

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

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL No. 55053 OF 2023

[Arising out of Order in Appeal No. IND-EXCUS-000-APP-117-2022-23 dated 10.03.2023 passed by Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Indore]

**M/s. M.P. Audyogik Kendra
Vikas Nigam (Indore) Ltd.**

...Appellant

1, Ground Floor, Nanakheda Bus Stand
Parisar Main Road,
Ujjain – 456010 (M.P.)
Now MPIDC RO, 1st Floor,
Atulya IT Park, Near Crystal IT Park,
Khandwa Road, Indore, M.P.

Versus

**Commissioner of Central GST &
Central Excise, Indore, M.P.**

....Respondent

APPEARANCE:

Mr. Ankur Upadhyay, Advocate for the appellant

Mr. Rohit Issar, Authorized Representative for the Respondent

Coram: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

DATE OF HEARING: 22.08.2024

DATE OF DECISION: 29.08.2024

FINAL ORDER NO.58109/2024

BINU TAMTA

1. The appellant has assailed the order-in-Appeal No.IND-EXCUS-000-APP-117-2022-23 dated 10.03.2023 confirming the demand of service tax.

2. The appellant is engaged in providing 'Renting of Immovable Property Service', 'Business, Auxiliary Service', and 'Construction, Repair and Maintenance Services'. During the course of audit and reconciliation

of figures of amounts received against various financial services shown in the profit and loss accounts and ST-3 returns of the appellant pertaining to the year 2012-13, it was noticed that there is difference in the taxable value shown in the profit and loss account and ST-3 returns amounting to ₹25,83,338/-.

3. Show cause notice dated 25.05.2016 was issued to the appellant demanding service tax on account of:

- (i) Differential value of Service Tax : Rs.6942/-
- (ii) Road Cutting charges : 8343/-
- (iii) Land Application Processing Fees : Rs.13,601/-
- (iv) Street Light Charges : 1329/-

4. The Adjudicating Authority confirmed the demand, however, in appeal before the Commissioner (Appeals); the matter was remanded back for fresh adjudication. On remand, the adjudicating authority dropped the demand of ₹2,89,086/-, but confirmed the demand of ₹30,215/- along with interest and penalty in terms of section 78 of the Finance Act, 1994. Being aggrieved the appellant filed an appeal before the Commissioner (Appeals), which has been rejected by the impugned order. Hence the present appeal has been filed before this Tribunal.

5. Heard both sides and perused the records of the case.

6. The basic contention raised by the appellant is that the nature of service on which demand of service tax has been confirmed are either exempted services or no service element is involved and therefore the service tax demand on Road Cutting Charges, Land Application Processing Charges, and Street Light Charges are liable to be set aside. On invocation of extended period of limitation, the learned Counsel for the appellant has referred to the decision in **Mega Trends Advertising**

**Ltd. vs. Commissioner of Central Excise & Service Tax, Lucknow
reported in 2020 (38) G.S.T.L. 57 (Tri.-All)[16.05.2019]**

7. The learned AR has reiterated the findings of the authorities below.

8. The amount of ₹67, 500/- received by the appellant towards 'road cutting charges' has been confirmed as no documentary evidence has been produced by the appellant to show that the said amount is actually used for construction or repair of road. The appellant has claimed exemption in terms of Notification No. 25/2012 dated 20.06.2012 at Sr. No.13(a), the relevant provisions reads as:

"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;"

That clause 13 has been very widely worded as it includes services, which are provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration and is not restricted to construction only. Sub-clause (a) specifically includes 'Road' which are used by general public. The case of the revenue is not that the roads are not for use by general public. The objection rather is that in the absence of documentary evidence, it is not clear that this amount is actually used for construction or repair of roads. The appellant has submitted the copy of the ledger which shows that against the total amount of ₹67, 500, the appellant received sum of ₹57,700/- for 'road cutting charges' from Gail Gas Dewas and thereafter small amounts of ₹3,000/- have been received from other companies

which, according to the appellant have been received for construction of public road, which has been damaged by them on account of their personal work done on the public road at industrial area in Dewas. There is no reason to deny the benefit of the exemption notification and therefore, the demand of service tax is unsustainable.

9. Regarding the amount of ₹1,10,040/- towards 'Land Application Processing Fees', the revenue has gone by the nomenclature 'processing fees' which shows that the amount has been charged for processing of application. The description given by the appellant is that the fees charged for processing the land application form for the allotment of land to industrial units, is actually the 'purchase of land application form' for purchase of land for which forms are generally published online and the industrial units submit the required details in the said application along with the land premium which is actually related to the purchase of the land. The processing fees does not relate to any specific activity of processing. I agree with the learned counsel for the appellant that the term 'land application processing fees' has been wrongly interpreted by the revenue without appreciating the nature of activity involved. Hence, there is no service element involved therein and therefore, no service tax is leviable.

10. The 'Street Light Charges' of Rs.10,758/- have been explained by the appellant that Madhya Pradesh Electricity Board (MPEB) installed the street light in the industrial area of Dewas and Maksi, however, where there were no street lights in front of any particular industry then as per the requirement of the concerned industry, the appellant installed the said street light for which the initial payment is made by the appellant to

MPEB, who subsequently recovers the said amount from the concerned industry. According to the appellant no service is provided by them as they are only acting as 'pure agent'. To consider the submission, the definition of 'pure agent' defined in Explanation I to rule 5(2) of Service Tax (Determination of Value) Rules, 2006 is quoted below :

"Explanation 1.-For the purposes of sub-rule (2), "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;*
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;*
- (c) does not use such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services."*

11. The first and the primary condition is that the person enters into a contractual agreement with the recipient of service to incur expenditure or cost in the course of providing taxable service, however, as noted by the authorities below, the appellant failed to submit the copy of agreement or contract with MPEB to show that he was acting as their pure agent. Further, the appellant has not even submitted any proof of payment or expenses to MPEB, which is specifically provided in the definition that the person receives the actual amount incurred to procure such goods or services. In view thereof, I hold that the appellant is not entitled to any relief on that account and is liable to pay the service tax as confirmed by the authorities below.

12. The differential value of service tax has been included by the revenue on the ground that the appellant had justified sum of ₹25,27,169/- only out of the total taxable value shown as Rs.25,83,338/-

and therefore on the amount of ₹56,169/-, service tax is leviable. It appears that amount of Rs.25,83,338/- has been directly taken from Note 16 of the balance sheet, whereas the appellant had taken the amount as per the Ledger records. The revenue was required to clarify the service under which the differential amount of ₹56,169/- was chargeable. The appellant has rightly contended that no service tax can be determined without clarifying the category of service under which the said amount can be attributed. Consequently, the service tax on account of differential value cannot be sustained.

13. The learned Counsel for the appellant next submitted that the show cause notice dated 25.05.2016 for the period 2012-2013 is barred by limitation and extended period of limitation cannot be invoked as there is no allegation of suppression, fraud or wilful mis-statement by the revenue. Moreover, referring to various decisions, the learned counsel for the appellant reiterated the principle that the extended period is not invocable if the services rendered are reflected in the balance sheet and income tax returns which have been held to be public documents. Without multiplying too many decisions on the principle, reference is made to the decision of the Division Bench of this Tribunal in Mega Trends Advertising Ltd, observing as under:

"6. Apart from the merits of the case, we also find that the demand is squarely barred by limitation having been raised by invoking the longer period. The Revenue has picked up the figures from the balance sheet and profit and loss account maintained by the assessee. The balance sheet and profit and loss account has been held to be public documents by various decisions and it stands concluded that when the income arising from various activities stand reflected in the said public documents, it cannot be said that there was any suppression or misstatement on the part of the assessee so as to invoke the longer

period of limitation. Reference can be made to Tribunal's decision in the case of C.S.T., New Delhi v. Kamal Lalwani [2017 (49) S.T.R. 552 (Tri. - Del.)], laying down that extended period is not invocable if services rendered are reflected in balance sheet and income tax returns and no evidence stands produced that non-payment of duty was due to any mala fide. Reference can also be made to Hon'ble Allahabad High Court's decision in the case of Commissioner of Central Tax v. Zee Media Corporation Ltd. [2018 (18) G.S.T.L. 32 (All.)]. The Hon'ble High Court observed that the show cause notice itself shows that every details was maintained by the assessee in usual course of business, the ingredients of proviso to Section 73(1) of the Finance Act, 1994, establishing any suppression of facts to evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue.

14. In the present case also, the revenue has taken the details of the valuation from the balance sheet and the profit and loss account maintained by the appellant. Hence there is no suppression justifying the invocation of the extended period of limitation. Since the demands under the different categories has been confirmed by invoking the extended period of limitation and which I have held is not invocable, the impugned demands are unsustainable. Consequently, the impugned order deserves to be set aside.

15. Accordingly, the **appeal is allowed**.

[Pronounced in the open Court on 29th August, 2024]

**(BINU TAMTA)
MEMBER (JUDICIAL)**