

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50157 of 2017 [DB]

[Arising out of Order-in-Original No. DLI SV TAX 002 COM 022 16 17 dated 17.10.2016 passed by the Commissioner of Service Tax, Delhi-II]

M/s. Paramount Infraventures Pvt. Ltd. **...Appellant**
W-15, J/14, Western Avenue,
Sainik Farms, New Delhi

VERSUS

Commissioner of Service Tax – Delhi II **...Respondent**
C.R. Building, IP Estate,
Delhi - 110109

APPEARANCE:

Shri B.K. Singh & Ms. Vandana Singh, Advocates for the Appellant
Shri S.K. Meena, Authorized Representative for the Respondent

CORAM:

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

DATE OF HEARING: 09.02.2024
DATE OF DECISION: **07.06.2024**

FINAL ORDER No. 55905/2024

DR. RACHNA GUPTA

The officers of DGCEI, Delhi Zonal Unit, New Delhi developed an intelligence that M/s Paramount Infraventures Pvt., Ltd., (hereinafter referred to as the Contractor), having their office at W-15, J/14, Western Avenue, Sainik Farms, New Delhi, had constructed the earthen embankment for F-1 Race Track (Formula One Grand Prix) for M/s Jaypee Sports International Ltd., NOIDA (Gautam Buddh Nagar) (hereinafter referred to as the Owner), but had not discharged their appropriate service tax liability. Based there upon the investigations in the matter were conducted. After

perusing the chart of bills and the copy of contracts as provided by the appellants, department observed as follows:

(i) Site Formation and Clearance, Excavation & Earth Moving, Soil Stabilization and Demolition etc. Service as defined under Section 65(97a) and taxable under Section 65(105)(zzza), provided under:

(a) Contract No. JPSK/EMB/21-09 dated 01.11.2009 as extended vide Contract Agreement No. JPSI/Extn-3/EMB/21-09 dated 01.11.2009.

(b) Contract No. JPSI/CA/PICPL/PW/184-10 dated 15.10.2010.

(ii) Works Contract Service, pertaining to construction work of storm water and sewage, taxable under Section 65(105)(zzza) are provided under Contract No. JPSI/PIPL/Drain/(NSCA)198-10 dated 28.10.2010.

1.1 With these observations, Show Cause Notice No. 4389 dated 15.09.2014 was served upon the appellants proposing recovery of service tax amounting to Rs.2,24,29,175/- for the period November, 2005 to March, 2012 along with interest and proportionate penalties. The extended period of limitation, as envisaged under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994, is also invoked in the instant case, as the Contractor, on account of his various acts & omissions is opined to have suppressed material facts with intent to evade payment of Service Tax, have failed to discharge the Service Tax liabilities. The said proposal has been accepted vide the Order-in-Original No. 390/2014 dated 17.10.2016. Being aggrieved the appellant is before this Tribunal.

2. We have heard Shri B.K. Singh and Ms. Vandana Singh, learned Advocates for the appellant and Shri S.K. Meena, Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that scope of this contract includes site formation and clearance, excavation and earthmoving, soil stabilization and demolition etc, which is covered under 'Site Preparation Service' defined under Section 65(105)(zzza) of the Finance Act, 1994. The Contractor vide his letter dated 06.08.2014, has claimed full exemption from payment of Service Tax in terms of Notification No. 17/2005-ST dated 07.06.2005, on the ground that the earthwork undertaken by them related to roads specially laid for conducting motor race on it and other connecting roads within the Buddha International Circuit.

3.1 It is further submitted that the service under another contract (as mentioned above) pertained to construction work of storm water and sewage. The work, as genuinely understood by the appellant was in the nature of public welfare and non commercial industrial, thereby not covered under the scope of taxable Service under Section 65(105)(zzza) and thus did not attract any service tax liability. In any case, on being pointed out by the department about its liability for levy of Service of Tax, appellant had without awaiting for ascertainment of amount of service tax and interest payable had tentatively paid an amount of Rs. Ninety Lakh and informed the same vide letter dated 06.08.2014. Hence the show cause notice should not have been issued.

3.2 While challenging the invocation of extended period, it is mentioned by learned counsel for appellant that they had completed the work assigned to them under the contract Owner before the F-1 Race event in October, 2011. They are registered under Service Tax laws under the service category of Works Contract Service. Their Service Tax registration number is AAACP750NSD001 dt 21.10.2010. They had not paid service tax in respect of work done as per the work contract with the owner as they were made to understand by the owner that being a mega International sports event, no service tax was applicable on the work relating to the event. Under this *bona fide* belief, they had not paid Service Tax under the category of Works Contract Service. Hence, there is no suppression with intent to evade tax. The extended period is thus wrongly invoked. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. Per contra, learned Departmental Representative on behalf of the department has reiterated the findings in the order under challenge. It is mentioned that to claim the benefit of Notification No. 17/2005 dated 07.06.2005, the construction should have been for public road. The said notification is wrongly relied by the appellant with the sole intent to evade tax. Impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire record of impugned appeal memo, it is observed and held as follows:

5.1 Apparently and admittedly the appellants had entered into three contracts (as mentioned above) agreements with M/s. Jaypee Sports International Ltd. for the construction of the earthen embankment for F-1 Racing Track and other roads at SDZ site, Section 25, Yamuna Express Way, Gautam Buddha Nagar; that they had completed the work in October, 2011. Also that they are registered under Works Contract Service. Thus, there is no denial that the appellant has provided site preparation services as defined under Section 65 (105) (zzza) of the Finance Act. One of the contract was for Construction of embankment, hence, was for providing Works Contract Service as defined under Section 65 (105) (zzzza) of the Finance Act. The adjudicating authority has held that both the services rendered by appellants are taxable but tax has intentionally not been paid.

5.2 To adjudicate the findings, we observe that the appellant, to deny the alleged liability, has relied upon Entry No. 13 of Notification 17/2005 dated 07.06.2005. It reads as follows:

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:

1. xxxxxxxxxxxx
2. xxxxxxxxxxxx
3. xxxxxxxxxxxx
4. xxxxxxxxxxxx
5. xxxxxxxxxxxx
6. xxxxxxxxxxxx
7. xxxxxxxxxxxx
8. xxxxxxxxxxxx

9. xxxxxxxxxxxxxx

10. xxxxxxxxxxxxxx

11. xxxxxxxxxxxxxx

12. xxxxxxxxxxxxxx

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.

5.3 Bare perusal clarifies that activity of construction of road which is meant for use by general public is exempted from whole duty. Admittedly appellant constructed car race track. Whether such track can be called as road for use by general public. What is exempted in the Notification No. 17/2005 is the service, as named in Entry No. 13 thereof, for construction of road for use of general public but not the services for constructing road simpliciter. Emphasis therein is on the word 'public'. "Public place" is defined in Section 2(34) of Motor Vehicles Act as "a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access. We are of the opinion that the accent is not on the circumstance that public have access, but it is on the circumstance that public have a right of access. Element of 'Right of Access' dominates the definition. Thus in order that a place may fall within the ambit of the definition of public place, the element of right of access of public on such road is a necessary concomitant. To hold that this definition is intended to rope in places where public have no right of access would amount to enlarge the definition to an unrecognisable proportion and in such a case, every private place, may have to be regarded as "public place". We draw our support

from the decision of Hon'ble Karnataka High court in the case titled as **Taxi Drivers' Union And Anr. vs Kerala State Road Transport decided on 10 March, 1982.** We also look for the literal dictionary meaning of word 'Road'. As per Collins Dictionary:

"A road is a long piece of hard ground which is built between two places so that people can drive or ride easily from one place to the other."

Marriam Webster describes road as:

"Road is an open way for the passage of vehicles, people, and animals."

Dictionary.com defines:

"Road a noun, as in path upon which travel occurs. Strongest matches, artery, avenue, boulevard, course, drive, expressway, highway, lane, line, parking lot, pathway, pavement, roadway, route, street, subway, thoroughfare, track, trail, way."

Seen from these definitions the race track constructed by appellant is definitely a "Road". But to avail the benefit of the Notification no. 17/2005 appellant should have constructed a road meant for use of public i.e. a public road/place. The race track constructed by appellant is apparently and admittedly is not meant for public access as a matter of right. In the light of discussion about definition of public place above, we hold that though impugned race track is a road but public has no access as a matter of right thereupon. Hence we hold that the impugned race tracks are not meant for public use, hence are not covered under Entry No. 13 of Notification 17/2005. The appellant is held to have wrongly availed the exemption under said notification.

6. In the light of above discussion we find no reason to differ from the findings arrived at by the adjudicating authority below. The decision of hon'ble Supreme Court in the case of **Bolani Ores vs State of Orissa cited as AIR 1975 SC 17** is held to have rightly been applied in the order under challenge. Since it stands established on record that the appellant paid no tax by wrongly claiming the benefit of notification 17/2005, we hold it to be clear case of misrepresentation. Accordingly, it is held that extended period has rightly been invoked by the department while issuing the impugned show cause notice. The miniscule demand has been dropped by the original adjudicating authority. The department is not in appeal against the same. We also find no reason to differ on that count as well.

7. As the result of above discussion, we hereby uphold the order. Consequent thereto the appeal is hereby dismissed.

[Order pronounced in the open court on **07.06.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIAY)
MEMBER (TECHNICAL)

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