



ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರದ ಅಧಿಕಾರ ವಹಿ ಸಂಸ್ಥೆ  
KARNATAKA GOVT. EMPLOYEES' COMMISSION



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16/2019-8  
2019-2019

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**KCH-FXCTIS-GM-APP-027-2019**

ಆದೇಶದ ದಿನಾಂಕ : 16.08.2019  
Date of Order: 16.08.2019  
ಆದೇಶದ ದಿನಾಂಕ : 19.08.2019  
Date of Issue: 19.08.2019

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ORDER IN APPEAL :

1. M/s. Nihar Projects Village Megha (Kamohardi), Barina Ham Mandi, Gelpasar Road, Anjar - Gujarat (hereinafter referred to as appellant) has presented appeal against Order-In-Original No. 16/2017-18 dated 25.07.2018 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Cerina GST Division Anjar Bhachau (Kutch) (hereinafter referred to as 'the adjudicating authority').

2. The salient facts of the case are that the investigation revealed that the appellant provided 'Supply of Tangible Goods Service' and 'Site Preparation and Clearance' services and not being service tax by claiming exemption under notification No. 17/2011-ST dated 01.02.2011 as amended vide 12-2013-ST dated 21.07.2013. Show Cause Notice No. M/16-02/CDN/2013-17 dated 11.10.2017 was issued to the appellant demanding Service Tax of Rs. 10,67,467/- for the period from 01.01.2013 to 30.06.2016 under Section 70(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act, imposition of penalty under Section 77 of the Act for failure to assess service tax liability and imposition of penalty Section 78 of the Act. The lower adjudicating authority vide impugned order confirmed Service Tax of Rs. 10,67,467/- along with interest imposed penalty of Rs. 10,000/- under Section 77 of the Act and also imposed penalty of Rs. 10,07,137/- under Section 78 of the Act.

3. Being aggrieved with the impugned order, appellant preferred the present appeal inter-alia, on the following grounds -

(i) The appellant has provided services to M/s. Torrent Energy Limited energy Limited which was approved as a co-developer for providing infrastructure facilities for power generation in the MPSEZ. Under by the Ministry of Commerce & Industry, Department of Commerce, M/s. Torrent Energy Limited contracted the part of the work for providing the infrastructure services to M/s. Siemens Limited which sub-contracted the part of the above work to M/s. Simolax Infrastructure Limited in the capacity of a franchisee. Sub-Contractor for the Co-Developer M/s. Torrent Energy Limited, M/s. Simolax Infrastructure Limited further sub-contracted the excavation work of reclamation area, etc. etc. in all types of soil, excavation in all types of soil for F&B services including trimming and levelling of slopes and bottom excavation of roads and drains in all types of soil, disposal of excavated soil from ECLM site to designated dumping yard of M/s. Torrent Energy Limited Energy Limited, hiring of Excavator-Tata Hitachi EX-110 and Dumper 3-t-03307 at Mega Food Park Project of M/s. Torrent Energy Limited Energy Limited

to the Appellant in a capacity of second level administration to viz. Co-Developer viz. Torrent Energy Limited (Energy Limited). The appellant has submitted copy of work orders received from viz. Suplex Infrastructure Limited duly verifying that the work undertaken by the appellant is exclusively used for specialized operations in SEZ and classifying under the specified list of services by the Ministry of Commerce & Industry. The appellant has exercised an option to take exemption from service tax instead of charging service tax and the SEZ unit i.e. Developer claiming exemption by way of refund in form of Notification No. 11/2011-ST dated 01.09.2011, Notification No. 10/2012-ST dated 25.03.2012 and Notification No. 12/2012-ST dated 01.09.2012.

(b) The appellant submitted that the services undertaken by them were exclusively used and consumed by the Co-developer, i.e., Torrent Energy Limited for the authorized and approved operations of the SEZ. The work is relating to the immovable property situated at the SEZ of the Co-developer and thus the place of provision shall be determined as per the rule 2 of the Place Of Provision Rules, 2012 and the sub-clause (i) of the clause (a) of the para 2 of the notification No. 40/2012 viz. the place of provision for the exportation work shall be the location of the immovable property and for the supply of tangible goods shall be the location of service recipient who does not own or carry on any business other than the operations in the SEZ.

(c) The activities undertaken for the period from Oct-2011 to April-2012 were decided under Voluntary Compliance Encouragement Scheme (VCESE), 2012 and had duly received acknowledgement since the same activities cannot be held liable to pay or tax for the subsequent period.

(d) The provision of any other Act contrary to the non-obstante clause cannot prevail over the non-obstante clause of the Special Economic Zones (SEZ) Act, 2005. The appellant relies upon decisions by the bench of law Commission Services Ltd reported as 2010 (25) S.T.R. (T) - Mumbai, Sujana Metal Products Ltd reported as 2011 (270) T.L.R. 112 (T-Bangal), Reliance Ports and Terminals Ltd reported as 2011 (240) S.T.R. 200 (T - Ahmed), Reliance Industries Ltd reported as 2010 (41) S.T.R. 485 (T - Mumbai), Jans Pharma Ltd reported as 2011 (52) S.T.R. 513 (T - Ahmed), Zyda Technologies Ltd. reported as 2012 (39) S.T.R. 617 (T - Ahmed), AICOM Ltd. 2009 (231) E.L.T. 490 (S.C.) & Parasystems Pvt. Ltd. reported as AIR 1994 AP 220 & Vasipada reported as A.R. 1994 SC 1541, Bri. Raj Krishna reported as A.R. 1991 SC 10 & G.M. Kulk reported as AIR 1984 SC 1022.

(e) The

(vi) The appellants submitted that substantial benefit cannot be taken away by mere procedural lapses. The appellants relied upon the decisions in the cases of Mrs. Joty Board reported as 2017 (49) S.T.R. 820 (Tri. - Mumbai), Fon Kharud Infrastructure Pvt. Ltd. reported as 2018 (50) S.T.R. 267 (Tri. - Mumbai), Gicotta Haskins & Sells reported as 2015 (38) S.T.R. 1220 (Tri. - Mumbai), Barceya Technology Central India (P) Ltd. reported as 2015 (35) S.T.R. 39 (Tri. - Mumbai), Repro India Pvt. Ltd. Tulayar KEO Ltd. reported as 2014 (33) E.L.T. 377 (G.O.) Khar. Seva Systems Pvt. Ltd. reported as 2007 (1) S.T.R. 242 (Comm. Appl.).

(vii) The taxable amount of Rs. 18,10,125/- taxed in FY. 2014-15 is relating to the retention money which was earlier deducted and transferred to M/s. Simplex Infrastructure Limited debit account in FY. 2011-12 as the same was due. The appellant submitted copy of ledgers of retention money deposit account and 'Simplex Infrastructure Limited Infra Ltd.' account and submitted that at the time of deduction the appellant was recognizing the amount deducted as income in the period when the invoice amount is received from M/s. Simplex Infrastructure Limited and retention money deposit account recognized as current asset in the books of accounts. When the said activity is approved by M/s. Simplex Infrastructure Limited, the amounts deducted earlier which to be payable by M/s. Simplex Infrastructure Limited and the amount so deducted is debited to the debit ledger i.e. 'Simplex Infra Ltd. - Debit' account cannot be taxed again in the period when only the amount of deduction was due.

(viii) Extended period is invoked only in cases of contravention of any of the provisions of Chapter V or of the rules made thereunder with intent to evade payment of service tax. There was neither any negligence, nor any intention to evade payment of tax and the issue is arising out of the interpretation of the statutory provisions of law. The appellant has also filed ST-3 returns for the relevant period and therefore, the appellant has not evaded the tax and evaded payment of service tax. The facts were in knowledge of the department not only for the disputed period but also for the earlier period for the same activities. The appellant relied upon many cases like Adani Gas P. Ltd. reported as 2017 (37) S.T.R. 894 (Tri. - Ahmed.), Tata Pigments Ltd. reported as 2018 (45) S.T.R. 158 (Tri. - Kolkata), AtvAA Textiles Pvt. Ltd. reported as 2018 (322) E.L.T. 90 (G.O.), Swasth Patanjalis Pvt. Ltd. reported as 2014 (322) E.L.T. 81 (Tri. - Ahmed.), TOLIS reported as 2018 (295) S.T.R. 334 (G.O.), Nizam Sugar Factory reported as 2008 (2) S.T.R. 314 (G.O.).

ORDER

19.3) The penalty under Section 78 of the Act cannot be imposed in absence of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provisions of the Act or Rules framed thereunder with intent to evade payment of service tax. In the orders for the aforesaid periods have been admitted to the department without suppressing any fact and the department was aware of the facts of the case. The appellants relied on decisions in the cases of Bhayana Builders reported as 2011 (30) STR 418 (Trib. - Bang.), Modern Motors reported as 2012 (22) STR 268 (Trib. - Del.), GE India Industrial Pvt. Ltd. reported as 2017 (20) P & H 430 (Trib. - Del.), United Commissioner reported as 2012 (29) STR 198 (Karn.), Dharma Telecom reported as 2009 (14) STR 145 (P&H), Sanyo reported as 2008 (3) STR 551 (Trib. - Kerala).

19.4) The appellant is registered since 22.2.2009 and from 1.1.2010 with all due care and maintained Books of Accounts and has issued the invoices in accordance with the provisions of the Act. Thus penalty under section 78 of the Act cannot be imposed with a proper justification. The appellants rely on the decisions in the cases of Sree Ganga Combines reported as 2014 (23) STR 824 (Trib. - Hyd.), Panna Motors Ltd. reported as 2011 (43) STR 1153 (Trib. - Del.), Rana Ganga reported as 2013 (26) STR 676 (Trib. - Del.).

4. Personal hearing in the matter was attended by Mr. Pradyumn Chaturvedi Accountant who reiterated the grounds of appeal and also submitted that section 81 of SEZ Act has existing effect on all other facilities of services undertaken by the appellant and exclusively used in SEZ, that mere procedural lapses can't take away substantial benefits; that the arrears have taken from Oct. 2011 to Sept. 2012 were declared under MATS, 2013, for other services and service tax paid on appr's can be deducted 100% on these services; that amount of Rs. 16.15 lacs received in 2014-15 has been booked as income in previous years and hence not liable to service tax again; that M/s. Sanyo Infrastructure Limited has a pp. on direct free of cost amounting to Rs. 9,14.50 and no service tax is payable as per judgement of the Hon'ble Supreme Court in the case of Bhayana Builders reported as 2011 (30) STR 418 (SC). The aforesaid period is not booked and penalty under Section 78 of the Act is also not imposed as they have not kept books and records with intent to evade payment of service tax.

**FINDINGS:**

5. I have carefully gone through the facts of the case, findings and grounds of appeal and the submissions made during hearing. It is found to be valid in the aforesaid case as to whether the appellant was supplying demand of services

tax along with interest and imposing penalty under Section 77 and under Section 75 of the Act in legal, proper and correct manner.

6. The appellant argued that they provided services to M/s. Simplex Infrastructure Limited in the capacity of 2<sup>nd</sup> layer sub-contractor and M/s. Simplex Infrastructure Limited provided services to M/s. Siemens Limited, which provides taxable services to M/s. Torrent Energy Limited, co-developer of MPSEZ. Dated and therefore they are entitled for ab-initio exemption from payment of service tax under Notification No. 12/2013-ST dated 01.03.2013, Notification No. 40/2012-ST dated 20.05.2012 and Notification No. 13/2013-ST dated 01.07.2013. I find that Notification No. 12/2013-ST dated 01.03.2013, Notification No. 40/2012-ST dated 20.05.2012 do not provide ab-initio exemption from service tax to the service providers. Notification No. 12/2013-ST dated 01.07.2013 provides ab-initio exemption from payment of service tax to service provider for services which are used for authorized operations of SEZ. In the present case, the appellant has submitted copy of work orders received by them from M/s. Simplex Infrastructure Limited, copy of work orders received by M/s. Simplex Infrastructure Limited from M/s. Siemens Limited, copy of letter of approval to M/s. Torrent Energy Limited as co-developer of MPSEZ, Dated, copy of Form A-1 given by M/s. Torrent Energy Limited declaring M/s. Siemens India Limited as a service provider and copy of Form A-2 issued by the Deputy Commissioner, Central Excise & Service Tax, Bharuch for procurement of services from M/s. Siemens Limited. All these documents put together establish that the appellant has ultimately provided services for authorized operations of co-developer of SEZ i.e. M/s. Torrent Energy Limited. Hence, I am of the considered view that the appellant is eligible for exemption from payment of service tax from 1.7.2013. However, the period of dispute under impugned SCN is from 1.7.2013 to 30.6.2015 and hence, I uphold the demand of service tax for the period from 01.7.2013 to 30.6.2013 during which ab-initio exemption was not available to the appellant. Therefore, the appellant is required to pay service tax along with interest on services rendered during the period from 01.7.2013 to 30.6.2013. However, I set aside demand of service tax for the period from 1.7.2013 to 30.6.2015 since it is established that the appellant has ultimately provided services to SEZ co-developer for authorized operations of SEZ.

7. The appellant contended that the activities undertaken for the period from Oct-2011 to Sept-2012 were declared under Voluntary Compliance Encouragement Scheme (VCEES), 2013. I find that the VCEES, 2013 scheme was operational for service tax payable during the period upto 31.12.2013, whereas service tax under the impugned SCN has been demanded for the

period from 1.1.2019 to 30.11.2019. I also find that the appellant during investigation vide their letter dated 25.11.2019 had informed that they had not demanded the exemption available under a VOPB concession. Hence, I find that this argument of the appellant for not assessing and paying any required service tax for the services provided by them upto and including 30.11.2019 is not tenable and 50% of net amount payable for any period from 1.1.2019 to 30.11.2019.

8. The appellant argued that interest on taxes of Rs. 18,10,133/- (Rupees eighteen lakh and ten) was liable to be paid by M/s. Simply Infrastructure Limited and the amount so deducted was debited to the ledgers ledger of Simply Infra Ltd. - Bank account can be used again since the appellant has a ready cash service tax on that amount. I find that the appellant was not free to pay service tax on retention money retained in FY 2014-15 whereas service tax was earlier on which service tax has been paid. Hence, I have concluded that there is demand of service tax on this amount and by of Rs. 18,10,133/-.

9. The appellant argued that M/s. Simply Infrastructure Limited had a profit from of cost amounting to Rs. 2,14,13, and no service tax is assessable per judgement of the Honble Supreme Court in the case of Bhayana Builders reported as 2018 (11) GSTL 115 (SC). I find that the appellant has produced copy of work orders furnishing of excavator and Diagnostics machine. It has been clearly stated that diesel will be supplied free of cost by the service received. In that case, I find that when diesel is supplied free of cost by the service receiver, then in case of the use or value of the services provided as per judgement of the Honble Supreme Court in the case of Bhayana Builders reported as 2018 (11) GSTL 115 (SC). Hence, I am of the view that of service tax on value of diesel supplied free of cost by the appellant. (18,10,133/-)

10. The appellant contended that the extended period is not incontestable and penalty is not incontestable under Section 78 of the Act since there is no suppression of facts with intent to evade payment of service tax. I find that the appellant has concealed and suppressed facts as compared to 2008 and not disclosed these services to the department and thereby suppressed the facts with intent to evade payment of service tax. Hence, the penalty has not been condoned by the Department. The amount of service tax would have remained undeducted. Hence, I am of the view that 50% of net amount payable extended period under clause (b) Section 78 of the Act and penalty under Section 78 of the Act is applicable on the appellant. However, I find that the transactions were recorded in the specified records maintained by the appellant hence, the penalty imposed under Section 78 of the Act would be



50% of demand of service tax upheld in this order as per provision in Section 78 of the Act.

10. Regarding penalty imposed under Section 77 of the Act, find that the appellant failed to ensure their service tax liability towards rendering of services and payments provided to M/s. Simplex Infrastructure Limited and therefore penalty under Section 77 of the Act is justified.

11. In view of above, uphold demand of service tax for the period from 1.1.2013 to 30.9.2019 along with interest and also upheld penalty imposed under Section 77 of the Act. However, penalty imposed under Section 78 of the Act is reduced to 50% of the demand of service tax.

12. असे केसची प्रकृता असे की गई अपील का निष्पत्ता उपरोक्त तरीके से किया जाता है।

13. The appeal filed by the appellant is disposed of in above terms.

गणेश चिहल प्रो.वि.क.स.  
 (अपील नं. 179)  
 प्रधान आयुक्त (अपील)

गणेश चिहल प्रो.वि.क.स.  
 (अपील नं. 179)  
 प्रधान आयुक्त (अपील)

By Email/Post

To

M/s. Vimal Projects,  
 Village Wagnpar (Kumbharvad),  
 Road Bara Mandir,  
 Gandhinagar, Rajkot,  
 Gujarat.

गणेश चिहल प्रो.वि.क.स.  
 (अपील नं. 179)  
 राम मंदिर के पीछे  
 गणेश चिहल प्रो.वि.क.स.  
 (अपील नं. 179)

Copy to:

- 1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
  - 2) The Commissioner, CGST & Central Excise, Gandhinagar Commissionerate, Gandhinagar (Rajkot), for necessary action.
  - 3) The Deputy Commissioner, Central Excise Division, Anand-Dheeran, for necessary action.
- By: Gaurav P. P.

