

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench  
Court – I

**Service Tax Appeal No. 469 of 2012**

(Arising out of OIO No.53/2011 (MP) dt.22.11.2011 passed by Commissioner of Central Excise & Customs, Visakhapatnam-II)

**B. Ramanaiah Constructions**

Sri Saibaba Mandir Marg, Seethammadhara,  
Visakhapatnam – 530 013

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise  
& Service Tax, Visakhapatnam - I**

Port Area, Visakhapatnam,  
Andhra Pradesh – 530 035

**.....Respondent**

**Appearance**

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri M. Anukathir Surya, AR for the Respondent.

**Coram:**

**HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)**

**HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/30201/2023**

**Date of Hearing: 01.08.2023**

**Date of Decision: 01.08.2023**

**[Order per: ANIL CHOUDHARY]**

Heard the parties. The issue involved in this Appeal is whether the Appellant/Assessee is liable to pay service tax on the activity of management, maintenance and repairs of road.

2. SCN dated 16.08.2010 was issued invoking extended period of limitation proposing to demand service tax for the period April, 2007 to March, 2009, as it appeared to Revenue that the Appellant has been providing maintenance or repair service in respect of roads. It further appeared that maintenance and repair of roads was brought under tax net w.e.f. 16.06.2005 and 01.05.2006. Appellant had taken registration w.e.f. 18.03.2008 and was paying service tax. Accordingly, SCN proposed to demand Rs.7,14,23,581/- for the aforementioned period with proposal to appropriate an amount of Rs.1,79,56,048/- already deposited prior to issue of SCN along with interest and further, penalty was proposed under Sec 77 & 78. Further, to demand late fee under Sec 70(1) of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994.

3. The SCN was adjudicated vide OIO dated 22.11.2011 on contest and the proposed demand was confirmed with appropriation as proposed. Further, equal penalty was imposed under Sec 78 and further penalty was also demanded under Sec 76, 77(1)(a), 77(2) read with Sec 70(1). Further, late fee was also demanded under Sec 70(1) read with Rule 7C of the Act and an amount of Rs.8,000/- was ordered to be appropriated.

4. Being aggrieved, the Appellant is before this Tribunal. Learned Counsel for the Appellant submits that during the pendency of this Appeal, the Central Government has inserted Sec 97(1) in the Finance Act, 1994 vide Finance Act, 2012 which provides – Notwithstanding anything contained in Sec 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads during the period on and from 16<sup>th</sup> day of June, 2005 to 26<sup>th</sup> day of July, 2009 (both days inclusive). Sub-Section (2) further provides for refunds of all such service tax that have been collected but which could not have been collected in view of the retrospective effect of Sec 97(1) of the Finance Act.

5. Learned Counsel also relies on the precedent ruling of this Tribunal in the case of Dwaraka Constructions vs CCE, Tirupati [2021 (54) GSTL 159 (Tri-Hyd)] wherein, under similar facts and circumstances, this Tribunal after relying on Sec 97(1) of the Finance Act, have set aside the demand. Reliance is also placed on Hon'ble Madhya Pradesh High Court's judgment in the case of M.P. Audhyogik Kendra Vikas Nigam vs CCE [2015 (40) STR 875 (MP)], wherein, Hon'ble High Court, allowing writ petition, held that even on repair and maintenance of roads, service tax is not chargeable.

6. Learned AR for the Revenue states that amendment has come later on whereas the Impugned Order was passed prior to the date of insertion of Sec 97(1) in the Finance Act. Learned AR also submits that as per Sub-Section (3) of Sec 97, the refund window of six months was provided from the date of passing of the Finance Act.

7. Having considered the rival contentions, we find that it is an admitted fact that the Appellant has provided repair, management and maintenance of roads services for NHAI and others, which fall under the category of maintenance or repair service.

8. We find that by virtue of insertion of Sec 97(1) vide Finance Act, 2012 with retrospective effect from 16.06.2005, applicable till 26.07.2009, no service

(3)

tax is leviable on the activity of repairs, management and maintenance of roads. Accordingly, we allow this Appeal and set aside the impugned order. The Appellant is entitled to consequential benefits, if any.

(Dictated and pronounced in the Open Court)

**(ANIL CHOUDHARY)  
MEMBER (JUDICIAL)**

**(A.K. JYOTISHI)  
MEMBER (TECHNICAL)**

Veda