

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Service Tax Appeal No. 75882 of 2022

(Arising out of Order-in-Appeal No. 62/Pat/S.Tax/Appeal/2022-23 dated 25.08.2022 passed by Commissioner (Appeals) of CGST & Central Excise, Patna.)

M/s Vrindavan Construction,

Proprietor- Mr. Rajiv Dokania, 204, Second Floor, Narayan Plaza, Exhibition Road, Patna-800001.

....Appellant (s)

VERSUS

Commissioner (Appeals), CGST & Central Excise, Patna.

2nd Floor, C.R. Building, Birchand patel Path, patna-800001.

....Respondent(s)

APPEARANCE :

Shri Ankit Kanodia & Ms. Megha Agarwal, both Advocates for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...76489/2023

DATE OF HEARING : 22.08.2023

DATE OF PRONOUNCEMENT: 29.08.2023

PER K. Anpazhakan:

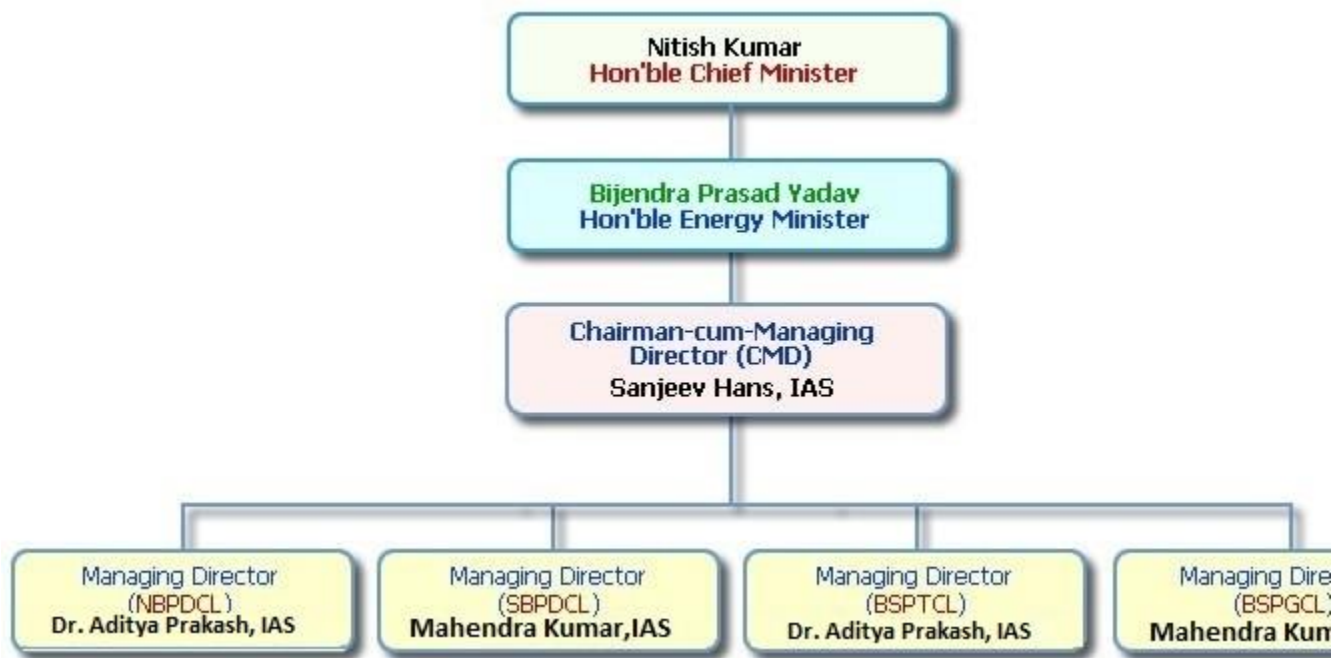
M/s. Vrindavan Construction(The Appellant), Patna has provided Works Contract Service to M/s Bharti Infratel Ltd and M/s. Lamco Industries (P) Ltd and also to Govt. of Bihar vide M/s South Bihar Power Distribution Company Ltd. during the period 2013-14 to 2016-17. In the impugned order, the Ld. Commissioner (Appeals), has confirmed the demand on the work undertaken by the Appellant for SBPDCL on the ground that SBPDCL doesn't qualify the definition of 'Government Authority' as defined under clause 2(s) of the Notification No. 25/2012-ST dated 20.06.2012 for the period 2014-15 to 2016-17. Aggrieved against

the confirmation of the demand, the Appellant has filed the present appeal.

2. In their grounds of appeal, the Appellant stated that SBPDCL is a Govt. of Bihar Undertaking and is incorporated under the Companies Act, 1956. The audited financial statement of SBPDCL for FY 2021-22 as available in its website [Notice Board \(sbpdcl.co.in\)](http://sbpdcl.co.in) Provides the company information as below:

“South Bihar Power Distribution Company Limited, is a company incorporated under the Companies Act, 1956, applicable in India in July 2012, to which the State Govt. Through the Department of Energy has vested Distribution undertakings existing within the territory of South Bihar (South of Ganga River) of the erstwhile Bihar State Electricity Board in accordance with the Bihar State Electricity Reforms Transfer Scheme, 2012 vide Notification No. 17 dated 30.10.2012. The address of the Company’s registered office is Vidyut Bhawan, Bailey Road, Patna 800021. The Company is primarily involved in the distribution of power within the territory of South Bihar (South of Ganga River) of the Bihar State.

3. *The Company is subsidiary of Bihar State Power (Holding) Company Limited which holds 100% of shares in the company.” Bihar State Power (Holding) Company Limited is charged with the responsibility of promoting a co-ordinated development of generation, supply and distribution of electricity in the State of Bihar on an efficient and economic basis of management. The administrative set up of Bihar State Power (Holding) Company Limited is as below:*



4. Thus, the Appellant states that for the purposes of the present case, SBPDCL is also a Government Authority as defined under clause 2(s) of the Notification No. 25/2012-ST dated 20.06.2012 as it is under the control of Govt. of Bihar and hence the services provided by the Appellant to SBPDCL will be exempt from service tax.

5. The Appellant further states that the extended period of limitation cannot be invoked since there was no fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made with intent to evade payment of tax. The Appellant also states that the extended period of limitation under proviso to section 78 of the Act can be invoked if suppression, wilful misstatement occurs due to deliberate evasion of duty on part of the assessee. Such act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to avoid payment of duty. Accordingly, they contended that the demand confirmed in the impugned order is not sustainable on the ground of limitation also.

6. The Ld. A.R reiterated the findings in the impugned order and stated that as per Notification 25/2012-ST dated 20.06.2012, services provided to a Government authority only to carry out any function entrusted to a municipality under Article 243W of the Constitution. "alone exempted under the Notification. In the present case, the appellant were entrusted with the work of supply of materials and equipment's, erection, testing and commissioning of 11KV line, 11/0 433 KV 63KVA D/S/S LT Line and providing 30 service

connection including energy meter on TURNKEY basis to the state tube wells under NABARD Phase VIII and works of similar nature in the State of Bihar. "This work has not been specified as a function entrusted to a Municipality under Article 243W of the Constitution of India. Accordingly, he contended that the Appellant are not eligible for the benefit of the Notification 25/2012-ST dated 20.06.2012. Hence, he prayed for rejecting the appeal filed by the appellant.

7. Heard both sides and perused the appeal records.

8. We observe that the two issues to be decided in this appeal are:

(i) Whether SBPDCL are a 'Government Authority' or not, as defined in clause 2(s) of the Notification No. 25/2012-ST dated 20.06.2012?

(ii) Whether the works carried out by the Appellant for SBPDCL are *specified as a function entrusted to a Municipality under Article 243W of the Constitution of India?*

9. *In order to answer the first question, it is necessary to see the definition of 'Government Authority' and whether the Appellant falls within its ambit. Clause 2(s) defines 'Government Authority' as under:*

Clause 2(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."*

The said clause 2(s) have been substituted by Notification No. 2/2014-S.T. w.e.f. 30-1-2014, which is as follows :-

"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;

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

(ii) 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;'

10. We find that "South Bihar Power Distribution Company Limited, is a company incorporated under the Companies Act, 1956, applicable in India in July 2012, to which the State Govt. Through the Department of Energy has vested Distribution undertakings existing within the territory of South Bihar (South of Ganga River) of the erstwhile Bihar State Electricity Board in accordance with the Bihar State Electricity Reforms Transfer Scheme, 2012 vide Notification No. 17 dated 30.10.2012. The address of the Company's registered office is Vidyut Bhawan, Bailey Road, Patna 800021. The Company is primarily involved in the distribution of power within the territory of South Bihar (South of Ganga River) of the Bihar State. The Company is subsidiary of Bihar State Power (Holding) Company Limited which holds 100% of shares in the company." Bihar State Power (Holding) Company Limited is charged with the responsibility of promoting a co-ordinated development of generation, supply and distribution of electricity in the State of Bihar on an efficient and economic basis of management. The administrative set up of Bihar State Power (Holding) Company Limited indicates that it is wholly owned by Government of Bihar. Thus, we find that SBPDCL falls within the ambit of the definition of 'Government Authority' as provided under Clause 2(s) of the Notification No. 2/2014-S.T. w.e.f. 30-1-2014.

11. The Appellant relied on the following judicial pronouncements in support of their interpretation of the definition of Governmental authority.

(i) KRISHI CONSTRUCTIONS PVT. LTD. Versus COMMISSIONER OF C.T., HYDERABAD 2020 (43) G.S.T.L. 236 (Tri. - Hyd.)

(ii) RAJASTHAN STATE ROAD DEVELOPMENT CONSTRUCTION CORPORATION LTD. Versus COMMISSIONER OF CGST & C. EX., JODHPUR (2023) 2 Centax 48 (Tri.-Del)

12. We observe that the above said decisions supports the contention of the Appellant that SBPDCL is a 'Government Authority'. In view of the above discussion and by following the decisions cited above, we hold that SBPDCL is a 'Government Authority'.

13. The next issue to be decided is whether the works carried out by the Appellant for SBPDCL are specified as functions entrusted to a Municipality under Article 243W of the Constitution of India. We observe that Notification 25/2012-ST dated 20.06.2012 exempts certain services rendered to

Government Authorities. The relevant exemption entry No. 12A(a) and Entry No. 25 of Notification No. 25/2012-ST dated 20.06.2012 is reproduced below:

“12(A). 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;”

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

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation. ”

14. Thus, we observe that all the services rendered to the 'Government Authority' are not exempted from payment of service tax. Only those services which are entrusted to a Municipality, if carried out by a service provider then such services alone are exempted from service tax. As per the work order issued by SBPDCL to the Appellant, we observe that the details of work undertaken by the Appellant to SBPDCL are as under:

"LOA for composite work of supply of materials and equipment's, erection, testing and commissioning of 11KV line, 11/0 433 KV 63KVA D/S/S LT Line and providing 30 service connection including energy meter on TURNKEY basis to the state tube wells under NABARD Phase VIII and works of similar nature in the State of Bihar."

15. Now, it is to be examined whether the above works undertaken by the Appellant are covered within the ambit of *functions entrusted to a Municipality under Article 243W of the Constitution of India*. Article 243W of the Constitution of India provides as below:

"243W. Powers, authority and responsibility of Municipalities, etc. - Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of

powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule...”

16. The Twelfth Schedule to Article 243W of the Constitution of India lists down the activities which are to be carried out by a Municipality, as below:

- (a) Urban planning including town planning.*
- (b) Regulation of land-use and construction of buildings.*
- (c) Planning for economic and social development.*
- (d) Roads and bridges.*
- (e) Water supply for domestic, industrial and commercial purposes.*
- (f) Public health, sanitation conservancy and solid waste management.*
- (g) Fire services.*
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.*
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
- (j) Slum improvement and upgradation.*
- (k) Urban poverty alleviation.*
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
- (m) Promotion of cultural, educational and aesthetic aspects.*
- (n) Burials & burial grounds; cremations, cremation grounds; and electric crematoriums.*
- (o) Cattle pounds; prevention of cruelty to animals.*
- (p) Vital statistics including registration of births and deaths.*
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.*
- (r) Regulation of slaughter houses and tanneries.*

17. From the Work Order, we observe that the services undertaken by the Appellant are related to *supply of materials and equipments, erection, testing and commissioning of 11KV line, 11/0 433 KV 63KVA D/S/S LT Line and providing 30 service connection including energy meter on TURNKEY basis to the state tube wells under NABARD Phase VIII and works of similar nature in the State of Bihar.* It is seen that the scope of work includes supply of material

and equipment, erection, testing and commissioning of electric line under Electric Supply circle, Patna. The above contract was executed by the Appellant under Special State plan against **'the Backward Regions Grant Fund' (BRGF in short) which is an Indian government program designed to "address regional imbalances in development.** The Backward Regions Grant Fund is designed to redress regional imbalances in development by way of providing financial resources for supplementing and converging existing developmental inflows into the identified backward districts, so as to:

- Bridge critical gaps in local infrastructure and other development requirements that are not being adequately met through existing in-flows,
- Strengthen, Panchayat- and Municipality-level governance with more appropriate capacity building, to facilitate participatory planning, decision making, implementation and monitoring, to reflect local felt needs,
- Provide professional support to local bodies for planning, implementation and monitoring their plans
- Improve the performance and delivery of critical functions assigned to Panchayats and Municipalities and counter possible efficiency and equity losses on account of inadequate local capacity.

18. We observe that the above works carried out by the Appellant would qualify under 'Planning for economic and social development' as defended under 12th Schedule to Article 243W of the Constitution of India. The scope of this Entry is wide enough to cover the tube well energization work undertaken by the Appellant. Thus, we hold that the activities undertaken by the Appellant are covered within the ambit of the works assigned under Article 243W of the Constitution to

be carried out by the Municipalities. Accordingly, we hold that the appellant are eligible for the exemption provided under Notification 25/2012-ST dated 20.06.2012.

19. Regarding the ground of limitation raised by the Appellant, we observe that the authorities below has held that extended period of limitation is invocable in the present case on the ground that the Appellant had violated the provisions of law by claiming exemption from payment of service tax on the services provided to SBPDCL. However, we observe that every non-payment/non-levy of duty does not attract extended period. There must be a deliberate default on the part of the Appellant to invoke extended period, which is not there in this case. The conclusion that mere non-payment of

duties is not equivalent to collusion or wilful mis-statement or suppression of facts is untenable. Accordingly, we hold that the department has not brought in any evidence to substantiate the allegation of suppression of fact with an intention to evade payment of duty. Accordingly, we hold that the demands confirmed in the impugned order are not sustainable on the ground of limitation also.

20. In view of the above findings, we hold that the Appellant has undertaken works to a 'Government Authority', which are function entrusted to a Municipality under Article 243W of the Constitution of India. Accordingly, we hold that the Appellants are eligible for the exemption provided in Notification 25/2012-ST dated 20.06.2012 and hence the demand confirmed in the impugned order is not sustainable. Since the duty itself is not sustainable, the question of demanding interest and imposing penalty does not arise. Accordingly, we set aside the impugned order on merits as well as on the ground of limitation.

19. In view of the above discussion, we allow the appeal filed by the Appellant.

(Pronounced in the open court on.....29.08.2023...)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.