

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52462 of 2022

[Arising out of Order-in-Appeal no. 229(BSM) ST/JPR/2022 dated 28.09.2022 passed by The Commissioner (Appeals), Central Excise and CGST, Jaipur]

M/s. Maturam Construction company

Ward No. 10, Saharan Market,
Kotputli,
Jaipur (Raj.) 303 108

... Appellant

VERSUS

**The Commissioner,
CGST Commissionerate,**

NCRB, Statue Circle,
Jaipur (Raj.) – 302 005.

... Respondent

APPEARANCE:

Shri Ajay Kumar Mishra, Advocate for the Appellant
Shri Shashank Yadav, Authorised Representative for the Revenue

CORAM:

HON'BLE Dr. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 30.04.2026

DATE OF DECISION: 23.06.2026

FINAL ORDER NO. 51057/2026

P V SUBBA RAO

M/s. Maturam Construction company¹ filed this appeal to assail the order dated 28.09.2022² passed by the Commissioner (Appeals) in which he partly allowed the appeal of the appellant and partly upheld the order dated 14.6.2021 passed by the Assistant Commissioner. The Assistant Commissioner, had, in his order, decided the proposals made in the show cause notice dated 13.11.2019³ by confirming demand of service tax of Rs. 7,52,403/- on the appellant under the proviso to section

1. Appellant
2. Impugned order
3. SCN

73 of the Finance Act, 1994⁴ invoking extended period of limitation along with interest under section 75 of the Act and imposed an equal amount as penalty under section 78 of the Act and a penalty of Rs. 10,000/- under section 77 of the Act. He dropped demand of Rs. 11,28,602/- proposed in the SCN. The Commissioner (Appeals) has, in the impugned order, further reduced the demand of service tax to Rs. 7,07,899. The appellant assails in this appeal this confirmation of demand with interest and penalty.

2. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records. The demand of service tax has been confirmed for the period April 2014 to June 2017 on three services provided by the appellant. According to the appellant, these were exempted and no service tax was payable while according to the Revenue, service tax is payable. The entire period of demand is in the post negative list period during which all services were taxable except those which were in the negative list or those which were otherwise exempted. The three services in dispute are:

- (a) Services provided by the appellant to M/s. Krishi Upaj Mandi Samiti by construction of covering of existing Auction Platform. The appellant does not dispute having rendered this service but asserts that it was exempted by Exemption Notification No. 25/2012-ST dated 20.6.2012 [S. No. 12A (a)].
- (b) Services provided by the appellant to Krishi Upaj Mandi Samiti for construction of roads which service, which according to the appellant was exempted by Exemption Notification No. 25/2012-ST dated 20.6.2012[S. No. 13 (a)].
- (c) Services provided by the appellant to Krishi Upaj Mandi Samiti by construction of covering of existing auction platforms,

construction of boundary wall, construction of check posts, construction of approach road up to gate, construction of BT Road which, according to the appellant were exempted by Exemption No. 25/2012-ST dated 20.6.2012 (S. No. 14(d))

3. The appellant is also contesting the demand on the ground of limitation asserting that the ingredients necessary to invoke extended period of limitation were not present in the case. For the same reason, according to the appellant, penalty under section 78 could not have been imposed. According to the appellant, all its transactions were meticulously accounted for and the entire demand is based on the data obtained from the appellant itself and it is only a question of interpretation of law and the appellant believed and continues to believe that no service tax was payable. Hence, the appellant had not paid service tax. It had no intention to evade payment of service tax.

4. According to the learned authorised representative for the Revenue, the impugned order is correct and proper and calls for no interference. The exemption under Notification No. 25/2012-ST [S. No. 12A(a)] will not be available to the appellant for the service of construction of covering of the existing auction platform because, Krishi Upaj Mandi Samiti is not a 'governmental authority' and it is engaged in commercial activity. Likewise, the construction of roads in the mandi were not eligible for exemption under S. No. 13(a) available to construction of roads because these are not meant for public use and but were meant for users of the mandis only. Similarly, exemption under Notification No. 25/2012-ST [S. No. 14 (d)] will not be available for the services of construction of

covering over auction platforms, boundary walls, check posts and approach road upto gate.

5. Learned authorised representative submits that the appellant had not taken service tax registration nor filed any ST-3 returns nor paid any service tax for the entire period April 2014 to June 2017. This shows that the appellant had wilfully suppressed the fact that the appellant had rendered taxable services. Therefore, extended period of limitation has been correctly invoked and penalties were also correctly imposed.

6. We have considered the submissions advanced by both sides and perused the records.

7. Undisputedly, the appellant was not registered with the service tax department and it had not filed any service tax returns and had also not paid any service tax during the relevant period. On the basis of information obtained from income tax department, service tax officers initiated enquiries, investigated the matter and issued an SCN demanding service tax of Rs. 18,81,005/-. After considering the submissions of the appellant, the Assistant Commissioner confirmed demand of only Rs.7,52,403/- and on appeal, the Commissioner (Appeals) has, in the impugned order reduced further to Rs. 7,07,899/- only on three services rendered by the appellant and discussed above. There is no appeal by the department to the extent the demands were dropped by the lower authorities. The issue has attained finality to that extent. We now proceed to decide the issues on merits.

8. The appellant constructed a covering to the existing auction platform of **Krishi Upaj Mandi Samiti, Kotpuli** which, according to the appellant was exempted by Notification No. 25/2012-ST [S. No. 12A(a)]. This entry of the notification exempts '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 **civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business** or profession'. The auction platform in a Krishi Upaj Mandi including any covering over it can only have one primary function viz., auction of goods which, by any stretch of imagination is only commerce. Therefore, exemption Notification No. 25/2012-ST [S. No. 12A(a)] will not be available to this service.

9. The appellant constructed roads in **Krishi Upaj Mandi Samiti, Kotpuli** which, according to the appellant, was exempted by Notification No. 25/2012-ST [S. No. 13(a)]. This entry of the notification exempts 'Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of... a road, bridge, tunnel or terminal for road transportation for use by general public'. The case of the department is that the roads in the Krishi Upaj Mandi are not meant for public use but are within the mandi and hence the appellant is not entitled to the benefit of the exemption.

10. We do not agree with the contention of the department. The roads in question are not private roads in a private property. **Krishi Upaj Mandi** is meant for use by general public such as farmers, traders, etc. and hence any roads constructed therein are also meant for use of public. Therefore, the appellant is entitled to the benefit of this exemption.

11. The appellant constructed covering of auction platforms, boundary walls, check posts and approach gate in **Krishi Upaj Mandi Samiti**, which, according to the appellant was exempted by Notification No. 25/2012-ST [S. No. 14(d)]. This entry of the notification exempts 'Services provided by way of construction, erection, commissioning or installation, of original works pertaining to Post-harvest storage infrastructure for agricultural produce including cold storages for such purposes..'. .

12. Clearly, auction platforms and other structures of a market are not warehouses meant for Post harvest storage but are markets meant for trade. In our considered view, they cannot be called post harvest storage infrastructure but can only be called market infrastructure. It is true that when goods are brought to the market for selling, they are stored for sometime but that does not make market a storage area. The exemption notification is not available to the appellant for these constructions.

13. As far as the extended period of limitation is concerned, demand under section 73 of the Act can be raised within the normal period of limitation and extended period of limitation can be invoked if the non-payment or short payment of service tax is by reason of fraud or collusion or wilful misstatement or suppression of facts or violation of any

provisions of the Act or Rules with an intent to evade payment of service tax. Intent of a person can only be determined from the facts of the case. The appellant was evidently rendering taxable services but neither obtained service tax registration nor paid service tax nor filed any returns. Until the department obtained information through third parties and started investigation, the appellant did not take any steps which would demonstrate it's bonafide intentions. The appellant was just waiting till the department knocked on its door. This is, in our considered view, a clear case for invoking extended period of limitation. Penalties imposed on the appellant also, likewise, are fully justified.

14. In view of the above, we partly allow the appeal and set aside the demand on the services rendered in respect of construction of roads and uphold the rest of the demand. The penalty under section 78 of the Act will also be correspondingly reduced. The matter is remanded to the Assistant Commissioner only for the purpose of calculation of the service tax and penalty as above.

15. In view of the above, the impugned order is modified to the extent indicated above and the appeal is partly allowed with consequential relief to the appellant.

(Order pronounced in open court on 23/06/2026.)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)