

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 2

**SERVICE TAX Appeal No. 10161 of 2022-SM**

[Arising out of Order-in-Appeal No. AHM-EXCUS-001-APP-026/2021-22 dated 24.11.2021/28.12.2021 passed by Commissioner (Appeals) CGST Commissioner, Ahmedabad]

**Amplus Capital Advisors Pvt. Limited**

**.... Appellant**

23-24 Government Servant Society, Adjoining  
Municipal Market, CG Road, Navrangpura,  
Ahmedabad-380 009

*VERSUS*

**Commissioner, CGST Commissionerate, Ahmedabad .... Respondent**

GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad  
380 015

**APPEARANCE :**

Shri Amit Laddha, Advocate for the Appellant  
Smt. Sunita Menon, Superintendent (AR) for the Revenue.

**CORAM:**

**HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)**

DATE OF HEARING : 16.12.2025

DATE OF DECISION: 18.12.2025

**FINAL ORDER NO. 11435/2025**

**DR. AJAYA KRISHNA VISHVESHA :**

This appeal is directed against the impugned order dated 24.11.2021 passed by learned Commissioner (Appeals) through which he upheld the Order-in-Original dated 18.09.2020 and rejected the appeal.

2. The facts of the case, in brief, are that an enquiry was initiated by the Preventive Wing of CGST, Ahmedabad on the allegation that the appellant had received certain services from foreign service provider in Financial Years 2014-15 and 2015-16 on which they were liable to pay service tax under Reverse Charge Mechanism. The appellant paid service tax alongwith interest and penalty vide challan No. 50020 for an amount of Rs. 3,46,342/-

on the advice of the department, voluntarily and in bonafide belief that the same was payable. Thereafter, the appellant came to know that they were not liable to pay service tax on services received from abroad as per Rule 3 of Place of Provision of Services Rules, 2012. Since, the service providers are located outside India, the place of provision of the relevant services would be outside India and therefore, no Service Tax is to be levied. Accordingly, the appellant filed refund claim for an amount of Rs.2,45,786/- (Rs.1,00,366/- as service tax, Rs.1,30,365/- as interest and Rs. 15,055/- as penalty). The refund claim was rejected by the Ld. Assistant Commissioner, CGST, Ahmedabad on the ground that refund claim is filed beyond limitation period and the appellant had voluntarily paid the entire amount. Feeling aggrieved from Order-in-Original as mentioned above, the appellant filed appeal before the learned Commissioner (Appeals). Learned Commissioner (Appeals) rejected the appeal and upheld the Order-in-Original dated 18.09.2020 by passing order dated 24.11.2021. Feeling aggrieved from the impugned order dated 24.11.2021, passed by learned Commissioner (Appeals), the present has been filed before this Tribunal.

3. Learned Counsel for the appellant submitted that appellant is entitled to get refund of service tax, interest and penalty on the services received from a foreign service provider. During Financial Years 2014-15 and 2015-16, they were not liable to pay service tax under Reverse Charge Mechanism. He has also submitted that the amount paid by them will not amount to payment of service tax but only a deposit with the government because there was no liability upon the appellant to pay service tax. He has also submitted that the period of limitation will not be applicable in the case of the appellant as service tax was never paid by them and only a deposit was made by them. He has contended that the appeal may be allowed and

the impugned order dated 24.11.2021 passed by learned Commissioner (Appeals) may be rejected.

3.1 The learned Counsel for the appellant cited the ruling of the Hon'ble Delhi High Court in **Pavneet Oberoi vs. The Commissioner of Customs** reported in 2025-TIOL-1918-HC-DEL-CUS in which the Hon'ble Delhi High Court has observed that oral waiver of Show Cause Notice or personal hearing cannot satisfy the mandatory requirements of Section 124 and violates principles of natural justice. The bench held that law laid down in earlier Delhi High Court judgments and the Supreme Court decision in **Jatin Ahuja** makes clear that non-issuance of Show Cause Notice within the statutory period under Section 110(2), without extension, renders continued detention illegal and mandates release.

4. The learned AR for the department has reiterated the impugned order dated 24.11.2021 passed by learned Commissioner (Appeals) and submitted that the impugned order has been passed in accordance with the provisions of Section 73(3) of Finance Act, 1994 and there is no illegality in the impugned order passed by the learned Commissioner (Appeals). She prays that appeal may be rejected and the impugned order passed by learned Commissioner (Appeals) may be upheld.

5. I have heard the learned Counsel for the appellant and learned AR for the Revenue and perused the record.

5.1 I am of the view that learned Commissioner has passed the impugned order dated 24.11.2021 in accordance with the provisions of Section 73(3) of Chapter 5 of Finance Act, 1994. There is no illegality or irregularity in the impugned order passed by the learned Commissioner. In para 6 of the impugned order, the learned Commissioner has observed that the service

tax amount for which refund is claimed by the appellant came to be paid by them during the course of an enquiry initiated against them by the department. The appellant paid the service tax involved in the impugned transactions alongwith interest and penalty and informed the same to the department vide their letter dated 29.08.2019 and requested that in terms of provision of Section 73(3) of Chapter 5 of Finance Act, 1994 and as per the instructions contained in Board's letter F. No. 137/46/2015-Service Tax dated 18.08.2015. The Show Cause Notice may not be issued to them in the case. Paragraph 6 of the impugned order is being reproduced below:-

**"6.** It is observed that the service tax amount, for which refund is claimed by the appellant, came to be paid by them during the course of an inquiry initiated against them by the department. The appellant had paid the amount of service tax involved in the impugned transactions along with interest and penalty and informed the same to the department vide their letter dated 29.08.2019 and requested that in terms of provision of Section 73(3) of Chapter 5 of Finance Act, 1994 and as per the instructions contained in Board's letter F.No.137/46/2015-Service Tax dated 18.08.2015, the show cause notice may not be issued to them in the case. It was further stated that the above issue will be treated as closed with this letter since they have complied with the provisions of the Service Tax and Central Excise laws and they have confirmed that this amount is paid voluntarily. From the above communication of the appellant available on records, it is apparent that the appellant had voluntarily opted for concluding of inquiry proceedings against them in terms of Section 73 (3) of the Act. After settling an issue by paying duty along with interest and penalty in terms of statutory provisions, the proceedings in respect of the said issue gets concluded and it is not open for an assessee to challenge it later as it would jeopardize the interest of the department. By opting for conclusion of proceedings against them under the provisions of Section 73(3) of the Act, the appellant has relinquished their right to challenge the assessment of tax under the said proceedings which they wanted to conclude. It is a fact that since the appellant had chosen to conclude the issue of non-payment of service tax in the case, it was not open for the department to issue any Notice in the matter. Had the appellant not opted for concluding provisions as envisaged under Section 73(3) *ibid*, the department could have taken necessary measures to safeguard its interest by issuing a notice in the matter, which is not possible now as such a notice would be hit by the provision of limitation for issue involved in the matter being pertaining to the period of 2014-15 and 2015-16. It was for the appellant's request for closing the proceedings under the provision of Section 73(3) *ibid* that the department had to close the proceedings initiated by it against them. It was a *quid pro quo* act on the part of the department not to proceed with the proceedings."

5.2 It is pertinent to reproduce the provisions of Section 73(3) of the Finance Act, 1994, which reads as under:-

**"(3)** Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the

person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing. who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid.

*Provided that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this Section. and the period of eighteen months referred to in sub-section (1) shall be counted from the date of receipt of such information of payment."*

5.3 I also find that this bench, in the case of **Amar Engineering Company vs. Commissioner of CE & ST, Vadodara-1** – 2019 (28) GSTL 116 (Tri. Ahmd.), held that :-

**"5.** As per the above Section, once the appellant opted for voluntary payment of service tax and interest and intimate to the department, the matter shall stand closed and the department has no liberty to issue any SCN, that means the issue stand closed. Neither the assessee can dispute the same nor the department has opportunity to issue any SCN. Therefore, at a later period coming with the refund is absolutely contrary to the provision of Section 73(3) of the Finance Act, 1994. Therefore, I do not find any substance in the refund issue of the appellant. Accordingly, the impugned order is upheld and the appeal is dismissed."

5.4 I am also of the view that law laid down by Hon'ble Delhi High Court in **Pavneet Oberoi vs. The Commissioner of Customs** (supra) is not applicable in the present case as the facts of both the cases are entirely different. In the present case there is no oral waiver of Show Cause Notice as was the case in **Pavneet Oberoi vs. The Commissioner of Customs**. Therefore, the judgment passed in **Pavneet Oberoi vs. The Commissioner of Customs** case is not applicable in the present case.

5.5 In view of the above legal position, I have come to the conclusion that there is no merit in the appeal filed by the appellant and the impugned order passed by learned Commissioner (Appeals) is in accordance with the

provisions of Section 73(3) of the Finance Act, 1994 and no interference is called for. Therefore, the appeal is liable to be dismissed and the impugned order passed by learned Commissioner is liable to be upheld.

6. Consequently, the appeal is dismissed and the impugned order is upheld.

*(Order pronounced in the open court 18.12.2025)*

**(Dr. Ajaya Krishna Vishvesha)**  
**Member (Judicial)**

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