

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70577 of 2019

(Arising out of Order-in-Appeal No.102-ST/APPL/LKO/2019 dated 21.02.2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

**Commissioner of CGST &
Central Excise, Lucknow**

(7-A, Ashok Marg, Lucknow)

.....Appellant

VERSUS

M/s Meatek Food & Machineries

India Pvt. Ltd.,

(A-2/3, Dewa Road, Chinhat, Lucknow-227105)

....Respondent

APPEARANCE:

Shri Santosh Kumar, Authorized Representative for the Revenue
Absent on Call, for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.- 70019/2024

DATE OF HEARING : 05 January, 2024

DATE OF DECISION : 05 January, 2024

SANJIV SRIVASTAVA:

This appeal is filed by the Revenue by the impugned order Commissioner (Appeals) has set aside the Order-in-Original No.010/AC/JC/LKO/ST/2017-18 dated 05.02.2018 vide which following has been held:-

ORDER

- (i) *I confirm the demand of Service Tax amounting to Rs.1,20,99,300/- (Rs. One Crore Twenty Lacs Ninety Nine Thousand and Three Hundred only) against the party i.e. M/s Meatek Food Machineries India (P) Ltd. A-2/3, Dewa Road, Chinhat Industrial Road, Chinhat Lucknow-227105.*
- (ii) *I also order to the party to pay appropriate amount of interest under Section 75 of the Finance Act, 1994.*

(iii) I impose penalty of Rs.10,000/- (Ten Thousand only) under Section 77 of the Finance Act, 1994.

(iv) I also impose penalty of Rs.1,20,99,300/- (Rs. One Crore Twenty Lacs Ninety Nine Thousand and Three Hundred only) against the party under Section 78 of the Finance Act, 1994.

2.1 Respondent has undertaken the work of Design & Engineering, Land & Site Development & Civil works etc. for construction of slaughter house for Kolkata Municipal Corporation.

2.2 Revenue was of the opinion that the said activity should have been subjected to service tax. Accordingly a show cause notice dated 21.12.2016 was issued to the Respondent asking him to show cause as to why:-

(i) An amount of Rs.1,20,99,300/- (Rupees One Crores Twenty Lakh Ninety Nine Thousand Three Hundred only) being the Service Tax not paid/short paid by the party should not be demanded and recovered from them under proviso to section 73(1) of the Finance Act, 1994.

(ii) Interest leviable thereon should not be demanded from them under the provisions of section 75 of the Act.

(iii) Penalty should not be imposed upon them under Section 77(1)(a) of the Act for not taking registration in accordance with the provisions of Section 69 or Rules made under this Chapter.

(iv) Penalty should not be imposed upon them under Section 78 of the Act for suppressing the facts from the Department with the intent to evade due Service Tax.

2.3 This show cause notice has been adjudicated as per the order in para one above. Commissioner (Appeals) allowed the appeal filed by the Respondent.

2.4 Hence this has been filed by the Revenue.

3.1 When the matter was listed today none appeared for the Respondent. As the issue is in a very narrow compass in terms of Rule 21 of CESTAT Procedure Rules, 1982, we took up this

matter for consideration ex-parte after hearing the learned departmental Authorized Representative.

4.1 We have considered the impugned order along with submissions made in appeal and during the course of argument.

4.2 For deciding against the Revenue Commissioner (Appeals) has in his order observed as follows:-

"6. I have gone through the case record. It is apparent from the record that the appellant constructed the Slaughterhouse for the Kolkata Municipal Corporation. Regulation of Slaughter house is one of the mandated functions of local bodies under the Twelfth Schedule of the Constitution envisaged under article 243W of the Constitution. Thus, there is no ground to say that the said slaughter house has been established by KMC for commerce or industry. Therefore, the said service of construction of slaughterhouse for KMC is covered under para 12(a) of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012. Hence, the impugned order is not sustainable and the same is set aside. The appeal is allowed."

4.3 Entry at Serial No 12 (a) of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012, reads as follows:

"G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994)(hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E),dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

12. Services provided to the Government, a local authority or a governmental authority by way of construction , erection,

commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b)”

Thus all the services provided to the Government, a local authority or a governmental authority, as specified in clause (a), (b) etc have been exempt from the payment of service tax. In case of Ganpati Mega Builders (India) Pvt. Ltd. [2021 (55) (GSTL) 161 (T-All)] Allahabad Bench has held as follows:

"13. *From above citation we find that undisputedly the appellant have rendered construction service to the Mandi Samiti, which is a statutory authority. We, further find that the services provided to Mandi Samiti for construction services in the market yard are not commercial in nature as held by a Coordinated Bench of this Tribunal in Krishi Upaj Mandi Samiti v. Commissioner of C. Ex & S.T., Jaipur, 2017 (4) G.S.T.L. 346 (Tri. - Del.). Wherein Paras 10 & 11 it is held herein with the introduction of Negative List Regime of Taxation w.e.f. from 1st July, 2012, the Mandi Parishad is excluded from tax liability. Under Section 66D(d) provides exemptions for services relating to agriculture or agricultural produces by way of renting or leasing of agro machinery, shorting, grading, cooling or bulk packaging, loading, unloading, packaging, storage or warehousing of agricultural produce agricultural extension services by any Agricultural Produce Marketing Committee or Board for sale or purchase of agricultural produce. Accordingly, this Tribunal held that Mandi Samiti or Board are not liable to Service Tax on renting of immovable property used for storage of agricultural produce in the market area."*

4.4 We find that the slaughter house was established for Kolkata Municipal Corporation in terms of Article 243W read with Schedule 12th of the Constitution of India. Nothing as observed

by the Commissioner (Appeals) has been placed on record to show that the said slaughter house was for commerce and industry. On the contrary in terms of Article 243W this was the responsibility of the municipal corporation. That being so, Appellant is entitled to benefit of Sr. No.12(a) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

5.1 We do not find any merits in this appeal and dismiss the Revenue appeal.

(Dictated and pronounced in open court)

**Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)**

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

LKS