

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 41381 of 2015

(Arising out of Order-in-Original No. 5/2015-Commr. dated 31.03.2015 passed by Commissioner of Central Excise, Customs and Service Tax, No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Trishaa Rose Garden Pvt. Ltd.

No. 52, De-Sa-Ba Colony,
West Club Road,
Coimbatore – 641 018.

...Appellant

Versus

Commissioner of GST and Central Excise

Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

...Respondent

APPEARANCE:

For the Appellant : Mr. Raghav Rajeev, Advocate

For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40094 / 2026

DATE OF HEARING : 21.07.2025

DATE OF DECISION : 14.01.2026

Per Mr. VASA SESHAGIRI RAO

This appeal has been filed by M/s. Trishaa Rose Garden, Coimbatore (hereinafter referred to as the appellant) assailing Order-in-Original No. CBE/ST/5/2015 - Commr. dated 31.03.2015, passed by the Commissioner of Central Excise & Service Tax, Coimbatore (hereinafter referred to as the impugned order).

2.1 The appellant is engaged in operating a plant nursery and in providing garden-related services such as landscaping, planting, horticultural operations and maintenance of gardens, parks, lawns, avenues and green belts for municipal authorities and corporate entities.

2.2 The appellant was registered under Service Tax for Interior Decorator Service, but did not obtain registration or discharge service tax under "Management, Maintenance or Repair Service".

2.3 Based on intelligence gathered by the Preventive Unit, it was alleged that the activities undertaken by the appellant namely watering, trimming, pruning, mowing, weeding, pest control, replacement of plants and maintenance of lawns and parks constituted maintenance of gardens, taxable under Section 65(64) read with Section 65(105)(zzg) of the Finance Act, 1994 for the period April 2008 to June 2012, and taxable as "service" under Section 65B(44) read with Section 66B thereafter.

2.4 Accordingly, Show Cause Notice No. 12/2013 (COMMR) dated 10.10.2013 was issued proposing demand of service tax of ₹80,16,538/- for the period April 2008 to March 2013, recovery of interest under Section 75 and

imposition of penalties under Sections 76, 77 and 78 by invoking the extended period under the proviso to Section 73(1). The notice was adjudicated by the Commissioner, who confirmed the demand with interest and penalties as proposed. Being aggrieved by the impugned order, the appellant has filed the present appeal.

3. The Ld. Advocate Mr. Raghav Rajeev appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Mr. Sanjay Kakkar appeared for the Revenue and defended the Impugned Order.

4. The Ld. Advocate Mr. Raghav Rajeev made the following submissions which are summarized as below: -

The appellant contended that: -

- i. the activities undertaken are horticulture involving cultivation and development of gardens, not maintenance;
- ii. Horticulture was not a taxable service prior to 01.07.2012 and is covered under agriculture in the Negative List thereafter;
- iii. contracts are composite in nature and, if taxable, fall under works contract;

- iv. services rendered to Coimbatore City Municipal Corporation are municipal/sovereign functions under Article 243W;
- v. services rendered to SEZ units are exempt under the SEZ Act;
- vi. sale of plants, manure, soil, milk and dairy products is pure sale of goods;
- vii. extended period, interest and penalties are not invocable due to bona fide belief and departmental awareness.

5. *Per Contra*, the Ld. Authorized Representative Mr. Sanjay Kakkar for the Revenue supported the findings in the impugned order and further submitted that: -

- i. contracts and invoices clearly show recurring maintenance of gardens for consideration;
- ii. horticultural methods do not change the essential character of maintenance;
- iii. Article 243W does not grant tax immunity to private contractors;
- iv. urban garden maintenance is not "agriculture";
- v. SEZ exemption is conditional and procedural, not complied with;
- vi. non-declaration in ST-3 returns justifies extended period, interest and penalties.

vii. The Ld. Authorized Representative accordingly prayed that the appeal be dismissed.

6. We have heard both sides, perused the appeal records, examined the relevant statutory provisions and the case laws cited by both sides. The main issue involved in this appeal is regarding the classification of services rendered by the Appellant.

7. Upon careful consideration of the same, the following questions arise for our determination as to: -

- i. Whether landscaping and garden maintenance activities undertaken by the appellant are classifiable as taxable services?
- ii. Whether services rendered to Coimbatore City Municipal Corporation constitute sovereign/Public functions under Article 243W of the Constitution?
- iii. Whether the appellant is eligible for service tax exemption: -
 - a. prior to 01.07.2012, and
 - b. post 01.07.2012 under the Negative List or Mega Exemption.
- iv. Whether sale of plants, manure, soil, milk etc. attracts service tax?
- v. Whether services rendered to SEZ units are exempt?
- vi. Whether invocation of extended period and imposition of interest and penalties are sustainable?

We take up the questions framed by us in seriatim:

Whether landscaping and garden maintenance activities undertaken by the appellant are classifiable as taxable services

8.1 The appellant submitted that the activities undertaken by them are essentially horticulture and cultivation of gardens, involving soil preparation, planting of saplings, nurturing of plants, irrigation and related agricultural operations. It is contended that such activities result in creation and development of gardens, rather than mere maintenance. Reliance was placed on *Kasturi (Dead) v. Gaon Sabha* (1989) 4 SCC 55 to submit that horticulture means cultivation of gardens. It is argued that horticulture was not a specified taxable service under Section 65(105) of the Finance Act, 1994 prior to 01.07.2012 and therefore not liable to service tax.

Alternatively, it was contended that the contracts are composite in nature, involving supply of plants, manure, soil, sand, etc., along with incidental services, and therefore the same ought to be classified, if at all, as works contract service, and not under "management, maintenance or repair service".

8.2 Whereas the Department submitted that the contracts, invoices and scope of work clearly establish that

the appellant was engaged in regular and recurring maintenance of gardens, parks and landscaped areas for a fixed consideration. The activities include watering, trimming, pruning, mowing, pest control, cleaning and replacement of plants, which squarely fall within the ambit of maintenance of property.

It is contended that mere use of horticultural techniques does not alter the essential character of the service. The Department relies on the expanded definition of "management, maintenance or repair service" w.e.f. 01.05.2006, which covers maintenance of property whether movable or immovable.

8.3 We have carefully examined the nature of activities undertaken by the appellant. The contracts and invoices on record unmistakably show that the appellant was entrusted with upkeep, preservation and periodic maintenance of existing gardens and parks, and not with one-time development or creation of new horticultural assets.

The definition of "management, maintenance or repair service" under Section 65(64) read with Section 65(105)(zzg), as amended w.e.f. 01.05.2006, is wide enough to cover maintenance of properties, whether

movable or immovable. The services rendered by the appellant clearly satisfy this definition.

8.4 The reliance placed on *Kasturi (Dead) v. Gaon Sabha* is misplaced, as the said judgment was rendered in a land-tenure context and not in a fiscal statute. The meaning of horticulture in land laws cannot be mechanically imported into service tax law. Similarly, the plea of works contract is unsustainable, as the contracts are service-dominant, and any supply of goods is only incidental. Accordingly, we hold that the activities are correctly classifiable as taxable “management, maintenance or repair service”.

ISSUE No. 2 Whether services rendered to Coimbatore City Municipal Corporation constitute sovereign functions under Article 243W

9.1 The appellant submits that maintenance of parks and gardens is a function entrusted to municipalities under Article 243W read with the Twelfth Schedule. It is argued that by performing such activities for Coimbatore City Municipal Corporation (CCMC), the appellant has effectively stepped into the shoes of the municipal authority and is discharging a sovereign/municipal function, which is not taxable.

9.2 The Department controverted that while the function may be municipal in nature, the appellant is a private contractor rendering services for consideration. Service tax law distinguishes between services rendered by a local authority and services rendered to a local authority. Outsourcing does not confer Public Authority/ sovereign character on the contractor.

9.3 We have heard both the sides on this issue and find that Article 243W of the Constitution empowers municipalities to perform functions listed in the Twelfth Schedule, including:

- i. Urban forestry, environmental protection (Entry 8), and
- ii. Urban amenities such as parks and gardens (Entry 12).

There is no dispute that: Maintenance of parks and gardens is a municipal function, and such functions may be outsourced to private agencies.

9.4 However, Article 243W only identifies municipal responsibilities; it does not grant tax immunity to private entities executing outsourced work.

9.5 We find that Core functions of the State such as taxation, legislation, policing, defence, or statutory administration are Sovereign function and Execution of

municipal works by private entities for consideration under contract by a private contractor: does not become a sovereign authority, and the Appellant does not step into the shoes of the State or municipality merely because the work relates to a municipal function.

9.6 We note that Service tax law exempts services rendered by Government/local authority, not services rendered to them by private contractors / entities unless are specifically exempted by the statute. The appellant is not a local authority, is not acting under statutory delegation, and is providing services under commercial contracts for consideration.

Therefore, the activity remains taxable service, subject to classification and exemption provisions.

9.7 Judicial Precedents

(a) In the case of *UTI Technology Services Ltd. v. CST, Mumbai 2012 (26) STR 147 (Tri.)*, Exemption was allowed because the assessee was performing PAN card issuance, a core sovereign function directly connected with tax administration, under statutory control and by delegation not applicable to garden/park maintenance, which is non-core and non-statutory.

- i. In the case of *Greater Noida Development Authority v. CCE 2015 (40) STR 46 (Tri.)* it was held that Municipal or development functions carried out by private entities remain commercial services, not sovereign acts.

9.8 We also find that CBEC Circular No. 89/7/2006-ST dated 18.12.2006 clarifies: that Sovereign functions performed by Government authorities are not taxable and Private contractors performing such functions are not covered by this exclusion.

9.9 We find that although maintenance of parks and gardens is a function entrusted to municipalities under Article 243W of the Constitution, the appellant, being a private service provider executing such work under commercial contracts for consideration, does not perform a sovereign function. Outsourcing of municipal functions does not confer sovereign character upon the contractor or its activities. Accordingly, services rendered by the appellant to the Coimbatore Municipal Corporation cannot be treated as sovereign functions and are not immune from levy of service tax.

9.10 As such, we conclude that the Appellant is liable to Tax on this score.

ISSUE No. 3 Whether the appellant is eligible for service tax exemption

- (a) prior to 01.07.2012, and
- (b) post 01.07.2012 under the Negative List or Mega Exemption

10.1 The appellant submitted that prior to 01.07.2012, horticulture was not a specified taxable service. Post 01.07.2012, it is contended that the activities fall under Section 66D(d) (Negative List – agriculture). Reliance is also placed on Notification No. 25/2012-ST (Mega Exemption).

10.2 The Department on the other hand has adverted to that no general exemption existed prior to 01.07.2012 for landscaping or garden maintenance services rendered by private contractors. Post 01.07.2012, maintenance of urban gardens does not qualify as “agriculture”, as it is not related to production of agricultural produce.

10.3 Pre-01.07.2012:

We find that Service tax was leviable on specified taxable services. Landscaping and garden maintenance were squarely covered under “management, maintenance or repair service”. No exemption existed for services rendered to municipalities by private contractors.

Post-01.07.2012:

“Agriculture” under Section 65B refers to cultivation for food, fibre, fuel or raw material. Maintenance of urban parks and gardens for aesthetic and recreational purposes does not fall within this definition. Further, Notification No. 25/2012-ST exempts services by governmental authorities, not services rendered to them.

Accordingly, we hold that no exemption is available either before or after 01.07.2012.

ISSUE No. 4 Whether sale of plants, manure, soil, milk etc. attracts service tax

11.1 It is the submission of the Appellant that sale of plants, manure, soil, milk and dairy products is a pure sale of goods, involving transfer of title, and hence not taxable as service.

11.2 *Per contra*, the Department contends that such supplies are not independent transactions, but form part of composite contracts entered into by the appellant for landscaping and garden maintenance, and are integrally connected with the rendering of taxable services. It is therefore argued that the value of such supplies cannot be excluded from the taxable value.

11.3 We have carefully considered the rival submissions on this issue. We find merit in the appellant's contention to a limited extent. It is well settled that pure sale of goods, involving transfer of property in goods, is outside the scope of service tax, in view of Article 366(29A) of the Constitution of India. The Hon'ble Supreme Court in *BSNL v. Union of India - 2006 (2) STR 161 (SC)* and *Imagic Creative Pvt. Ltd. v. CCE - 2008 (9) STR 337 (SC)* has categorically held that the value of goods and the value of services are required to be segregated, and service tax cannot be levied on the value of goods.

Further, even in the case of composite contracts, the value of goods sold is liable to be excluded from the taxable value, subject to documentary proof, in terms of Notification No. 12/2003-ST, provided such goods are sold and the value thereof is shown separately.

11.4 The appellant has submitted, in the grounds of appeal, that the value of plants, manure and other goods sold by them during the relevant period is as under: -

YEAR	Value of plants, manure etc Sold (Rs)
2008-09	32,38,654/-
2009-10	25,35,8 13
2010-11	74,39,072
2011-12	1,28,93,933

2012-13	1,25,46,909
TOTAL	3,54,15,727

Further, in paragraph H8 of the grounds of appeal, the appellant has claimed that an amount of Rs. 52,00,305/-, representing sale proceeds of milk, manure and other dairy products from their dairy farm, is also not liable to service tax.

11.5 We observe that these claims require detailed factual verification, particularly to ascertain: -

- i. whether the sale of goods was independent and standalone, and
- ii. whether such goods were not integrally connected with or incidental to the execution of landscaping or garden maintenance contracts.

Only those sales which are established as pure sales of goods, supported by documentary evidence such as invoices, stock records and separate accounting, would be eligible for exclusion from the taxable value.

11.6 Since the necessary factual details and supporting documents are not readily available on record before us, we are unable to quantify the exact extent of exclusion at this stage.

Accordingly, we hold that the demand to the extent it includes the value of pure sale of goods not relatable to landscaping and maintenance contracts is unsustainable. However, for the purpose of limited verification and recomputation, we remand this issue to the Adjudicating Authority, who shall:

- a) examine the documentary evidence produced by the appellant,
- b) verify whether the sales are independent of service contracts, and
- c) allow appropriate relief and recompute the demand in accordance with law, after granting due opportunity to the appellant.

ISSUE No. 5 Whether services rendered to SEZ units are exempt

12.1 The appellant submitted that services rendered to SEZ units are exempt under Section 26 of the SEZ Act, 2005, read with SEZ Rules.

12.2 The Department contended that SEZ exemption is conditional, subject to authorised operations and procedural compliance, which has not been demonstrated.

12.3 Section 26(1)(e) of SEZ Act provides exemption from service tax on taxable services provided to a developer

or unit to carry on authorised operations and prescribes three mandatory conditions The recipient must be an SEZ unit or developer; The service must be taxable under the Finance Act, 1994; The service must be used for authorised operations. We find that the exemption is not unconditional and is activity-specific, not recipient-specific.

12.4 Rule 31 of SEZ Rules 2006 prescribes the procedure for claiming exemption, which includes: approval of the service as an authorised operation by the Approval Committee, compliance with prescribed documentation.

Thus, the scheme under the SEZ Act is procedural as well as substantive.

12.5 The legal position is settled that SEZ exemption is conditional and procedural compliance is mandatory.

i. *Infosys Ltd. v. CST, Bangalore 2014 (36) STR 565 (Tri.)*

The Tribunal held that: Exemption under the SEZ Act is not automatic and is subject to fulfilment of conditions prescribed under the notifications and rules.

ii. *Intas Pharma Ltd. v. CST, Ahmedabad 2013 (32) STR 458 (Tri.)*

It was held that: Even where services are rendered to SEZ units, exemption can be denied in the absence of

proof that the services were used for authorised operations.

12.6 Applying the above statutory scheme and judicial precedents to the facts of the present case, we find as follows: -

- a) **Absence of Proof of Authorised Operations** The appellant has not produced any document to show that landscaping or garden maintenance services were approved as authorised operations by the SEZ Approval Committee.
- b) **Nature of Service Rendered** Landscaping and garden maintenance are ancillary amenities and not inherently linked to core SEZ operations such as manufacture or export of services. Unless specifically approved, such services do not automatically qualify as authorised operations.
- c) **Exemption Cannot Be Claimed Merely on the basis of Recipient Status.**

Merely because the recipient happens to be an SEZ unit does not render all services rendered to it exempt. The onus lies squarely on the service provider to establish eligibility.

12.7 We finally find that the appellant has failed to establish that the landscaping and garden maintenance

services rendered to SEZ units were approved as authorised operations under the SEZ Act, 2005. Further, the appellant has not demonstrated compliance with the mandatory procedural requirements prescribed under the SEZ Rules and the relevant service tax exemption notifications. In the absence of such compliance, exemption under Section 26 of the SEZ Act cannot be extended. The overriding effect of Section 51 of the SEZ Act does not dispense with fulfilment of statutory and procedural conditions.

Accordingly, the claim of exemption in respect of services rendered to SEZ units is not allowed.

13. Observations common to all the questions:
Findings on Contracts / Purchase Orders Referring to Service Tax and Registration

13.1 From a perusal of the impugned Order-in-Original and the documents relied upon therein, we find that the appellant was already registered with the Service Tax Department, albeit under the category of "Interior Decoration / Designer Service", with effect from 01.07.2002.

13.2 We further find that during the relevant period, the appellant entered into multiple contracts and purchase orders with corporate entities and public authorities,

including M/s. Larsen & Toubro Ltd., Robert Bosch Engineering and Business Solutions Ltd., ESIC Hospital and Coimbatore City Municipal Corporation, for activities described as "maintenance of gardens", "maintenance of parks", "landscaping", "AMC for garden maintenance", etc.

13.3 Significantly, the purchase orders and contractual documents, as recorded and relied upon in the Impugned Order, contain explicit references to Service Tax, which include:

Clauses stating that "Service Tax will be reimbursed at applicable rates", and

Conditions requiring the contractor to submit a copy of Service Tax Registration Certificate.

- a) By way of illustration, the Purchase Order dated 29.03.2011 issued by M/s. Larsen & Toubro Ltd. expressly stipulates that Service Tax will be reimbursed extra at applicable rates, thereby evidencing that the contracting parties themselves treated the activity as a taxable service. (Page 10, Vol II of paper Book)
- b) Similarly, the Letter of Intent dated 03.01.2013 issued by L&T Construction mandates submission of Service Tax Registration details as a pre-condition for payment, further reinforcing the understanding of

taxability at the contractual level.)Page 25 of Vol II of Paper Book)

- c) The OIO also records that, in respect of certain SEZ units, communications issued by the Development Commissioner clarified that Service Tax is payable first and refund is to be claimed thereafter, negating any presumption of outright exemption at the service provider's end.

13.4 We note that the presence of Service Tax clauses in contracts and purchase orders, coupled with the appellant's existing Service Tax registration, assumes significance for the following reasons: -

- i. It demonstrates that the appellant was aware of the taxability of the services rendered, or at the very least, the issue was known and foreseeable.
- ii. It negates the plea of *bonafide* belief that the activity was wholly outside the service tax net.
- iii. It establishes that the non-payment of tax was not on account of ignorance, but despite contractual recognition of tax liability.

13.5 The argument of the appellant that the activity was understood by them as "horticulture" and hence non-taxable cannot be accepted in isolation, when commercial contracts contemporaneously treated the activity as taxable,

and when the appellant had never sought clarification or re-classification from the Department, despite such clauses.

13.6 In view of the above factual and legal position, we hold that: -

The presence of Service Tax clauses in contracts and purchase orders, the requirement to submit Service Tax Registration Certificate, and the appellant's pre-existing registration under the Service Tax law clearly establish or refer to awareness of taxability. The appellant's failure to declare and discharge tax on the impugned services cannot be treated as a mere interpretational dispute. These facts strongly support the findings in the impugned order on taxability and justify the conclusions drawn therein, particularly on limitation.

Distinguishing the Case Laws Relied Upon by the Appellant.

14.1 The appellant has relied upon various judicial pronouncements to contend that the activities undertaken by them constitute horticulture / agriculture or works contract and are therefore not liable to service tax. We have carefully examined each of the decisions cited and find that the same are distinguishable on facts, statutory framework and period involved, as discussed below.

i. Kasturi (Dead) v. Gaon Sabha – (1989) 4 SCC 55

The decision of the Hon'ble Supreme Court in *Kasturi (Dead) v. Gaon Sabha* was rendered in the context of land rights and agrarian legislation, where the meaning of the term "horticulture" was examined for determining land tenure and revenue implications. The said judgment does not deal with the taxability of services or the interpretation of charging provisions under the Finance Act, 1994. It is well settled that expressions interpreted in land or tenancy laws cannot be mechanically applied or imported to a fiscal statute. Service tax liability depends upon whether an activity falls within a taxable service definition, and not merely on the nomenclature of the activity. Hence, reliance on this decision is misplaced.

ii. *ANS Constructions Ltd. – 2010 (17) STR 549 (Tri.-Del.)*

The decision in *ANS Constructions Ltd.* is clearly distinguishable on period and statutory context. The Tribunal in that case was concerned with a period prior to 01.05.2006, when the definition of "maintenance or repair" was confined to immovable property. On that basis, the Tribunal held that maintenance of gardens was not taxable. However, with effect from 01.05.2006, the definition was substantially amended to cover maintenance of properties whether movable or immovable, thereby expanding the scope of the levy.

The present appeal relates to April 2008 to March 2013, which is governed by the amended definition. Consequently, the ratio of ANS Constructions Ltd. has no application to the facts of the present case.

iii. *Murlidhar Horticulture Pvt. Ltd. – 2019 (3) TMI 1435 (CESTAT Ahmedabad)*

In Murlidhar Horticulture Pvt. Ltd., the Tribunal was dealing with activities relating to development and creation of horticultural assets, involving plantation and initial landscaping. In contrast, the present case involves routine, periodic and continuous maintenance of existing gardens and landscaped areas under contractual arrangements for fixed consideration. The scope of work in the present case predominantly consists of watering, pruning, mowing, pest control, cleaning and replacement of plants, which are characteristic of maintenance services. The factual matrix being materially different, the said decision is distinguishable.

iv. *Evergreen Horticulture – 2019 (25) GSTL 556 (Tri.-All.)*

The decision in Evergreen Horticulture also turned on its own facts, wherein the Tribunal was concerned with initial landscaping and horticultural development, and not with recurring maintenance contracts. In the present case, the documentary evidence clearly establishes that the appellant was engaged in maintenance of gardens on

a recurring basis, rather than one-time development or cultivation activity. Further, the decision did not consider the impact of the expanded definition of "management, maintenance or repair service" post 01.05.2006. Hence, the ratio of the said decision is not applicable.

v. *Shobha P. Bhopatkar; Vividh Landscape Consultants Ltd.; Voora Shreeram Constructions*

The decisions relied upon by the appellant to contend that the contracts qualify as works contract service are also distinguishable. In those cases, the Tribunal found substantial execution of works involving transfer of property in goods, resulting in creation of assets. In the present case, the contracts are service-dominant, and any supply of plants, manure or soil is only incidental to the principal activity of maintenance. There is no evidence of transfer of property in goods of the nature contemplated under Article 366(29A) of the Constitution. Hence, the works contract plea is not sustainable.

vi. *UTI Technology Services Ltd. – 2012 (26) STR 147 (Tri.)*

In UTI Technology Services Ltd., the Tribunal held that services performed on behalf of the Government in relation to issuance of PAN cards constituted sovereign functions. The present case relates to maintenance of parks and gardens outsourced to a private contractor, which is a commercial activity and not a core sovereign

function. Therefore, the said decision is clearly distinguishable.

Case Laws on Limitation

14.2 The appellant has also relied upon decisions such as MM Engineering Works, Padmini Products and Pragathi Concrete Products to contest invocation of the extended period. These decisions pertain to cases where the Department was found to be fully aware of the activity and no suppression was established. In the present case, the appellant failed to disclose the impugned taxable activities in ST-3 returns, and mere recording in books of accounts or audit does not amount to disclosure to the Department, as held by the Hon'ble Supreme Court in Pushpam Pharmaceuticals and Nizam Sugar Factory. Hence, the limitation-related decisions relied upon by the appellant are also distinguishable and not applicable to the facts obtaining in this case.

14.3 In view of the above discussion, we hold that all the case laws relied upon by the appellant are distinguishable either on facts, period involved or statutory provisions applicable, and do not assist the appellant in seeking relief in the present appeal.

ISSUE No. vi) Whether invocation of extended period and imposition of interest and penalties are sustainable

15.1 The appellant contended that the invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 and the consequential imposition of interest and penalties are unsustainable as the

- i. the entire demand has been raised based on the books of accounts, contracts and invoices regularly maintained by the appellant;
- ii. the appellant was under a bona fide belief that the activities undertaken by them constituted horticulture/agriculture and were not taxable, which belief was supported by judicial precedents;
- iii. there was no deliberate suppression, misstatement or intent to evade tax;
- iv. the appellant was subjected to audit and correspondence by the Department as early as 2008, and therefore the Department was fully aware of the nature of activities;
- v. mere non-payment of tax on an interpretational issue cannot be equated with suppression.

Reliance was placed on *Padmini Products – 1989 (43) ELT 195 (SC)*, *Pragathi Concrete Products – 2015 (322) ELT 819 (SC)* and *MM Engineering Works – 2024 (12) TMI 525 (CESTAT Ahmedabad)*.

15.2 The Department has controverted that: -

- i. the appellant was registered under service tax, but failed to disclose the impugned activities in ST-3 returns;
- ii. the appellant never declared that they were providing taxable maintenance services to corporate entities, municipal bodies and SEZ units;
- iii. disclosure in books of accounts does not amount to disclosure to the Department;
- iv. extended period is correctly invoked as suppression of material facts is evident;
- v. Once suppression is established, interest under Section 75 is automatic, and penalty under Section 78 necessarily follows.

Reliance is placed on *Pushpam Pharmaceuticals – 1995 (78) ELT 401 (SC)*, *Nizam Sugar Factory – 2006 (197) ELT 465 (SC)* and *Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC)*.

15.3 We have carefully examined the findings recorded in the impugned Order, the appellant's synopsis and the rival submissions.

15.4 We note that the proviso to Section 73(1) permits invocation of the extended period where non-payment of tax is by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade tax.

15.5 We find that although the appellant was registered under one taxable category, they did not declare the impugned activities, nor did they discharge tax under the appropriate category of "Management, Maintenance or Repair Service", nor file ST-3 returns reflecting the consideration received under these contracts.

15.6 Disclosure of receipts in books of accounts or balance sheets cannot substitute statutory disclosure through service tax returns, as consistently held by the Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Co. v. CCE – 1995 (78) ELT 401 (SC)*.

15.7 In this factual background, the contractual stipulations referring to Service Tax in the contracts/purchase orders and requiring submission of registration certificate fortify the Department's case that there was suppression of taxable activity, justifying invocation of the extended period.

15.8 In the present case, we note the following undisputed facts: -

- i. The appellant was registered with the Service Tax Department during the relevant period;

- ii. Despite registration, the appellant did not declare landscaping/garden maintenance services in their ST-3 returns;
- iii. The appellant did not classify the service under any taxable category, nor did they seek any clarification from the Department when the contracts entered into expressly referred to service tax registration and payment of the tax.
- iv. The taxable nature of the activity has been upheld by us on merits.

15.9 It is settled law that statutory returns are the primary mode of disclosure under service tax law. Mere availability of information in books of accounts, contracts or invoices would not amount to disclosure unless the same is specifically declared in statutory returns. The Hon'ble Supreme Court in *Pushpam Pharmaceuticals Co. v. CCE - 1995 (78) ELT 401 (SC)* held that suppression includes failure to disclose information which the assessee was legally required to disclose. Similarly, in *Nizam Sugar Factory v. CCE - 2006 (197) ELT 465 (SC)*, it was held that non-disclosure of correct information in returns justifies invocation of extended period. The appellant's contention that the Department was aware of their activities due to audit or correspondence cannot be accepted. The Hon'ble

Supreme Court has consistently held that knowledge of some officers or audit parties cannot substitute statutory disclosure.

15.10 Rebuttal of Appellant's Limitation Case Laws: -

Padmini Products dealt with a case where all material facts were disclosed and the dispute was purely interpretational. In the present case, non-declaration in ST-3 returns is admitted, making the ratio inapplicable.

Pragathi Concrete Products involved repeated audits and conscious approval of classification by the Department. No such approval exists in the present case.

MM Engineering Works relates to a fact-specific scenario where the Department had accepted the assessee's position earlier. That is not the situation here.

15.11 Accordingly, the above decisions do not assist the appellant.

We therefore hold that the extended period has been correctly invoked.

15.12 We find that Interest under Section 75 is mandatory and compensatory in nature. Once tax liability is

upheld and delay in payment is established, interest follows automatically.

This position is settled by the Hon'ble Supreme Court in *CCE v. SKF India Ltd. – 2009 (239) ELT 385 (SC)*.

Accordingly, interest is payable as a statutory consequence.

15.13 On imposition of penalties: Section 78 provides for penalty where non-payment of tax is due to suppression or wilful misstatement. In the present case: the appellant has failed to declare taxable services despite registration; the plea of bona fide belief is rejected on merits; suppression with intent to evade is established.

15.14 The Hon'ble Supreme Court in *Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC)* has held that once conditions under Section 78 are satisfied, penalty is a civil consequence and mens rea need not be separately proved. Accordingly, penalty under Section 78 is sustainable, subject to recomputation of tax based on our remand directions *Supra*. Penalties under 77 are imposed for failure to pay tax and non-compliance with statutory requirements such as filing of returns.

We find no infirmity in their imposition, as the appellant admittedly failed to comply with statutory obligations.

15.15 Whether waiver of penalties under Section 80 of FA 1994 is justified in this case The appellant has sought waiver of penalties under Section 80 on the ground of bona fide belief. However, we find that Section 80 requires the assessee to establish reasonable cause. In the present case, continued non-declaration of taxable services despite registration negates the plea of reasonable cause. Hence, benefit of waiver of Penalties under Section 80 cannot be extended in this case.

15.16 In view of the foregoing discussion, we hold that the invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 is legal and proper. Interest under Section 75 being mandatory is rightly demanded. Penalties imposed under Sections 77 and 78 are sustainable, subject to recomputation of tax liability after excluding the value of sale of goods, as held above in this order.

16. In view of the above discussions, it is to state finally that: -

- i. Landscaping and garden maintenance activities are held as taxable services.
- ii. Services rendered to Coimbatore City Municipal Corporation are not sovereign functions under Article 243W.

- iii. No exemption is available either prior to or after 01.07.2012.
- iv. Pure standalone sale of goods (plants, manure, soil, milk, etc.) is not taxable and remanded back to Adjudicating authority to examine this issue and allow the benefit claimed, if eligible by following the principles of natural justice and pass a reasoned order within 90 days of receipt of this Order.
- v. SEZ exemption is not admissible in the absence of compliance and,
- vi. Extended period, interest and penalties are sustainable, subject to recomputation excluding value of goods sold on standalone basis.

17. The Appeal filed by the Appellant is allowed partly to the portion of the Pure standalone sale of goods (plants, manure, soil, milk, etc.) which is not taxable by way of remand proceedings before the Adjudicating Authority. The remaining portions of the Impugned order are upheld.

(Order pronounced in open court on 14.01.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)