Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Service Tax Appeal No. 11263 of 2025

(Arising out of OIA No. VAD-EXCUS-001-APP-626-2024-25 dated 12.03.2025 passed by Commissioner (Appeals)-Vadodara)

Rama Overseas Company **...Appellant**
(Prop. Sanjay Prasad Dashrath Prasad Sharma)
GF/1, Sankalp, Nr. Volga Apartment
Nr. Shuklanagar, New Sama Road,
Vadodara-390008

VERSUS

CGST & Central Excise-Vadodara-I **...Respondent**
Central GST Building, Race Course Circle,
Vadodara-Gujarat-390007

APPEARANCE:
Shri Rahul Gajera, Advocate appeared for the Appellant
Shri Sarjeet Kumar, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. 11415 /2025

DATE OF HEARING: 08.12.2025
DATE OF DECISION:08.12.2025

SOMESH ARORA

The Learned Advocate pleads that the matter is squarely covered by the decision of Division Bench of CESTAT Allahabad as reported in 2025 (3) TMI 1347 – CESTAT Allahabad in the matter of M/s Yards and Yields Infratech Pvt. Ltd., therefore they are entitled to relief even on merits at this stage. He particularly draws the attention of this court to para 14 which is reproduced below:

> "14. We find that the whole case of demand was built up merely on the basis of figures shown in Form 26AS statement. In para-11 of the SCN, service rendered by the Appellant was mentioned as Real Estate Agent on imaginary basis. No document has been discussed in support of the said allegation. As per definition of service' provided under Section 65B(44) of the Finance Act, 1994, any activity carried out by a person for another for consideration would be service. The Department in the present case could not bring on record any person to whom service was rendered by the Appellant. It is further mentioned in para -12 of the SCN as under-
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> > "Whereas, the above mentioned Form 26AS for the Financial Years 2011-12,2012-13,2013-14 and 2014-15 as obtained from Income Tax department reflects the Commission amount credited to the party and TDS deducted by service receivers of the party in respective Financial Years. On the basis of said 26AS statement, the liability of M/s Yards N Yields Infratech Pvt. Ltd. has been calculated."
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> The contents clearly show that demand of service tax was determined merely on the basis of figures of Form 26AS without examining any other document with a view to ascertain as to whether the receipts shown in Form 26AS was in respect of service only. It is a known fact that Form 26AS statement is prepared by the Income Tax Department, not by the taxpayers. There may be chances of error in such statement. It is further seen that the figure shown in Form 26AS statement

> differ with turnover declared in respective Balance Sheet. The Department have not made any enquiry to ascertain the reason of the difference between figures shown in balance sheet and Form 26AS statement. Neither the adjudicating officer nor the appellate authority has tried to find out nature of services rendered by the Appellant. In the impugned Order-in-Appeal, Learned Commissioner (Appeals), has categorically mentioned in para-5, that demand was determined on the basis of figures shown in Form 26AS statement which is without support of any other documents. He further observed that Form 26AS statement is an authentic statutory document received from the Income Tax Department. In this regard we find that the aforesaid observation is not legally correct. Onus lies on the Department to give specific findings on taxability of action of the assessee,
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> The Department failed to demonstrate the essential elements for service tax liability as:-
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> > i. They didn't prove that the Appellant actuaily rendered taxable services.
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> > ii. They didn't identify the specific recipients of these alleged services.
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> > iii. They didn't demonstrate that the amounts in question were received as payment for taxable services.
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> > iv. Information from other statutory documents like ATR/26AS, though valuable, cannot be the sole basis for service tax demands.
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> Service tax demands require establishing the four elements mentioned above. Shifting burden of proof, The Department cannot solely rely on ITR/26AS discrepancies to shift the burden of proof to the taxpayer. In this context, reference is made to the decision of the Tribunal in the case of United Telecom Ltd.. (2011 (22) S.T.R. 571 (Tribunal)] wherein it has been held that no demand can be confirmed unless exact liability is not decided. In the case of Kush Constructions [2019 (24) G.S.T.L. 606 (Tri.-All.)], the Tribunal categorically held as:-
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> > "After hearing both the sides duly represented by Shri A.K. Singh authorized representative of the appellant on behalf of the appellant and Shri Shiv Pratap Singh, Learned AR on behalf of the Revenue, we note that through impugned order Service Tax of Rs. 93,000/- was confirmed along with equal penalty. On perusal of record, we note that the appellants were registered with the Service Tax Department and also they were filing ST-3 returns. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income-tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal."
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> Hence by following the ratio of the decisions cited (supra), we are of the considered view that the impugned order is not sustainable in law and is liable to be set aside and we do so.

2. Learned AR submits that the decision was not available for the consideration before the adjudicating authority.

3. This court has considered the submissions. The learned advocate draws the attention of this court that once the matter was remanded by the Commissioner (Appeals) but they were not met with the justice. Second time it came right up to this Tribunal and matter was remanded

with the specific direction which have not been obeyed. This court finds that beside other issues which are not on merit and are still undecided even up to the level of this Tribunal. There is also pleaded that matter is prima facie now covered by the aforesaid observations of the Allahabad Tribunal through the Division Bench. Since the comments and findings of the Commissioner (Appeals) are not available on this decision, therefore, it will be in the interest of justice, that he takes a look on the judgment and applies it to the facts of this matter. This direction will not prevent the appellant to seek answers on the preliminary issues raised by them. However, in case the Commissioner (Appeals) is of the view that the decision quoted above is squarely applicable it is left open for him to decide the peripheral issues or not? Matter has already shuttled a lot and the appellant have suffered litigation. Therefore, same should be decided within a month of receipt of this order by the Commissioner (Appeals). Appeal is allowed by way of remand.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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