

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No.11443 of 2018**

(Arising out of OIA-VAD-EXCUS-764-APP-2017-18 dated 29/12/2017 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

**Kanubhai Ramjibhai Makwana**

**.....Appellant**

G-12, Rangoli Complex, Opp. Pioneer High School, Bhalej Road,  
Anand, Gujarat

*VERSUS*

**C.C.E. & S.T.-Vadodara-i**

**.....Respondent**

1st Floor...Central Excise Building,  
Race Course Circle,  
Vadodara, Gujarat-390007

**APPEARANCE:**

Shri Amit Laddha, Advocate for the Appellant

Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 10976 /2022**

DATE OF HEARING: 26.07.2022  
DATE OF DECISION: 12.08.2022

**RAMESH NAIR**

The brief facts of the case are that the appellant have filed refund claim for an amount of Rs.22,77,511/- on 11.11.2016 before the Assistant Commissioner, Central Excise, Customs and Service Tax, Division-IV, Anand Commissionerate under Section 102 of the Finance Act, 1994 which was introduced vide Finance Bill, 2016 with retrospective effect. The adjudicating authority rejected the refund amounting of Rs.18,13,698/- on the ground that under the Provision of Section 102(1)(a), it is clear that the exemption applicable only when service is provided to Government, local authority or Governmental authority by way of Construction, Erection, Commissioning, Installing, Fitting out, Repair and maintenance, renovation of residential complex pre-dominantly meant for self use or for use of their employees. The contention of the adjudicating authority that the claimant had provided the services to M/s. Gujarat State Police Housing Corporation Ltd. (GSPHCL) is a company and not a Governmental Authority hence, the exemption is not

applicable. He also submits that since the appellant have not produced evidence of not passing on any incidence of service tax the principles of unjust enrichment does not satisfy itself instead. Being aggrieved by the Order-In-Original, the appellant filed the appeal before the Commissioner (Appeals) who rejected the appeal on limitation as well as on merit holding that the appellant have filed appeal with the delay of 24 days and no sufficient reason was given for the delay. As regard the merit, the learned Commissioner (Appeals) also of the view that the service provided to GSPHCL is not to the government or government authority. Being aggrieved by the Order-In-Appeal impugned, the appellant filed the present appeal.

02. Shri Amit Laddha, learned counsel appearing on behalf of the appellant submits that the appellant has given sufficient reason for delay in filing the appeal before the Commissioner (Appeals) and the delay was only 24 days which was well within the power of Commissioner (Appeals) to condone the delay. As regard the merit, he submits that the service provided to GSPHCL falls under the category of governmental authority as the said GSPHCL Corporation is 100% owned by the government by way of equity therefore, the same is a governmental authority hence, the exemption is available. In support of his submission, he placed reliance on the following judgments:-

- Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Thanjavur Vs. Principal Chief Commissioner of GST & C.Ex., Chennai- 2021 (51) GSTL 360 (Mad.)
- Commissioner of Central Excise & S.T., Kanpur Vs. Executive Engineer, UP State Construction & Infrastructure Development Corpn. Ltd.- 2019 (24) GSTL 607 (Tri.All.)
- Bharat Bhushan Gupta & Company Vs. State of Haryana- 2016 (44) STR 195 (P&H)
- Krishi Constructions Pvt. Ltd. Vs. Commissioner of C.T., Hyderabad- 2020 (43) GSTL 236 (Tri.-Hyd.)
- R.B. Chy Ruchi Ram Khattar & Sons Vs. CST, New Delhi- 2015 (38) STR 583 (Tri.-Del)

03. Shri Prakash Kumar Singh, Learned Superintendent (AR) reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue to be decided by us is that whether the Commissioner was right in rejecting the appeal on limitation as there was delay of 24 days in filing the appeal before the Commissioner

(Appeals). (ii) Whether the services provided by the appellant to GSPHCL falls under the category of services provided to government or governmental authority and eligible for exemption under Section 102 of the Finance Act, 1994 consequential refund thereof. As regard the limitation, we find that the learned Commissioner (Appeals) has rejected the appeal despite the appellant's filing of COD application showing difficulty for not filing the appeal within the stipulated time of 60 days. We find that once the appellant have filed a COD application where delay is well within period of 30 days after stipulated period of 60 days, the learned Commissioner (Appeals) should have taken a lenient view and should have condoned the delay, by not condoning the delay the learned Commissioner (Appeals) has deprived the appellant from their right of appeal, we are, therefore of the considered view that the appellant should have been allowed condonation of the delay, accordingly, the order of rejection of the appeal by the Commissioner (Appeals) on time bar is not sustainable.

4.1 As regard the issue that whether the service provided by the appellant to GSPHCL is service provided to a governmental authority, we find that the GSPHCL is a 100% owned by Government of Gujarat therefore, it clearly falls under the category of service provided to government authority. This issue has been considered in the following judgments:-

- Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Thanjavur Vs. Principal Chief Commissioner of GST & C.Ex., Chennai- 2021 (51) GSTL 360 (Mad.)

*"7.I am not persuaded by any of the three submissions. As rightly urged by the Learned Additional Advocate General, though clause No. 12(a) was withdrawn from the Mega Exemption Notification, it was reintroduced vide Notification No. 6/2015, dated 1-3-2015 issued by the Department of Revenue and Finance Ministry, Government of India. The withdrawal notice was issued on 1-3-2015 but it came into effect on 1-4-2015. Since there was still some ambiguity as regards the treatment of the subject matter for the period from 1-4-2015 to 1-3-2016, to deal with the same, Section 102 of the Finance Act, 2016 was brought in. Section 102(1) of the Finance Act, 2016 reads as follows : Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 - "102. (1)*

(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) a structure meant predominantly for use as -

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date."

**8.**Therefore, the second respondent clearly erred in proceeding on the premise that the exemption on which, the appellate order was predicated no longer held good. On this sole ground, the order impugned in the writ petition has to go. When the order suffers from a patent illegality, it is certainly open to the aggrieved party to invoke the writ jurisdiction of this Court.

**9.**I must of course deal with other contention raised by the Learned Standing Counsel for the respondents that the order passed by the appellate authority has to be put to challenge before the Tribunal. I posed a question as to whether any interim order of stay has been obtained. It is fairly stated that the challenge is pending only at the appeal stage and that no interim order has been obtained. When the appellate order is holding good, the original adjudicating authority ought not to have passed an order at variance with the appellate order. On this ground also, the impugned order has to go.

**10.**The petitioner is a public sector undertaking. It is funded entirely by the Government. Even for the construction activities in question, the allocation was made only by the Government of Tamil Nadu. Such construction activities have been explicatively exempted by the Mega Exemption Notification issued on 20-6-2012. Of course, for a short duration, exemption was not available. But then, by a subsequent notification, the break in the exemption had also been bridged. Therefore, it should be held that the petitioner always was entitled to the benefit under Clause 12(a) of the mega exemption notification. Therefore, when the appellate order was to the benefit of the writ petitioner for the period upto October, 2015, it was certainly not open to the original adjudicating authority to pass an order adverse to the petitioner for the period from October, 2015. Looked at from any angle, the order impugned in the writ petition is not defensible. It stands quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed".

- Commissioner of Central Excise & S.T., Kanpur Vs. Executive Engineer, UP State Construction & Infrastructure Development Corpn. Ltd.- 2019 (24) GSTL 607 (Tri.All.)

**"2.** After hearing both sides duly represented by Shri Rajeev Ranjan, Learned Addl. Commr. (AR) along with Shri Gyanendra Kumar Tripathi, Learned Dy. Commr. (AR) for the Revenue and Shri Amit

*Kumar Prasad, Learned Advocate for the respondent, we find that the respondents were engaged in providing 'works contract services' to various departments of Govt. of Uttar Pradesh in terms of the contract entered between the two. The services provided by the respondent to the Govt. departments were exempt in terms of the Entry No. 12 of Notification No. 25/2012-S.T., dated 20-6-2012. However, subsequently vide Notification No. 6/2015-S.T., dated 1-3-2015, effective from 1-4-2015 such mega exemption was omitted and the services provided to the Govt. authorities became taxable. Accordingly the respondents started paying Service Tax. Subsequently the said exemption was again restored vide Notification No. 9/2016-S.T., dated 1-3--2016, by inserting Entry 12A in the mega Notification.*

**3.** Further Section 112 was inserted in the Act, vide the Finance Act, 2016, which provide as under :-

**"Section 102 :** (1) Notwithstanding anything contained in Section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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) a structure meant predominantly for use as -

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of Section 65B of the said Act,

*under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.*

(2) Refund shall be made of all such Service Tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of Service Tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."



*In terms of said Section 112 of the Finance Act respondents applied for the refunds under Section 11B of the Central Excise Act, 1944 as made applicable to the Service Tax matters vide Section 83 of the Finance Act. The said refund claims so filed by the respondent was rejected by the Deputy Commissioner by observing that they failed to produce documentary evidences to show that they had not passed on the incidence of Service Tax. The show cause notices issued to the respondents were accordingly resulted in passing of order of rejection of such refund claim.*

**4.** *On appeal against the said orders, Commissioner (Appeals) scrutinized all the documents and found that the observations of the original adjudicating authority that the assessee had not filed any documents/invoices to show that the Service Tax paid by them related to the services specified in Entry 12A of the mega exemption Notification are not proper inasmuch as there were all the documents to show that the services provided by them were covered by the said entry. As regards unjust enrichment angle he observed as under :-*

*"3.4 Further, it is observed that for executing these work orders, the appellants did not raise any bill/invoice on the concerned department of the Government of Uttar Pradesh and on the basis of their estimates provided to the Government of Uttar Pradesh for such works, they had received the funds from the Government of Uttar Pradesh. Since prior to 1-4-2015, Service Tax on such work orders, was exempt under Sl. No.(a), (c) & (f) of the entry 12 of the Mega Exemption, the funds received by them during 2015-16 did not include the Service Tax element. Since such work orders had become taxable during 1-4-2015 to 29-2-2016, they paid the Service Tax out of these funds allotted by the Government of Uttar Pradesh which did not include the Service Tax element."*

**5.** *As is seen from the above findings of Commissioner (Appeals), he has observed that the contracts with the Government were executed when the services were exempted in terms of various Sl. Nos. of Entry 12 of the mega Notification. Admittedly in such a scenario the question of inclusion of any tax in the contract value would not arise. He has further observed that the assessee was not raising any Bills for the work executed by them and only the contract amounts were being paid to them. We find no infirmity in the above findings of Commissioner (Appeals) and hence no merits in the Revenue's appeals. We also note that when the legislation itself has legislated for the refund of Service Tax in terms of the provisions of Section 102, the objections raised by Revenue cannot be appreciated.*

**6.** *In view of the foregoing, we find no merits in the Revenue's appeals. The same are accordingly rejected. Stay Petition as also the Cross Objections filed by the respondents also get disposed of".*

- **Bharat Bhushan Gupta & Company Vs. State of Haryana- 2016 (44) STR 195 (P&H)**

**"10.** *Heard learned Counsel for the parties and perused the paper book.*

**11.** *The following issues arise for consideration by this court in the present petition :*

(i) *Whether service tax is chargeable on construction of BPL houses constructed by the petitioners for the Board?*

(ii) *Whether in terms of Condition No. 3 in the tender conditions, the petitioners would be liable to discharge the liability of service tax, if payable, by the Board as per the provisions of the Finance Act, 1994, the Rules and the notifications issued thereunder?*

**Issue No. (i) :**

**12.** *Section 93 of the Finance Act, 1994, which enables the Government to grant exemption from payment of tax is extracted below :*

"93. Power to grant exemption from service tax. - (1) *If the Central Government is satisfied that it is necessary in public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.*

(2) *If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order."*

**13.** *In exercise of the powers conferred under the aforesaid provision, various notifications have been issued providing for exemption from payment of service tax. Relevant provisions of the applicable notifications are extracted below :*

**"Notification No. 25/2012-S.T., dated 20 Jun., 2012**

**Exemptions from Service tax - Mega Notifications - Notification No. 12/2012-S.T. Superseded**

*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 : -*

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*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

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**2.Definitions.** - For the purpose of this notification, unless the context otherwise requires, -

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(s)"governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under Article 243W of the Constitution;

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(y) "original works" has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

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**Notification No. 2/2014-S.T., dated 30 Jan., 2014**

**Mega Exemption Notification - Governmental Authorities - Redefined**

In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide GSR 467(E), dated the 20th June, 2012, namely :-

In the said notification, in the paragraph 2, for clause(s), the following shall be substituted, namely :-

(s)"governmental authority" means an authority or a board or any other body;

(ii) set up by an Act of Parliament or a State Legislature; or

(iii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution;

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**Notification No. 6/2015-S.T., dated 1 Mar., 2015**



**Exemption from Service Tax - Mega Notification exempting 39 group of services - Amendment to Notification No. 25/2012-S.T.**

*In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide G.S.R. 467(E), dated the 20th June, 2012, namely : -*

1. *In the said notification, -*

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*(ii) in entry 12, items (a), (c) and (f) shall be omitted.*

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3. *Save as otherwise provided in this notification, this notification shall come into force on the 1st of April, 2015.*

**The Finance Act, 2016**

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**Special provision for exemption in certain cases relating to construction of Government buildings. - 102.** *Notwithstanding anything contained in Section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a governmental authority, by way of construction, erection, c (1)ommissioning, 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) a structure meant predominantly for use as -*

*(i) an educational establishment;*

*(ii) a clinical establishment; or*

*(iii) an art or cultural establishment;*

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**Notification No. 9/2016-S.T., dated 1 Mar., 2016**

**Exemption from Service Tax - Mega Notification - Amendment to Notification No. 25/2012-S.T.**

*In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 467(E), dated the 20th June, 2012, namely :*

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*(iv) after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely -*

*"12A. 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) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*

*(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of Section 65B of the said Act; under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date :*

*Provided that nothing contained in this entry shall apply on or after the 1st April, 2020.*

*[Emphasis supplied]*

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**14.** *The Board has been constituted in terms of the provisions of Section 3 of the Act, as was enacted by the State Legislature. It is a body corporate which consists of a Chairman, a Chief Administrator and such other members, as the State Government may, from time to time, appoint by a notification. The Chief Administrator shall be a person from amongst the officers of the rank of Head of the Department or Joint Secretary of the State Government. It is termed to be a local authority for the purposes of Land Acquisition Act, 1894. Section 20 of the Act provides that subject to control of the State Government the Board may incur expenditure on framing and execution of such housing schemes as may be considered necessary from time to time or as may be entrusted to it by the State Government. Every year, the Board is to prepare a budget in advance for the next year and place it before the State Government for its approval. After sanction is granted by the State Government, the same is published in the Official Gazette. The Board is authorised to borrow money for implementation of the projects, as*

*approved with prior approval of the State Government. Section 72 of the Act provides that the State Government shall exercise superintendence and control over the Board and its officers. The aforesaid provisions of the Act clearly show that the Board is a governmental authority, as it is fully under the control of the State Government.*

**15.***The issue sought to be raised by the petitioners is that they are contractors engaged by the Board for construction of BPL houses from time to time. In all the cases, except two, the contract was entered into after 1-7-2012. There is no dispute about the period prior thereto as the petitioners in most of the petitions have categorically stated that service tax for that period was paid by them. The period in dispute is from 1-7-2012 onwards.*

**16.***The petitioners approached this court for the reason that the Board deducted the amount of service tax from the running bills of the petitioners from the very beginning opining that service tax was payable. The action was taken, as claimed, on an opinion sought by the Board. The tax deducted from the bills of the petitioners, if leviable, would be liability of the Board in law.*

**17.***The service tax has been levied on various services with amendments made in Finance Act, 1994. The services on which the tax was levied were added from time to time. Section 93 of the Finance Act, 1994 enables the Central Government to exempt any service from payment of tax by issuing a notification. Notification No. 25/2012-S.T., dated 20-6-2012 was issued stating therein that the Government being satisfied exempts the taxable services as enumerated in the notification from the whole of the service tax leviable thereon. If Clause 12 of the notification dated 20-6-2012 is analysed, exemption from taxation to the services is provided to :*

- (i) Government, a local authority or a governmental authority;*
- (ii) the kind of service being construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of;*
- (iii) it is meant predominantly for use other than for commerce, industry, or any other business or profession.*

**18.***"Original works" has been defined in Clause 2(y) of the notification dated 20-6-2012 to mean the meaning as assigned to in Rule 2A of the Service Tax (Determination of Value) Rules, 2000.*

**19.***On a plain reading of the notification dated 20-6-2012, in our view, the service being provided by the petitioners would clearly fall in the exemption clause, as the Board is a governmental authority having been set up under a State Act, i.e., Haryana Housing Board Act, 1971. It is wholly controlled by the State Government. BPL houses constructed by the petitioners are meant for residential purpose and not for commerce, industry or any other business or profession.*

**20.***Similar issue came up for consideration before a Division Bench of Patna High Court in Shapoorji Paloonji and Company Pvt.*

*Ltd.'s (supra), where the contract was for construction of administrative block in Indian Institute of Technology set up under the Institutes of Technology Act, 1961. Indian Institute of Technology was held to be a governmental authority and the contract for construction was opined to be falling in the exemption clause. The notice issued for levy of service tax was quashed.*

**21.***In view of our aforesaid discussion, it can safely be opined that for the kind of contract entered into between the petitioners and the Board, no service tax is leviable, hence, the action of the Board in deducting part of the service tax, though payable in the hands of the Board, if tax is leviable, from the bills of the petitioners is declared to be illegal.*

**Issue No. (ii) :**

**22.***Another issue was raised regarding liability for payment of service tax, if payable. Though in view of our aforesaid findings, the issue has lost significance, however, as the argument was raised, we will touch upon the same. Condition No. 3 in the additional conditions, as provided for in the contract entered into between the parties, reads as under :*

*"3.Royalty, Sales Tax, Excise Duty, Octroi, Service Tax or any other tax or levy, shall be paid by the contractor direct to the respective department in accordance with their rules and regulations enforce from time to time, without any liability to the Housing Board Haryana."*

*[Emphasis supplied]*

**23.***The stand of the petitioners was that as per the aforesaid contract, the petitioners could not shift their liability of any kind of tax on the Board. Where any liability, as per law, is on the Board, that cannot be shifted on the contractors by way of the aforesaid clause. As per the provisions of Finance Act, 1994, as amended up to date read with Notification No. 30/2012-S.T., dated 20-6-2012 on the works contracts the liability is 50% on the contractor, whereas 50% is on the contractee, i.e., service provider and the service recipient. The stand of the petitioners was that for any alleged levy on the petitioners, namely, the contractors/service provider, the department never issued any notice seeking to levy the tax. Notice was issued to the Board. From the running bills of the petitioners, the Board had deducted the amount of tax, which is to be paid by the Board, in case the tax is leviable, which was totally uncalled for. A perusal of the aforesaid clause shows that the contractor is liable to pay various taxes, as mentioned in the clause, directly to the department in accordance with the Rules and the Regulations in force from time to time. The case of neither of the parties is that the liability, which may be put on the contractor/service provider, if tax is leviable, is being passed on to the Board, as the scheme of the Act provides for levy of tax 50 : 50 on service provider and the service recipient. Hence, the action of the Board, even if it is assumed that tax is leviable, to pass on their share of burden as per the provisions of the Act on the contractors is not envisaged in the clause.*

**24.***Mere assessment framed by the department in the case of the Board will not detain this court from opining on the legal issue raised by the*

*petitioners in the writ petitions, as the petitioners are aggrieved of the act of the Board in deducting the tax from their bills.*

**25.***In view of our abovesaid discussion, the questions, as framed above, are answered as under :*

*(i) On the contract for construction of BPL houses, as awarded by the Board to the petitioners, no service tax is leviable w.e.f. 1-7-2012; and*

*(ii) the Board is not entitled to pass on the burden of service tax payable on its part, if the tax is leviable, upon the contractors.*

**26.***The writ petitions stand disposed of”.*

- **Krishi Constructions Pvt. Ltd. Vs. Commissioner of C.T., Hyderabad- 2020 (43) GSTL 236 (Tri.-Hyd.)**

**"12.***Having considered the rival contentions on this issue, we find that admittedly all the companies/Corporations have been established by the Government of Andhra Pradesh under the various Acts and/or 'Government order', as aforementioned and thus we hold that the appellant has provided service to Governmental authority. Evidently all the service recipients have been set up by the State Government, and are directly under the control of the various Ministries of the State Government. Thus, the service recipients are covered under sub-clause (i) of clause (5), of the definition of the term 'Govt. Authority', in Notification No. 25/2012-S.T. as amended by Notification No. 2/2014-S.T. (by way of substitution). Accordingly, we hold that the appellant is entitled to exemption under Notification No. 25/2012-S.T., and the demand of Rs. 97,63,710/- is set aside”.*

In view of the above catena of judgments wherein, it is held that even the corporation/board constituted under the act of State Government should be considered as a governmental authority and accordingly, exemption provided to the government or governmental authority is applicable in respect of service provided by a service provider to such board/corporation. Applying the ratio of the above judgments in the present case also the service provider has provided service to GSPHCL which is a corporation of State Government incorporated under the State Government Act passed by the State Assembly accordingly, the GSPHCL is a governmental authority and exemption under Section 102 is clearly applicable.

4.2 As regard unjust enrichment, the lower authority have contended that the appellant have not submitted the necessary evidence to establish that the incidence of the service tax paid was not passed on to any other person.

On this, the appellant may be given the opportunity to present the evidence and explanation on the aspect of unjust enrichment.

05. Accordingly, the impugned order is set aside. Appeal is allowed in the above terms.

(Pronounced in the open court on 12.08.2022)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Mehul