

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

Service Tax Appeal No. 52272 of 2019

(Arising out of Order-in-Original JOD-EXCUS-000-COM-0003-19-20 dated 23 May, 2019
passed by the Commissioner, Central Goods and Service Tax, Jodhpur (Raj.)

Bhardwaj Infrastructure Private Limited Appellant
F-302, Silver Harmony, Nr. Vishwas City-11,
Gota Bridge, Gota, Ahmedabad – 382481.

Versus

Commissioner, Central Goods & Service Tax, Respondent
Jodhpur
G-105, Road No. 5, New Industrial Area
Basni, Opp. Diesel Loco Shed, Behind AIIMS
Jodhpur-342 003.

Appearance

Shri Shridevi J Vyas, Advocate - for the appellant

Shri Radhe Tallo, DR - for the respondent

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing/Decision: 15.2.2021

Final Order No. 51044/2021

Raju :

This Appeal has been filed by Bhardwaj Infrastructure Pvt. Ltd., against demand of service tax made against Appellant under the head of Site Formation and Clearance Excavation and Earth Moving and Demolition Services in respect of 28 contracts.

2. Learned Counsel pointed out that there are 28 contracts in respect of which demand has been made. Learned Counsel stated

that they have paid the service tax in respect of Serial Number 14 and 20 of the said list and these are not disputed. Learned Counsel pointed out that they are entitled to get the benefit of the mega Exemption Notification No. 25/2012-ST dated 20 June, 2012. He pointed out that Serial Number 12(d), Serial Number 13(a) and Serial Number 14(a) of the said notification cover all the contracts that they have undertaken as these contracts are in respect of the canals, roads and railways etc. He pointed out that the availability of exemption under Serial Number 13(a) and 14(a) could not be taken up before Commissioner due to lack of proper representation by the Advocate. He pointed out that they are entitled to these benefits but the Commissioner's order only examine the benefits with respect to Serial Number 12(d) of the said notification. He pointed out that in order to get a proper redressal, the matter needs to be sent back to Commissioner for fresh adjudication for examining the relief under all the related entries of the mega Notification No. 25/2012-ST dated 20 June, 2012.

3. He further pointed out that another issue raised by the impugned order relates to a situation where the services to Government were not provided directly but through the help of a sub-contractor. He argued that the said issue has been decided by the Tribunal in its decision in the case of **M/s Saritha Infra & Geo Structures reported in - 2019 (5) TMI-75-CESTAT-Hyderabad.**

4. He further stated that in order to show their bona fides they undertake not to claim any refund of the pre-deposit made by them at the time of filing Appeal before the Tribunal.

5. Learned Authorised Representative relies on the impugned order. However, he agrees that the matter needs to be examined with reference to entries at Serial Number 13 and 14 of the mega Notification 25/2012-ST dated 20 June, 2012.

6. We have gone through rival submissions. The essential defence of the Appellant is that some entries of the notification were not examined by the lower authorities as they had failed to point them out. The said entries of the Notification No. 25/2012-ST dated 20 June, 2012 read as under:

"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)***

(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)***

(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)***"

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;"

(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation"under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

(bb) a civil structure or any other original works pertaining to the Beneficiary led individual house construction / enhancement

under the Housing for All (Urban) Mission/Pradhan Mantri Awas 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

(e) 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) railways, excluding monorail and metro;

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.”.

(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;”

(ca) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

(ii) any housing scheme of a State Government.”.

(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.”

From the description of the contracts in the Show Cause Notice as well as order in original, we find that it is quite likely that many of them may relate to roads, canals and railways. If that is the case then the Appellant might be entitled to benefits under Serial Number 12, 13 and 14 of the Service Tax Notification in respect of services provided by them subject to fulfillment of the other

necessary conditions. The learned Counsel for Appellant has pointed out that the matter was not represented properly before the lower authority by Advocate. These exemption granted in entries at Serial Number 12, 13 and 14 of Notification No. 20/2012-ST dated 20 June, 2012 could not be examined by the original adjudicating authority as the Advocate failed to point them out.

7. As regards the issue relating to provision of service directly to the Government the Appellants have relied on the decision of Tribunal in case of **M/s Saritha Infra & Geo Structures** (supra). The said decision was not before the original adjudicating authority. The matter also needs to be re-examined in light of the decision cited by the Appellant.

8. The matter needs to be re-examined and, therefore, in the interest of justice, the impugned order is set aside and matter is remanded to the Commissioner for fresh adjudication keeping all the issues open. The Appeal is allowed to the extent indicated above.

9. As undertaken by the learned Counsel, the Appellant will not be seeking the refund of pre-deposit already made.

(Pronounced in open Court)

(Justice Dilip Gupta)
President

(Raju)
Member (Technical)

RM