
(2023) 11 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 30314 Of 2023

Managing Director

APPELLANT

Vs

Commissioner Of Central Tax, Guntur

RESPONDENT

Date of Decision : 02-11-2023

Acts Referred:

Finance Act, 1994 — Section 77(1), 77(2), 78
Andhra Pradesh Societies Registration Act, 2001 — Section 18

Citation : (2023) 11 CESTAT CK 0002

Hon'ble Judges : A.K. Jyotishi, Member (T)

Bench : Single Bench

Advocate : Siva Prasad Annavarapu, V. Srikant Rao

Final Decision : Allowed

Judgement

A.K. Jyotishi, Member (T)

1. This Appeal has been filed by the Managing Director, APMSIDC, herein after referred to as APMSIDC, with prayers to set aside the OIA passed by the Commissioner (Appeals), confirming demand of service tax of Rs.5,73,422/-and imposition of penalty of equal amount under Sec 78 of the Finance Act, 1994 as also Rs.10,000/- each under Sec 77(1) & Sec 77(2) of the Finance Act, 1994. The period of dispute is 2016-17.

2. The Original Authority had adjudicated upon the SCN No.27/2020-21 dated 08.07.2020, involving the demand of service tax of Rs.76,14,505/-, in respect of receipt of Works Contract Service received by APMSIDC during the period 2014-15 to June, 2017. After analyzing the 7 contracts involved during the period, wherein, they have received the services of Works Contract service (WCS) from one M/s Satya Sai Constructions, a proprietor/ partnership firm, he came to the conclusion that the nature of the service is that of WCS. He has, however, considered the availability of Notification No.25/2012-ST as amended by Notification No.02/2014-ST (by way of substitution) and came to the

conclusion that the WCS provided by Shri Satya Sai Constructions to M/s APMSIDC in respect of works carried out against work orders mentioned at S.No.1 to 6 of Para 18.23 of OIO, were covered under Notification No.25/2012-ST dt.20.06.2012 as amended. He, however, did not allow the benefit of the same exemption in respect of work order at S.No.7, which was for the construction of BSc Nursing College & Hostel Building at Singupuram on the grounds that the work order was given on 06.02.2016 and the exemption notification as amended was applicable only to contracts entered prior to 01.03.2015 and therefore, the said exemption was not available in respect of work order covered at S.No.7. Accordingly, he dropped the demand of Rs.70,41,083/- and confirmed the demand of service tax of Rs.5,73,422/- and also imposed equal penalty under Sec 78 as well as penalty under Sec 77(1) & 77(2) of the Finance Act. This Order has been upheld by the Commissioner (Appeals) vide his Order dated 27.01.2023.

3. The Appellant is in Appeal against this confirmation of demand of Rs.5,73,422/- out of the total demand of Rs.76,14,505/- by the Commissioner (Appeals). Their main submission is that APMSIDC is primarily an implementing agency, which is a corporation registered under Andhra Pradesh Public Societies Act (APPSA), with an objective to construct and maintain hospital buildings, procure and distribute drugs, surgical, consumables and equipment as entrusted by the State Government to Corporation; That they are not a business entity and are working with an objective of no profit and no loss. Thus, even though they are a "corporate entity", they are not a business entity. Therefore, they are not liable to pay service tax as a service recipient under RCM in terms of Notification 30/2012-ST dated 20.06.2012.

4. Heard the parties and perused the records.

5. The Original Adjudicating Authority has discussed in detail the status of M/s APMSIDC and came to the conclusion, based on the documents furnished by APMSIDC, that as per Sec 18 of the Andhra Pradesh Societies Registration Act, 2001, the registration of a society shall render it a "body corporate" having perpetual succession and a common seal and therefore, as APMSIDC was registered, it would be deemed to be a body corporate. He has extended the benefit of Notification No.25/2012-ST, which basically exempts services provided to the Government of local authority or a "governmental authority" by way of construction, erection, commissioning, etc. However, the same was exempted only up to 28.02.2015, under S.No.12A of the notification and the said exemption continued on the same services in case of contracts which were entered prior to 01.03.2015. Further, having considered the Government Order under which the APMSIDC was created by the Andhra Pradesh Government and the nature of work being performed, as also having regard to certain judgments, he came to the conclusion that APMSIDC is covered under the definition of Governmental authority under Notification No.25/2012-ST dt.20.06.2012 and therefore entitled for the exemption.

6. The Adjudicating Authority had given cogent reasons and relied on certain case laws to arrive at this conclusion and has extended the benefit to 6 work orders. He has however, not extended the same benefit to one work order because of the period involved and non-applicability of the notification. Admittedly, the nature of service involved i.e., WCS, has not been disputed by the Appellants and he has not even challenged that aspect in his Appeal. He has also not challenged that he is a corporate in terms of the provisions under the Act under which it has been registered. What they are challenging is that they are merely an implementing agency and not the service recipient.

7. The perusal of the records would indicate that the work order has been placed by them on M/s Satya Sai Constructions and the services have clearly been rendered to them only. Therefore, this ground would not sustain. As regards there not coming within the ambit of RCM under Notification No.30/2012-ST, it is obvious that they are body corporate. The relevant statutory provisions under Notification No.30/2012-ST – provides that when taxable service by way of service portion in execution of works contract is provided by, inter alia, partnership firm to a “business entity” registered as body corporate, both service provider and service recipient would be liable to pay service tax in proportion of 50% - 50%. Therefore, the only limited issue is whether they are business entity or not. The Commissioner (Appeals) has taken a view that if they are admittedly, body corporate, they are also business entity. However, from the Order, this is not forthcoming as to what made him to consider APMSIDC as business entity.

8. In SCN, at Para 9.9, the department felt that since APMSIDC is procuring drugs and equipments and charging supervision charges, varying from 2% to 7% on the cost and therefore, that cannot be treated as “Governmental agency” and instead it appears to be a “business entity” working with motive of profit as they are recovering supervision charges, which appears nothing but profit for the services rendered. The adjudicating authority, in his finding, has been able to establish that APMSIDC is a body corporate in terms of provision under the Act under which they were registered but he has not made any observation whether they are business entity also. Further, what is to be noted is that APMSIDC is deemed to be a corporate and not a corporate or corporation under Companies Act. The RCM would be applicable only when the service is provided to ‘business entity registered as body corporate’. The Order is silent on this aspect whether the Appellants are business entity or otherwise, even though the SCN has taken a feeble ground that they were recovering supervision charges and that too only with respect to purchase of drugs and equipments on behalf of the Government, which is not the case in the present Appeal, where the issue is provision of WCS.

9. Further, on going through submissions, I find that Department has not been able to adduce, except to one example discussed supra, to support that APMSIDC is a business entity. It is also an admitted position that they are “Governmental authority”, though in terms of Notification No.25/2012-ST as well as in terms of relevant documents perused by the Adjudicating Authority. A holistic view would

indicate that even though they might be considered as body corporate, they cannot be considered as business entity, which intrinsically involves profit motive. The collection of processing charges or a cost markup on the medicines purchased on behalf of the Government and supplied as per their direction would not make them a business entity, per se. There is no other evidence on record to suggest that they are a business entity. Therefore, on this count itself, they would not be required to pay any service tax on reverse charge basis on the WCS provided to them by M/s Satya Sai Constructions and therefore, Notification No.30/2012-ST would not be applicable to them.

10. Therefore, neither Original Order nor Impugned Order has been able to establish that they will be within the ambit of Notification No.30/2012-ST and therefore, liable to pay 50% of the service tax payable on the WCS provided by M/s Satya Sai Constructions to APMSIDC. Therefore, Appellant is entitled to get the relief and accordingly, I allow the Appeal.

11. Appeal is allowed with consequential benefits, if any, as per law.