CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX APPEAL No. 53032 OF 2018

[Arising out of Order in Appeal No. 369 (SM) ST/JPR/2018 dated 05.06.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Gokulnath Construction Company **...Appellant**
116, 1st Floor, North Avenue,
ARG Tower, Road No.9, VKI Area,
Jaipur- 302013 (Rajasthan)

Versus

Commissioner of Central Excise &
Central GST, Jaipur **....Respondent**
NCRB, Statue Circle, C-Scheme, Jaipur,
Rajasthan – 302005.

WITH

SERVICE TAX APPEAL No. 53034 OF 2018

[Arising out of Order in Appeal No. 370 (SM) ST/JPR/2018 dated 05.06.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Commissionerate – Jaipur, Jaipur]

M/s. Gokulnath Construction Company **...Appellant**
116, 1st Floor, North Avenue,
ARG Tower, Road No.9, VKI Area,
Jaipur- 302013 (Rajasthan)

Versus

Commissioner of **....Respondent**
Central Excise & Central GST
Commissionerate Jaipur-I
NCR Building, Statue Circle, C-Scheme, Jaipur,
Rajasthan - 302005

APPEARANCE:
None appeared for the appellant
Mr. Aejaz Ahmed, Authorized Representative for the Respondent

Coram:
HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13/12/2024
DATE OF DECISION: 20/03/2025

FINAL ORDER NOs. 50416-50417/2025

DR. RACHNA GUPTA

M/s. Gokul Nath Construction Co., the appellant herein is holder of Service Tax Registration for providing management maintenance or repair services, construction services other than residential complex, works contract services. For rendering the services, the appellant had entered into an agreement with Rajasthan State Agriculture Marketing Board (RSAMB), Jaipur, Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO), Jaipur Development Authority (JDA). Department observed that in respect of Commercial and Industrial Construction Services' provided by the appellant during the period 01.04.2014 to 31.03.2015 the appellant appears to have not paid the service tax amounting to Rs.1,10,711/-.

1.1 The Department relied upon the definition of 'Service' w.e.f. 01.07.2012 under clause 44 of section 65 B of the Finance Act to mean any activity carried out by a person, for consideration. Such activity is leviable to service tax under section 66B. With these observations, the appellant was summoned to produce requisite documents. Based on the ITRs work orders received from JDA, RIICO, RSAMB and also from private companies like M/s. Parul Construction the activities rendered by the appellant were alleged to be taxable 'Construction of Commercial/Industrial Service'. The Department also observed that the activities carried out by the appellant in respect of construction of roads are fully exempted from the definition of CICS under Commercial and Industrial Construction

Service (CICS) under section 65 (25 b) of the Finance Act and also in terms of the clarification issued by CBEC in para 13.04 of Circular No.80/10/2004 dated 17.09.2004. For the same reason the construction of compound wall for JDA was also observed to be outside the levy of service tax. Similarly, the services provided in respect of management maintenance or repairs of roads of non-commercial government buildings were also found to be exempted in view of Notification No.24/2009 dated 27.07.2009 and also in view of Notification No.25/2012 dated 20th June, 2012. However, the services as that of construction of compound wall, maintenance and repair of roads and construction of bridges for RIICO and RASMB and even to the private parties like M/s. Parul Construction and M/s. Prakash Asphalting and Toll Highways India Ltd. the department formed an opinion that these entities being engaged in commercial activities, hence, the exemption benefit, is not available to these authorities/private entities. Hence, the appellant was held liable to pay service tax on the services provided to these entities.

1.2 Resultantly, a SCN No. 1015/14/2016 dated 21.04.2016 was served upon the appellant demanding service tax amounting to Rs.1,10,711/- along with the proportionate interest and the appropriate penalties. The said proposal was initially confirmed vide Order-in-Original No.79/2016 dated 31.03.2016 and the appeal against the same has been rejected vide the Order-in-Appeal No.369-370/2018 dated 05.06.2018. This Order-in-Appeal is a common order to another SCN issued to the appellant for the period of demand from 1st April 2010 to 31st March, 2014 proposing a demand of Rs. 66,52,774/- which was decided vide OIO No.32-16-17 dated 21.03.2017. Being aggrieved, the appellant is before this Tribunal.

2. None appeared for the appellant and we have heard Mr. Aejaz Ahmed, Authorised Representative for the Revenue.

3. Appellant had not appeared despite being duly served and despite being awarded sufficient reasonable opportunities. In absence of the appellant on 13.12.2024, the arguments on behalf of department heard. Ld. Departmental Representative at the outset reiterated the findings in the orders of the Departmental Adjudicating Authorities. It is submitted that the exemption under the provisions of Notification No.25/2012 dated 20th June, 2012 is not available to the appellants as the internal roads of the complex cannot be considered as roads for general public. RSAMB and RIICO are purely the commercial organizations. Hence, there arises service tax liability on the service providers for providing any service to such commercial organizations irrespective of these organizations being the governmental/ local authorities. The private parties have commercial concerns, hence, no exemption flows towards any service being provided to the private authorities.

3.1 It is further submitted that the Board Circular No.80/10/2004 dated 17.09.2004 as relied upon by the appellant also clarifies that the services provided for commercial purposes are liable to tax. The exemption for construction of roads as mentioned in para 13.4

thereof is limited only to public roads and highways, excluding internal roads of commercial complexes constructed for sale at market rates. Ld. Departmental Representative also impressed upon the Boards Circular No.B1/6/2005-TRU dated 27.07.2005 wherein it prescribes a condition that if the construction of a commercial complex and its roads is considered a single contract service tax would be applicable to the gross amount charged for the entire construction including the roads. It is also submitted that in the instant case the appellant did not provide any documentary evidence to support the separation of road construction from the overall commercial construction services. Hence, the benefit of exclusion provided in the definition of commercial or industrial construction does not at all arises. With these submissions and impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

4. Having heard the department, perusing the appeal record including reply to SCN and the grounds of appeal in the appeal memo, we observe that the issue involved in the present appeal is about the tax liability of the service provider providing 'Commercial and Industrial Construction Service' to the public authorities. The period involved herein is post 1st July, 2007. Hence section 66D, the negative list of services is applicable. Sub-clause (a) thereof mentions that services provided by the government or the local authority excluding those as mentioned in (i) to (iv) of the said clause are not liable to tax. Sub-clause (d) (vii) excludes services by any

agricultural produce market committee or Board and the definition of commercial industrial construction service under section 65(25 b) of Finance Act, 1994 exclude the services provided in respect of roads, airports, railways, transport terminals, Bridges, Tunnels & Dams. Similar is the exclusion in circular No.80/10/2004 dated 17.09.2004 as has been relied upon by the appellant.

5. The scope of the circular the definition, the exclusion clause of 65 (25 b) and that of mega-exemption notifications now stands clarified by Hon'ble Supreme Court in the case of ***Krishi Upaj Mandi Samiti v. Commissioner of Central Excise and Service Tax, 2022 SCC OnLine SC 224****, decided on 23-02-2022] Hon'ble supreme court has dealt with the Circular No. 89/7/2006 as relied upon by the present appellant as well. It has been held that:*

> *As per the Circular, activities performed by the sovereign / public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. Paragraph 3 of the Circular, specifically clarifies that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus the circular exempts activities that are mandatory statutory obligations with fees deposited into the Government Treasury. Since the fees collected by APMCs were directed to the Market Committee Fund and not the Treasury, the exemption did not apply.*

The Court further noted that language used in circular of 2006 is clear and unambiguous. Applying the principles of interpretation of statutes, the Court observed that, "It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard". The Court observed that the contention of the appellants stating that the activity of rent/lease/allotment of shop/land/platform/space is a statutory activity and the Market Committees are performing their statutory duties under S. 9 hence the entitlement to exemption, holds no substance. After carefully perusing the words used in S. 9, the Court stated that the activity cannot be said to be a mandatory statutory activity as contended by appellants since the fee collected is not deposited into the Government Treasury; it will go to the Market Committee Fund and will be used by the market committees. Thus such a fee collected cannot have the characteristics of the statutory levy/statutory fee. Thus, under the1961 Act, it cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/platform on rent/lease. "If the statute mandates that the Market Committees have to provide the land/shop/platform/space on rent/lease then and then only it can be said to be a mandatory statutory obligation otherwise it is only a discretionary function. If it is discretionary function, then, it cannot be said to be a mandatory statutory obligation/statutory activity. Hence, no exemption to pay service tax can be claimed.

6. The above observations of Hon'ble Supreme Court in **Krishi Upaj Mandi Samiti v. Commissioner Of Central Excise And Service Tax, to our opinion,** serves as a definitive interpretation of tax liability concerning public authorities engaged in leasing activities. By meticulously analyzing statutory language and established legal principles, the Court reinforced the necessity for strict adherence to legislative intent when applying tax exemptions. It has been clearly held that:

- *Exemption from service tax is strictly confined to mandatory statutory activities.*
- *Discretionary functions, even if performed by public authorities, remain subject to service tax unless explicitly exempted.*
- *Exemption notifications must be interpreted in the context of their specific conditions without expanding their scope beyond legislative intent.*

Thus this judgment not only clarifies the tax obligations of Agricultural Produce Market Committees but also sets a precedent affecting various public authorities across different sectors. It underscores the judiciary's role in ensuring taxation policies are applied consistently and fairly, aligning with the spirit and letter of the law."

7. In the light of the said decision, the functions of RIICO and RASMB are held to be discretionary functions for commercial

purposes. Hence irrespective the roads or compound wall have been constructed for these local authorities, we hold that the appellant is liable to pay service tax while providing the said services. There is no exemption available to the appellant while providing such services to any private entity whose interest is nothing except commercial.

8. In the light of the above discussion, we do not find any infirmity in the findings arrived at by the adjudicating authority below. We accordingly, uphold the order and dismiss the present appeals.

[Pronounced in the open Court on 20/03/2025]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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