

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No. 11916 of 2016**

(Arising out of OIO-BHR-EXCUS-000-COM-41-2016-17 dated 29.07.2016 passed by  
Commissioner of Central Excise, Customs & Service Tax- Bharuch)

**Prabhakar Enterprises**

48 PADMAVATI NAGAR RAJPIPLA ROAD  
ANKLESHWAR, BHARUCH-UJARAT

.....Appellant

*VERSUS*

**C.C.E BHARUCH**

VADODARA-II,GST BHAVAN,SUBHANPURA,VADODARA  
VADODARA-GUJARAT-390023

.....Respondent

**AND**

**SERVICE TAX CROSS APPEAL NO. 10011 OF 2017**  
**in**

**Service Tax Appeal No. 11945 of 2016**

(Arising out of OIO-BHR-EXCUS-000-COM-41-2016-17 dated 29.07.2016 passed by  
Commissioner of Central Excise, Customs & Service Tax- Bharuch)

**C.C.E BHARUCH**

VADODARA-II,GST BHAVAN,SUBHANPURA,VADODARA  
VADODARA-GUJARAT-390023

.....Appellant

*VERSUS*

**Prabhakar Enterprises**

48 PADMAVATI NAGAR RAJPIPLA ROAD  
ANKLESHWAR, BHARUCH-UJARAT

.....Respondent

**APPEARANCE:**

Shri Nimish S. Desai, Advocate appeared for the Appellant  
Shri R.R .kurup, Superintendent (Authorized Representative) for the Respondent

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

**Final Order No. 10206-10207/2024**

DATE OF HEARING: 04.12.2023  
DATE OF DECISION: 24.01.2024

**RAJU**

This appeal has been filed by M/s Prabhakar Enterprises against  
demand of Service Tax for extended period, not extending cum duty  
benefit and Imposition of penalties under Section 77 and 78 of the

Finance Act, 1994. Revenue has also filed appeal against dropping of demand in respect of services provided to Indian Railways.

2. Learned counsel for the Prabhakar Enterprise pointed out that the proceedings were initiated on the basis of the 26AS statement of income tax and balance sheet of the appellant. The appellant rendered services of cleaning, house-keeping and manpower supply to Indian Railways, Airport Authority and also provided to SEZ Units. Demand was partly confirmed by the original adjudicating authority. Benefit of exemption was granted in respect of the services provided to Railways. This was challenged by Revenue in its appeal. Ms. Prabhakar Enterprises also filed cross objection against the Revenue appeal.

3. Revenue has argued that the benefit of exemption has been wrongly granted to services provided to Indian Railway. It was argued that before 01.07.2012, the definition of cleaning activity service under Section 65 (24B) of the Finance Act 1994 reads as under:

**(24b) "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;

In the impugned order it has been argued that the said definition did not cover services provided to railways. It was argued by Revenue that the activities undertaken by Indian Railways cannot be considered as non-commercial or non-industrial. As regards period after 01.07.2012 under the negative list of service tax regime, it was argued that Section 66D does not cover the cleaning services provided to Indian Railways.

It was further argued that even Notification 25/12-ST dated 20.06.2012 entry No. 25 does not cover the services provided to Railways. The said entry reads as under:

“25. Services provided to Government, a local authority or a governmental authority by way of-

- (a) Carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;”

The said notification defines ‘Government Authority’ as follows:

(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 243 W of the Constitution;”

4. It has been argued by Revenue that Indian Railways are not performing any functions under Article 243W of the Constitution and as such cleaning service provided by the assessee in the present case to the Indian Railways cannot be said to be the services to provide to Government or Local Authority or a Governmental Authority and as such benefit of Notification 25/12-ST has wrongly been extended in the impugned order. The impugned order wrongly holds that India Railways do not fall under definition of ‘Person’, and therefore no service can be provided. It was further argued that Section 67B (37) of the Finance Act, 1994 which provides the definition of ‘Person includes government and Local Authority. It was argued that Services provided to Government or local authority are equally taxable as provided to any other person unless specifically exempted.

5. We have carefully considered rival submissions. We find that the demand has been raised on the basis of financial accounts of the appellants. It appeared that the appellant had not paid any service tax

in respect of services provided by them to various clients including railways. A show cause notice was issued to the appellant wherein they were asked to explain why service tax should not be levied on the various incomes disclosed in their financial records. After examining the details, the Commissioner in his order has dropped the demand in respect of services provided to SEZ and to railways and confirmed the demand in respect of services provided to others. Aggrieved by the order both sides are in appeal. Revenue has filed appeal against the dropping of demand of service tax on the services provided to railways. Prabhakar Enterprises has filed appeal against invocation of extended period of limitation and imposition of penalty under Section 77 and 78.

6. While various arguments have been raised by Revenue as to why the Commissioner should not have dropped the demand during the course of hearing attention was drawn to the following decisions.

- Mukesh Kalway 2017 (3) GSTL 183 (Tri. Del.)
- Sarovar Hotels Pvt Ltd. 2018 (19) GSTL 650
- Dynamic Enterprises 2019 (22) GSTL 230 (Tri. Del.)

7. In all these cases the Tribunal has held that service tax is payable in respect of cleaning services provided to railways. In view of above, we do not find any merit in the order of the Commissioner dropping the demand in respect of cleaning services provided to railways and the order to that extent is set aside and appeal of Revenue to that extent is allowed.

8. The appeal of M/s Prabhakar Enterprises relates to invocation of extended period of limitation and imposition of penalties under Section 77 and 78 of the Finance Act, 1994. It is noticed that the order of Commissioner has not cited any specific reason to substantiate the charges of invocation of extended period of limitation. The only reason

given is that the assessee was aware of their liability and therefore failed to pay the tax, amounts to suppression with intent to evade payment of duty. We find that Commissioner himself has held that no duty was payable in respect of the services provided to railways under the belief that the said services are not chargeable to tax for various reason cited in the impugned order. In those circumstances, it will not be out of place to hold that the assessee could also have harbored similar beliefs in respect of services provided to railways. Thus, extended period of limitation cannot be invoked in respect of the amount demanded as service tax in respect of supply of services of railways.

10. The appellant has also sought benefit of cum tax calculation for the purpose of demand. Section 67(2) of the Finance Act 1994 clearly stipulates that gross amount charged by service provider should be treated as inclusive of Service Tax payable. In the instant case, the entire calculation stand made on the basis of gross amount charged by the appellant and therefore, the benefit of cum tax has to be granted to the appellant.

11. In view of above, the appeal of revenue is partly allowed to the extent that the demand for the period within the limitation is up held in respect of the services provided to railways. No penalty under section 78 or 77 can be imposed in respect of this demand.

12. The appeal of M/s Prabhakar is partly allowed to the extent that the benefit of cum tax benefit is to be allowed in calculation of the demand already confirmed in the impugned order. The extended period of limitation invoked in the demand is also set aside and the demand is to be limited only to the extent of the normal period of limitation.

Penalty under Section 77 and 78 is therefore set aside. The appeals are partly allowed in above terms.

(Pronounced in the open court on 24.01.2024)

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

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

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