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

Division Bench – Court No. – I

Service Tax Appeal No. 1517 of 2012

(Arising out of Order-in-Original No. 04/2012-ST-Hyd-III-Adjn-Commnr dt.28.02.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

M/s Utility Powertech Ltd
Ramagundam Super Thermal Power Station,
Inside NTPC Ltd Plant, Old Civil (O&M) Office,
Jyothinagar, Karminagar, AP – 505 215 **.....Appellant**

VERSUS

Commissioner of Central Tax Medchal - GST
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

Appearance:-

Shri Adhithya Srinivasan, Advocate for the Appellant.
Shri M. Anukathir Surya, Authorized Representative for the Respondent.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30221/2025

Date of Hearing: 04.03.2025
Date of Decision: 26.06.2025

[Order per: ANGAD PRASAD]

M/s Utility Powertech Ltd (hereinafter referred to as the appellant) is in appeal against OIO dt.28.02.2012 (impugned order), whereby, the adjudicating authority confirmed the demand raised in the SCN along with interest and imposed penalty.

2. The brief facts of the case are that the appellants had entered into Power Station Maintenance Agreements (PSMA) dt.15.06.1999 & 06.01.2003 with NTPC for provision of various services, on which the appellants earn 10% profit margin on all works agreements/LOAs executed. In the process, they engage sub-contractors under an agreement for executing the said services normally for fixed period which are in the nature

of cleaning/housekeeping, electrical maintenance and civil maintenance works to various township buildings, plant areas and auxiliary buildings, township water supply maintenance works which involve repair, renovation, extension, demolishing and reconstructions, sanitary, painting/white washing works, etc., to the existing buildings and also pipe line repair and maintenance of water supply works in NTPC township. The appellants had classified all housekeeping and cleaning works under 'Cleaning services'; all Annual Electrical maintenance works under 'Maintenance or Repair services'; Annual Civil maintenance works under 'Commercial Construction services' since 2005-06 and were discharging the liability of service tax accordingly. However, in respect of works executed under Commercial Construction services, service tax was paid on 33% of the value after availing abatement of 67% in terms of Notification 15/2004-ST dt.10.09.2004 and 01/2006-ST dt.01.03.2006.

3. Audit was conducted by the department for the period July, 2003 to March, 2006 and the following observations were made:

a) The benefit of abatement under Notification No. 15/2004-ST dt.10.04.2004 and Notification No. 01/2006-ST dt.01.03.2006 was availed without including value of material supplied free of cost by NTPC. Accordingly, a demand of Rs.8,75,852/- was raised.

b) That provision of retired railway drivers for transportation of fuel falls under the taxable category of 'Manpower Recruitment and Agency Services' (MRAS). Therefore, the appellant was required to pay service tax on such service as well.

c) The scope of work covered under the one of the LOAs i.e., quenching of fire in stock yard, removal of sliding coal, spraying water round the clock, etc., fall under the ambit of MRAS on which service tax is chargeable.

4. Agreeing with the above audit objections, the appellant discharged the service tax liability. Accordingly, the department dropped further proceedings. Thereafter, again from 16th to 19th December, 2008, department conducted audit for the period January, 2007 to September, 2008 and noted the following:

a) The appellant had claimed abatement @ 67% without including free of cost material supplied by NTPC and had also availed Cenvat credit and therefore, appellant was required to deposit Rs.36,24,967/-.

b) The activity of collection and disposal of Mill rejects, ash, coal dust, etc., falls within the category of 'Cargo Handling Service' (CHS) and accordingly, the appellant is required to discharge service tax liability.

5. In reply to the above audit objections, the appellant relied on the judgment of Hon'ble Delhi High Court in the case of M/s ERA Infra Engineering Ltd Vs UOI [2008 (11) STR 3 (Delhi)] and judgment of Hon'ble Madras High Court in the case of M/s Larsen & Toubro Vs UOI [2007 (7) STR 123 (Mad.)] in support of their claim that they were eligible for abatement and insofar as the CHS is concerned, they had placed reliance on the judgment of Coordinate Bench at Kolkata in the case of Modi Construction Co. Vs CCE, Ranchi [2008 (12) STR 34 (Tri-Kol)]. Subsequent to this reply and a series of correspondences, the appellant was issued SCN dt.01.02.2011, which the appellant contested before the adjudicating authority.

6. On adjudication, the adjudicating authority, inter alia, observed as follows:

a) On the issue of classification of services rendered under certain LOAs, the services were held to be classifiable under 'Management, Maintenance or Repair Service' (MMRS) but not under 'Commercial or Industrial Construction service' (CICS), as claimed by the appellant and accordingly, appellant was not entitled for abatement of 67%.

b) On the issue of irregular availment of abatement under Notification No. 15/2004-ST and 01/2006-ST without including the value of material supplied free of cost by M/s NTPC, in view of Rule 3 of Service Tax (Determination of Value) Rules, 2006, subject to section 67, and in terms of decision of Coordinate Bench at Bangalore in the case of VPR Mining Infrastructure Pvt Ltd [2011 (23) STR 279 (Tri-Bang)], it was held that value of materials supplied free of cost has to be included in the gross value for the purpose of availing benefit under above notifications and for the purpose of payment of service tax by the appellant.

c) On the issue of short payment of service tax in respect of LOAs No. 190 & 206, the appellant was directed to discharge service tax of Rs.3,14,756/- after appropriating the service tax of Rs.9,39,213/- already paid.

d) On the issue of non-payment of service tax in respect of LOAs No. 151 & 156, the services were held to be classifiable under 'Cleaning activity service' and accordingly, the appellant was liable to pay service tax.

e) Further, it was observed that appellant had suppressed the facts of providing these services and had not declared the value of the same in the periodical returns filed by them with an intention to evade payment of duty. Accordingly, extended period was invoked and service tax of Rs.4,48,889/- was demanded along with applicable interest and penalties. In this regard, reliance was placed by the adjudicating authority on the decision of Coordinate Bench at Chennai in the case of Chemfab Alkalis Ltd Vs CCE, Pondicherry [2010 (251) ELT 264 (Tri-Chennai)] and in the case of Positive Packaging Industries Ltd [2010 (249) ELT 57].

In view of above observations, the impugned order was passed demanding payment of service tax along with interest and imposition of penalties. Aggrieved by the same, the appellant is before this Tribunal.

7. Heard both sides and perused the records.

A. <u>Classification of services under certain LOAs by the adjudicating authority under MMRS instead of CICS</u>:

8. Insofar as this issue is concerned, learned Advocate for the appellant submitted that the LOAs listed by the adjudicating authority are primarily repairs and construction in respect of Ramagundam Super Thermal Power Station of NTPC where majority of work is in the nature of construction and minor part related to repairs which are related to civil works like earth work, concrete work, reinforced cement concrete work, etc. He further submits that time schedule provided in the contract is for the sake of convenience and to avoid unusual delays similar to agreements of construction and turnkey projects. He placed his reliance on the definition of CICS under

section 65(25b) of the Finance Act, 1994 and circular dt.27.07.2005, wherein it was provided that construction service includes repairs as well. He also relied on the definition of Spandrel Vs CCE, Hyderabad/Kochi [2010 (20) STR 129 (Tri-Bang)] in support of his contention that their activities are classifiable under CICS and not under MMRS, as held by the adjudicating authority.

9. Whereas, learned AR argued that most of the Letter of Awards (LOAs) on which service tax was paid under Construction Service, are in the nature of Annual Civil Maintenance Agreements for onsite/offsite areas/buildings in the Main Plant/Administration and auxiliary buildings and various township buildings of NTPC, which involved works like repair, alteration, renovation, maintenance, painting, colour/white washing, sanitary and pipeline repair/ maintenance and replacement works, construction of sheds, compound wall, extension of community centre buildings, etc. The agreements basically did not involve any construction activity and are only in relation to maintenance of existing facilities so as to keep them in working/usable condition so as to not to cause any hardship to NTPC.

10. Section 65(25b) of the Finance Act, 1994 provides the definition of 'Commercial or Industrial Construction Service' as thus:-

> "Commercial or industrial construction" means —
>
> (a) construction of a new building or a civil structure or a part thereof; or
>
> (b) construction of pipeline or conduit; or
>
> (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or
>
> (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is —
>
> (i) used, or to be used, primarily for; or
>
> (ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

11. Section 65(64) of the Finance Act, 1994 provides the definition of 'Management, Maintenance or Repair' service as thus:-

"Management, Maintenance or Repair" means any service provided by—

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorised by him, in relation to,—

(a) management of properties, whether immovable or not;

(b) maintenance or repair of properties, whether immovable or not; or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle."

12. In this regard, it is important to mention Section 65A(2) of the Finance Act, 1994, which provides classification of taxable services as thus:-

"65A. Classification of taxable services –

(1) ……

(2) When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration."

13. The Adjudicating Authority in relation to classification of services rendered under LOA Nos. 77, 78, 99, 100, 103, 122, 147, 151, 152, 161, 190, 229, 230, 237, 239, 261, 313, 314, 341 and 349 observed that the LOAs consist of three parts. Part-I relates to works viz., Carriage of materials, Earth work, Concrete work, Reinforced cement concrete work, Brick work, Stone work, Wood work, Steel work, Flooring work, Roofing work, Finishing work, Repairs to building work, Dismantling & Demolishing work, Misc building work, Road work, Sanitary installation work, Water supply work, Drainage work, Aluminum work, Water proofing work and miscellaneous works, etc. Part-II relates to works viz., Annual civil maintenance contract for all buildings other than plant area, AMC for all buildings & structures inside plant MGR & ADMN buildings and AMC for all buildings in plant area, etc. Part-III relates to works viz., Acid proof works in main plant area and Acid proof works in offsite area etc. The LOAs also contain the time schedule for attending to various civil complaints in plant area, special conditions of contract for civil maintenance works in plant area, list of minimum equipment and machinery required for the execution of work and technical specifications for acid/alkali resistant lining. The subject of the LOAs is mentioned as Annual Maintenance contract for all types of civil works of all building works and structure. To illustrate, LOA No.77 consists of three parts viz., Part-I relates to the same works as mentioned above, Part-II relates to Annual civil maintenance contract for all buildings other than plant area, AMC for all buildings & structures inside plant MGR & ADMN buildings and Part-III relates to acid proof works in offsite area. The subject of the LOA is mentioned as 'Annual Maintenance Contract for all types of civil works of all buildings and structure inside plant MGR & Admn building (Offsite Area)'. Similarly, LOA No.78 also consists of three parts viz., Part-I relates to same work as mentioned above, Part-II relates to Annual civil maintenance contract for all buildings other than plant area, AMC for all buildings & structures inside plant MGR & ADMN buildings and Part-III relates to acid proof works in offsite area. The subject of the LOA is mentioned as 'Annual Maintenance Contract for all types of civil works of all

buildings and structure inside plant MGR & Admn building (Main Plant Area) SWYD area'.

14. From the above, it is evident that LOAs given by M/s NTPC to the appellant contains repair and maintenance part. It is not disputed that services of repair, alteration, restoration, renovation or similar services provided in respect of such LOAs are in respect of buildings, etc. The LOAs are titles as 'Annual Maintenance' and there is no continuous maintenance of single structure and the work is of repair nature on the basis of job order only. The work undertaken by the appellant based on maintenance contract is nothing but repairs of buildings. Even though job orders are issued for the services provided by the appellant, the scope of work or rates of providing such service cannot go beyond the purview of Annual Maintenance Contract. The essential condition to qualify under the said service is to render the service of repair or maintenance for a specific period under a contract/ agreement irrespective of number of buildings or goods. Maintenance of a building or structure involves not only repair but also replacement of certain parts. As per section 65(64)(ii)(b), any service provided by any person under a contract or agreement in relation to maintenance or repair of properties, whether immovable or not, is to be classified under 'Management, Maintenance or Repair service'. Therefore, the services as mentioned in the above LOAs i.e., repair or maintenance of buildings are rendered under an annual/biennial agreements. The same are required to be classified under Management, Maintenance or Repair service and not under Construction service.

15. Learned Counsel for the appellant relied on the judgment of Coordinate Bench at Bangalore in the case of Spandrel Vs CCE, Hyderabad/Kochi [2010 (20) STR 129 (Tri-Bang)], in which the Tribunal quoted Circular No. F.No.B1/6/2005-TRU dt.27.07.2005 and clarified as follows:

> *"14.2 Post construction completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, especially if undertaken as an isolated or stand alone contract, are also specifically included. Thus post construction completion and finishing services are specifically included in the definition of commercial or industrial construction services."*

But in the instant case, there is no such isolated or standalone contract. Therefore this case law is distinguished.

16. As discussed above, the Commissioner has rightly classified the above services under MMRS and accordingly, the appellants are not entitled for abatement as availed. Therefore, there is no requirement of any interference in the finding given by the adjudicating authority in the OIO.

B. Irregular availment of abatement without including the value of free supply of material in the gross value:

17. With respect to this issue, learned Advocate has relied on the following decisions to substantiate his claim that free supply material is not includable in the gross value.

a) CST, Delhi Vs Bhayana Builders (P) Ltd [2018 (10) GSTL 118 (SC)], wherein the Hon'ble Supreme Court has held as under:

"20. It is to be borne in mind that the notifications in questions are exemption notifications which have been issued under Section 93 of the Act. As per Section 93, the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, which is leviable on any 'taxable service' defined in any of sub-clauses of clause (105) of Section 65. Thus, exemption under Section 93 can only be granted in respect of those activities which the Parliament is competent to levy service tax and covered by sub-clause (zzq) of clause (105) and sub-clause (zzzh) of clause (105) of Section 65 of Chapter V of the Act under which such notifications were issued.

21. For the aforesaid reasons, we find ourselves in agreement with the view taken by the Full Bench of CESTAT in the impugned judgment dated September 6, 2013 and dismiss these appeals of the Revenue."

b) M/s ERA Infra Engineering Ltd Vs UOI (supra), wherein the Hon'ble High Court of Delhi held as under:

"12. …… they will not include for the purposes of determining the taxable service the supply of free material to the Petitioner and to this extent the Explanation appearing against Serial No. 7 in the table given in the Notification dated 1st March, 2006 will not be applied to the detriment of the Petitioner."

18. Learned AR stated that materials supplied free of cost by M/s NTPC are essentially required for the construction works undertaken by the appellant and have to be treated as consideration other than in the form of money. Therefore, the value of such material supplied free of cost has to be included in the gross value. In case such value cannot be determined, service provider has to determine equivalent money value on such consideration.

19. The Adjudicating Authority, in the OIO, decided that the value of the material supplied free of cost by M/s NTPC should be included for the purpose of availing abatement.

20. The Larger Bench of this Tribunal in the case of Bhayana Builders (P) Ltd Vs CST, Delhi [2013 (32) STR 49 (Tri-LB)], concluded their answer as under:-

> *"16. In conclusion we answer the reference as follows:*
>
> *(a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and*
>
> *(b) Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-S.T., including the Explanation thereto as introduced by Notification No. 4/2005-S.T."*

This judgment is upheld by Hon'ble Supreme Court reported at [2018 (10) GSTL 118 (SC)].

21. Therefore, now it is settled law that material supplied free of cost is not liable to be included for taking abatement. Therefore, the findings given by the Adjudicating Authority in the OIO in this regard is not sustainable and liable to be quashed.

C. <u>Improper payment of service tax in respect of LOAs 190 & 206 and utilized Cenvat credit without availing credit in ST3 Returns</u>:

22. Insofar as this issue is concerned, learned Advocate submitted that the department was in agreement with the appellant that the amount of service tax was paid to the vendor and discharged to the Revenue. Due to a clerical error the same was not reflected in the ST3 Return filed as on the date of filing. He placed his reliance on the decision of the Coordinate Bench at Chennai in the case of M/s Origin Learning Solutions Pvt Ltd Vs CST, Chennai-II [Final Order No. 41698/2021 dt.20.07.2021] in support of his contention. The relevant portion is reproduced below:

> *"5. It is not in dispute that the appellants are eligible for credit to the tune of Rs.16,93,074/- on the service tax paid by them under reverse charge mechanism on input services availed by them. The only reason for denying the credit is that they have not reflected such availment of credit*

in ST-3 returns for July, 2013 to September, 2013. The services having been exported, the service tax paid on the input services used for export of services should be refunded to the appellants as per Rule 5 of Cenvat Credit Rules, 2004. The appellants have properly accounted in their books of account. Not mentioning the credit availed in ST-3 returns is only a procedural lapse, which can be condoned.

6. From the above discussions, I hold that the appellants are eligible for refund as claimed by them. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any."

23. Learned AR submitted that it is not proper to vivisect the amount received under one single agreement/contract and show a part amount under MMRS and part amount under CICS and discharge service tax by claiming abatement, as the service rendered is one and the same. The appellant was receiving amount against the said two LOAs but have not declared full value in the ST3 Returns.

24. Learned Counsel for the appellant submitted that due to clerical error the person who is attending to the preparation and filing ST3 Returns failed to show the credit of service tax paid by some contractors.

25. The Adjudicating Authority found that even though the payment of service tax has been made by the sub-contractors during the month of January, 2009 to April, 2009, credit has been availed by the appellant only during 2010. The service tax credit available as on the last date of month of January, 2009 and April, 2009 are only to be utilized for payment of service tax on the amounts received during the respective months. Even if there is clerical oversight, the appellant has the availability for payment of tax dues arising after the said date of availment and cannot be utilized for payment of service tax for the earlier period. In this regard, proviso to Rule 3(4) of Cenvat Credit Rules, 2004, is important to mention, wherein, it was provided as follows:

"Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be."

26. The case law relied upon by learned Counsel on M/s Origin Learning Solutions Pvt Ltd Vs CST, Chennai-II (supra), is not applicable in the instant case since it is not only a clerical mistake but it is also case of wrongfully availing credit which was not permissible by law. Therefore, the finding

given by the learned Commissioner in this regard does not require any interference.

D. Non-payment of service tax in respect of LOA 151 & 156 – Cleaning Services:

27. Learned Advocate submitted that appellant had undertaken activities of loading, transportation and unloading of mill rejects, ash, coal dust and cylinders in the dump yard located within the factory premises. Initially, department wished to categorize the activities under Cargo Handling Service and based on reply provided by the appellant with reliance on the judgment of Coordinate Bench in the case of Modi Construction Co Vs CCE, Ranchi (supra), wherein it was held that service of shifting/transportation of raw materials, waste materials and finished products from one place to another, inside plant does not qualify to be 'Cargo Handling Service' but instead confirmed under 'Cleaning Service', which is incorrect.

28. The appellants were awarded contract for collection of mill rejects, ash, coal dust and cylinders and offloading them at dump yard by M/s NTPC. The department has classified this service under 'cleaning services', which is defined under section 65(24b) as under:

> ""cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of —
>
> (i) commercial or industrial buildings and premises thereof; or
> (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying."

29. However, in the instant case, there is only transportation within the factory premises. In this regard, the decision of Coordinate Bench at Kolkata in the case of Purba Medinipur Zilla Parishad Vs CCE, Haldia [2010 (20) STR 355 (Tri-Kolkata)] is important to mention, wherein, it was held that the activity of removing fly ash by mechanical means from ash pond to other area is prima facie not covered under 'cleaning activity services'. Therefore,

the above service is not cleaning activity but only transportation within the factory premises from one place to another and accordingly, is not taxable.

E. Invocation of extended period and imposition of penalty:

30. Learned Advocate submitted that from the above submissions, it can be observed that appellant has relied on various judgments either from the Coordinate Benches of this Tribunal or Hon'ble High Courts and Supreme Court in arriving at the categorization of services or in utilizing Cenvat credit or in certain cases of clerical errors, which resulted in credit not being reported in the ST3 returns. In several cases, decisions with regards to the matters have reached conclusion belatedly and have had several instances of varying approaches. The appellant had started paying service tax in consideration of the service being CICS even prior to the introduction of the category proposed by the impugned order came into force. They had also disclosed the information to the Department and had also at all times co-operated in completing the audit requirements. He also submitted that all the acts of the appellant have always been in the bonafide belief and never with an aim to evade tax. He has relied on the judgment of Hon'ble Supreme Court in the case of Densons Pultretaknik Vs CCE [2003 (155) ELT 211 (SC)], wherein it was held that by mere claiming classification under specific tariff heading, it cannot be said that there was any willful misstatement or suppression of fact. He has also relied on the decision of Coordinate Bench at Ahmedabad in the case of M/s Chansama Taluka Sarvoday Mazoor Kamdar Sahakari Mandli Ltd Vs CCE, Ahmedabad [2012 (25) STR 444 (Tri-Ahmd)], wherein it was held that in a case which involves issues related to classification, the appellant cannot be held responsible for interpreting the same in such a way that it could be beneficial to them. Therefore, no penalty under section 78 of the Finance Act, 1994 is imposable as also extended period of limitation is not invokable. He further submitted that since the impugned order has failed to establish any willful suppression of facts with an intention to evade payment of service tax, it is liable to be set aside.

31. On the other hand, learned AR for the Revenue has reiterated the findings of the adjudicating authority in the impugned order.

32. The Adjudicating Authority has not given any specific reason about invocation of provision under section 73(1). The Hon'ble Supreme Court in the case of Densons Pultretaknik Vs CCE (supra), held that by merely claiming classification under a specific tariff heading, it cannot be said that there was any willful misstatement or suppression of facts. The Coordinate Bench at Ahmedabad in the case of M/s Chansama Taluka Sarvoday Mazoor Kamdar Sahakari Mandli Ltd Vs CCE, Ahmedabad (supra), held that in a case which involves issues related to classification, the appellant cannot be held responsible for interpreting the same in such a way that it could be beneficial to them. Therefore, no penalty under section 78 of the Finance Act, 1994, is imposable. Further, the Hon'ble Supreme Court in the case of Hindustan Steel Ltd Vs State of Orissa [1978 (2) ELT (J-159)], held that penalty will not ordinarily be imposed unless the assessee obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligations. In this case, there is no willful misstatement or suppression of facts involved and therefore, invocation of extended period or imposition of penalty under section 78 are not sustainable.

33. To sum up,

a) On the issue of classification of services under Management, Maintenance or Repair service instead of Construction services, we find that the Adjudicating Authority has correctly classified the services under Management, Maintenance or Repair service and accordingly, we find no infirmity in the OIO and we uphold the same to this extent.

b) On the issue of irregular availment of abatement without including the value of free supply of material in the gross value, we find that it is settled law that material supplied free of cost is not liable to be included for taking abatement. Therefore, the findings given by the Adjudicating Authority in the OIO in this regard is not sustainable and liable to be quashed and is accordingly set aside to that extent.

c) On the issue of improper payment of service tax in respect of LOAs 190 & 206 and utilization of Cenvat credit without reflecting credit in ST3 Returns, we find that the finding given by the learned

Commissioner in this regard does not require any interference and therefore, the impugned order, to this extent, is upheld.

d) On the issue of non-payment of service tax in respect of LOA 151 & 156 under 'cleaning services', we hold that the activity is not taxable under the said heading and therefore, the impugned order to this extent, is set aside.

e) On the issue of invocation of extended period and imposition of penalty, we find no willful misstatement or suppression of facts involved and therefore, invocation of extended period or imposition of penalty is not sustainable and accordingly, demand beyond normal period, to the extent upheld and imposition of penalty under section 78 are set aside.

34. Appeal is allowed partly.

(Pronounced in the Open Court on 26.06.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda