

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85155 of 2017

(Arising out of Order-in-Original No. KLH-EXCUS-000-005-16-17 dated 19.09.2016 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.)

Shri Narasinha Traders

Santakrupa, Sangavewadi
Karveer Taluk, Kolhapur District.

.... Appellants

Versus

Commissioner of Central Goods & Service Tax

4th and 5th Floor, Vasant Plaza Commercial Complex
C.S. No. 1079/2 Rajaram Road, Bengal Chowk
Kolhapur - 416 001.

.... Respondent

APPEARANCE:

Shri Vipin Jain a/w Shri Ambrish Pandey & Ms. Sanjana Jain, Advocates for the Appellants

Shri Priyesh Bheda, 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/86824/2025

Date of Hearing: 01.08.2025

Date of Decision: 19.11.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Shri Narasihna Traders, Kolhapur, (earlier known as Narsinha Construction) which is a sole proprietary concern represented by Shri Sudarshan Babaso Khot (herein after, referred to as "the appellants", for short), assailing the Order-in-Original No. KLH-EXCUS-000-005-16-17 dated 19.09.2016 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Excise & Service Tax, Kolhapur.

2.1 The brief facts of the case are that the appellants herein are engaged *inter alia*, in the business of drilling and blasting of land sites of canal, dam, road projects etc. and land developments for commercial purposes. For the purpose of payment of service tax on taxable output services of 'Site formation and clearance, Excavation, Earth moving and Demolition services' and for compliance with the Service Tax statute, they are

registered with the jurisdictional Commissionerate under service tax registration No. AFRPK8883MST001.

2.2 During the disputed period from April, 2010 to March, 2015, the appellants had provided site formation and clearance services to M/s D.M. Corporation Private Limited, who in turn had provided such services to M/s Shimizu Corporation (Nipro Company) and various other clients, who were engaged in the construction projects of dams, roads, canals, airports and tunnels. The appellants have not paid service tax on the services provided to their clients on the ground that such services were exempt from payment of service tax in terms of Notification No.17/2005-S.T. dated 07.06.2005 and subsequently after 01.07.2012 in terms of Notification No.25/2012-S.T. dated 01.07.2012.

2.3 The jurisdictional Central Excise & Service Tax Commissionerate had conducted detailed investigation on non-payment of service tax by the appellants in respect of various amounts received from some of the service recipients, on the ground that only the main contractor is exempted from payment of service tax and the services provided by the appellants are distinctly classifiable as the taxable category of services under Section 65 (105) (zzza) of the Finance Act, 1994. Further, the Department had also interpreted that w.e.f. 01.07.2012, the services provided by the appellants are neither covered in the negative list as per section 66D *ibid* nor under the scope of general exemption notification. During the investigation, the appellants had explained to the investigation authorities about the various types of works undertaken by them along with copies of work orders received from the contractors, and that since these works were exempted from payment of service tax, they had not discharged any service tax on such services. However in respect of the services which are taxable, they had provided complete details and mentioned the same in the periodical ST-3 returns and paid applicable service tax. On completion of the investigation, the Department had issued show cause notice dated 13.10.2015, by invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 and for appropriation of an amount of Rs.23,52,120/- paid by the appellants during investigation. Further, the SCN also proposed for imposition of penalties on the appellants and the sole proprietor under Sections 76, 77, 78 *ibid*.

2.4 The matter arising out of the show cause notice dated 13.10.2015 was adjudicated vide the impugned order dated 19.09.2016 in confirming

all the proposals made in the SCN. Feeling aggrieved with the impugned order, appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that they are engaged in providing the services of site formation and clearance, excavation and earthmoving & demolition services, for construction of canals, dams, road projects, airport projects, mining etc. He stated that during the course of these operations, the appellants had carried out several work orders received from various contractors, duly accounting for the services which were exempt and those services for which payment of service tax was involved; the details of service tax paid on taxable services were duly reflected in the periodical ST-3 returns filed by the appellants with the jurisdictional Commissionerate.

3.2 He further stated that the appellants had claimed the benefit of exemption under Notification No.17/2005-S.T. dated 07.06.2005 in respect of services of site formation and clearance, excavation and earthmoving etc. provided in the course of construction of roads, airports, railways, dams etc. and subsequently after 01.07.2012 in terms of entries at Serial Nos. 12, 13 and 14 of Notification No.25/2012-S.T. dated 01.07.2012. In this regard, learned Advocate submitted that all the works undertaken by the appellants were duly accounted for in their records as taxable or exempted services, and further categorised as road projects, mining works, dam works, canal works, hydropower project works, airport project works, private quarry work, private land work in order to claim the exemption from payment of service tax. The details regarding various parties from whom the work orders were received, the nature of such work under various category, the amounts involved in such work etc. were maintained by them and the entire show cause proceedings quantifying the non-payment of service tax in various Annexures to the SCN have been prepared on the basis of the records maintained by them. Therefore, they claimed that there is no suppression of facts with intention to evade payment of service tax. Further, he claimed that the appellants are eligible for exemption from payment of service tax, and in no case there was any ground for demand of service tax by invoking the extended period, as there was no suppression or mis-statement by them.

3.3 Learned Advocate also submitted that the SCN had proceeded on the basis that because the appellant has not provided the services to the government directly, it would not be eligible for exemption. By doing so,

the SCN was reading a non-existent condition or restriction into the notification, which is impermissible, as has been held by the Hon'ble Supreme Court in the case of *Union of India Vs. Inter Continental (India)*. He further stated that the above issue of eligibility to benefit of exemption notification in respect of services provided through another person/contractor which were ultimately provided to the government, have been held to be admissible considering the object of the notification and the exemption entry provided therein, in the case of *Shree Nandi Logistics*. Therefore, he submitted that the adjudged demands are not sustainable and the appeal filed by the appellants be allowed.

3.4 Furthermore, learned Advocate submitted that the issue under dispute has been settled in favour of the appellants in the following judicial pronouncements passed by this Tribunal and the Hon'ble Supreme Court. In this regard, he relied upon the following case laws:

(i) *Shree Nandi Logistics Vs. Commissioner of Central Excise & Service Tax, Vadodara-II* – 2024 (12) TMI 278 CESTAT Ahmedabad

(ii) *Saritha Infra & Geo Structures Vs. Principal Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate* – 2019 (27) G.S.T.L. 211 (Tri.-Hyd.)

(iii) *Union of India Vs. Inter Continental (India)*– 2008 (226) E.L.T. 16 (S.C.)

4. On the other hand, learned Authorized Representative (AR) appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that the appellants had accepted the liability for payment of service tax in respect of those services which are not exempt and paid an amount of Rs.23,52,120/- during investigation. Since there is no separate exemption for site formation and clearance services, subsequent to the introduction of negative list regime, he stated that the learned adjudicating authority has rightly confirmed the adjudged demands.

5. Heard both sides and perused the case records along with paper books and case law citations submitted by both sides in this case.

6. In the impugned order dated 19.09.2016, learned Commissioner had examined the issues under dispute and had recorded his findings as follows:

"19. The assessee submitted their written reply on 21.03.2016 wherein inter-alia it was stated as under:

19.1 With regard to the demand for the service tax of Rs. 93,66,828/- for the period up to 30.06.2012, as per Notification No.17/2005-S.T. dt.07.06.2005 effective from 16.06.2005, the exemption from payment of the service tax is provided for the site preparation, etc. provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports and other ports. There is no service tax leviable on the site preparation, etc. provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports and other ports as well as site preparation, etc. related to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies. They submitted that while issuing the show cause cum demand notice, the Department had not at all taken any cognizance of Notification No.17/2005-S.T. They relied upon the Hon'ble High Court's decision in the case of Wasp Pump Private Limited 2008 (230) E.L.T. 405 (Bom HC) under which it specifically laid down that even if the assessee does not claim the exemption under particular notification, still the benefit thereof is to be given by the adjudicating authority. Annexure containing name of party, name of work and details regarding bills raised and payments received quarter wise for the F.Y. 2010-2011 to 01.07.2012 showed services which are categorised as under:-

- (a) Taxable/exempted;
- (b) Road project;
- (c) Mining Work;
- (d) Dam work;
- (e) Canal work;
- (f) Private land work;
- (g) Hydro power project;
- (h) Private quarry work.

19.2 They submitted that the demand was raised by solely relying upon the said Annexures and hence it was part and parcel of the said show cause cum demand notice and further no dispute/ doubt was raised in the show cause cum demand notice about the correctness of the nature of work mentioned in the said annexures; that it was basic principle of rule of evidence that facts admitted need not be proved as is held by the Hon'ble Supreme Court in the case of CCE Vs. Systems & Components Pvt. Ltd. 2004 (165) E.L.T. 136 (S.C.) and as such one has to accept that the nature of work mentioned against the nature of party mentioned in the said annexures.....

DISCUSSION AND FINDINGS

20. I have carefully gone through the records of the case, written reply filed by the assessee and arguments made by the advocate at the time of Personal Hearing. I find that the main question to be decided in this case is whether the activities of drilling and blasting falls under the category of services of site preparation, when provided to contractors/ clients who are engaged in the construction of projects of dams, roads, canals, airports and tunnels are exempted from Service Tax as alleged in the Show Cause Notice or exempted from Service Tax as claimed by the assessee?

21. I find that whether the assessee is engaged in activities of drilling and blasting and these activities fall under the category of "Site Formation and Clearance, Excavation and Earth Moving and Demolition Services". It is also accepted that the assessee has provided these

services to clients who are engaged in the construction of projects of dams, roads, canals, airports, tunnels etc. I find that there are two distinct periods involved in the Show Cause Notice. The first is from April 2010 to 30.06.2012 and the other period is from 01.07.2012 to 31.03.2015 which is commonly known as negative list regime. I will consider the legal positions in both these periods one by one.

22. During the first period that is from 01.04.2010 to 30.06.2012, the assessee has provided services to M/s D.M. Corporation Pvt. Ltd. at Shirwal site. They work pertained to site preparation for M/s Nipro Ltd. the assessee has received a consideration of Rs. 2,49,61,405/- from M/s D.M. Corporation. They have accepted the Service Tax liability on this amount and they have paid Rs. 23,52,120/- under various challans. As there is no dispute about this amount the Service Tax needs to be appropriated. The assessee has also accepted liability of Rs.1,73,622/- for works which are not in relation to construction projects.

23. As regards the remaining tax liability of Rs.68,41,086/- which is in respect of site preparation services provided to main contractors who are engaged in construction of roads, airports, railways, bridges, terminals etc. the assessee has submitted that these activities were exempted from Service Tax by virtue of Notification No.17/2005-ST dtd. 07.06.2005 w.e.f. 06.06.2005. For reference the text of the Notification is reproduced below.

xxx

xxx

xxx

xxx

24. A plain reading of the above notification suggests that it exempts services falling under the category of "Site formation and clearance, excavation and demolition services etc. when provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams and ports" these services are exempted when provided by any person to other person. In this regard I find in the impugned Show Cause Notice the demand was basically issued on the grounds that even though there was an exemption to the services for Site formation and clearance, excavation and demolition services etc. services when provided in the course of construction of vide the above claimed exemption, the assessee had failed to establish that the services provided by them were in the course of construction of roads, airport, railways, transport terminals, bridges, tunnels, dams and ports. When anyone is claiming benefit of any exemption notification he must prove beyond doubt that he is eligible for that exemption failing which the benefit of exemption notification will not be admissible to him. I find that only those services of Site formation clearance, excavation and demolition services etc. are exempted when they are provided during the course of construction of roads, airport, railways, transport terminals, bridges, tunnels, dams and ports. In this case the assessee had failed to produce any such proof before the investigating officer and even afterwards, before the adjudicating authority to prove that he had provided services of site formation clearance, excavation and demolition services etc. during the course of construction of roads, airport, railways, transport terminals, bridges, tunnels, dams and ports. I therefore conclude that they do not having any evidence to prove that the services provided by them are eligible for exemption under Notification No.17/2005-ST dtd. 07.06.2005. I am therefore inclined to deny the benefit of the above-mentioned exemption notification claimed by them and thus confirm the demand.

the demand by invoking extended period of limitation is factually incorrect. We further find that Annexure-B to the SCN specifically provide details of 28 challans with individual number and date, whereby the appellants have paid the total service tax amount of Rs.43,83,427/- along with interest of Rs. 54,318/- for a gross total amount of Rs.44,37,745/- and the same reiterated by the appellants in the reply to SCN, whereas in the impugned order an amount of Rs. 23,52,120/- was appropriated. Thus, there was no detailed discussion in the impugned order in respect of correlation between the amount paid during the investigation by the appellants as given in Annexure-B to SCN, and the amount appropriated towards the adjudged demands. For these reasons alone, the impugned order is liable to be set-aside as the confirmation of demands is without any legal basis and is also contrary to the facts of the case.

7. We have carefully examined the exemption notifications relevant to the present dispute i.e., Notification No.17/2005-S.T. dated 07.06.2005 and entries at Serial Nos. 12, 13 and 14 of Notification No.25/2012-S.T. dated 01.07.2012. The extract of these notifications are given below:

7th June, 2005

Notification No. 17/2005-Service Tax

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 site formation and clearance, excavation and earthmoving and demolition and such other similar activities, referred to in sub-clause (zzza) of clause (105) of section 65 of the Finance Act, provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay

Under Secretary to the Government of India

and

[TO BE PUBLISHED IN THE GAZZETE OF INDIA , EXTRAORDINARY, PART II, SECTION 3, SUB -SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 25/2012-Service Tax

New Delhi , the 20th June, 2012

G.S.R.....(E).- 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 said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;

.....

11. Services by way of sponsorship of sporting events organised,-

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Act;

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

.....

3. This notification shall come into force on the 1st day of July, 2012.

[F. No.334/1/2012 -TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

8.1 In the Notification No.17/2005-S.T. dated 07.06.2005, the Central Government had fully exempted the activity of "site formation and clearance, excavation and earthmoving and demolition, and such other

similar activities" referred to as taxable service under the category specified in sub-clause (zzza) to clause (105) of Section 65 of the Finance Act, 1994 from payment of service tax. Such services could be provided by any person to any person; but such services should be provided in the course of construction of roads, airports, railways, transport terminals, bridges, funnels, dams, ports or other ports. In the present case, the SCN along with its annexures specify that the nature of works carried out by the appellants as (i) road projects; (ii) mining work; (iii) dam work; (iv) canal work; (v) quarry rework; (vi) airport projects etc. As the services provided by the appellants are broadly and specifically covered by the services that were exempted in the Notification No.17/2005-S.T. dated 07.06.2005, the only contentious issue for a decision by the Department was that such services were not directly provided by the appellants to the entities such as airport, port, dam etc., On careful consideration of the wordings of the notification, by strictly interpreting it, it is clear that there is no condition that such services should be provided directly by the appellant, as the requirement is that any person/service provider can provide such service which are exempt to any person/service receiver, provided such services are for intended purposes mentioned in the notification. Inasmuch as the services provided by the appellants are covered under the aforesaid Notification No.17/2005-S.T. dated 07.06.2005, we are of the considered view that the Appellants are eligible for exemption from payment of service tax in terms of the notification dated 07.06.2005.

8.2 With respect to the exemption entries under serial No. 12, 13 & 14 of Notification No.25/2012-S.T. dated 20.06.2012, the Central Government had fully exempted the specified activities that are provided to

- (i) Government, local authority or a governmental authority;
- (ii) for specific public utilities such as roads, bridges, tunnel, burial ground, cremation etc. including buildings for religious use by general public, pollution control, effluent treatment;
- (iii) specified sectors such as airports, ports, railways, Metro, agricultural storage, cold storage, foodgrain handling system and other agricultural public utilities, low-cost houses etc.,

by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration works.

8.3 On analysis of the specific areas for which the exemption has been provided in the notification dated 20.06.2012, it is very clear that the disputed works undertaken by the appellants are viz. (i) road projects; (ii)

mining work; (iii) dam work; (iv) canal work; (v) quarry rework; (vi) airport projects etc. These items of work are elaborately covered in the exemption entries at serial No. 12, 13 & 14 of Notification No.25/2012-S.T. dated 20.06.2012. Further, there is no restriction in such exemption entries that for claiming exemption, it should be provided directly and not indirectly i.e. through sub-contractors. Therefore, we are of the considered opinion, that the activities undertaken by the appellants, in the post negative list regime i.e., after 01.07.2012 are also eligible for exemption from payment of service tax and the confirmation of demands in the impugned order by the learned adjudicating authority does not stand legal scrutiny.

9.1 We find that in the case of *Shree Nandi Logistics* (supra), the Co-ordinate Bench of the Tribunal has held that demand service tax on site formation and clearance, excavation and earthmoving work for road construction, water supply etc., provided as a sub-contractor are also eligible for exemption under Notifications No. No.17/2005-S.T. dated 07.06.2005 and Notification No.25/2012-S.T. dated 20.06.2012. The relevant paragraphs in the said order is extracted and given below:

"4.2 As regard the demand of Rs. 27,226/- for road construction work and Rs. 10,64,431/- related to water supply project, we find that these services are related to construction of road provided to M/s L & T and in turn L& T has got the work done from the appellant for execution of contract for the governmental authority i.e. GIDC (Gujarat Industrial Development Corporation). In this regard we find that the appellant have claimed the exemption under Notification No. 25/2012-ST dated 20.06.2012 (w.e.f. 01.07.2012) under Sr. No. 12 & 13(a). The same are reproduced below:-

"12. Service provided to the Government, a local authority or a governmental authority by way of construction erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alternation of - (e) Pipeline, conduit or plant for (i) water supply (ii) water treatment or, (iii) sewerage treatment or disposal;

13. Service provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alternation of- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

From the above reading of the exemption entry, it is found that if a service is provided to the government or governmental authority by way of construction of pipe line or plant for water supply, the same is exempted. Similarly, under Sr. No. 13., the services provided by way of construction of road transportation used by general public is also exempted. In the present case the appellant's activity involved is to construct the water supply system and also related to the construction

of road. Therefore, the appellant's activities are clearly covered under both the entries i.e. Sr. No. 12 & 13 of Notification No. 25/2012 ST.

4.3 The Learned AR Shri Rajesh Nathan argued that the appellants have provided the service to M/s L&T is not a government or governmental authority, therefore, the appellant's activities are not covered under exemption. In this regard, we are of the view that since the entire project of the main contractor i.e. M/s L&T is meant for government and appellant being a sub-contractor also providing the service for the government. We find that the entire project is for government i.e. GIDC, therefore, the ultimately services provided to the government. Hence, merely because the appellant is a sub-contractor, he cannot be deprived of the benefit of exemption Notification No. 25/2012-ST. Even if we look into objective of the notification which is given with a clear intention that any project of the government specified in Sr. No. 12 and 13, no service tax should be levied or charged. Therefore, it is an usual practice that a main contractor who is allotted the project by the government major part of the work is done by sub-contractor only and if on this ground the exemption is denied then the whole purpose of the modification will be defeated. Therefore, we are of the view that even though the service is provided by the sub-contractor but since the same undisputedly meant for the government i.e. GIDC, the activities are covered under Sr. No. 12 and 13 of the notification No. 25/2012-ST..."

9.2 We further find that in the case of *Saritha Infra & Geo Structures* (supra), the Co-ordinate Bench of the Tribunal has held that demand service tax is not sustainable and the reason for denial of exemption as these services have been provided by sub-contractor or through a sub-sub-contractor to the main contractor is incorrect, when the main entity is found eligible to have been covered by the notification benefit. The relevant paragraphs in the said order is extracted and given below:

"7. *It is not in dispute that the ultimate client in this case is IIT, Kharagpur which is an educational establishment. Research Park of this educational establishment was being constructed by the main contractor M/s. NCCL and a portion of that work has been sub-contracted to the appellant. The exemption available to the services provided to IIT, Kharagpur does not depend on whether such services are provided directly by the main contractor or by the main contractor using the services of a sub-contractor. In view of the above, I find that on merits, the services rendered by the appellant through the main contractor to IIT, Kharagpur are exempted under Section 102 of the Finance Act, 1994. The application for refund has been filed within the time stipulated in the section. I do not agree with the contention of the first appellate authority that merely because the services were rendered through main contractor and the bills were raised in the name of the main contractor the nature of the service would automatically become one of the services to the main contractor and not to IIT, Kharagpur. I have gone through the work order which shows clearly that a work given by the main contractor to the appellant was in relation to a construction at IIT, Kharagpur Research Park. Although the C.B.E. & C. Circular (supra) cited*

by the Learned Counsel is in a different context, the logic applies to other cases as well. As long as the service is rendered to a client, the taxability has to be decided accordingly regardless of whether the service was rendered directly by the main contractor or through a sub-contractor or through a sub-sub-contractor. Accordingly, I find that the appellant is not liable to pay service tax as he has already paid the same and he is entitled to refund under Section 102 of the Finance Act, 1994.

8. *The impugned order is set aside and the appeal is allowed."*

10. We further find that the Hon'ble Supreme Court in the case of *Inter Continental (India)* (supra) have held that the department could not whittle down the exemption provided in a notification by way of issue of a circular or otherwise. The relevant paragraphs in the said judgement is extracted and given below:

"5. *The High Court by the impugned order has accepted the writ petition by holding that the Central Board of Excise and Customs could not, by issuing a circular subsequent to the issuance of the notification, add a new condition thereby restricting the scope of the exemption notification. It was held that the impugned Circular No. 40/2001-Cus., dated 13-7-2001 being contrary to the Notification No. 17/2001-Cus., dated 1st March, 2001 could not be sustained as it cannot override the said notification. In para 16, the High Court observed as under :*

"In relation to entry at [Sr. No. 29](#) no condition is prescribed. Similarly no condition is prescribed in relation to entry at Sr. No. 34 or even in entry No. 28. If the Notification No. 17 has not provided for any condition, in our opinion, subsequent circular cannot impose such a condition as the same would tantamount to rewriting Notification No. 17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with Section 159 of the Act, a notification under Section 25 of the Act requires publication in the official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification No. 17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification before each House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give licence to the executive to bypass/override the legislature and cannot be countenanced."

6. *We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down."*

11. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Bench of the Tribunal and the judgement delivered by the Hon'ble Supreme Court, we do not find any merits in the impugned order dated 19.09.2016 passed by the learned Commissioner.

12. In the result, the impugned order dated 19.09.2016 is set aside and the appeal filed by the appellants is allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in the open court on 19.11.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha