

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 86143 OF 2019

(Arising out of Order-in-Original No. 177-82/COMMR/ME/2018-2019
dated 31.12.2018 passed by the Commissioner of GST & CE, East
Commissionerate, Parel, Mumbai)

M/s. CMS Computers Ltd.

.....Appellant

CMS House, Plot no. 91, Street no. 7
Marol, MIDC Andheri East, Mumbai

VERSUS

**Commissioner of Central GST, Mumbai
East**

.....Respondent

9th Floor, Lotus infocentre, Near Parel stn.
Parel, Mumbai

APPEARANCE:

Ms Asmita Nayak, Chartered Accountant for the appellant
Shri Shambhoo Nath, Spl. Counsel (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER No: 85084/2025

Date of Hearing: 30-07-2024

Date of Decision : 29.01.2025

Per: AJAY SHARMA

This appeal has been filed by the Appellant assailing the
impugned Order-in-Original Nos.177-182/Commr/ME/2018-19
dated 31.12.2018 passed by the Commissioner GST & Central
Excise, Mumbai East-Adjudicating Authority, confirming the
service tax demand totalling Rs.24,51,04,331/- alongwith

penalty of Rs. 19,69,08,036/-, Rs. 47,62,057/- and Rs. 30,000/- under Sections 78,76 & 77 of the Finance Act, 1994 respectively. The learned Commissioner, vide the impugned order, has adjudicated six Show Cause Notices covering the period from July, 2003 to September, 2013, the details of which, for ease of reference, are as under: -

Details of Show-Cause Notices adjudicated in Impugned Order-In-Original								
S. No	Show-Cause Notice date	Period/ Services						Total demand
			BSS		BAS			
			Taxable value	Service Tax	Taxable Value	Service Tax	Educatio n Cess	
1.	31.08.2006	01.07.2003 to 24.10.2005 Card personalization, e-seva, bill generation service			319265394	29966078		29966078
		10.09.2004 to 24.10.2005 Card personalization, e-seva, bill generation service					442485	442485
		01.07.2003 to 30.09.2005 Card personalization, e-seva, bill generation service			136623860	12388081		12388081
		10.09.2003 to 30.09.2005 Card personalization, e-seva, bill generation service					145817	145817
2.	06.04.2011	2006-07 to 2008-09 Card personalisation	232911686	28630385				28630385
		2006-07 to 2007-08 Card personalisation	4705197	576746				576746
3.	10.05.2011	01.05.2006 to 30.09.2010 e-mitra, e-suvidha project, Kaveri project, National e-governance	1085288290	125335191				125335191
4.	11.04.2012	Oct 2010 to Sept 2011 e-governance service	204738981	21088115				21088115

5.	02.04.2013	Oct 2011 to Sept 2012 e-governance service	184758764	21006314				21006314
6.	01.04.2014	Oct 2012 to Sept 2013 e-governance	44709707	5526120				5526120
			1757112625	202162871	455889254	42354159	588302	245105332

2. The activities which are in issue before us in the instant Appeal are as under: -

- Printing of Bills
- Personalisation of Credit & Debit Cards;
- E-governance/E-seva Services.

3. With regard to the said activities, following allegations were made in the Show Cause Notices:

(i) **Printing of Bills:** Appellant entered into separate agreements with BSNL, Idea Cellular Ltd., Birla Tata AT&T, Bharati Cellular Ltd., HDFC Bank, Standard Chartered Bank etc. [hereinafter referred to as "Companies"] as per which the appellant had to generate and dispatch telephone bills of the customers of the said Companies. All the infrastructure and manpower for generating and dispatch of such bills were to be provided by the Appellant at the premises of the Companies, on the basis of inputs/ data provided by the respective Companies. As per the case made out in the show cause notice dated 31.08.2006, the generation of telephone bills are nothing but part of billing service and, therefore incidental to the business of appellant's customer. Consequently, the said activity would fall within the purview of "Business Auxiliary Service" as defined

u/s.65(19) r/w Section 65(105) (zzb) ibid and the appellant ought to have discharged its service tax liability under the said taxable service.

(ii) **Personalisation of Credit/Debit Cards:** Appellant had entered into agreements with various Indian and Foreign Banks for personalization of Credit/Debit cards provided by such Banks to their customers. The cards were manufactured by Visa/Mastercard companies and the banks provided blank cards or pre-printed cards to the appellant with duly incorporated magnetic strip along with data for personalization. The process of card personalization involved following activities viz., (a) Magnetic strip encoding; (b) Signature printing for photo cards; (c) Photo printing for photo cards; (d) Lamination; (e) Embossing; (f) Indent printing on the front of the cards for Debit card or electronic cards; (g) Indent printing on rear of the card; (h) Automatic insertion/affixing of the card into the card carrier; and (i) Packing the card along with other material. All the necessary infrastructure like hardware, software required for card personalisation was provided by the appellant at the space provided by the respective Banks. Even the manpower required for card personalisation was deployed by the appellant. The required data for personalisation was prepared in Banks' system by the respective bank's staff and the same was, thereafter, transmitted to the appellant's system. As per the show cause notice dated 31.08.2006, the service of Personalisation of cards was support service for the Bankers. Banks issue the credit/debit

cards to their customers as part of providing banking services. In order to prepare these credit/debit cards, the bank outsourced the activity of production of cards to the job worker like the appellant. The process of producing credit/debit card did not amount to manufacture under the Central Excise Act 1944 or Rules made thereunder. These services were the support services to run the organisation and thus become part of the business transactions. Further, this service was an input service to the Bankers for providing Banking Services. Thus, the service provided by the appellant to Bank was an incidental or auxiliary support services and in particular relating to procurement of input services. Hence, as per the show cause notice dated 31.08.2006, the activity of personalisation of credit/debit card undertaken by the appellant would appropriately fall under the category of "Business Auxiliary Service" u/s. 65(19) r/w section 65(105)(zzb) ibid and the appellant ought to have discharged its service tax liability for rendering the said taxable service.

However, in the subsequent show cause notice dated 06.04.2011 the very same activity had been stated to be appropriately falling under the category of "Business Support Service" as defined u/s. 65(104c) r/w section 65(105)(zzzq) ibid and, consequently, service tax was demanded from the appellant.

(iii) **E-governance/E-seva services:** The Appellant had entered into various agreement with different State Governments, Government bodies and societies created by the

State Govt. for providing E-Seva in around 07 States including Andhra Pradesh, Karnataka, Punjab, Rajasthan, Uttar Pradesh, Maharashtra and West Bengal offering various services to the citizens under one roof relating Payment of utility bills like Electricity bills, Water and Sewerage bills, Telephone bills, Proper Tax, Road Tax, payment of traffic fines and Challans etc., making application and issuance of Certificates such as Birth and Death Certificates, Renewal of learner's licenses, Khata certificates, Khata extract, B-Extract of vehicles Licenses, Filing of Applications for New water supply connections, filing of complaints in connection with electricity supply, filing of grievances in connection with MahanagarPalika, Sale of passport application form etc. Being the technological partner, the appellant provided hardware, software, networking to facilitate these services through online. According to the show cause notices dated 10.05.2011, 11.04.2012, 02.04.2013 and 01.04.2014 respectively, the appellant had provided support services to various Government Bodies and Societies in performance of their task, on which the appellant had failed to pay service tax. According to the show cause notices, the e-governance service has been outsourced to the appellant, which are provided on principal to principal basis in relation to business and commerce. Therefore, as per revenue, the said services would fall under "Business Support Service" as defined u/s. 65(104c) r/w section 65(105) (zzzq) ibid. However, in the show cause notice dated 31.08.2006, the very same services were

stated to be falling under "Business Auxiliary Services" as defined u/s. 65(19) r/w Section 65(105)(zzb) ibid.

4. It is pertinent to mention that out of the six show cause notices referred to in the table above, the show cause notices dated 31.08.2006, 06.04.2011 and 10.05.2011 respectively were issued invoking extended period of limitation under the proviso to Section 73 ibid, alleging suppression and mis-statement on the part of the appellant to evade payment of service tax on the above three activities.

5. In reply to the show cause notices, the defence of the appellant before the learned Commissioner, was as under: -

(i) **Bill Printing Services covered under show cause notice dated 31.08.2006:** The appellant entered into agreements with various Telephone Operators, Municipal Corporations for Bill Printing Services. For the said purpose, the appellant installed its own printing machinery at customer's premises and supplied the required manpower, infrastructure, other stationery etc. for this purpose. For the purpose of printing the bills, the appellant receives data/information required for printing of bills (name, address, customer account no., bill amount etc.) in the soft copy format in the CDs and also through LAN provided by customers. The appellant then printed these bills through high speed data printer. The service charges are collected by the appellant depending on the number of bills printed subject to certain minimum number of images.

The show cause notice dated 31.08.2006 alleged that the said activity is covered under the taxable category of "Business Auxiliary Service" as defined under clause (vi) of Section 65(105)(zzb) [as existed prior to 16.06.2006] i.e. "Service in relation to *any incidental or auxiliary support service as billing, collection and recovery of cheques, accounts and remittance, evaluation of prospective customer and public relations services*". This allegation made in the show cause notice was without appreciating the fact that the appellant was not undertaking billing and accounting services for their clients but the services are limited to printing of bills for clients which need to be sent to the end customers. For rendering such service, there was no interaction/ communication between the appellant and the end customers. Also, the appellant never had any access to the accounting systems of the clients. Billing was done by the client's staff and the data was shared with the appellant solely for the purpose of printing the bills. It was emphasised by the appellant that bill printing by the appellant takes place after billing performed by client's staff. In other words, the calculation of the amount to be billed along with accounting was done by the client prior to printing of bills by the appellant. Thus, the appellant was only engaged for the purpose of printing and stuffing bills in envelopes, as was also reflected in the scope of work under various agreement entered into by the appellant in

this regard. Therefore, the said activity of the appellant cannot be equated with "billing" and, thus, would not fall under any clause of Section 65(105)(zzb) including clause (vii) as referred to in the show cause notice.

(ii) Card Personalization Services covered under show cause notices dated 31.08.2006 and

06.04.2011: Appellant had entered into agreements with various Indian and Foreign Banks for personalization of Debit/Credit Card provided by the said Banks to their customers. The cards were manufactured by Visa/Mastercard companies and the banks provided the appellant with blank card or pre-printed cards with duly incorporated magnetic strips along with data for personalization. The appellant was engaged in data processing, card embossing and indenting through Data Card Printers and spares for the same along with raw material such as tipping foil, color ribbon, indent ribbon etc. The activity of card personalization of Credit Card, Debit Card, VISA Card, ATM Card etc. includes Magnetic Strips Encoding, Signature printing for Photo Cards, Photo Printing of Photo Cards, Top Coat for Photo Cards, Embossing and indent printing on the front and rear of the card. In the show cause notice dated 31.08.2006 the said activities were sought to be classified under the category of "Business Auxiliary Service" u/s. 65(19) r/w section 65(105)(zzb) ibid. However, in the subsequent show cause

notice dated 06.04.2011 the very same activity was stated to be appropriately falling under the category of "Business Support Service" as defined u/s 65(104c) r/w section 65(105)(zzzq) ibid. According to appellant, the process of Card Personalization amounts to manufacture and, thus would fall outside the purview of service tax. It was stated that w.e.f. 01.01.2007, personalization smart cards were classifiable under heading 8523 5290 [Smart Cards- Others] which were fully exempted from payment of central excise by insertion of Sl.No.22A in the master Notification No.06/2006 dated 01.03.2006 vide Notification No.31/2007-CE dated 19.07.2007. Reliance was also placed on Note 10 to Chapter 85 of the Central Excise Tariff which states that recording of sound/other phenomena in respect of heading 8523 amounts to manufacture. The appellant had also highlighted the fact regarding flip-flop by the revenue while issuing show cause notices in as much as in show cause notice dated 31.08.2006 the activity was stated to fall under "Business Auxiliary Services" whereas in the subsequent show cause notice dated 06.05.2011 the very same activities were shown as falling under "Business Support Service" which showed that revenue itself is not clear about the nature of activities involving card personalization.

(iii) E-Governance/E-Seva Services covered under show cause notices dated 31.08.2006, 10.05.2011,

11.04.2012, 02.04.2013 and 01.04.2014: Electronic governance or e-governance refers to the application of information and communication technology for delivering government services, exchange of information, communication transactions, integration of various standalone systems and services between government-to-citizen (G2C), government-to-business (G2B), government-to-government (G2G) and government-to-employees (G2E) as well as back office processes and interactions within the entire government framework. Through e-governance, governments strive to make their services available to citizens in a more convenient, efficient and transparent manner. The National e-Governance Plan (NeGP) is an initiative of the Government of India to make all government services available to the citizens of India via electronic media. NeGP was formulated by the Department of Electronics and Information Technology (DeITY) and Department of Administrative Reforms and Public Grievances (DARPG). The Governments of various States in India had launched various e-Governance projects in order to create a one stop facility (CSC-Common Service Centre) for the rural and urban citizens. Various Government Departments like Education, Revenue, Health, Transport, Electricity, Election, Water, Registrar and other Government Utility services were covered in the scheme. In order to effectively implement the E-

Governance Projects, the appellant was awarded various contracts by various State Governments under BOOT Model (Build, Own, Operate and Transfer) in 9 States during the period of 2003-2012. The projects were undertaken under different names in different states such as E-seva in A.P., E-Mitra Project in Rajasthan, E-Suvidha Project in U.P. etc. However, the nature of services provided by the appellant under all the projects was same i.e. e-Governance services. The design, planning, scope and policies of the entire projects were as per the plan & decision of the client i.e. the Government bodies. The appellant is responsible solely for the execution and implementation by way of supply of hardware, software, office, networking, data storage servers, infrastructure support etc. Being a technical partner for implementation and operation of E-governance plans, the appellant is responsible for development, maintenance and operation of E-portal which was required to deliver the contracted services. CSC (Kiosk) Operator at CSC Booth always connected with all Government Departments for providing the Governmental Services to general public. Thus, the appellant had effectively computerized all the transactions in Government Department which was to be processed manually. Few of the major services provided by the appellant, in terms of agreements executed with the State Government etc. were as under: -

Sr. No.	Department	Services Covered
1.	Public Health and Engineering Deptt	Payment of Bills/Taxes
2.	Municipal Corporations/Municipalities	Payment of Bills/Taxes
3.	Education Department	General Information about the Department/schemes, submission of admission applications, payment of school fee, issue of duplicate mark sheets etc.
4.	Medical and Health Department	General Information about the Department/Schemes, forms and procedures, payment of hospital charges/bills.
5.	Transport Department	Issue of Driving Licenses, Registration of Vehicles, payment of dues etc.
6.	Registration and Stamps Department	Registration of different types of documents and deeds.
7.	District Collectorate	Submissions of applications for different purposes such as BPL, Old age pension, Ration Cards, Voter Identity Cards etc.
8.	Vidyut Vitaran Nigam	Submission of application for new connections, payment of bills

As per revenue, the said service of E-Governance was nothing but “Business Support Services” as defined u/s 65(105c) ibid. The appellant, with regard to the above activities, disputed and denied that the same would be classifiable under the taxable service category of “Business Support Services” and took the stand that the services provided by them were Statutory/ Sovereign functions which have to be performed by the concerned Government Department (State Government/ Centre

Government/Municipalities/ Local Authorities etc.) as may be appreciated from the following table:

SI No.	Description of Activity	Applicable legislation
1.	Issuance/amendment of Ration Cards	National Food Security Act, 2013
2.	Issuance of Driving Licenses	Section 3 of the Motor Vehicles Act, 1988
3.	Registration of Motor Vehicles/ issuance of Registration Certificates	Section 39 of the Motor Vehicles Act 1988
4.	Issuance of Voter ID Cards	Representation of People's Act 1950
5.	Registration of documents/deeds	Indian Stamp Act 1899
6.	Issuance of Birth Certificates/ Death Certificates	Article 243 W of the Constitution of India
7.	Submission of Application for Old age pension/health schemes/ other social benefits	The Maintenance and Welfare of Parents and Senior Citizens Act, 2007
8.	Application/issuance of PAN Card	Section 139A of the Income Tax Act 1961
9.	Application/issuance of Aadhar Card	Section 3 of the Aadhaar (Targeted delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
10.	Application for Electricity connections and collection of Electricity Bills	The Electricity Act 2003 Article 243G of the Constitution of India

According to the appellant, to fall under the taxable service “Support Service for Business or Commerce” under Section 65(104c) ibid, the services must be provided in relation to business or commerce whereas herein the services were provided in relation to statutory/sovereign functions carried out by various Governmental Authorities for the purpose of administration/social welfare and they did not involve any profit motive nor these are linked to business or commerce. The appellant has also highlighted the flip-

flop by the revenue while issuing show cause notices in as much as in show cause notice dated 31.08.2006 the said activity was stated to fall under "Business Auxiliary Services" and, in the later show cause notices the very same activities were shown as "Business Support Service" which shows that revenue itself is not clear about the nature of activities.

6. Learned Commissioner adjudicated all the six show cause notices vide common impugned order dated 31.12.2018 confirming the service tax demand amounting to Rs. 24,51,04,331/- under proviso to section 73(1) and 73(2) ibid along with interest u/s. 75 ibid, while upholding the invocation of extended period of limitation and imposed penalties of Rs. 19,69,08,036/- under Section 78, Rs. 47,62,057/- under Section 76 and Rs. 30,000/- under Section 77 of the said Act by holding as under: -

- (i) ***Re. Bill Generation and Dispatch i.e. printing and despatch of bills:*** The said activities of the appellant qualifies as Business Auxiliary Service u/s 65(19) r/w sec. 65(105)(zzb) as the same are covered not only u/s. 65(19)(vi) but also u/s 65(19)(vii). Further, the activities of the appellant are not only restricted to printing of bills but the same involves processing of data as well. Further, the appellant, being an IT company who internally create and maintain software for others and, as per

appellant's agreement with Tata AT&T dated 21.11.2003, the appellant has also provided calculation software to them. Thus, appellant's activity is not merely printing but qualifies as billing.

- (ii) **Re. Card Personalization:** The process carried out by the appellant relating to card personalization does not amount to manufacture and, thus, cannot be held to be chargeable to central excise duty under CETG 85235290. The appellant applies necessary processes so that the simple plastic card is converted into a full-fledged credit or debit card and, in this way credit/debit card gets generated. The processes involved for card personalization viz., activities of flat printing, encoding, embossing, indenting, tipping, photo placement etc. qualify as Business Auxiliary Services by way of processing of plastic cards under Section 65(19) since the said activity is nothing but processing the plastic cards into credit/debit cards. Further, the said activity of card personalisation does not fall under the "works contract service" as defined under Section 65(105)(zzzza) of the Act as there is neither any transfer of property in goods involved nor the said services are for specified contracts as enumerated under Section 65(105)(zzza)(ii) (a) to (e). Learned Commissioner also rejected the stand of the appellant that there is flip flop on the part of the

revenue in classifying card personalisation service. According to learned Commissioner, the revenue has raised demand in the 1st show cause notice dated 31.8.2006 for the period 1.7.2003 to 24.10.2005 under BAS services for *Bill generation/ realisation (E-Seva) & Despatch services* and for *Card Personalisation services*. No demand was raised therein for E-governance. He further observed that the demand relating to E-governance was raised in subsequent show cause notices which did not contain any demand with regard to either Bill generation or Card Personalisation services. He recorded the finding that the revenue has raised demands for Bill generation & despatch services under BAS services only and for E-governance it was raised only under BSS.

- (iii) **E-Governance Service:** Though service tax demand on E-Governance Services was proposed in the 1st show cause notice under the category "Business Auxiliary Service" under Section 65(19) r/w sec. 65(105)(zzb), but in the subsequent show cause notices, the demands were proposed under the category of "Business Support Service" u/s. 65(104c)r/w sec.65(105)(zzzq). However, the activities under E-Governance are not covered under the category of "Business Auxiliary Service" but,

would squarely fall under both "means" and "includes" part of the definition of "Business Support Service" as the appellant has provided support services to various government bodies and societies in performance of their tasks, on which it had failed to pay the service tax. The E-governance services have been outsourced to the appellant by its clients, which are provided on principal to principal basis and in relation to business and commerce. Even after introduction of negative list w.e.f. 01.07.2012, all services including E-Governance are chargeable to service tax under Section 65B(44) read with Section 65(51) as the subject E-Governance services provided by the appellant are neither covered under the negative list of Section 66D nor by the mega exemption notification no. 25/2012-ST dated 20.06.2012.

7. We have heard learned Chartered Accountant for the Appellant and learned Special Counsel on behalf of Revenue and perused the case records including the synopsis/written submissions and case laws placed on record by the respective sides. As the dispute in the present appeal pertains to three different services undertaken by the appellant, we shall be taking up and deciding each service separately under their respective heading and, thereafter, shall be deciding the

common issues pertaining to invocation of extended period of limitation and penalty.

BILL GENERATION/PRINTINT & DISPATCH SERVICE

8. The said issue is involved only in the show cause notice dated 31.08.2006. As per the said show cause notice, the appellant had entered into agreements with its clients for providing the service of generation of bills of the customers of the respective clients, based on the data/inputs provided by that client. For the said purpose, the appellant is required to use its own infrastructure, manpower and consumables. It further stated that the appellant is providing the support services such as bill printing, scanning and generation of documents, photocopying of documents, stuffing of bills in envelopes and despatch on their behalf, which services are required for running the organisation of its customers. The generation of telephone bills is nothing but a part of billing activity and the said activity are incidental or auxiliary support services in relation to procurement of input services to the Telephone operations. Thus, the service i.e. generation of bill falls under the category of Business Auxiliary Service and liable for service tax. Reliance was also placed therein on the statement dated 08.06.2004 of Shri K.Jagannath, Regional Manager of the Appellant.

9. As can be seen from the show cause notice dated 31.08.2006, the entire case of the revenue is to classify the said service u/s. 65(19) of the Act whereas, it is the stand of the

appellant that the said services might fall within the purview of "Support Services of Business or Commerce" which came into force only w.e.f. 01.05.2006 and, thus, no liability to pay service tax could be fasten on the appellant as the period involved in the said show cause notice is from 1.7.2003 to 24.10.2005. The learned Commissioner, in the impugned order has held that the said services of Bill Generation and Dispatch would constitute a service which is incidental or auxiliary to any activity specified in Section 65(19)(vi) and, thus, would be covered under Section 65(19)(vii) of the Act. It was observed that the activities of the appellant are not only restricted to printing of bills but the same involves processing of data as well. Further, the appellant, being an IT company who internally create and maintain software for others and, as per appellant's agreement with Tara AT&T dated 21.11.2003, the appellant has also provided calculation software to them. Thus, appellant's activity is not merely of printing but qualifies as billing.

10. The relevant portion of the Sections 65(19) and 65(105)(zzb) of the Act are reproduced hereunder: -

S. 65(19) : "Business Auxiliary Service" means any service in relation to, -

(i) - (v)

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as **billing**, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or

vendor, public relation services, management or supervision, and includes services as a commission agent but does not include any activity that amounts to "manufacture" of excisable goods.

.....

S. 65(105)(zzb): *"Taxable Service" means any service provided or to be provided to a client by any person in relation to business auxiliary service.*

11. We note that the relevant entry u/s. 65(19)(vii) *ibid* which is applied in the present case i.e. *"a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing....."*, is the entry under which the appellant is sought to be taxed. The adjudicating authority observed that the activities of the appellant are not only restricted to printing of bills but the same involves processing of data as well. Further, the appellant, being an IT company internally create and maintain software for others. Thus, appellant's activity is not merely printing but qualifies as billing. We are afraid that we are not inclined to accept such finding of the Adjudicating Authority. The expression "billing" has not been defined under the Act and, therefore, common parlance needs to be applied. Billing involves a number of processes of services providers on whose behalf bills are to be raised i.e. collecting details of customers, collection of consumption data of customers, calculate charging and billing information, produce bills to customers etc. In other words, billing is more of a financial activity involving quantification of amount, methodology of providing information in the bill and reaching it to the customer and following it up for collection.

12. In the instant matter, the perusal of the agreements entered into by the appellant clearly reveals that the appellant is not assigned the task of calculation or quantification of the billing amount, details to be presented in the bill and correctness of the details in the bill or recovery of the billing amount. The appellant is not at all responsible for any details in the bill or authenticity of the same and they are required to process and print the bills on the basis of data provided by its clients and, thereafter to dispatch the same in envelopes. The Adjudicating Authority erred in holding that the appellant had provided calculation software to their clients whereas, the agreements with M/s. Birla Tata AT&T Ltd. mentions that it was not calculation software but the software developed for "Billing Application" which is meant only for printing designing purpose and not for the purpose of calculation. The facts on record clearly demonstrates that the appellant had not undertaken billing and accounting services for their clients but the services were limited to printing of bills for clients which need to be sent to the end customers. For rendering such service, there was no interaction/communication between the appellant and the end customers. Billing was done by the client's staff and the data was shared with the appellant solely for the purpose of printing the bills. It was emphasised by the appellant that bill printing performed by the appellant takes place after calculation etc. of billing performed by client's staff. In other words, the calculation of the amount to be billed along with accounting was done by the client prior to printing of bills

by the appellant. Thus, the appellant was only engaged for the purpose of printing and stuffing bills in envelopes, as was also reflected in the scope of work under various agreement entered into by the appellant in this regard. Therefore, the said activity of the appellant cannot be equated with "billing" and, thus, would not fall as business auxiliary service under any clause of Section 65(105)(zzb) including clause (vii). We also find that the adjudicating authority has invoked clause (vii) of Section 65(19) by coming to the conclusion that the services in question would also fall under clause (vi) of Section 65(19) which provides for "provision of service on behalf of the client". However, the fact is the appellant is nowhere connected with the provision of service on behalf of its clients as it did not have any contact with the customers of the clients and, thus, did not provide any service "on behalf of client" and, in case of any discrepancy in the bill the end customers of the clients would not contact the appellant but to their service provider. We also find that on somewhat identical facts in the matter of *Commissioner of Central Excise, Delhi v Ricoh India Ltd.*; 2017 (3) GSTL 412 (T-Del) and also in the matter of *Commissioner v Galaxy Data Processing Centre*; 2011 (23) STR 375 (T), the coordinate Bench of this Tribunal has held that the Bill printing and despatch service could not be considered as "business auxiliary service". Accordingly we are setting aside the demand of Service Tax raised for Bill generation/printing and dispatch service. Since the appeal of the appellant is liable to succeed on this issue, thus, we are

leaving the issue regarding classification of the said service as "Support Services of Business or Commerce" as introduced w.e.f. 01.05.2006 to be decided in any other appropriate case as the period involved herein is 01.07.2003 to 24.10.2005.

CARD PERSONALISATION SERVICE:

13. The issue relating to "Card Personalization Service" is involved in Show Cause Notices dated 31.08.2006 and 06.04.2011. Interestingly, in the Show cause notice dated 31.08.2006 the said service was stated to fall under Section 65(19) i.e. "Business Auxiliary Service" whereas, in the Show Cause Notice dated 06.04.2011 the same service was classified under Section 65(104c) i.e. "Support Service of Business or Commerce". Even though the appellant had brought this conflicting stand of the revenue to the notice of the Adjudicating Authority, however, the same was rejected by the said Authority without looking into the submission carefully. The Adjudicating Authority while rejecting the objection of the appellant has observed that the revenue has raised demand in the 1st show cause notice dated 31.8.2006 for the period 1.7.2003 to 24.10.2005 under Business Auxiliary Services for *Bill generation/realisation (E-Seva) & Despatch services* and for *Card Personalisation services*. No demand was raised therein for E-governance. He further observed that the demand relating to E-governance was raised in subsequent show cause notices which did not contain any demand with regard to either Bill generation etc. or Card Personalisation services. Therefore he recorded the

finding that the revenue has raised demands for Bill generation & despatch services under Business Auxiliary Services only and for E-governance it was raised under Support Service of Business or Commerce only.

14. The aforesaid finding of the adjudicating authority is totally contrary to the record and it has been rendered without looking into these two Show Cause Notices. When the revenue itself is not clear as to whether the card personalization service would fall under "Business Auxiliary Service" or Business Support Service" due to conflicting stands in the Show Cause Notices, the appellant cannot be held to be willfully mis-stating the facts with intent to evade payment of service tax and for invoking extended period of limitation in the Show Cause Notices. The adjudicating authority has held the said services to fall under "Business Auxiliary Services" whereas in the Show Cause Notice dated 06.04.2011 the proposal was to classify the said service as "Business Support Service" under Section 65(104c) of the Act, therefore the impugned order insofar it relates to Show Cause Notice dated 06.04.2011, is liable to be set aside on this ground alone, without going into the merits, being beyond the scope of the Show Cause Notice.

15. Now we take up the issue confined to Show Cause Notice dated 31.08.2006 as to whether the adjudicating authority is justified in confirming the service tax demand under Section 65(19) which defines "Business Auxiliary Service". The appellant

entered into agreements with various Indian and Foreign Banks for personalization of Debit/Credit Card provided by the said Banks to their customers. The banks provided the appellant with blank card or pre-printed cards with duly incorporated magnetic strips along with data for personalization. The appellant was engaged in data processing, card embossing and indenting through Data Card Printers and spares for the same along with raw material such as tipping foil, color ribbon, indent ribbon etc. The activity of card personalization of Credit Card, Debit Card, VISA Card, ATM Card etc. includes Magnetic Strips Encoding, Signature printing for Photo Cards, Photo Printing of Photo Cards, Top Coat for Photo Cards, Embossing and indent printing on the front and rear of the card. The Adjudicating Authority has held that the activities of flat printing, encoding, embossing, indenting, tipping etc. qualify as Business Auxiliary Services by way of processing of cards under Sections 65(19)(v), (vi) and (vii) *ibid* and observed as under: -

- The activity of Card Personalization qualify as main BAS service of production or processing of goods for, or on behalf of, the client under Section 65(19)(v). I find that the noticee is processing the plastic cards and converted or processing them into debit/credit cards.
- Therefore, the activity of Card Personalization and providing debit/credit card qualifies as main BAS service of provisions of service on behalf of the client under section 65(19)(vi). The Noticee is providing services to the customers of clients. If the noticee does not provide the services of Card Personalization, then the card user cannot avail the services of credit card. I find that section 65(19)(vii) covers only those activities or services which are incidental or auxiliary to any activity specified in

section 65(19)(i) to Section 65(19)(vi). In this way I find that the subject Card Personalization activity are covered by section 65(19)(vii) also as auxiliary activity to Section 65(19)(vi). In this way, I find that the subject activity of the Noticee are covered in clause 65(19)(v), 65(19)(vi) and 65(19)(vii) of section 65(19).

16. As per Section 65(19)(v) of the Act, "Business Auxiliary Service" means any service in relation to *production or processing of goods for, or on behalf of the client*. However, if such production or processing of goods amounts to 'manufacture' as defined under Section 2(f) of the Central Excise Act 1944, it no longer remains service and goes out of the purview of the Act for the purpose of payment of service tax and would be leviable to central excise duty under the Central Excise Act 1944. In the present case, the adjudication authority held that card personalisation service does not amount to manufacture, by observing as under:-

- However, the notice has contended that subject debit and credit are smart cards, for the recording of other phenomena, classifiable under CETH 85235290. The Noticee has placed their reliance on chapter 85. Note 10 of Chapter 85 of the Schedule 1st of the Central Excise Tariff Act 1985 which reads as "for the purpose of heading 8523 "recording" of sound or other phenomena shall amount to manufacture. Therefore, the contention of the Noticee is that their activity of card personalisation amounts to manufacture and chargeable to central excise duty. However, I find no merits in the said contention of the Noticee for the following reasons:
- I observe that CETH 8523 reads as "smart cards and other media for the recording of the sound or other phenomena". It shows that the smart cards or other media which are for the purpose of recording sounds or other phenomena qualify under this heading. The usage of the proposition "for" shows that such smart cards or other media are yet to be recorded with

sound or with other phenomena. *Therefore, I find that smart cards only before recording of any phenomena will qualify under this heading.*

- I further notice that as per Cambridge Dictionary, the term "phenomena means something that exist and can be seen, felt, tasted etc." The example of natural phenomena includes gravity, tide, oscillation etc. Similarly there are certain psychological social, visual phenomena, however the condition is that the process which qualifies as phenomenon should be perceptible to one of the senses. In CETH 8523 also one of the examples of the phenomena is "sound" which is perceptible to human sense of hearing. However, in the instant case only digital code is recorded on the magnetic strips of the smart cards. This digital code does not qualify as a phenomena because it is not perceptible to human senses. Therefore, the recording of digital code on magnetic strips of credit and debit cards does not amount to manufacture under Note 10 of Chapter 85 as recoding of phenomena on smart cards.

17. We find that the Adjudicating Authority has come to the above conclusion without even perusing CETH 8523 in full which reads *"Discs, tapes, sold-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters production of discs, but excluding products of Chapter 37.* The said CETH covers not only Cards incorporating magnetic stripe [8523 21 00] but also, Smart Cards like SIM Cards [8523 52 10], Memory cards [8523 52 20], Proximity cards and tags [8523 59 10]. The Adjudicating Authority is not justified in picking the words as per his convenience for quoting incomplete entry 8523 as *"smart cards and other media for the recording of the sound or other phenomena"* and skipping *"whether or not recorded..."* and then coming to the conclusion

that *smart cards before recoding of any phenomena will only qualify under CETH 8523*. This finding, in our view, is erroneous as all smart cards and other media for the recording of the sound or other phenomena, whether recorded or not will fall under the said CETH 8523. Further, the conclusion arrived at by the adjudicating authority that the digital code recorded on the magnetic strips of the smart cards does not qualify as a phenomena because it is not perceptible to human senses is, in our view, totally erroneous and without any basis. If the reasoning of the adjudicating authority is accepted, it would mean that even the SIM cards or for that matter Proximity cards would go out of CETH 8523 even though they are specific entries in the Tariff.

18. The adjudicating authority has also observed that the appellant is engaged in applying the necessary process on plastic cards provided by the bank in the form of flat printing, indenting, embossing encoding, tipping photo placement etc. All the processes undertaken by the appellant are mandatory to convert a simple plastic cards into credit/debit cards. This would clearly mean that the processes adopted by the appellant to convert simple plastic cards into credit/debit card will squarely fall within the meaning of "manufacture" as defined under Section 2(f) of the Central Excise Act 1944. In the matter of *Brakes India Ltd. v Supdt. of Central Excise & Ors.*; 1998(101)ELT 241 (SC), the Hon'ble Supreme Court has very aptly brought out the test of character or end use and laid down as under: -

"If by a process, a change is effected in a product, which was not there previously, and which change facilitates the utility of the product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product. It will not be safe solely to go by a test as to whether the commodity after the change takes in a new name, though in stated circumstances, it may be useful to resort to it. This may prove to be deceptive sometimes, for it will suit the manufacturer to retain the same name to the end product also. The 'character or use' test has been given due importance by pronouncements of the Supreme Court. When adopting a particular process, if a transformation takes place, which makes the product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture under Section 2(f) irrespective of the fact whether there has been a single process or have been several processes."

The appellant, therefore, is correct in its submission that the process of Card Personalization amounts to manufacture and, thus would fall outside the purview of service tax. It is also relevant to mention that w.e.f. 01.01.2007, personalization smart cards were classifiable under heading 8523 5290 [Smart Cards – Others] which were fully exempted from payment of central excise by insertion of Sl. No. 22A in the master Notification No. 06/2006 dated 01.03.2006 vide Notification No. 31/2007-CE dated 19.07.2007. Therefore, the Adjudicating Authority erred in confirming service tax demand on the said activity under section 65(19)(v), (vi) and (vii) as the same is not service but involves process of manufacture of excisable goods. Accordingly the demand of Service Tax under 'Card Personalisation service' is set aside.

E-GOVERNANCE/E-SEVA services:

19. As covered under Show Cause Notice dated 31.08.2006: The appellant is "Technology Partner" to Government of Andhra Pradesh for "Twin Cities Network Services (TWINS) to provide one-stop solutions to citizens. Subsequently, TWINS was renamed as eSeva. It was headed by Commissioner and was a part of Government of Andhra Pradesh, Department of Information Technology & Communication. Being the technical partner and having no shares in eSeva, the appellant provided all the necessary Hardware and software including connectivity for 15 districts and Twin cities in Andhra Pradesh. The services provided were of two types viz., one is of services provided by businessmen to citizens and the second type by Government to citizen. The Appellant was engaged in providing services such as (i) municipal services including issue of Birth Certificates/Death Certificates, collection of property tax etc. (ii) Commercial tax services such as sales tax collection, issue of registration certificates etc; (iii) electricity services (bill collections); (iv) Road Transport Services such as issue of driving licenses, Registration Certificates, Tax collections etc. (v) Telephone bills collections for BSNL, etc. For the said purpose, the appellant had to build the required infrastructure, own it, maintain the entire system and transfer the same at the end of the contract period in working condition to the Department of Information Technology & Communication, Govt. of A.P. The concerned municipalities, where eSeva were providing services, had provided necessary buildings and furniture for running eSeva

centres to the appellant and the charges collected for the services provided were shared between the appellant and eSeva.

20. The case of the revenue is that the appellant were providing eSeva services to the citizens of Andhra Pradesh as well as to the participating departments/agencies of the government, on behalf of eSeva, Govt of Andhra Pradesh by using its own infrastructure, consumables, network and manpower. E-seva department had no infrastructure and other paraphernalia to provide eSeva services and was completely dependent on the appellant to operate eSeva centres and to provide eSeva services. These services were incidental or auxiliary services to the Government departments or agencies and the same were being provided by the appellant on behalf of eSeva and Govt. of A.P. and other Agencies. Hence, as per revenue, these services fall under the category of Business Auxiliary Services under section 65(19) of the Act and are liable for service tax.

21. We find that though the charge in the Show Cause Notice is to demand service tax on the eSeva service under Section 65(19) as Business Auxiliary Service, however, the adjudicating authority has confirmed the demand of service tax by classifying the eSeva activities under "Business Support Service" under Section 65(104c) by rendering a finding that the E-seva services are not covered under Business Auxiliary Service which is completely beyond the scope of show cause notice and liable to

be set aside. In next paragraph we are discussing on merits about the demand of Service Tax on e-governance or e-seva services.

22. E-Governance as covered under Show Cause Notices dated 10.05.2011, 11.04.2012, 02.04.2013 and 01.04.2014 respectively:

E-governance has not been defined in the Finance Act, 1994 yet broadly it can be stated that "*E-governance or electronic governance is the integration of Information and Communication Technology (ICT) with the aim of enhancing government ability to address the needs of the general public.*" The basic purpose of e-governance is to simplify process for government, citizens etc. at National, State and local levels. In other words, it is the use of electronic means to promote good governance. It connotes the implementation of information technology in the government process and functions so as to cause simple and transparent governance. It entails the access and delivery of government services, dissemination of information, communication in a quick and efficient manner. It was initiated by the government of India but later on in order to provide all important services to its citizens most of the State Governments, government bodies and local governments such as municipalities, town area and even gram panchayats adopted this system although with different names such as 'e-seva', 'e-setu' etc. According to the Appellant various State Government, local bodies etc. entered into

agreement with the appellant to provide E-Governance on their behalf which are as under:-

- (i) The Government of Madhya Pradesh, state Electronics Development Corporation
- (ii) The Government of Rajasthan — **"e-mitra"**
- (iii) District E-Governance Rajasthan — **"e-mitra"**
- (iv) The Government of Andhra Pradesh – **"e-seva"**
- (v) State of Maharashtra – **"e-setu"**
- (vi) Directorate of Registration and stamp Revenue – Government of West Bengal
- (vii) The Government of Punjab – Punjab Land Record Society
- (viii) Government of Gujarat – **"e-gram"**
- (ix) Government of Karnataka – **Kaveri project**
- (x) Government of Uttar Pradesh – **"e-suvidha"**

23. According to the appellant various State Governments had launched different schemes to provide certain facilities to their citizens where they can come and obtain the required information, pay the government charges, fees, taxes, etc. and submit application to the Government or the Government organisation, bodies for employment/jobs/ PAN card, driving licence, ration cards etc. The object and purpose to initiate such schemes was to enable the citizens to get all or most of the information/services at one point under one roof. The Government of Rajasthan through District E-Governance Society of Jaipur headed by District Collector- Jaipur launched "e-mitra" an integrated IT

enabled scheme for delivery of various services and information to Urban and Rural people of Rajasthan with intention to bring the Government closer to the people. These centres were called as *Lok-Mitra and Jan Mitra*. The services will be provided by the Appellant for and on behalf of the Rajasthan Government by establishing infrastructure, design, etc. and to run these centres in Jaipur. The common services which were to be offered under the agreement are as under:-

- (i) General information about the Department
- (ii) Submission of Applications for new connection/ and other services
- (iii) Public grievances and
- (iv) The other services (department wise) which are provided include the following:

Department	Services Offered
Vidyut Vitaran Nigam Ltd.	Payment of Bills
Public Health and Engineering	Payment of Bills/Taxes
Municipal Corporation/Bodies and UTIs	Payment of Bills/Taxes
Rajasthan Housing Board	Payment of Bills/Taxes
Education Department	General information about the department/Schemes/Schools/Colleges /Admission procedure/Forms and procedure etc. Payment of School fees Submission of admission forms Issue of Duplicate Mark sheets, Migration Certificates
Medical and Health Department	General information about the Department/Schemes/hospitals/Dispensaries/ Health Centre/Facilities/Forms and procedures etc. Payment of Hospital charges/Fees

Transport Department	Issue of Driving Licenses/Registration of Vehicles etc. Payment of dues/fees
Registration and Stamp Department	Registration of different document/deeds/issue if encumbrance certificates.
District Collectorate	Submission of applications for different purposes like old age pension, BPL, Ration Card etc. Issue of Jamabadi record certificate Issue of election ID cards, OBC certificate, Bonafide certificate, Income certificates
Agricultural Department	Submission of applications for new house/other services
Panchayati department	Online submission of application forms for various services, issued of birth and death certificates
Zilla parishad	Online submission of application forms for various services

They entered into "E-Suvidha" Agreement with state of U.P. which is a major e-governance initiative of Uttar Pradesh Government. Under "E-Suvidha" the Uttar Pradesh Government provides, among others, the following services/facilities to its citizens:-

a.	Caste certificate	b.	Income Certificate
c.	Domicile Certificate	d.	Cause List Generation
e.	Case Tracking	f.	Final order Generation
g.	Issuance of Citation for Recovery (RC)	h.	Status of Recovery (RC)
i.	Recording of Payments	j.	Application for Khatauni
k.	Birth Certificate	l.	Death Certificate
m.	Handicap certificate	n.	Old age pension
o.	Family Benefit Scheme	p.	Application for Scholarship (Gen & SC/ST)
q.	Application for Marriage & illness Grant	r.	Application for assistance against atrocities
s.	Pension for widows	t.	Dampati Puraskar scheme to promote widow marriage under 35 years
u.	Financial assistance to	v.	Legal assistance to dowry

	women of dowry scheme		sufferers women scheme
w.	Grant of marriage of daughter of widow destitute scheme	x.	Handicap pension
y.	Application for loan to Handicap person	z.	Application for Aids & Appliances
aa.	Application for Marriage grants	bb.	Registration in Employment Exchange
cc.	Application for renewal of Employee Registration	dd.	Issuance of Ration Card
ee.	Surrender of Ration Card	ff.	Duplicate Ration Cards
gg.	Modification in ration cards	hh.	Copy of Kutumb Register
ii.	Birth Certificate (Rural)	jj.	Death Certificate (Rural)
kk.	Filing of Grievance	ll.	Tracking of Grievance
mm.	Labour Registration	nn.	Labour Renewal
oo.	Benefits of scheme		

Similarly, the Appellant executed an agreement with Punjab government for computerization of land record and Registration Services for providing all facilities to its citizens under Integrated Land Management System (in short ILMS) covering 153 Tehsils/sub-tehsils. It covers comprehensive services related to land records and Registration of Documents. The work covers:

(i) Data entry of all the registers of the Patwari and updating it to the current level (ii) Providing land record related information to the citizens through "NAKAL KENDRAS". (iii) Computerization of the process of registration in sub-Registrar office all over the State which includes scanning of documents for registration, taking finger prints, taking digital photographs and Registration of documents. It was agreed upon that the Appellant shall establish all infrastructure, manpower IT equipment and maintain them. A similar agreement was also executed with the

Director of Registration and stamp Revenue, Government of West Bengal. The Appellant executed similar agreement with the Government of Karnataka for computerization of offices of the Inspector General of Registration and Commissioner stamps across the state and 98 sub-Registrar offices.

24. A perusal of the aforesaid terms/scope of agreements would show that through e-governance, governments strive to make their services available to citizens in a more convenient, efficient and transparent manner. The National e-Governance Plan (NeGP) is an initiative of the Government of India to make all government services available to the citizens of India via electronic media. NeGP was formulated by the Department of Electronics and Information Technology (DeITY) and Department of Administrative Reforms and Public Grievances (DARPG). The Governments of various States in India had launched various e-Governance projects in order to create a one stop facility (CSC-Common Service Centre) for the rural and urban citizens. Various Government Departments like Education, Revenue, Health, Transport, Electricity Election, Water, Mobile Operator, Registrar and other Government Utility services were covered in the scheme. In order to effectively implement the E-Governance Projects, the appellant was awarded various contracts by various State Governments under BOOT Model (Build, Own, Operate and Transfer) in 09 States during the period of 2003-2012. The projects were undertaken under different names in different states such as E-Mitra Project in Rajasthan, E-Suvidha Project in

U.P. etc. However, the nature of services provided by the appellant under all the projects was same i.e. e-Governance services. The design, planning, scope and policies of the entire projects were as planned & decided by Government bodies. Being a technical partner for implementation and operation of E-governance plans, the appellant is responsible for development, maintenance and operation of E-portal which was required to deliver the contracted services. CSC (Kiosk) Operator at CSC Booth were always connected with all Government Departments for providing the Governmental Services to general public. Thus, the appellant had effectively computerized all the transactions in Government Department which were used to be processed manually. According to the revenue, the E-Governance Service would be classifiable under "Support Service of Business or Commerce" under Section 65(104c) of the Act and would be leviable to service tax.

25. The "Support Service of Business or Commerce" was introduced w.e.f. 01.05.2006 by inserting Section 65(104c) read with Section 65(105(zzzq)) as under: -

S. 65(104c): "Support Services of Business or Commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer services and pricing policies, infrastructural support services and other transaction processing.

Explanation – For the purpose of this clause, the expression "infrastructural support services includes

providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.

S. 65(105)(zzzq) : "Taxable Service" means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner.

26. It is specific submission of learned Chartered Accountant that neither the appellant is providing any service to the end users nor there is any tripartite agreement nor any such document has been produced on record by revenue. Therefore it will not fall either under 'Business Auxiliary Service' or 'Business Support Service.' She further submits that the appellant is doing this service on principal to principal basis. According to learned Chartered Accountant, for the period post 1.7.2012 i.e. during the negative list period, the amended provision was not invoked in any of the show cause notices therefore for the post negative list i.e. w.e.f. 1.7.2012 the demand is liable to be set aside being beyond the scope of show cause notices.

27. The allegation of the department, that the appellant had collected but not paid Service Tax, has not been supported by any documentary evidence. Rather it is the specific case of the Appellant that neither they charged nor the clients paid them Service Tax. The services included in E-seva/E-governance are rendered for the welfare of citizens of India and for which the government i.e. service recipient from the appellant, is not earning any profit or doing any business. These are the

sovereign function and the statement recorded, by the department of the government officials, also mentioned that these are sovereign functions. On being asked a particular query from the learned Chartered Accountant , we have been informed that wherever non-sovereign services done by the government, the arrangement for the same is purely between the government and respective private companies. The appellant is neither party to the agreement nor does it receive any payment from any private company. She further submitted that the department has failed to segregate the value of sovereign and non-sovereign services. Although learned Commissioner has observed that w.e.f. 1.7.2012 Government has also been brought in the tax net by including government in the definition of 'person', but since the amended provision has not been invoked in the show-cause notices, so no demand can be raised or levied for the period w.e.f. 1.7.2012.

28. On the issue 'e-governance' module for, and by agreements with, respective State governments, the adjudicating authority has held the consideration to be taxable as service described in section 65(105)(zzzq) of Finance Act, 1994 which was included as 'support service of business or commerce' with effect from 1st May 2006 and defined in section 65(104c) of Finance Act, 1994. To render the finding of the contracted activity as taxable, the adjudicating authority has, in the absence of definition of 'business', fallen back on dictionary meaning to conclude that even non-commercial activity that involves employment of

persons is 'business' as intended by the taxing entry; effectively, the charge is built upon the argument that 'business' includes functions of governance and not just for profit. It appears to us that the authority has been influenced by the use of 'employed' in Black's Law Dictionary and that, too, by reference to certain judicial decisions of the Courts of United States of America. These decisions although have been cited to strengthen the conclusion but do not appear to have been resorted to after placing appellant on notice of such intent which, together with no elaboration of context in which these came to be pronounced, are not reliable guide to interpretation of 'business' as deployed in Finance Act, 1994. It also appears that the emphasis on 'employed' in the dictionary meaning is misplaced; the definition does not, on the face, refer to hiring of persons but of engagement in. The erroneous reliance by the adjudicating authority on the meaning assigned to 'business' in the dictionary strikes at the foundation of the conclusion that the taxable entry covers the activity.

29. Taking the argument of the adjudicating authority to its logical conclusion, it would appear that all activities of governance are in the nature of service with the government machinery undertaking such for the President of India or the Governor, as the case may be, merely from civil servants being employed for the purpose and all of it being undertaken in the name of the President or Governor, as the case may be. Logically, the activity should, thereby, be taxable even if, for 'e-

governance' a partner like the appellant has not been taken on board. We have nothing on record to suggest that such demands have been raised on government departments. The adjudicating authority also appears not to have thought through the potential outcome of the logic in the impugned order that such activities on behalf of the Government would end up getting taxed. Consequently, we are unable to accept that the basis of taxability as provider of 'support service of business or commerce' is employment of persons.

30. From the activities set out in section 65(104c) *ibid*, there can be no doubt that the intent is to tax 'outsourcing' of elements of operations of a 'business or commercial entity' to another. The activities intended in the agreement between the appellant and respective State governments are seen to be those that inhere in the State to undertake. Collection of fee is from those citizens or residents to whom the services are provided. For that to be treated as 'consideration' received by appellant without examination of the nature of the agreement is an erroneous conclusion. There are several models by which contractors such as the appellant are compensated; the impugned order has not even glanced at the mechanics by which the fee is handled by the respective State governments. In the absence of such scrutiny, the conclusion that it is consideration of service lacks validity. Moreover, from Circular No.89/7/2006-ST dated 18th December, 2006 of Central Board of Excise & Customs which was also included in Circular No. 96/7/2007-ST

dated 23rd August 2007, it can be seen that authorities are not liable to be taxed for any service which has a statutory mandate. In the absence of identification of any of these activities as not being statutory in the show cause notices, supposition and/or inference cannot be an acceptable substitute.

31. The appellant, as representative, cannot be taxed any more than the government can be. It is not the case of respondent-revenue anywhere, that the government would be rendering any taxable service if the interface with citizens or residents were direct. Even where the activity of such outsourcing was sought to be taxed as 'business auxiliary service', the Hon'ble High Court of Madhya Pradesh, in the matter of *Commr. of Customs & C.Ex., Bhopal vs. Smart Chip Ltd.*; 2015(39) STR 197 (M.P.) dismissed the appeal filed by revenue by upholding the Tribunal's decision that services rendered to public authorities is not taxable, after evaluating the definition of business auxiliary service in the backdrop of fact that the service being rendered by the assessee therein for the transport department. Obviously what is not 'business' in 'business auxiliary service' cannot be 'business' in 'support service of business or commerce' under Finance Act, 1994. Likewise, in considering dispute over taxability of consideration in outsourcing of issue of PAN cards by the Income Tax authorities, this Tribunal in the matter of *UTI Technology Services Ltd. Commr. of Service Tax, Mumbai*; 2012(26) STR 147 (Tri.-Mum.) has held that undertaking of activity that is

responsibility of the sovereign is not taxable. Judicial decisions, thus, also offer no scope for Revenue to contend that there is any support to business or commerce from the impugned activity.

32. We deem it proper to mention here that a co-ordinate Bench of the Tribunal in the matter of *Sukhmani Society for Citizen Services vs. CCE&ST, Chandigarh; 2017(47) STR 172 (Tri.-Chan.)* while dealing with the similar issue of e-governance service, wherein the Commissioner has taken the view that the e-governance services provided by the appellant therein to various government departments of State of Punjab is covered under the category of 'Business Auxiliary Service' which is chargeable to tax, has held that the activities facilitated by the appellant therein such as issue of birth and death certificate, marriage certificate, vehicle registration etc are undoubtedly in the nature of the statutory functions of the government and CBE & C vide circular No.96/07/2007-ST, dated 23.8.2007 has clarified that services which are in the nature of statutory duties of the Government are not to be treated as services provided for consideration and hence no service tax will be chargeable on the same, therefore same is not covered under the 'Business Auxiliary Service'. The relevant extract of the said decision is as under:-

"8.....The Commissioner in the impugned order has taken the view that 'provision of service on behalf of the client' appearing in the definition of Business Auxiliary Service, would mean that any service on behalf of any client, would be covered

under it. We are of the view that such an interpretation is totally mis-laced. The business auxiliary service would become chargeable to service tax only if the service is rendered in relation to the business of the recipient. In the present case, the service of facilitation has been rendered to the Govt. departments, which are engaged not in business but in rendering public service. Hence we find that the present case fails the basic test prescribed by C.B.E.&C. in the circular dated 23.8.2007 that for charging service tax, the service should not be in the nature of statutory duties of the Government.

9. This Tribunal in several decisions and also the Hon'ble High Court in several decisions has taken similar views. In Ideal Road Builders P. Ltd. case, the Tribunal has taken the view that collecting toll on behalf of NHAI and retaining a portion of the amount collected as commission cannot be considered as rendering Business Auxiliary Service. Similar view was taken by the Tribunal in the case of Intertoll India Consultants P. Ltd. In United Telecom Ltd. case, service tax demand on e-Seva kendra facilities for payment of electricity bill, telephone bill, birth or death certificate etc. were set aside. In Smart Chip Ltd. case the services rendered to the Transport Department to facilitate issue of driving licenses, etc. was held to be not covered under the Business Auxiliary Service."

Therefore, in our view the demand of Service Tax on e-Seva/e-governance service, in any of the show-cause notices in issue before us, does not survive.

33. It has been recorded in the impugned order that the appellant is essentially an Information Technology (IT) firm which provides to their clients IT infrastructure in the form of computer hardware, software, connectivity, integration, manpower, consumables etc. Learned chartered accountant without admitting any liability, submitted that had the e-governance services been taxable at the relevant time then the services herein would have been covered under IT services u/s.

65(53a) ibid and not otherwise as the appellant is an IT Firm and the same has been made taxable only w.e.f. 16.05.2008 and is outside the purview of 'support service of business or commerce' (BSS) or any other service.

34. Although on merits we have already set aside the demands raised in the show cause notices (supra) but still we like to deal with the issue of limitation as well. According to learned Chartered Accountant the activities of the appellant had come within the knowledge of the department in the year 2003 itself but the department issued the 1st show-cause notice only in the year 2006 on the basis of DGCEI Audit objection, hence the entire demand is time barred. She further submits that appellants were under bonafide belief that no Service Tax is payable that's why they did not collect the same from their clients. According to her Service Tax Returns were periodically filed by them so there is no question of any suppression. We have seen that the 1st show cause notice dated 31.08.2006 involving all the three services in issue herein, has been issued invoking the extended period therefore the alleged irregularity has come to the knowledge of the department. But the subsequent show cause notices dated 06.04.2011 for the period 2006 to 2009 for card personalisation service and dated 10.05.2011 for the period 01.05.2006 to 30.09.2010 for E-Governance/E-seva service, which covers substantial amount out of the total service tax claimed under this category, have also been issued after invoking extended period, which in our view is

not sustainable on limitation ground as well since the said fact was within the knowledge of the revenue in the year 2006 itself when the 1st show-cause notice dated 31.08.2006 was issued. Revenue is not permitted to raise the plea of suppression just in order to invoke the extended period when they were already aware about the alleged irregularity. Therefore demand of service tax for the period covered in the above show cause notices is not sustainable both on merits as discussed in preceding paragraphs as well as on the ground of limitation. Otherwise also when the department itself was confused in classifying the services and was taking divergent views in different show-cause notices, no fault or mensrea can be attributed on the part of the appellant. Since we have already set aside the demands raised in the show-cause notice(supra), there is no question of any interest or penalty.

35. In view of the discussion made in the preceding paragraphs, the demand made in the show-cause notice(supra) is not sustainable. Accordingly, the impugned order is set aside by allowing the instant appeal.

(Pronounced in open Court on 29.01.2025)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)