

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 51606 Of 2019

[Arising out of Order-in-Original No.284(CRM)/ST/JDR/2019 dated 25.03.2019
passed by the Commissioner (Appeals), Central Excise and GST, Jodhpur]

M/s. Smt. Kala Kudal

.....Appellant

M/s. Kudal Caterer & Halwai

207-A, Shiv Sadan, Nr.Hanuman Mandir,
Solanki Talkies Road, Shastri Nagar,
Bhilwara (Raj.)

Versus

**The Commissioner, Central Excise & GST,
Udaipur (Rajasthan)**

.....Respondent

APPEARANCE:

Shri Vivek Sharma and Ms. Saumya Mehrotra, Advocates for the Appellant
Shri Anand Narayan, Authorized Representative for the Department

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:14.05.2025

Date of Decision:12.08.2025

FINAL ORDER No.51175/2025

DR. RACHNA GUPTA:

M/s. Kudal Caterers and Halwai, the appellant herein, is engaged in providing the taxable services. Department found that appellant contravened the provision of Section 66, 66B, 67, 68, 69

and 70 of the Finance Act, 1994 read with Rule 4, 6 and 7 of the Service Tax Rules, 1994 in as much as they have failed to pay Service Tax amounting to Rs.2657045/- for the period from 2012-13 to 2014-2015 in respect of services provided under the category of 'Outdoor Catering Services" as per the details mentioned hereunder.

2. Whereas, on receiving information from the Central Excise and Service Tax Commissionerate, Udaipur under Third Party Data for the year 2012-13 (ITR-Data), the Superintendent (Anti Evasion) Central Excise and Service Tax Division Bhilwara vide letter C.No.V(15)25/AE/BHL/2016/4891 dated 05.08.2016 asked the service provider M/s Kala Kudal to provide Copies of Income tax returns, with computation of income Sheets for the year 2011-12 to 2015-2016, TDS Certificates or Form 26AS of the year and ledger account/ Balance Sheet or Profit and Loss account etc., of their firm. The documents were provided with PAN details vide letter dated 12.09.2016. Smt. Kala Kudal had intimated that appellants are engaged in sale and purchase of goods and supplies. However, examination of the description of TDS given in the Form 26 AS of the service provider revealed that a considerable amount was shown credited into their accounts by two entities i.e M/s Noble Educational Society and M/s Udham Protsahan Sansthan wherein TDS was deducted under 194-C head of Income tax i.e. payments towards contracts and sub contracts during the year 2012-13 to 20-14-15. However, the balance sheet has described business or profession as "Supplying of Vegetables and Food Items on contracts basis" of

appellant and a huge amount was shown credited into their account being received from M/s Noble Educational Society and M/s Udham Protsahan Sansthan, TDS was deducted under 194-C head of Income tax the services/ work rendered by them. for.

3. Department formed the opinion that the service being provided as that of food preparation labour as well as supplying of Food on contracts basis falls under the definition of Outdoor Catering Services in terms of Section 65(105)(zzt) of Finance Act, 1994 as amended upto 30.06.2012 and thereafter the service is appearing taxable in terms of Section 65B (44) of the Act. But M/s. Kudal Caterers and Halwai, have not paid the Service Tax amounting to Rs.26,57,045/- including Cesses on the value of taxable service to the tune of Rs.2,14,97,127/- provided by them.

4. Alleging the suppression of facts, the service tax amounting to Rs.26,57,045/- was proposed to be recovered vide Show Cause Notice bearing no.23/2017 dated 29.09.2017 along with the proportionate interest in terms of section 75 of the Finance Act, 1994. The penalties under section 70, 77 and 78 of the said Act were also proposed to be imposed. While adjudicating the said Show Cause Notice the original adjudicating authority vide order bearing no.57/2017-2018 dated 28.03.2018 had extended the Cum-tax benefit to the appellant and dropped the demand of service tax amounting to Rs.10,62,818/-. The demand of the balance amount of service tax proposed i.e., amounting to Rs.15,94,227/- was confirmed alongwith the interest. The penalty of equal amount was imposed under section 78 and of

Rs.10,000/- + Rs.10,000/- was imposed under section 77 of the Finance Act, 1994.

5. Being aggrieved of the said order appellant filed an appeal before the Commissioner (Appeals). The said appeal was decided vide order-in-appeal no.284/2019 dated 25.03.2019 upholding the said order-in-original and rejecting the appeal. The appellant is before this Tribunal to assail the said order-in-appeal.

6. We have heard Shri Vivek Sharma, learned counsel for the appellant and Shri Anand Narayan, Authorized Representative for the Department.

7. Learned counsel for the appellant has submitted that the appellant is a sole proprietorship concern and is inter alia engaged in providing services in the nature of food to educational institutions and also is engaged in trading activities. The appellant entered into a contract dated 25.07.2011 with Warden of Noble Children Hostel (Noble Educational Society/ Noble International School) to prepare food including breakfast, lunch, dinner, weekly special diet, milk and fruit to Noble International School's Students of the hostel /faculty. Said Noble Educational Society, Bhilwara, by Certificate dated 24.01.2018 declared that it an education institute and was running a mess in the school and the hostel which was also part of the same education institute/organisation. It was also certified by Noble Educational Society, Bhilwara that it had outsourced the services of running mess/ dining hall to the appellant during the period 2012-2013 to 2015-2016 is mentioned to be on record. Hence, activity of the

appellant was exempted from service tax vide serial no.9 of Notification No. 25/2012-ST dated 20.06.2012. But the order-in-original dated 28.03.2017 failed to give any finding as to why the benefit of serial no.9 of Notification No.25/2012-ST was not available to the appellant. Though, the order-in-original extended abatement but as per Rule 2C of the Service Tax (Determination of Value Rules), 2006 and confirmed Service tax demand of Rs.15,94,227/- for the period 2012-13 to 2014-15 along with interest and penalty on the appellant out of the demand of Rs.26,57,045/- as was proposed in the Show Cause notice.

8. Learned counsel submitted that in the light of the said Notification the demand in question is not at all sustainable as the appellant was exempted from payment of any service tax while rendering the catering services to the educational institutions, the entire demand confirmed, except of giving cum-tax benefit, is still liable to be set aside.

9. The matter is mentioned to be squarely covered in favour of the Appellant by the following decisions:

- **CCE & ST v. M.J.Solanki (2025) 26 Centax 121 (Tri.-Ahmd)**
- **CCE & ST v. National Edu Venture Institute 2023 (8) TMI 902-CESTAT-AHMEDABAD**
- **Mody Education Foundation v. CCE Jodhpur 2023 (7) Centax 116 Tri.-Del**

10. Finally it is submitted that since there was no liability on the appellant to pay service tax, due to exemption available, the appellant was not required to seek registration nor was required to file the returns. The appellant is wrongly held to commit an act of suppression. Hence, extended period of limitation while invoking the Show Cause Notice has wrongly been invoked. With these submissions, the order under challenged is prayed to be set aside and the appeal is prayed to be allowed.

11. While rebutting his submissions, learned Departmental Representative has mentioned that the exemption at serial no.9 of the Notification No.25/2012 dated 20.06.2012 is available to the service auxiliary educational services but the appellant herein was providing outdoor catering service which is taxable under section 65 (105)(zzt) of Finance Act, 1994. Once the activity rendered by the appellant was taxable, absence of registration with Service Tax Department amounts to suppression on part of the appellant with an intent to evade the payment of service tax. Hence, the adjudicating authorities below have rightly confirmed the demand, justifying invocation of extended period of limitation while issuing the Show Cause notice, however, after extending the cum-tax benefit. The order is prayed to be upheld and the appeal is prayed to be dismissed.

12. Having heard the rival contentions made on behalf of both the parties, perusing the entire record of the appeal memo and the written submissions on behalf of both the parties, we observe that the issue to be adjudicated herein is:

Whether the catering services provided by the appellant to M/s. Noble International School with hostel facility are covered under the exemption from payment of service tax given at serial no.9 of Notification No.25/2012-ST dated 20.06.2012.

13. Foremost, we peruse the relevant part of the said Notification for the period 01.07.2012 to 10.07.2014, it reads as follows:

"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:-

1. ...

...

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

- (a) auxiliary educational services; or
- (b) renting of immovable property;

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

.....

(f) "auxiliary educational services" **means** any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, **or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person**, including services relating to admission to such institution, conduct of examination, **catering for the students under any mid-day meals scheme sponsored by Government, or transportation** of students, faculty or staff of such institution;

.....

3. This notification shall come into force on the 1st day of July, 2012.”

[emphasis supplied]

14. As noted, the said Notification has been clarified by the Department in their Circular No.172/7/2013 dated 19.09.2013 clarifying the meaning of auxiliary educational services. The Circular reads as follows:

“As defined in the said notification, "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge- enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as “auxiliary educational services” and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

4. In addition to the services mentioned in the definition of “auxiliary educational services”, other examples would be hostels, housekeeping, security services, canteen, etc.”

15. It has also been brought to our notice that the said entry at serial no.9 of Notification No.25/2012 was amended for the period from 11.07.2014 to 31.03.2015. The amended provisions read as follows:

"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:-

1. ...

...

"9. Services provided,-

(a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;"

16. From the conjoint reading of all these provisions, as quoted above, it becomes clear that the activity of rendering catering services was clarified by the Department itself to be the part of 'auxiliary educational services'. This activity was specifically exempted vide amendment in the said serial no.9 of Mega-Exemption Notification. As per Notification No.06/2014 dated 11.07.2014, the services of catering provided to the educational institutions including the mid-day meal were made exempted from service tax for the period 11.07.2014 to 31.03.2015. This observation is sufficient to hold that the exemption of this Mega-exemption Notification was available to the appellant for the entire period in dispute.

17. The findings in the impugned order that the exemption of this Notification was not available to the appellant prior 11.07.2014 and that the appellant has not provided any services after 11.07.2014 are factually incorrect. Also for the reason that the impugned Show Cause notice itself has proposed demand even for the period beyond 11.07.2014 till 31.03.2015.

18. From the decisions as brought to our notice, we observe that the issue as framed above is squarely the same in those decisions. In the case of **M.J. Solanki** (*supra*) it has been held as follows:

“From the above Notification and Clarification issued by the Board it is clear that all the Services provided to education institution such as transport services, hostels, housekeeping, security, canteen services and any other type of services provided to education institution are exempted from payment of service tax and covered under the above entry of exemption notification. In the disputed matter it is on record that respondent supply the manpower to educational institutions by way of drivers/ administrative staff/ class 3& 4 staff that are essential for the educational institutions for performing their works. Therefore in our view respondent is eligible for exemption from payment of Service Tax for supply of manpower to above mentioned educational institutions under Sr. No. 9 of Notification No. 25/2012-ST dated 20.06.2012.”

19. In the light of this discussion, we hold that the appellant was not liable to pay any service tax while rendering catering services to the educational institutes.

20. Coming to the allegations of suppression of fact, it has been a settled law that the suppression of facts has to be wilful as is explained by Hon'ble Supreme Court in the case title as **Pushpam Pharmaceutical Company vs. Commissioner of Central Excise, Bombay** reported as 1995 (78) ELT 401 (SC), where the Hon'ble

Court has explained the meaning of suppression of facts as well. It was held that since "suppression of facts", in proviso to section 73 (1) of the Finance Act, 1994, has been used in the company of strong words such as fraud, collusion or wilful default, suppression of facts must be deliberate/wilful and with an intent to escape payment of duty. As already held, the appellant was not liable to pay service tax due to the exemption available to the rendered activity, no question arises for escaping or evading the payment of duty/tax. This observation is sufficient for us to hold that the extended period has wrongly been invoked while issuing the Show Cause notice. The Show Cause notice dated 29.09.2017 has proposed the demand of service tax for the period from 2012-2013 to 2014-2015, the entire period is an extended period rather some part of the period is beyond the period of five years. The demand is, therefore, held to be barred by limitation. The order under challenge has ignored all these aspects but has confirmed the demand based on factually incorrect facts (as observed above). Hence, the order is hereby set aside. Consequent thereto, the appeal stands allowed.

(Order pronounced in the open Court on **12/08/2025**.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)