling aggrieved with the impugned order, the appellant has preferred these appeals before the Tribunal.

2. Heard both sides and examined the case records.

3. The period of dispute involved in this case is from 2009-10 to 2014-2015. In exercise of the powers conferred under Section 93 of the Finance Act, 1994, the Central Government had issued the Notification No.25/2015-S.T. dated 20.06.2012 in exempting various taxable services from payment of Service Tax. The exemption entry in Sr. No. 25 of the said Notification has exempted various taxable services with the following narration:

"25. Services provided to Government, a local authority or a governmental authority by way of-

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or"

Subsequently, the said exemption entry in the notification was substituted by Notification No. 06/2014-S.T. dated 11.07.2014 (w.e.f. 11.07.2014) providing for the following services under the scope of exemption in said notification:

"(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation or".

It is fact that the two hospitals in this case viz., GPPH and MAIDS are run by the Government of N.C.T. We have examined the agreements entered into between the Appellant and G. B. Pant Hospital, Government of N.C.T., New Delhi. Such agreement was entered into by the service recipient on behalf of the President of India, meaning thereby that the said hospital is a Government Hospital. Since, the appellant is a provider of the taxable service, and has provided services to the government authority, such services were exempted in view of the Notification dated

No.25/2015-S.T. dated 20.06.2012. However, for the subsequent period w.e.f. 11.07.2014, there was confusion inasmuch as the phrase provision of service to the Government was not specifically finding place in such amended Notification. For removing the ambiguity in the original notification vis-à-vis the amended notification, the Ministry of Finance had issued instructions vide D.O.F.No.334/15/2014-TRU dated 10.07.2014 clarifying as under:

"For greater clarity, the exemption in respect of services provided to Government or local authority or governmental authority [in entry at Sl. No.25], has been made more specific. Services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation will **continue to remain exempted** but the exemption would not be extendable to other services such as consultancy, designing, etc. not directly connected with these specified services."

(Emphasis supplied)

On perusal of the said circular it is evident that the intention of the legislature was to exempt the taxable services provided to the Government and the local bodies. The recipient of service in this case since is a Government body, the services provided by the Appellant, in our considered opinion, should also be considered for exemption in terms of both the un-amended Notification dated 11.07.2014 and the subsequent Notification dated 11.07.2014 supra. Therefore, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the Appellant for provision of the taxable service to the Government Hospital.

4. With regard to the services provided by the Appellant to M/s Cummins Technology India Ltd, it is an undisputed fact that such unit is located in the Special Economic Zone (SEZ). In respect of claiming exemption for payment of service tax on the services provided to SEZ

Unit/Developer, the Notification No. 09/2009-S.T. dated 03.03.2009 as amended, in explicit terms provides that the services provided to the SEZ should be considered to grant of the benefit of exemption. In the case in hand, since the appellant had in fact provided the services to an unit of SEZ unit, in our considered view the benefit of the exemption provided under the Notification dated 03.03.2009 should also be available. Thus in this connection, we also do not find any merits in the impugned order passed by the learned Commissioner (Appeals).

5. In view of the above discussions, the impugned order passed by the learned Commissioner (Appeals) is set aside and the appeals filed by the Appellants are allowed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)