

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

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 54367 OF 2015

[Arising out of the Order-in-Appeal No. 231 (SLM) ST/JPR/2015 dated 29/06/2015 passed by The Commissioner (Appeals), Central Excise - I, Jaipur.]

M/s Baba Ram Dev Construction & Engineer, ...Appellant
71, Patel Nagar, Behind Ram Mandir,
Hawa Sadak, Sodala,
Jaipur.

Versus

The Commissioner of Central Excise ...Respondent
(Appeals) - I,
NCR Building, C-Scheme, Statue Circle,
Jaipur - 302 005.

APPEARANCE:

Shri Bipin Garg, Advocate, Ms. Kainaat, Advocate for the appellant.
Shri Ravi Kapoor, authorized representative for the Department

**CORAM :HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50490/2023

DATE OF HEARING : 09.12.2022

DATE OF DECISION: 17.04.2023

P.V. SUBBA RAO

M/s Baba Ram Dev Construction & Engineer¹ filed this appeal to assail the order-in-appeal² dated 29.06.2015 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur, whereby he partly allowed the appeal of the appellant.

¹ appellant

² Impugned order

2. The appellant was engaged in providing various services which fell under the categories of construction of complex services, management, maintenance and repair services, etc. A show cause notice³ dated 18.10.2011 was issued to the appellant covering the period 2006-2007 to 2010-2011 demanding duty of Rs. 35,58,757/- under the following categories :-

- (a) Rs. 21,49,471/- under the category of construction of complex services ;
- (b) Rs. 26,149/- under the category of technical testing and analysis services ;
- (c) Rs. 13,83,137/- under the category of Management, Maintenance & Repair Services.

3. The Original Authority, confirmed the demands proposed in the SCN and also imposed penalties under sections 76 and 78 of the Finance Act⁴, 1994.

4. On appeal, by the impugned order, the Commissioner (Appeals) set aside the demand on "construction of complex services" and upheld the remaining part of the demand. He also held that the penalties under section 76 and 78 shall be correspondingly modified. There is no appeal by the Revenue against the dropping of demand under the head "construction of complex services" and, therefore, this issue attained finality.

5. During hearing, learned counsel for the appellant submitted that he is not pressing the issue of demand under "technical testing and analysis services" as the amount of demand is very

³ SCN

⁴ Act

small. Therefore, the only issue before us is the demand of service tax under the head "management, maintenance and repair services".

6. It is undisputed that these services were provided by the appellant to the Rajasthan Housing Board⁵ and Rajasthan Public Health Engineering Department⁶. These services pertained to operation and maintenance work of water supply schemes round the clock, operation and maintenance work of AC/PVC/MS transfer, rising distribution pipeline, tube well and pumping machineries at different head works in various water supply schemes of PHED. Learned counsel for the appellant submits that these services were provided not for commerce or industry, but to provide the basic amenities to the people, which is an obligation of the Government. He also submits that the RHB is a Government sector organization and PHED is also a State Government Department. He submits that in terms of Board Circular No. B-2/8/2004-TRU dated 10.09.2004 and Board Circular No. 80/2004 dated 17.09.2004, service tax is not leviable on these services.

7. Learned counsel for the appellant also assailed the invocation of extended period of limitation and, therefore, prayed that the appeal may be allowed and the impugned order may be set aside.

⁵ RHB

⁶ PHED

8. Learned authorized representative for the revenue reiterated the findings of the Commissioner (Appeals) in the impugned order.

9. We have considered the submissions on both sides and perused the records. The two Board's circulars relied upon by the learned counsel explained the scope of various services and their taxability. The Circular dated 17.09.2004 discussed the scope of service tax on business exhibition services, airport services, transport of goods by air services, opinion poll services, construction services etc. but it did not say anything about the scope of service tax payable on "management, maintenance and repair services". Similarly, the Circular dated 10.09.2004 also discusses various changes made in the Finance Bill (No. 2) 2004 to the service tax provisions but this Circular also does not discuss the scope of management, maintenance and repair services". Therefore, these two circulars do not come to the aid of the appellant.

10. Of the three heads under which service tax was originally proposed in the SCN, the demand under the head "construction of complex services" has already been set aside by the Commissioner (Appeals) and learned counsel for the appellant submitted that he was not pressing the demand under the head of "technical testing and analysis services" because of the very low amount of service tax involved. This leaves us with a decision

on the demand under the head "management, maintenance and repair services".

11. It is undisputed that the services were provided by the appellant to RHB and PHED. Before the Commissioner (Appeals), the appellant had contested the demand relying on the provisions of section 98 of the Act which exempted non-commercial Government buildings during the period on and from 16 day of June, 2005 till 28 May, 2012. Commissioner (Appeals), however, found that the appellant's services were not covered by this section as the appellant had not managed or maintained or repair any non-commercial Government buildings, but had maintained pipelines as admitted by the appellant itself. The relevant paragraphs 12 and 13 of the impugned order are reproduced below :-

"12. Regarding the demand of Rs. 144954/- and Rs. 1238183/- confirmed under the category 'Management, Maintenance or repair' service. I find that the appellant have contested these confirmed demands on the ground that since these services were provided to RHB and PHED which are Government body hence the same is not liable to service tax in view of the provision of section 98 incorporated in the Finance Act, 1994 vide Finance Act, 2012 exempting the said services when provided to Government by giving retrospective exemption from the date of levy to 28.05.2012. I have gone through the following provisions of Section 98 -

- (i) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.
- (ii) Refund shall be made of all such service tax which has been collected but
Which would not have been so collected had sub-section (1) been in force at all material times.
- (iii) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President"

13. Thus, I find that the retrospective exemption has been provided in respect of management, maintenance or repair services provided for management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till 28.05.2012. I observe that in the instant case appellant have provided services of management, maintenance or repair for maintenance or repair of water supply system operated by RHB and PHED of Government of Rajasthan. I find that water supply system for which management, maintenance or repair services have been provided are not Government buildings hence benefits under provisions of section 98 can't be extended to them. Therefore, I upheld the demand of Rs. 144954/- and Rs. 1238183/- confirmed by the adjudicating authority vide the impugned order along with interest and penalty imposed under section 78 in this regard".

12. We fully agree with the learned Commissioner (Appeals). We find that there is no case for the appellant to claim an exemption from payment of service tax under management, maintenance and repair services either under section 98 of the Act or under the two CBEC Circulars, indicated above. Undisputedly, the appellant had not maintained any non-commercial buildings of the Government, but had maintained pipelines which were not exempted under any notification or provision or circular presented before us. For these reasons, we find that the impugned order was correct and proper in confirming the demand under the head of management, maintenance and repair services.

13. Learned counsel for the appellant also contested the demand on the ground of limitation and asserted that extended period of limitation could not have been invoked in this case. It is evident from SCN that the appellant had not disclosed the value of these services which it had rendered to the department. We, therefore, find no reason to hold that the demand was time

barred as the appellant had suppressed the value of these services for the department. For these reasons, we find that the extended period of limitation has also been correctly invoked. As far as the penalties under section 76 and 78 are concerned, they have already been reduced proportionately by the Commissioner (Appeals) in the impugned order. We find no reason to interfere with them.

14. In view of above, we find that the impugned order is correct and calls for no interference.

15. The impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court on 17/04/2023.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)