Complete text of the judgment on the aforesaid issue argued by APRA & Associates LLP is reproduced below: -

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

SERVICE TAX APPEAL NO. 51791 OF 2016

M/S JAI SHREE SHYAM BOREWELL CO.

VERSUS

COMMISSIONER OF CENTRAL EXCISE, JAIPUR

APPEARANCE:

Shri Atul Gupta & Shri Anmol Gupta, Chartered Accountants for the Appellant

Shri Rajeev Kapoor, Authorised Representative of the Respondent

CORAM:

MR. DILIP GUPTA, PRESIDENT

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

FINAL ORDER NO. 50036/2023

Dated - January 6, 2023

The order dated March 09, 2016 passed by the Commissioner confirming the demand of service tax with interest and penalty has been assailed in this appeal.

2. Apart from making the submissions on the merits of the case, Shri Atul Gupta, learned Chartered Accountant appearing for the appellant submitted that the order passed by the Commissioner deserves to be set aside solely on the ground that the show cause notice issued to the appellant alleges alternative services having been provided by the appellant. In support of this contention, learned Chartered Accountant has placed reliance upon the decision of a Division Bench of the Tribunal in **M/s Shubham Electricals vs CST & ST, Rohtak [2015 (6) TMI 786 – CESTAT, New Delhi].**

3. Shri Rajeev Kapoor, learned authorized representative appearing for the Department, however, supported the impugned order and submitted that it does not suffer from any illegality that may call for any interference by the Tribunal.

4. In order to examine the submissions advanced by both sides, it would be necessary to examine the show cause notice dated April 13, 2015 that was issued to the appellant. The show cause notice states that the service provided by the appellant can fall either under the category of 'erection, commissioning or installation service' **or** 'works contract service'.

5. The order dated March 09, 2016 passed by the Commissioner also proceeds to classify the service provided by the appellant and in this connection has not only referred to the services under 'erection, commissioning or installation service', but has also referred to 'works contract service'. In paragraph 14 and 15, it has also referred to 'commercial or industrial construction service'.

6. Thus, the show cause notice alleges that the services provided by the appellant could have fallen under **any** of the aforesaid three categories and the Commissioner has also not confined the order to one particular service, but has considered all the three categories of services.

7. In **Shubham Electricals,** a Division Bench of the Tribunal examined a similar controversy since the show cause notice also alleged that the services provided could either be classified under 'management, maintenance or repair service' **or** 'erection, commissioning or installation service' and set aside the impugned order for the reason that the show cause notice was vague and incoherent. The relevant portion of the order is reproduced below:

> "4. In para 8 of the show cause notice, which we consider critical to the validity of the show cause notice, it is stated : -
>
> "8. Whereas from the documents submitted by the party it appears that they have rendered the taxable services which may either be classified under 'Management, Maintenance or Repair service' or 'Erection, Installation and Commissioning services' and other construction linked services as defined under the Finance Act, 1994"

(emphasis added)

6. Suffice it to notice that in the entirety of the show cause notice there is not a single assertion proposing to levy and collect Service Tax on the basis of any specified taxable services allegedly rendered by the appellant except the several alternative taxable services speculated to have been proved and set out in para 8 (supra).

11. Neither the show cause notice dated 21-10-2011 nor the impugned adjudication order dated 18-1-2013 record any assertion/conclusion whatsoever as to which particular or specific taxable service the appellant had provided. In the absence of an allegation of having provided a specific taxable service in the show cause notice and in view of the failure in the adjudication order as well, neither the show cause notice nor the consequent adjudication order could be sustained.

12. Shri Amresh Jain, learned DR would strenuously contend that Revenue was handicapped and crippled by the total non-cooperative attitude of the appellant which failed to respond in time to the several notices issued, failed to furnish the relevant transactional documents and to assist the adjudication process in its efforts to identify the specific taxable service provided by the appellant.

13. We have noticed earlier that the show cause notice itself adverts to the fact that the appellant had provided copies of 20 work orders executed in relation to CWG Projects, particulars of which are set out in a tabular form in para 5 of the show cause notice. From the description of the works in this table, officers could have classified the several works into the appropriate taxable service which may appropriately govern rendition of these services. In any event officers are not handicapped and the Act provides ample powers including of search under Section 82 of the Act to obtain information necessary to pass a proper, disciplined and legally sustainable adjudication order. The disinclination to employ the ample investigatorial powers conferred by the Act is illustrative of gross Departmental failure and cannot afford justification for passing an incoherent and vague adjudication order. The failure to gather relevant facts for issuing a proper show cause notice cannot provide justification for a vague and incoherent show cause notice which has resulted in a serious transgression of the due process of law.

> 14. For the aforesaid reasons, we declare the show cause notice dated 21-10-2011 and the consequent impugned adjudication order dated 18-1-2013 to be unsustainable and quash the same."

8. The Department challenged the aforesaid order of the Tribunal before the Delhi High Court, which by judgment dated April 04, 2015 [**2016 (5) TMI 1055 – Delhi High Court]**, dismissed the appeal and the relevant portion of the judgment is reproduced below :

> 5. Having heard the learned counsel for the appellant and having perused the impugned order of the CESTAT, the Order-in-Original dated 18th January, 2013 as well as the show cause notice (SCN) dated 21st October, 2011, the Court concurs with the CESTAT that the SCN as well as the Adjudication Order are vague as to the taxable service performed by the respondent and, therefore, no substantial question of law arises for determination by the Court.
>
> 6. **As rightly pointed out by the CESTAT, the Department itself is unclear whether the service performed by the respondent was "management, maintenance or repair service" or "Erection, Installation and Commissioning Services". This vagueness goes to root of the matter.** Therefore, the decision in Commissioner of Service Tax v. ITC Ltd. – 2014 (36) S.T.R. 481 (Del.) relied upon by Mr. Rahul Kaushik, learned counsel for the Department, is distinguishable on facts. Although, Mr. Kaushik referred to certain portions of the SCN as well as the Adjudication Order to make good the plea neither was vague, the Court is not inclined to agree.

[emphasis supplied]

9. The show cause notice issued by the Department in the present appeal is also vague and incoherent as it alleges that the appellant could have provided any of the three alternative services.

10. For the reasons stated in the aforesaid decision of the Tribunal in **Shubham Electricals** and the judgment of the Delhi High Court in the appeal filed by the Department to set aside the said order of the Tribunal, the order dated March 09, 2016 deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Dictated & pronounced in the open Court)