

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

REGIONAL BENCH-COURT NO. 2

Service Tax Appeal No. 10773 of 2020

(Arising out of CCESA-SRT-APPEAL-PS-661-2019-20 Dated 20.03.2020 passed by Commissioner (Appeals), Central GST & Central Excise - Surat)

Harikrishna Pankajkumar Gopani

G-1, Sai Darshan Plaza, Kumbgas Sheri,
Katargam, Surat (Gujarat)-395004

.....Appellant

VERSUS

**Commissioner of Central Goods
& Service Tax & Central Excise, Surat**

New Central Excise Building,
Opp. Gandhi Baug,
Chaowk Bazaar, Surat- 395001

.....Respondent

APPEARANCE:

Shri Jigar Shah, Advocate with Shri Amber Kumrawat, Advocate appeared for the Appellant

Shri NeilPrakash G Makwana, Superintendent (AR) appeared for the Respondent

CORAM:

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

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10341/2026

DATE OF HEARING: 02.12.2025

DATE OF DECISION: 15.05.2026

SATENDRA VIKRAM SINGH

M/s. Harikrishna Pankaj Kumar Gopani, Surat (Appellant) are engaged in providing Construction Services other than residential complex including commercial/industrial buildings or civil structures and construction of residential complex service, etc.

1.1 During audit of their records, it was found that the appellant has not paid service tax on some of the invoices issued to M/s P R Patel & Co., Bhavnagar during the period from February,2016 to December,2016. On inquiry, they submitted that they are a subcontractor of M/s P R Patel & Co who has discharged the service tax liability. They have not collected any service tax from the principal contractor. The Revenue relying on master Circular No. 999.03 dated 23rd August, 2007 which provided that a sub-contractor who is essentially a service provider also has to pay the service

tax as services provided by him to the main service provider for completion of his work, are in the nature of input service. Service tax is, therefore, leviable on any taxable service provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input service. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provider. After completing enquiry, Revenue issued a show cause notice dated 30th August, 2018 to the appellant demanding service tax of Rs. 79,33,872/- under Proviso to sub-section (1) of Section 73 along with interest and also proposed penalty on him under Section 78(1) of the Finance Act, 1994.

1.2 The above show cause notice was decided by the Additional Commissioner vide order dated 30.08.2019, wherein he dropped the demand of Rs. 65,772/- and confirmed the balance service tax of Rs. 78,68,100/- on the appellant along with interest and also imposed equal penalty under Section 78. Aggrieved with the above order, appellant filed appeal before the Commissioner (Appeals) who vide impugned order, upheld the order of the lower authority and set aside their appeal. Hence, the present appeal before the Tribunal.

2. In their appeal, the appellant took the following grounds:-

- They are providing service to government, a local authority or a governmental authority which are exempt vide entry No. 12A of exemption Notification No. 25/2012-ST dated 20.06.2012. This notification was further amended vide Notification No. 9/2016-ST dated 01.03.2016 by inserting a new entry 12A effective from 1st March, 2016. This entry subject to some conditions, restored exemption on services of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration provided to government, a

local authority or a governmental authority during the period from 01.03.2015 to 01.03.2016.

- Vide entry No. 29 (h) of Notification No. 25/2012 dated 20.06.2012 services provided by a sub-contractor to main contractor are exempt if services provided by the main contractor are exempt. This entry reads as under:-

"29. Services by the following persons in respective capacities-

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt."

- The invoice value and taxable values are derived on the basis of invoices issued by them to M/s P R Patel & Co. In those bills, amount is the contract value for which contract is given by contractee to M/s P R Patel & Co. For determining invoice value and taxable value as applicable to them, 1% profit margin of M/s P R Patel & Co. has to be deducted from the bill amount. If revised calculations are considered total consideration for the appellant comes to Rs. 11,82,31,581/- instead of Rs. 12,08,54,245/- taken by the department. They also prayed that cum duty benefit should be extended under Section 67(2) of the Finance Act, 1994 where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable.
- There is no service tax liability on the sub-contractor where service tax has already been paid by the principal contractor. Demanding service tax again from the sub-contractor amounts to double taxation on same contract(s). When the government has already received tax amount, payment by them and again its Cenvat credit by the principal contractor becomes a revenue neutral situation. They rely on CESTAT Delhi decision in the case of M/s DNS Contractor Vs. Commissioner of Central Excise, Delhi-I 2015 (37) S.T.R. 848 (Tri-Delhi) wherein it has been held that as service tax on the entire contract value has been discharged by the principal contractor, there

is no liability of service tax on the sub-contractor. On the same issue, they also rely on the following decisions: -

- (i) Urvi Construction Vs. Commissioner of Service Tax, Ahmedabad 2010 (17) S.T.R. 302 (Tri.-Ahmedabad)
 - (ii) JAC Air Services Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi 2013 (31) S.T.R. 155 (Tri-Delhi)
 - (iii) M/s KOCH-GLITSCH India Pvt. Ltd. Vs. Commissioner of CEX & Cus. Vadodara-I (Tri-A'bad)
 - (iv) BCC Developers and Promoters Pvt. Ltd. Vs Commissioner of C. Ex,, Jaipur (Tri-New Delhi)
 - (v) M/S S.V. Engineering Constructions Vs CC, CE & ST, Guntur (Tri-Hyderabad)
 - (vi) Dinesh M. Kotian Vs Commissioner of Central Excise & Service Tax-I, Mumbai and Vica-Versa (Tri- MUMBAI)
 - (vii) Murari Lal Singhal Vs C.C.E. & S.T., Jaipur-I (Tri- New Delhi)
 - (viii) Newton Eng. and Chemicals Vs. Commissioner-2008 (12) STR 378 (Tri-A'bad)
 - (ix) OIKOS Vs CCE Bangalore-III-2007(5) STR 229 (Tri-Bang.)
 - (x) Viral Builders Vs CCE Surat-2011 (21) STR 457 (Tri-A'bad)
 - (xi) Hi-Tech Engineers Ltd. Vs CCE Nagpur-2010(17) STR 121 (Tri-Mum.)
 - (xii) Vijay Sharma & Co Vs CCE Chandigarh-2010 (20) STR 209 (Tri-LB)
- When service tax is not payable by them, the question of charging interest does not arise.
 - They have not suppressed any fact from the department nor contravened any of the provisions with intent to evade payment of service tax. There is also no fraud, collusion, willful mis-statement in the case and therefore, they are not liable to any penalty under Section 78 of the Finance Act, 1994.

3. During arguments, learned Advocate fairly accepted that after larger Bench decision in the case of Commissioner of Service Tax, New Delhi Vs. Melange Developers Pvt Ltd reported at 2019-TIOL-1684-CESTAT-DEL-LB, it is clear that the sub-contractors are liable to pay service tax. He however, submits that the extended period in this case, is not invocable as there was

interpretational issue because of divergent views taken by various Tribunals. He further relies on following decisions in which it has been held that invocation of extended period is not justified where diversion views are taken involving interpretation issue:-

- Bright Construction Vs CCE 2023-VIL-1241-CESTAT-AHM-ST
- Shalin Engineers Pvt. Ltd Vs CST 2024-VIL-15-CESTAT AHM-ST
- JP Construction Vs CCE 2024-VIL-730-CESTAT ALH-ST
- Nu Calcutta Construction Company Vs CGST 2025-VIL-476-CESTAT-KOL-ST
- Shivanssh Infrastructure Development Pvt. Ltd Vs CCT 2025-VIL-1720-CESTAT-HYD-ST
- CCE Vs Saurashtra Cement Ltd 2016 (42) STR 632 (Guj.)
- GD Goenka Pvt. Ltd Vs CGST 2023 (11) Centax 2 (Tri-Del.)

4. Countering the argument, learned AR mentions that in this case, period of dispute is from February 2016 to December 2016 and the show cause notice was issued on 30.08.2018. Therefore, it is within the normal period. His case that the issue regarding payment of service tax by the sub-contractor was clarified by CBIC in their circular issued in August, 2007. No doubt, there was a confusion prior to that but after issue of this master circular, there should have been no confusion in anybody's mind that sub-contractor has to pay service tax even though the main contractor has paid the service tax. This is to ensure smooth flow of Cenvat credit. Besides reiterating the findings of the lower authority, he relies on the decision of CESTAT Delhi in the case of Shri Rahul Agarwal Vs. Commissioner of CGST, Customs and Central excise, Jabalpur reported at 2025-TIOL-1368-CESTAT-DEL. He prays that the decision of learned Commissioner (Appeals) may be upheld and the appeal filed by the appellant be set aside.

5. We have heard both the sides. We find that there is no dispute in the facts that the appellant was a sub-contractor of M/s P R Patel & Co. engaged in provision of service. The following points need to be decided in this case:-

- a) Whether sub-contractor is liable to pay service tax on services provided to a main contractor?
- b) Whether demand is barred by limitation as argued by the appellant?
- c) Whether cum duty benefit is admissible to the appellant in the facts of the case?

5.1 The appellants have contended that the principal contractor has already paid service tax on these contracts and therefore, demanding service tax again from the sub-contractor amounts to double taxation. Learned Advocate has relied on various decisions as mentioned above. We however, are of the view that the air has been cleared on the issue by the decision of Larger Bench in the case of Melange Developers Pvt Ltd (cited supra). Therefore, there is no dispute that sub-contractor, who is essentially a service provider of the main contractor, is liable to pay service tax irrespective of the fact whether main contractor has/has not paid the service tax. This issue again came up for decision before CESTAT New Delhi in the case of Shri Rahul Agrawal (cited supra). The relevant paras of the said decision are reproduced as under:-

"17. We find that the issue relating to liability of sub-contractor to pay service tax was considered by the Larger Bench of this Tribunal in the decision of Commissioner of Service Tax, New Delhi vs. M/s. Melange Developers Pvt Ltd. The relevant paras of the decision is reproduced hereinafter:

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7. We have considered the submissions advanced by the learned Authorised Representative of the Department and the learned Chartered Accountant and learned Counsel for the Respondent.

8. It is w.e.f. 01 June, 2007 that sub-section (zzzza) was inserted in Section 65(105) of the Act in relation to execution of "Works Contract". Taxable Service under Section 65 (105) (zzzza) is defined as:

"65(105)(zzzza)-to any person, by any other person in relation to the execution of a works contract, excluding works Contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

- (ii) such contract is for the purposes of carrying out,— (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
- (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
- (c) construction of a new residential complex or a part thereof; or*
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
- (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”*

9. It is not in dispute that the activity undertaken by the sub-contractor falls under the category of “Works Contract” service. What is sought to be contended is that the main contractors, who had given sub-contracts to the subcontractor through various work orders, had already discharged the Service Tax liability on the entire contract amount and, therefore, the sub- contractor was not required to pay any Service Tax.

10. Section 66, as substituted by the Finance Act, 2007, provides that there shall be levied a tax (hereinafter referred to as the „Service Tax“) @ 12% of the value of taxable services of various sub-clauses of clause (105) of section 65 and collected in such a manner as may be prescribed. Section 68 of the Act provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in section 66 in such a manner and within such a period as may be prescribed. Section 94 of the Act deals with power to make Rules. Sub-section (1) provides that the Central Government may, by Notification in the official gazette, make Rules for carrying out the provisions of Chapter V of the Act. Sub-section (2)(a) provides that such Rules may provide for collection and recovery of Service Tax under sections 66 and 68 of the Act. In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 and section 94 of the Act and in supersession of the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002, the Central Government framed the CENVAT Credit Rules, 2004. It is, therefore, clear that every person (which would include a sub-contractor) providing taxable service to any person (which will include a main contractor) shall pay Service Tax at the rate specified in section 66 in the manner provided for. The manner has been provided for in the CENVAT Credit Rules of 2004. “Input Service” has been defined to mean, any

service used by a provider of output service for providing an output service. "Output Service" has been defined to mean any service provided by a provider of service located in the taxable territory. Rule 3 stipulates that a provider of output service shall be allowed CENVAT Credit of the Service Tax leviable under Section 66, 66A and 67B of the Act. Thus, in the scheme of Service Tax, the concept of CENVAT Credit enables every service provider in a supply chain to take input credit of the tax paid by him which can be utilized for the purpose of discharge of taxes on his output service. The conditions for allowing CENVAT Credit have been provided for in Rule 4. The mechanism under the CENVAT Credit Rules also ensures that there is no scope for double taxation.

11. In the face of these provisions, it may not be open to a sub-contractor to contend that he should not be subjected to discharge the Service Tax liability in respect of a taxable service when the main contractor has paid Service Tax on the gross amount, more particularly when there is no provision granting exemption to him from payment of Service Tax.

12. It is true that prior to 2007, various Service Tax, Trade Notices/Instructions/Circulars/Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/ Instructions/ Circulars/ Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below:

999.03/ 23.08.07	A taxable service provider outsources a part of the work by engaging another Service provider, generally known as sub- contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-
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	<i>contractor who undertakes only part of the whole work</i>	<i>contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a subcontractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.</i>
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13. Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a subcontractor is required to pay Service Tax, it may amount to "Double Taxation", but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by CENVAT Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as "CENVAT Credit") of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that CENVAT Credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would

include a subcontractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the CENVAT Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the CENVAT Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

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26. At this stage, it would also be useful to refer to a larger Bench decision of the Tribunal in Vijay Sharma & Company vs CCE, Chandigarh reported in 2010 (20) STR 309 (Tri.- LB). The issue that arose before the larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a sub-contractor is liable to pay Service Tax, the larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the CENVAT Credit Rules. The relevant paragraph 9 is reproduced below:

"9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub- broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as

rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."

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29. *The submission of the learned Counsel for the Respondent regarding "revenue neutrality" cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the CENVAT Credit Rules of 2004.*

30. *Thus, for all the reasons stated above, it is not possible to accept the contention of the learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.*

31. *The reference is, accordingly, answered in the following terms:*

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

18. *As regards the period from 01.07.2012, it has been submitted before us that the appellants were eligible for exemption under Notification no. 25/2012-ST dated 20.06.2012. In this context, we note that after 1.7. 2012, the services provided by Sub-contractor was exempted only if the services provided by the main contractor were exempted. If main contractor was liable to Service Tax, sub-contractor was also liable to Service Tax. In the instant case, we note that construction of residential complexes was not exempt from service tax duty. Hence, the sub-contractors, viz., Appellant no. 1 and appellant no. 2 were liable to discharge their service tax liability on such services provided by them to the main contractor viz., M/s Agarwal Builder and Developers, Damoh.*

19. *In view of the above discussions, we find no infirmity in the impugned order and uphold the same. Consequently, the appeals stand dismissed."*

5.2 We find that the present matter pertains to period from February 2016 to December 2016 for which show cause notice was issued on 30.08.2018. As per the Finance Act, 2016, normal period for demanding service tax under Section 73(1) was substituted from earlier **"Eighteen months to Thirty months"**. Further, as per sub-Section (6) of Section 73 of the Finance Act, 1994, "relevant date" means :-

"For the purposes of this section, "relevant date" means,-

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid-

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund."

As due date of filing ST-3 return for the period October 2015 to March 2016 was 25th April, 2016, the show cause notice issued on 30.08.2018 for demanding service tax for the period February, 2016 to December, 2016, is within the normal period of 30 months. Hence, there is no need to invoke extended period in this case for demand of service tax. The Revenue's case therefore, is not hit by limitation. We therefore find that even though show cause notice invokes extended period of limitation in the charging section, the demand is within the normal period. Therefore, answer to the first issue goes in favour of Revenue that time bar does not get attracted in the facts of the matter.

5.3 The appellant has argued that Section 67(2) of the Finance Act, 1994, provides that "*where the gross amount charged by service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable is equal to the gross amount charged.*"

With these provisions, we have no doubt that the appellant should be extended cum tax benefit while calculating the service tax liability. We therefore, agree

with the contention of the appellant that cum tax benefit should be extended to them and demand should be recomputed accordingly. Therefore, matters need to be remanded to the Adjudicating authority for correct calculation of the taxable value of service and service tax demand by granting them the benefit of Section 67 (2).

5.4 As discussed in preceding paras, the service tax liability on appellant needs to be re-computed by extending the benefit of cum tax as per section 67 (2) of the Finance Act, 1994. Therefore, the matter is remanded to the Adjudicating Authority to consider the submissions of the appellant and recompute the service tax liability upon the appellant by giving them above benefit. Needless to say, computation of interest liability and penalty shall also be decided by the Adjudicating authority keeping in view the provisions of Section 76 and 78 of the Finance Act, 1994 in mind. The appellant is directed to produce documentary evidences in the form of invoices to show that the value taken by the department also includes service tax elements and that, no service tax has been separately demanded or collected from the principal contractor.

6. The appeal is disposed of in above terms by way of remand.

(Pronounced in the open court on 15.05.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)