

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

**Service Tax Appeal No. 31268 of 2018
with**

Misc Application No. ST/AE/30231/2023

(Arising out of **Order-in-Original** No.HYD-EXCUS-001-COM-005-18-19 dated 31.07.2018
passed by Commissioner of Central Tax, Central Excise & Service Tax, Hyderabad)

EMRI Green Health Services

..

APPELLANT

Dever Yamzal, Shamirpet,
Medchal Road,
Hyderabad,
Telangana - 500 078.

VERSUS

**Commissioner of Central Tax
Medchal - GST**

..

RESPONDENT

Medchal Commissionerate,
H.No. 11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI Bazarghat Branch,
Lakdikapool, Hyderabad,
Telangana - 500 004.

AND

**Service Tax Appeal No. 30093 of 2019
with**

Misc Application No. ST/AE/30646/2019

(Arising out of **Order-in-Original** No.HYD-EXCUS-001-COM-005-18-19 dated 31.07.2018
passed by Commissioner of Central Tax, Central Excise & Service Tax, Hyderabad)

**Commissioner of Central Tax
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VERSUS

EMRI Green Health Services

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RESPONDENT

Dever Yamzal, Shamirpet,
Medchal Road,
Hyderabad,
Telangana - 500 078.

APPEARANCE:

Shri A.R. Madav Rao, Shri Tushar Joshi & Shri A. Mukund Rao, Advocates for
the Assessee.

Shri C. Dhanasekaran, AR (Special Counsel) for the Revenue.

**CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30242-30243/2024

Date of Hearing:12.03.2024
Date of Decision:08.04.2024

[ORDER PER: ANIL CHOUDHARY]

These Cross Appeals have been filed arising from Order-in-Original dated 31.07.2018 passed by the Commissioner of Central tax, Central Excise and Service Tax, Medchal Commissionerate i) dropping part of demand of service tax on the Appellant assessee holding that the **emergency response** Services of Dial 108, 102 and 104 rendered by them are exempted services as the same were provided to Government by way of public health in terms of Notification No. 25/2012-ST dated 20.06.2012. ii) However he was pleased to confirm the demand for Rs. 1,18,97,295/- towards service tax on the taxable service Dial 100 Project for the period April 2013 to March 2016 along with appropriation of matching amount already paid. Further interest was demanded under Section 75 and the amount already deposited Rs. 46,04,563/- was appropriated towards the interest liability. Further penalty of Rs. 81,19,495/- was imposed under Section 78 of the Finance Act. Further penalty of Rs. 10,000/- was imposed under Section 77. The personal penalty proposed on Mr K. Krishnam Raju, Director was dropped.

2. Revenue is in appeal being appeal No. ST/30093/2019 against dropping of the demand and the Appellant assessee is in appeal No. ST/31268/2018 against confirmation of the part of demand for service tax with respect to Dial 100 Project. The Appellant assessee also filed Miscellaneous Application for additional evidence in both the appeals being Miscellaneous Application No. ST/AE/30231/2023 in appeal No. 31268/2018 and Miscellaneous Application No. ST/AE/30646/2019 in appeal No. ST/30093/2019.

3. The brief facts are that the Appellant – G V K Emergency Management Research Institute have Registered Office at Secunderabad (herein after referred to as GVK EMRI for short). They had taken centralised registration for providing taxable services under the head Business Support Service, commercial training and coaching services etc. It appeared to Revenue – DGCEI (now DGGSTI) that GVK EMRI were providing taxable services falling within the ambit of Section 65B (44) read with (51) by way of Emergency Response Service for which they have received monetary consideration but have not discharged the service tax liability thereon.

4. In the course of investigation, Shri K. Marga Bandu, Executive Partner looking after finance and taxation matters appeared before the Officers on 20.01.2017 and interalia stated that they are a registered society having exemption as a charitable institution under Section 12AA(i)(b) of the Income Tax Act. It is a non-profit organisation engaging under PPP model with various State Governments for providing 'integrated emergency response ambulance service' free of cost to the general public through Toll-free numbers 104/108/102 from the year 2005 onwards. The entire activity was carried out under contract with various State Governments. They have also provided emergency response service under contract with the Police for a command and control centre with phone number 100 attending to Police related emergency calls from public from April 2001 onwards. The contract for service was awarded on nomination basis and subsequently also by way of contract after tender. They were also providing training in emergency medicine with respect to basic life support and advanced cardiac life support, basic and advanced trauma life support, obstetrics (basic life course in obstetric) with affiliation to various International Organisations and especially with Stanford University for paramedics and Doctors both for in-house training and for others. They also had a post graduate programme in APGDEC (Advanced Post Graduate Programming Diploma in Emergency Care) affiliated to Osmania University.

5. Pursuant to investigations and examining the documents like agreements etc., and of training it appeared to Revenue that GVK EMRI were executing comprehensive emergency response service by management of a fleet of ambulances for various Governments and Union Territories through emergency toll-free numbers 108/104/102 etc.

6. Dial 108 Project: this emergency telephone number for integrated medical, police and fire emergency service and the project executed by the assessee using this toll-free number is called by them as Dial 108 Project. This was implemented in about 14 States/Union Territories. They are providing the emergency response service under public-private partnership by operation and maintenance of the fleet of ambulances of the respective State Governments which includes provision of manpower, infrastructure, technology, training, 24x7 call centre, fleet management of the ambulances, administration, managerial support etc.

7. Dial 102 Project: this emergency number is for the pregnant women, newborn child for taking them to hospital and drop back to home commonly called as inter-facility ambulance 102 project or 102 ambulance project. They are providing the emergency response service which includes the same provisions as project 108 like manpower, infrastructure, technology, training etc.

8. Dial 104 Project: this emergency number is for the day health services commonly called '104 Ambulance Project' by the assessee. In this they are providing emergency response service similar to project 108 in the states of Tamil Nadu and Andhra Pradesh.

9. Dial 100 Project: the emergency number 100 is for the police emergency, which is commonly called 'Dial 100 Project' by the assessee and have been provided in the states of Andhra Pradesh, Telangana and Gujarat. Under this project the assessee have provided the services of emergency response service similar to service of Dial 108 Project, except for fleet management of the ambulances.

10. The assessee have also provided call centre services being medical advice on 24x7 basis, separately for mother and child (dial 102) and helpline for women Dial 181, and help desk for emergencies to M/s Aditya Birla where the service have been treated as taxable service and service tax is also paid by them.

11. It appeared to Revenue that the aforementioned services fall under the category of taxable service as defined under Section 65B Sub Section (44) read with (51) of the Finance Act, 1994 and is not exempted under entry no. 2 of Notification No. 25/2012-ST, nor fall under the Negative List of the service under Section 66D of the Finance Act. It further appeared that the appellant have accepted their service tax liability in respect of Dial 100 Project executed separately with the Police/Home Department of the State Government and have paid the service tax of Rs. 1,19,05,483/- along with interest during the course of investigation.

12. The appellant have contended that their service with respect to comprehensive emergency response services is specially that of 108/102/104 projects is exempted from service tax under integrated health

care service under exemption Notification No. 25/2012-ST, as amended. It appeared to Revenue that the said notification exempts from service tax health care services of a clinical establishments/authorised medical practitioner/para medic. Whereas the services rendered by the assessee were not of these categories. Rather the services provided were predominantly management of emergency response services. Hence, it appeared the claim of exemption was not tenable. They were providing emergency response services which includes Man Power Supply, Training, Infrastructure, Administration and Managerial Support, etc., apart from transport of patient and pre-hospital treatment in the ambulance. It appeared that GVK EMRI do not qualify as clinical establishment, authorised medical practitioner or para medic to avail the exemption under health care services. Further, it appeared that exemption if any would be available only to the extent of cost of transportation of the patient and not for the management of emergency response activity. It further appeared that these services were not declared to the Department in the ST-3 returns filed by them.

13. It further appeared that the assessee was working under self-assessment scheme and they themselves were obligated to correctly assess the service tax liability and pay the same by the due date and also file their periodical returns. It appeared to Revenue that the assessee failed to declare their full service consideration in the periodical return(s) filed, nor they claimed any exemption from payment of service tax on any service. As such Revenue remained fully unaware of their activities. Thus, it appears that the assessee have not made proper disclosures amounting to suppression of the relevant facts in their ST-3 returns, filed with intent to evade payment of service tax. It further appeared had Revenue not initiated enquiry based on intelligence, the aforementioned activity would have escaped the tax liability.

14. Quantification of service tax liability was worked out according to the gross amount received towards the provision of taxable services during the period July 2012 to March 2017 based on the monthly extract of invoice reflected in the documents submitted by GVK EMRI during the course of investigation. The operation of call centres, where service tax was paid by them as per the return, had not been taken for computation of tax liability. The service tax liability was worked out as under:

Year	Taxable Value (In Rs.)	Service Tax payable including Cesses (In Rs.)	S.Tax paid by M/s GVK EMRI during the course of investigation (In Rs.)
7/2012 to 3/2013	2869213686	354634812	0
2013-14	5291046591	653973358	3564035
2014-15	6844405485	845968518	3646300
2015-16	5692626398	786715125	4686960
2016-17	6140475599	921071340	0
Total	26837767759	3562363153	11897295

15. Accordingly, show cause notice dated 29.12.2017 was issued for the period July 2012 to till 2016-17 invoking extended period of limitation demanding service tax as aforementioned in the table with proposal to appropriate the amount of service tax already paid Rs. 1,19,05,483 with further proposal to appropriate the amount of Rs. 46,04,563/- paid towards interest, further penalty was proposed under Section 78 and 77 of the Act, personal penalty was also proposed on Mr K Krishnam Raju, Director of the GVK EMRI. The show cause notice was adjudicated on contest whereby the Commissioner framed the following issues for adjudication:

- i. Whether the services rendered by M/s GVK EMRI, are taxable services falling within the ambit of clause (51) read with clause (44) of Section 65B of the Finance Act, 1994; whether the said services are covered in the negative list of services specified under Section 66D of the Finance Act, 1994 or exempted under Sl.No. 2 of Notification No. 25/2012-ST dated 20.06.2012 as amended;
- ii. Whether M/s GVK EMRI are liable for service tax amounting to Rs. 356,23,63,153/- (including cesses) for the period from July, 2012 to March, 2017?
- iii. Whether an amount of Rs. 1,19,05,483/- paid by M/s GVK EMRI as service tax on the taxable service (dial 100 project) for the relevant period is liable for appropriation?
- iv. Whether M/s GVK EMRI are liable for interest at applicable rate(s) on the amount of service tax mentioned at Sl.No. (ii) above;
- v. Whether an amount of Rs. 46,04,563/- paid as interest by M/s GVK EMRI, is liable for appropriation against their interest liability at Sl. No. (iv);
- vi. Whether M/s GVK EMRI is liable for mandatory penalty under Section 78 of the Finance Act, 1994?

- vii. Whether M/s GVK EMRI are liable for penalties under section 76 & Section 77 of the Finance Act, 1994?; and
- viii. Whether Sri K. Krishnam Raju, Director of M/s GVK EMRI is liable for penalty under Section 78A of the Finance Act, 1994?

16. The Learned Commissioner after examining the reply to show cause notice and hearing the Appellant assessee recorded the findings as follows: –

The crux of the allegation in the notice was that services of management and implementation of the operation of emergency response service fall under the category of taxable service under Clause 51 read with Clause 44 of Section 65B of the Finance Act 1994 and the said services were neither exempt under entry No. 2 of Notification No. 25/2012 – ST nor fall under the negative list of the services under Section 66D of the Finance Act. It is further alleged that the exemption if any, be available only to the extent of cost of transportation of the patient, where fuel charges paid to them by the State Government, in ambulances provided by the respective State Governments, as a third party with effect from 01.04.2015 only and not to the management of emergency response activities which will fall under the taxable service.

17. The Learned Commissioner took notice of the contentions that the ambulance operated in response to the call received on telephone numbers 102/104/108 etc., provides the emergency health support service. The ambulances were well-equipped to provide such immediate health support equipments like oxygen cylinders, splints, salines/drip bottles, ECG monitors, defibrillator and pregnancy kits, basic first-aid equipment/instruments etc; some ambulances were fitted even with the equipment to deal with serious health condition like cardiac arrest, ventilators etc. Every ambulance is deployed with the paramedical qualified person who is supposed to provide such preliminary health support to save the life. The ambulance also contains certain basic medicines and oxygen which are administered as per the medical condition of the patient; they also contain the saline bottles to take care of hydration, suturing equipments to prevent heavy bleeding, some ambulances are provided with cardiopulmonary resuscitation – CPR to ensure revival of heartbeat and equipment for delivery of the baby etc; they also contended that the objective was not only to transport the patient but also to provide the necessary health support to ensure that the patient survives till he/she reaches the hospital, for providing further suitable

healthcare; that the essence of the service is to save the life of patient during the critical period/golden hour (critical period is 1 to 2 hours immediately after heart attack/accident/truama during which the primary objective is to save the patient's life and that 50% of the employees of the establishment are either doctors or paramedics or emergency medical technicians (EMT).

18. Further noticed that the terms of the agreement entered with the State Health Departments clearly indicate the scope of the service which reveals that the essence of the service was to provide emergency life saving medical support. As the entire medical treatment cannot be carried out, obviously, the patient has to be transported at the earliest to the nearest hospital for further detailed healthcare service/intensive-care. Hence the services are termed as pre-hospital medical care. In support of their claim the assessee had relied on the award received by them under the health category – they got certificate under ISO 9001:2015 for providing free hospital emergency services. Hence they contended that their service clearly falls under Serial Number 2(i) & (ii) of Notification No. 25/2012 – ST and thus the services were unconditionally and wholly exempted. It was also the contention that they do not collect any amount for the service provided from the beneficiary. The said service is provided against an agreement with the State Health Department and they receive their consideration from the Health Departments of the respective State Governments. Further, they have never collected any service tax from the respective State Governments as they were under bonofide belief that the subject service was clearly exempted under the above mentioned Notification. They also referred to the Board Circular No. 210/2/2018 – ST dated 30.05.2018 wherein it was categorically stated that the subject service provided to the Government by way of public health was exempted under Notification No. 25/2012–ST.

19. The Learned Commissioner further examined the agreements which are relevant to decide the eligibility for the exemption being claimed under Notification No. 25/2012–ST.

20. The MOU dated 28.11.2015 between Government of Andhra Pradesh and GVK EMRI extracted in para-7 of the show cause notice, indicates that it was with regard to call Centre with telephone No. 102 – for providing services to the pregnant women and also to provide medical advice on 24 x

7 basis. At para 3 of the said agreement, the scope of work as mentioned was noticed as here under: –

The approved service provider has to establish and operate 102 call centre through a centrally operated 102 telephone number to provide the following services to the pregnant women and children in the state of Andhra Pradesh.

- i) 24 x 7 health helpline for pregnant women;
- ii) monitoring the services provided to the pregnant women with special focus on high-risk pregnant women;
- iii) gauging the public perception and satisfaction on services provided by health department;
- iv) maintenance of database and software for real-time display of all the services provided by the call centre.

21. It was further noticed that other parts of the said agreement indicate that the said service was intended for pregnant women and children, that all high-risk women shall be monitored through the 102 call centre, that the details of high-risk pregnant women along with phone numbers to be provided to the service providers by CHNFW office; the maternity ambulance services, immunisation services and family services provided to the pregnant women and children shall be monitored by the service providers by calling 2 pregnant women per sub-centre per month through outbound calls; that any pregnant woman can call 102 for medical advice or any advice or help related to antenatal care and postnatal care; that these services shall be on 24x7 basis and will be provided with training paramedics (preferably qualified in nursing) and medical officers; that the call centre – 102 service, establishment includes physical establishment, communication systems, hardware software applications, training and other expenditures, that all the staff attending inbound outbound calls shall be females; and that the service provider shall provide medical officers at least on 2/2/1 basis; and that medical officer shall be available on 24x7 basis.

22. The Commissioner also examined MOU dated 14.08.2008 between the Appellant assessee and Government of Karnataka with regard to comprehensive emergency response service for the entire population of Karnataka by using 108 toll-free number for a period of 10 years. As per the said agreement the responsibilities of the assessee interalia include the following: –

They shall provide a vital emergency management information and assistance to raise a societal awareness and capability in emergency management and response mechanisms to save lives and reduce the economic impact to the citizens, firms and the Government; that they should operate the ambulances and ensure that ambulance services are available on a 24-hour per day and 365 days a year basis; that they will recruit, train and position the required manpower, including pilots – drivers and emergency medical technicians who will be present in the ambulances while shifting an emergency case to a hospital; that at least one pilot and one emergency medical technician shall be present at any given point of time to provide patient stabilisation, first-aid and other pre-hospital care; that they shall attend emergency calls that are received at emergency response centres as per the agreed performance benchmarks; that they assist Government when required in co-ordination of the hospitals in the State and such other matters from time to time; that they conduct training programs for paramedics, doctors and other academic activities as required for governmental doctors and others.

23. Further the agreement dated 17.05.2010 between the Appellant assessee and Government of Chattisgarh is for providing health services, particularly in emergency situation to pregnant women, neonates, mother of neonates, infants and children. The features of this agreement were also similar to the agreement with other State Governments as herein above mentioned.

24. Further these agreements mentioned hereinabove indicates that the subject services linked to Dial 102/104/108 are under National Rural Health Mission (NRHM) and that the director/representative of NRHM is one among both Executive and Advisory Committees.

25. Upon examining the aforementioned agreements, the Learned Commissioner found – it is abundantly clear that the assessee under the service schemes linked to telephone numbers 102/104/108 had provided emergency help support service in different States. These agreements were between the assessee and the concerned State and Family Welfare Department of the respective State Governments while the actual beneficiary is the general public who are in need of such emergency help support service. It is also on record that the entire remuneration for these services was being received, in terms of the agreement with the respective

State Governments, but never from the beneficiaries/people/women who receive the service. It was concluded that the aforementioned services linked to call centre service 102/104 and 108 in different States pertain to public health service.

26. Learned Commissioner also referred to Board Circular No. 210/2/2018 – ST dated 30.05.2018 with respect to the subject – applicability of service tax on ambulance services provided to Government by Private Service Providers (PSP) under National Health Mission. The Board had opined that the emergency response system primarily designed to attend to patients of critical care, trauma and accident victims etc, while dial 102 service essentially are for basic patient transport aim to cater to the needs of pregnant women and children, though other categories are also taking benefit and are not excluded. Many States are operating the ambulance service on an outsource model and these services are funded under the NHM and provided for free of cost to all patients. The Board observed – that this entire project involves 3 legs of activities, one by the Government for the public, second by the PSP for the public and third by the PSP for the Government. In respect of the first and the second legs of activity that is the ambulance service being provided by the Government and PSP to the patients, neither the State Governments nor the PSP charges any fee from the patients to avail of these ambulance services. The PSP however charges a fee from the State Government for carrying out the third activity.

27. Any activity carried out by one person for another without any consideration, will not be covered under the definition of service under Section 65B(44) of the Finance Act 1994. Even if a consideration was charged by virtue of entry to II of Notification No. 25/2012 – ST, services provided by way of transportation of a patient in an ambulance, other than healthcare service by a clinical establishment, authorised medical practitioner or paramedics, are exempted from the whole of service tax levy thereof. Thus the activities provided by the State Governments and the PSP to patients are not levied to service tax.

28. It was also clarified that the phrase 'public health' is the general term and will cover a number of activities which ensure the health of the public. In reference to Ministry of Health and Family Welfare, it has been stated that this activity of providing free ambulance service by the States is funded under the National Health Mission. One of the core values of the National

health Mission listed by the framework for implementation of NHM 2012 – 2017 is to strengthen public health systems as a basis for universal access and social protection against the rising cost of health care. The service of emergency healthcare and transportation by the Appellants assessee essentially focus on strengthening primary healthcare across the country. The framework further states that assured free transport in the form of emergency response system and patient transport system is an essential requirement of the public hospital and one which would reduce the cost barriers to institutional care. Further clarified that the provision of ambulance service to State Governments under the NHM is a service provided to Government by way of public health and hence exempted under Notification No. 25/2012–ST.

29. The Learned Commissioner found that the activities of the Appellant provided under the emergency response system/healthcare through phone Nos. 102/104/108 does not fall under the category of taxable services as clarified by the Board in the aforementioned circular. It was categorically held that in the facts and circumstances and the clarification of the board, the Appellant assessee was eligible for the exemption from whole of the service tax on the subject service through 102/104/108 call centres provided to the concerned State Governments, as it squarely falls within the ambit of the public health in terms of Notification No. 25/2012–ST. Hence, the demand of tax in respect of the relevant receipts for the said services cannot be enforced.

30. With regard to the service through call centre linked to telephone number 100, it was observed that the appellant assessee have accepted their service tax liability, as it was executed separately with the Police/ Home Department of the State Government. In fact the Appellant have discharged the service tax liability of Rs. 1,19,05,483/- along with interest of Rs.46,04,563/- before issue of show cause notice, during investigation by the Department. In view of the liability to tax being admitted for call centre service linked to telephone no. 100 the Learned Commissioner did not further examine the taxability of the same.

31. Learned Commissioner also noticed that against the total tax liability for dial 100 project Rs. 1,18,97,295/- for the period 4/2013 to 3/2016 the Appellant have already deposited Rs. 1,19,05,483/-, thus they paid Rs. 8,188/- in excess of their total liability. Accordingly, Learned Commissioner

was pleased to appropriate the amount of Rs. 1,18,97,295/- in respect of the liability for dial 100 project as per annexure B3 to SCN. Further the Learned Commissioner was pleased to drop the demand of Rs. 355,04,65,858/- (356,23,63,153-1,18,97,295) for the period July 2012 to March 2017 with respect to emergency response service of dial 102/104/108. The Learned Commissioner further ordered recovery of interest under Section 75 on the amount of service tax confirmed and further ordered appropriation of Rs. 46, 04,563/- deposited towards interest prior to SCN. Further penalty of Rs. 81, 19,495/- was imposed under Section 78 being @ 50% for the period April 2013 to April 2015 and at 100% of tax for May 2015 to March 2016. Further penalty of Rs. 10,000/- was imposed under Section 77 of the Finance act. The proposal to impose penalty on Mr K Krishnam Raju, Director was dropped.

32. Pressing the Revenue appeal Special Counsel Mr C. Dhanasekaran inter-alia urges that the Learned Commissioner have erred in not determining the eligibility and the applicability of exemption under Serial No. 25(a) Notification No.25/2012-ST. The comprehensive emergency response – management and operational service rendered by the assessee under dial 108 scheme etc., to various states, pertaining to not only medical and health emergency (which fall within the scope of the term public health appearing in the exemption entry read with Board Circular) but also admittedly included those related to police and fire, which do not fall in the ambit of the term – public health.

33. During the period under dispute in view of the words used in the said exemption entry it is urged that emergency response service by Appellant are not in relation to any function entrusted to municipality in relation to public health. Further urges that fire/police services etc., do not find any mention in the said entry in the said exemption notification. Further urges exemption notification and statute are unambiguous about Emergency Response Services.

34. Further urges that the emergency response service provided by the assessee appeared to fall under the taxable service in terms of Section 65B Clause (44) and (51) of the Finance Act and the said services were neither exempted under any notification nor appeared to fall under the negative list of the services under Section 66D of the Finance Act. It is further urged that

the Board Circular dated 30.05.2018, was referred to and examined during the investigation.

35. We find that this averment is against the facts on record as the show cause notice is dated 29.12.2017 whereas the Board Circular is dated 30.05.2018.

36. The Special Counsel further urges that the Circular dated 30.05.2018 restricts the exemption to transportation of the patient in ambulance vide Serial No. 2 of Notification No.25/2012 – ST to a clinical establishment, an authorised medical practitioner or paramedics up to 31.03.2015 when the notification was amended to include other than the clinical establishment and authorised medical practitioner or paramedics vide amending Notification No. 6/2015 dated 01.03.2015. Further urges that for the period 11.07.2014 to 30.05.2017 according to circular dated 30.05.2018 it is clarified that the provision of ambulance services to State Government under NHM is exempted. Further urges that the services were not rendered to a municipality. It is onus of the assessee claiming exemption to prove the entitlement to exemption, as held by Supreme Court in CC Vs Dilip Kumar [2018 (361) ELT 577].

37. Learned Special Counsel further urges that there are agreements entered into by the appellant assessee under Dial 108/104/102 schemes indicates that the same is to cater to not only health and medical related emergencies but also those related to Police/fire emergencies as specifically mentioned therein. This have been also specifically mentioned by the authorised person Shri K. Marga Bandhu wherein he interalia stated that the MOU with the State Governments were meant to provide comprehensive emergency services for medical emergencies or other emergencies like police/fire, that it is a comprehensive emergency service for medical/police/fire, but the quantum of services in relation to medical emergencies was maximum and services of fire and police very negligible and restricted to attending call/assigning only. Further urges that the impugned order evidently does not contain any consideration and findings with regard to the above elements of police and fire related services, which were invariably part of the comprehensive ER management and operational services provided by the assessee to the State Governments. Without such examination and finding the Adjudicating Authority concluded that the emergency response services provided by the Respondents related to only public health and

hence eligible for exemption under Notification No. 25/2012-ST. Thus the impugned order is erroneous based on incorrect/incomplete appreciation of material facts, and hence not legal and proper.

38. Learned Special Counsel further urges that in this context, the provisions of Section 66F of the Finance Act are relevant, which provides for principles of interpretation or specified description of services or bundled services. Sub Section (3) of Section 66F provides – subject to the provisions of Sub Section (2) the taxability of emergency response service shall be determined in the following manner, namely –

a) if various elements of such service are mutually bundled in the ordinary course of business, it shall be treated as the provision of a single service which give such bundle its essential character;

b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

39. Further explanation under Sub Section 3 provides – for the purposes of Sub Section (3), the expression bundled service means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

40. Further urges that to constitute naturally bundled service, the different elements are not available separately. In respect of the impugned services, it cannot be said that the emergency response services provided with regard to police and fire related emergency, are incidental or ancillary to the other /main service – related to public health or that these help in better provision/enjoyment of the latter.

41. Opposing the appeal of Revenue Learned Counsel for the assessee urges that it is an admitted fact in the SCN, that wherever this service of Project 100 relating to fire and police have been separately provided under separate agreement, for which separate remuneration was determinable, the Appellant have deposited the service tax along with interest before issue of SCN. So far in respect of other contracts where the services are bundled and the major service was health service, it is urged that there was no such proposal in the SCN to bifurcate the gross in respect of comprehensive

service and tax the taxable element separately with regard to Police/fire response service. The Learned Counsel further urges that under the comprehensive service the calls/response related to Police/fire was less than 5% or only minuscule. Further evidently the services under the contract where naturally bundled and no separate remuneration with respect to Police/fire have been billed and or received. Thus under the provisions of Sub Section (3) of Section 66F under Clause (a) it is provided that where various elements of the service are naturally bundled in the ordinary course of business, it shall be treated as the provision of a single service which give such bundle its essential character. It is further urged that in absence of such grounds raised in the show cause notice, the same is both legally wrong and also cannot be raised at this stage.

42. Considering the facts and circumstances and the rival contentions, we find that the Learned Commissioner in the Adjudication Order have rightly held eligibility to exemption under Notification No. 25/2012-ST which is available evidently under Serial No. 1 and 2 read with Serial No. 25(a) of the exemption notification. Further the eligibility to exemption has further been clarified by the Board vide its Circular dated 30.05.2018.

43. We further find that the ground raised by Learned Special Counsel for Revenue regarding bifurcation of bundled service in respect of comprehensive contract where police/fire response system was also in bundle, is only minuscule, being less than 5% and hence did not call for any bifurcations in terms of Section 66F(3)(a) of the Finance Act 1994.

44. We find no merits in the appeal of Revenue and accordingly we dismiss the same.

45. Pressing the appeal of the assessee, Learned Counsel for the assessee inter-alia urges that under the facts and circumstances, admittedly Appellant have been providing services to the State Governments under written agreements. All the receipts are through the banking channel. Admittedly, Appellant have maintained proper books of accounts and records of the transactions. Appellant was also registered with the Service Tax Department and they were filing their returns and paying the admitted taxes. The Appellant assessee was under bonafide belief that the services being related to public health under NHM they are entitled to exemption under Notification No. 25/2012-ST. The assessee was also under bonafide belief that the

service relating to emergency response service including for police/fire was also exempted being provided to the Government. Further the Police/fire services are public services provided by the Government Authority and as the Appellant was assisting the Government in discharge of statutory functions or welfare functions, they were also entitled to exemption. Further evidently the Appellant on being so advised, during the course of investigation/enquiry, deposited the service tax where the receipts are under separate contract for the Police/fire services under Project 100.

46. Learned Counsel further urges that in view of these admitted facts, there is no case of suppression, fraud, mis-statement etc., made out against the assessee with intent to evade payment of tax. Accordingly he urges that the demand for extended period of limitation be set aside. He further urges that accordingly penalty under Section 78 is not impossible there being no deliberate default in payment of service tax.

47. Learned Special Counsel for Revenue opposing the appeal of assessee reiterated the findings in the impugned order where in the Commissioner have observed that the assessee was well aware of the provisions of service tax as they had themselves got registered with the Service Tax Department and have paid certain amounts of service tax to the Department. The evasive nature of the assessee is evident from the fact that the assessee never bothered to include the total value of proceeds of the services under dispute in their ST3 returns, evidently to suppress the information from the Department with intention to evade payment of service tax. Thus the assessee have deliberately and wilfully ignored the aspect of payment of service tax. Further, reiterates the allegation in the SCN that the short payment of service tax would not have come to light but for the detailed investigation by the Officers of the Department.

48. Having considered rival contentions with respect to the appeal of the Appellant assessee, we find that the Appellant have maintained proper books of accounts and records of their transactions. Services are provided to the State Government under agreements and all the receipts were through the banking channel. The Appellant is a non-profit organisation registered under Section 12AA of the Income Tax Act 1961. We further find that the Appellant had taken suo-moto registration and were making compliance and depositing the admitted taxes. We further find that the appellant was under bonafide belief that their services with respect to emergency response

service under NHM, which is the major part of their services is exempt and has been rightly found to be exempted. Thus we find there is no malafide on the part of the Appellant in not depositing the service tax with respect to police/fire – 100 Project, being under the belief that the same is being provided to the State Government in discharge of their statutory functions to the people at large. Further, under the comprehensive contracts, the Dial 100 Project police/fire was only minuscule element less than 5%. Further, admittedly the appellant have deposited the service tax where they found the same to be payable before issue of SCN along with applicable interest, for which there was proposal in the SCN itself was made for appropriation.

49. In view of our findings, we hold that the extended period of limitation is not available to revenue and accordingly the demand is confined to the normal period of limitation. We further set aside the penalty under Section 78 of the Act.

50. To sum up, the appeal filed by the Appellant assessee ST/31268/2018 is allowed and the appeal filed by Revenue ST/30093/2019 is dismissed. The miscellaneous applications for additional evidence also stand disposed of. The Appellant assessee shall be entitled to consequential benefits in accordance with law.

(Order Pronounced in open court on 08.04.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)