CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70661 of 2016

(Arising out of Order-in-Original No.18/Comm/ST/GZB/2015-16 dated 28/03/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

M/s Kruti Techno Engineering Pvt. Ltd., ...Appellant
(26/2, South Side G.T. Road, Ghaziabad)

VERSUS

Commissioner of Central Excise &
Service Tax, Ghaziabad ....Respondent
(Commissionerate, Ghaziabad)

WITH

Service Tax Appeal No.70662 of 2016

(Arising out of Order-in-Original No.18/Comm/ST/GZB/2015-16 dated 28/03/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

Shri Manish Kumar Yadav, ...Appellant
(26/2, South Side G.T. Road, Ghaziabad)

VERSUS

Commissioner of Central Excise &
Service Tax, Ghaziabad ....Respondent
(Commissionerate, Ghaziabad)

APPEARANCE:

Shri Vishwjit, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70947-70948/2024

DATE OF HEARING : 26 November, 2024
DATE OF DECISION : 26 November, 2024

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Original No.18/Comm/ST/GZB/2015-16 dated 28/03/2016 passed by

Commissioner of Customs, Central Excise & Service Tax, Ghaziabad. By the impugned order following has been held:-

"Order

1. I confirm the demand of Service Tax along with Education Cess and SHE Cess amounting to Rs. 65,76,454/- (including Rs. 20,37,164/- of tax dues self assessed, admitted and declared in VCES) under Section 73 (1) & Section 87 of the Finance Act'1994 respectively. Further a sum of Rs. 33,59,001/-already deposited are ordered to be appropriated and adjusted against the said demand.

2. I confirm the charge and recovery of interest on the above demand under Section 75 of the Finance Act, 1994. Further a sum of Rs. 1,05,740/- already deposited by the party are ordered to be appropriated and adjusted as interest deposits towards the said demand.

3. I am refrained from imposing penalty under Section 76 of the Finance Act, 1994.

4. A penalty of Rs. 47,50,414/ [Rs. 18,26,041/- Rs. 8,87,209/- + Rs. 20,37,164/-] is imposed upon the party for their contraventions discussed above under the provisions of Section 78 of the Finance Act, 1994.

5. (i) A penalty of Rs 10,000/- is imposed upon the party under Clause (b) of section 77(1) of Finance Act 1994

(iii) A penalty of Rs. 10,000/- is imposed upon the party under Clause (c) of section 77(1) of Finance Act 1994

(iv) A penalty of Rs. 10,000/- is imposed upon the party under Clause (e) of section 77(1) of Finance Act 1994

(v) A penalty of Rs. 20,000/- imposed upon the party under Rule 7C of Service Tax Rules-1994.

(vi) A penalty of Rs. 1,00,000/- is imposed upon Shri Manish Kumar Yadav, Director of M/s Kruti Techno Engineering Pvt. Ltd., 26/2, South Side of G.T. Road, B.S. Road, Ghaziabad under the provisions of Section 78A of the Finance Act, 1994

(vii) A penalty of Rs. 10,000/- is imposed upon Shri Manish Kumar Yadav, Director of M/s Kruti Techno Engineering Pvt. Ltd., 26/2, South Side of G.T. Road, B.S. Road, Ghaziabad under the provisions of Section 77c of the Finance Act, 1994."

2.1 Appellant is engaged in providing taxable services under the category of Consulting Engineer, Maintenance or Repair Services, Erection Commissioning & Installation Service, Work Contract Service, Design Services, Technical Testing & Analysis Service and recipient of GTA Services. They are also availing facility of Cenvat credit as admissible under the Cenvat Credit Rules, 2004.

2.2 On the basis of intelligence that appellant was not paying service tax on Work Contract Services, the business premises of the appellant was visited by the officers of anti-evasion branch and appellants were found engaged in the manufacturing of 'Automation Systems' as well as in providing services for execution of Electrical projects on turnkey/service basis in respect of Installation, Erection and Commissioning of Control Disc, Electric Panel, PCC Panel, MCC Panel, PLC Panel, Cable Laying, Lighting etc. under the categories of 'Work Contract Service' and 'Erection & Commissioning Service to their various clients.

2.3 On scrutiny of records certain discrepancies were noted and appellant agreed to pay the service tax due and amount of Rs.13.39 lakhs was deposited by them through e-payment challan on the spot. Appellant had opted for payment of service tax on Works Contract Service as per provisions of Work Contract (Composition Scheme for payment of Service Tax) Rules, 2007 which provided to pay service tax @4.8% of the gross amount charged for Work Contract.

2.4 Appellant entered into two separate contacts with their clients, one for execution of service and other for supply of goods and while paying service tax under Work Contract (Composition Scheme for payment of Service Tax) Rules, 2007, value of material was not included.

2.5 Appellants had filed a VCES declaration by declaring the service tax dues of Rs.20,37,164/- for the period April, 2012 to December 2012 which they withdrew vide their letter dated 18.11.2013, from comparison of their balance sheet and ST-3 returns for the respective period as detailed in table bellow:-

Period	Value of Works Contract Service as per balance sheet	Value as declared in ST-3 return
Oct,10 to March, 11	2,15,34,209/-	1,47,33,413/-
2011-12	8,55,90,431/-	3,42,66,509/-

2.6 The service tax on the value in terms of Work Contract (Composition Scheme for payment of Service Tax) Rules, 2007 would be Rs.44,13,535/-.

2.7 In their balance sheet against Consulting Services the amount released was Rs.12,20,923/- during the period 2011-12 on which service tax of Rs.1,25,755/- was worked out. Thus, the total service tax demand to have been short paid would be Rs.65,76,454/- (Rs.20,37,164/-+Rs.44,13,535/- + Rs.1,25,755/-) against the above liability appellant have deposited Rs.13,39,000/- on 27.08.2013. They also paid an amount of Rs.20,20,001/- along with interest amounting to Rs.1,05,740/- on different dates from 15.07.2011 to 04.04.2012. Thus, appellant willfully suppressed facts regarding the correct value of taxable service and also willfully stated the facts relating to trading of goods. Therefore, the service tax short paid was demandable and required by invoking the extended period as per the provisions of Section 73 of the Finance Act, 1994.

2.8 Show cause notice dated 30.01.2015 was issued to the appellant, asking them to show cause as to why-

> *"(i) Service Tax alongwith Education Cess and SHE Cess amounting to Rs. 65,76,454/- including Rs. 20,37,164/- declared in VCES and recoverable under Section 87 as such should not be demanded and recovered from them under Section 73 (1) & Section 87 of the Finance Act'1994 and further why a sum of Rs. 33,59,001/- already deposited should not be appropriated and adjusted against the instant demand.*

(ii) Interest payable against the above demand under Section 75 of the Finance Act, 1994 should not be charged and recovered from them and further why a sum of Rs. 1,05,740/- should not be appropriated and adjusted as interest payment towards the instant demand.

(iii) penalty should not be imposed upon them under the provisions of Section 76 of the Finance Act, 1994

(iv) penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994

(v) penalty should not be imposed upon them under Clauses(b) (c) and (e) of section 77(1) of Finance Act 1994 and,

(vi) penalty should not be imposed upon them under Rule 7C of Service Tax Rules-1994.

Penalty was also proposed upon Shri Manish Kumar Yadav, Director of M/s Kruti Techno Engineering Pvt. Ltd., under the provisions of Section 77C and 78A of the Finance Act, 1994."

2.9 The said show cause notice was adjudicated as per the impugned Order-in-Original referred in para 1 above.

2.10 Aggrieved appellants have filed these two appeals.

3.1 We have heard Shri Vishwajit learned Counsel appearing for the appellants and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Demand of service tax of Rs.45,39,290/- for the period October-2010 to March-2012 is calculated after taking amount of trading of goods is illegal.
- There are computational error while determining net taxable turnover for levy of service tax for the year 2011-12 as Opening balance of Debtor was taken as Closing

Balance of Debtors amounting to Rs.1,48,25,578/- was not taken as shown in the balance sheet while for the F.Y. 2010-11 closing balance of debtor was taken and also less the said value of debtors as Rs.1,13,42,723/-

- Show cause notice has been issued by invoking extended period of limitation under proviso to Section 73 of the Act. The mandatory requirement for invoking period of limitation was totally absent. Hence, proceeding made on the basis of the above is erroneous and without jurisdiction.
- Service Tax would not be levied on trading of goods as per law. Service tax due for the period April, 2012 to December, 2012 is correctly paid.
- Impugned order lacks merits and needs to be set aside.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authority.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the following findings:-

"The main allegation in the Show Cause Notice is that the value of material used for execution of service under work contract has not been included to arrive at gross value of services rendered under the category of Work Contract while paying Service Tax. Before taking up the contentious issue, I may like to mention undisputed facts of the case. Sh. Manish Kumar Yadav, Director, M/s. Kruti Techno Engineering Pvt. Ltd., in his statement dated 27.08.2013, recorded under Section 14 of the Central Excise Act. 1944 which has also been made applicable for the Service Tax matter, has clearly stated that his company is executing complete turnkey projects as they are executing supply, installation, testing & commissioning of the whole project. It is also admitted fact that the party had opted to pay Service Tax treating their taxable services under the category of Work Contract. This fact is further confirmed from various charts submitted by the party during the

personal hearing where Service Tax was shown to have been paid in terms of the provisions of the Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 which was applicable only for Work Contract services. As regards payment of Service Tax for the period April'12 to Dec'12, the party have not disputed and accepted the demand of Service Tax. Similarly, demand raised in respect of Consulting Engineering Services has not been challenged by the party.

6. During the personal hearing the party have raised a preliminary objection that the Show Cause Notice has been issued on presumption basis without carrying out proper enquiry and in the Show Cause Notice evidences in support of allegation have not been discussed, so they have argued that the Show Cause Notice is liable to be dropped on this reason only. I find that in the Show Cause Notice, the details of the documents on the basis of which the inferences were drawn are categorically described and all these documents have been provided to the party for preparing their representation, if they had anything to say against the proposed action. I find that subsequent to visit to their premises by the officers of the Central Excise department on 27.08.2013m and during the investigation, summons dated 23.09.2013, 27.09.2013, 11.10.2013, 20.11.2013, 28.11.2013, 16.01.2014 & 12.05.2014 were issued to Shri Manish Kumar Yadav, Director, M/s Kruti Techno Engineering Pvt. Ltd. for personal appearance on 27.09.2013, 27.09.2013, 15.10.2013, 25.11.2013, 03.12.2013, 21.01.2014 & 21.05.2014 to produce information/documents relevant to the case, but the same went unheeded by the party. The party were summoned to provide the following information/documents:-

a) Work order wise details of all work orders received by the party for Erection, Commissioning/Installation and Work Contract service from all their clients containing *details víz. Work order No. and date, Total contract amount. Service Bill amount raised, Service tax charged and payment received etc., for the period from 2009-10 to 2013-14 in the given format along with the copies of Service Bills and Bank statements.*

b) In case they did not charge Service tax from some of their clients in provision of Erection, Commissioning/Installation and Work Contract service (for any reason), details of such clients, Work orders, details of service provided and payments received etc., for the period from 2009-10 to 2013-14 in the given format along with the copies of Service Bills and Bank statements.

c) Ledger account and details of all payments received from all service receiver clients, Bill wise and details of service tax charged/paid for the period from 2009-10 to 2013-14.

d) Copies of service bill/ invoices received by them during the period 2009-10, 2010-11 and 2011-12.

e) List/ ledger in respect of Debtors reflecting payments outstanding against them against bills raised by them in provision of service and

f) Complete balance sheets along with all schedules and annexures for the period 2009-10, 2010-11, 2011-12 and 2012-13.

It remains yet to be explained as to what inhibited them from responding to the summons of the department, submit required information/documents and present their case before the investigating officers/department. This tactics adopted by the party itself is questionable. Therefore, mere allegation does not suffice to prove their case of curtailed investigation on the face of contrary evidence available on record. The party have unsuccessfully made out their case in their favour.

In view of the above, it is evident that Show Cause Notice is not vague at all. It is found that in the case of Summer Foundries Ltd.[2015(316) ELT 659(Mad.)]. the Hon'ble

High Court has held that a Show Cause Notice demonstrating all materials collected during the investigation and also tentative inferences drawn from such materials is a valid Show Cause Notice and not a vague Show Cause Notice. It is further held that a Show Cause Notice cannot be termed as vague merely because it doesn't have contents of the choice of litigant. In the present Show Cause Notice, all charges leveled against the party are brought out in clear terms to enable them to submit an effective reply. Hence, I hold that the said Show Cause Notice is not vague. The judicial decision cited by the party in support of their contention that the Show Cause Notice is vague is not applicable to the present case. In the case of Magarpatta Township Development and Construction Co. Ltd., supra, which is cited by the party, the facts are that the party were engaged in the Renting of Immovable Property Services and had taken security deposits from their tenants. The department proposed to demand Service Tax on the amount representing notional interest on such security deposits but the department could not produce any evidence to prove that the rental income was influenced because of such security deposits. Hence, the demand of Service Tax on notional interest was dropped. The facts of present case are entirely different and clearly distinguishable from the facts of the case cited by the party.

7. In the Show Cause Notice, services rendered by the party in relation to supply. installation, testing & commissioning of the whole project have been proposed to be classified in the category of Work Contract Services. It is found that the party entered into contracts for supply of various items required for execution of project and also for installation of such items. The definition of Work Contract service as provided under erstwhile Section 65(105) (zzzza) of the Finance Act. 1994 is as under *a service provided by a person 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,

(1) 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 pre-fabricated 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 a pipeline or conduit, primarily for the purpose 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;

From the above definition, it is evident that the services of carrying out turnkey projects including Engineering, Supply & Commissioning projects which were done by the party were covered under the definition of Work Contract in view of the Explanation (ii) (e) appended to Section 65(105)(zzzza) of the Finance Act, 1994.

8. The valuation of services in the category of Work Contract Services, prior to 01.07.2012 was done, either under the provisions of Service Tax (Determination of

Value) Rules, 2006 or under the Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Rule 2A of Service Tax (Determination of Value) Rules, 2006 provides to determine the value of taxable service in relation to services involved in the execution of a Work Contract by way of reducing the gross amount charged by an amount equal to value of property in goods involved in execution of such contracts plus amount of VAT/Sales Tax. In the present case, the party undoubtedly opted for payment of Service Tax in terms of provision of the Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. The relevant portion of the provision of the Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 are as below: "Rule 3: (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 4.8 per cent of the gross amount charged for the works contract.

Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-

(a) including-

(1) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and

(ii) the value of all the services that are required to be provided for the execution of the works contract,

(b) excluding-

(i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and

(ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire: Provided that nothing contained in

this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7th day of July, 2009.]"

In view of the above, it is crystal clear that once an option has been exercised for payment of Service Tax in terms of Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, it cannot be withdrawn. As the party had exercised to pay Service Tax as per Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the valuation is required to be done according to the above Rules. Explanation (a) to Rule 3(1) of the Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides to include value of all goods used in or in relation to execution of the Work Contract irrespective of supply of goods under separate contract for arriving at gross value of Work Contract Service. It means that not only value of service but value of material is also to be taken for charging Service Tax under Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

9. The party have vehemently contended that they had supplied the goods to their clients as 'Trading of Goods'. The point remains unanswered by the party whether such goods were in connection with execution of various projects which were commissioned by them. In the statement dated 27.08.2013, Sh. Manish Kumar Yadav, Director has admitted that his company had supplied goods required for installation & commissioning of projects. In their Balance Sheets, the value of goods supplied by the party is depicted in addition to value of services. On scrutiny of the Balance Sheet, it is observed that under Note 17, entire income is shown which is from three sources one from sale of manufactured goods, other from trading of goods and last from work contract service. In the year 2010-11, there was no sale of manufactured *goods but the whole income is from "Trading of Goods' and from Work Contract Service. In regard to "Trading of Goods', the party could not produce any evidence to show that those goods were traded to buyers, different from the clients for which commissioning & installation of project was done. In contrast to the above, the department has proved by way of obtaining statement from Sh. Manish Kumar Yadav that the party had supplied goods to their various clients for execution of projects which were installed or commissioned by the party. Similarly, from the perusal of Balance Sheet for the year 2011-12, it is found that under Note 17, division of various sources of income is shown. As per the said Note, the income of traded goods and income from Work Contract are separately shown. In this case also, the party could not produce any evidence to prove that trading of goods were activities different from execution of projects in the light of the facts and circumstances of the present case, I am inclined to hold that so called "Traded Goods' were supplied in relation to execution of various projects which were undertaken by the party and thus would be includible in the value for charging Service Tax in view of provisions of Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, as discussed above.*

10. It has also been clarified by TRU (CBEC) under DOF No. 334/13/2009-TRU dated 06.07.2009 that the reason for prescribing the lower rate under the scheme is that the service provider need not bifurcate the gross value of work contract. The relevant para is produced hereunder-

"5.1 Changes in the Works Contract (Composition Scheme for Payment of Service Tox) Rules, 2007: These rules provide a simplified procedure for working out the tax liability by the service providers providing works contract service. Instead of working out the service element from the value of works contract and paying service tax at full rate (i.e. 10%) the service provider is allowed to pay 4% on the 'gross amount charged" for the works contract. The

reason for prescribing the lower rate under the scheme is that the service provider need not bifurcate the gross value of works contract. It was expected that the gross value should be shown to include the total value of materials as well as services used in providing the taxable services. However, it has been reported that in certain cases, the taxpayers are not including the full value of the goods required for execution of works contract for working out service tax liability under the Composition Scheme by either excluding the value of goods received free of cost from their client or splitting the contract into a sale contract (for a portion of goods required to execute the works contract) and works contract (for only a portion of the total value of goods and the labor charges), thus reducing the value of works contract for the purposes of calculating service tax. In order to plug this loophole, the Explanation appearing in sub-rule (3) is being amended to provide that the composition scheme would be available only to such works contracts where the gross value of works contract includes the value of all goods used in or in relation to the execution of works contract whether received free of cost or for consideration under any other contract. This condition would not apply to those works contracts, where either the execution of works contract has already started or any payment (whether in part or in full) has been made on or before the date of the amendment, Ie 07.07.2009, from which the said amendment becomes effective (refer notification No.23/2009-ST dated 07.07.2009)."

11. It is further seen that the party applied for VCES-Voluntary Compliance Encouragement Scheme of Service Tax dues pending during the period April'12 to Dec'12 but they withdrew the VCES declaration apparently for the reason that same amount was declared in the ST-3 return for the same period and the department had also issued a notice intent for rejection of VCES-I on 21.10.2013. It is also seen that the party have never challenged the payable *amount of Service Tax during the said period. The only issue is that the payable amount of Service Tax for the period April'12 to Dec'12 was not paid by the party. In view of the provisions of Section 87 of the Finance Act, 1994, any amount payable by a person would be recovered as per procedure provided under this Section. In the present case, the amount disclosed by the party in their ST-3 return for the period April'12 to Dec'12 is required to be recovered as per provisions of Section 87 of the Finance Act, 1994. In view of the above, I hold that the amount payable during the period April'12 to Dec'12 as declared in the ST-3 returns is required to be recovered under Section 87 of the Finance Act, 1994 (read with section 73(138) of the Finance Act, 1994, as amended].*

12. As regards demand of Service Tax on Consulting Engineering Service, it is found that in their Balance Sheet, they have shown total income as Rs. 9,54,92,571/-in the year 2011-12 and income from manufactured goods, traded goods and work contract was shown to be Rs. 9,42,71,648/- under Note 17 in the Balance Sheet. The differential amount of Rs. 12,20,923/-obviously pertains to Consulting Engineering Service which has been rendered by the party as per the statement of Sh. Manish Kumar Yadav. Director recorded on 27.08.2013. It is an undisputed fact that Consulting Engineering Service is a taxable service and as such Service Tax is required to be paid by the party. In their defence reply, the party have not challenged the allegation of short payment on account of Consulting Engineering Service. In the light of above discussion, I hold that the party should have paid Service Tax on Consulting Engineering Service as demanded in the show Cause Notice.

12.1 It has been argued that since the activities under taken by the noticee parties were not covered under the ambit of service tax net, the demand of service tax and interest on the demanded amount of service tax and imposition of penalty for contravention of the Finance Act, *1994 and Rules made thereunder does not arise in terms of Sections 73(1), 75, 76, 77, and 78 of the Finance Act, 1994. It has further been stated that since they were in bonafide belief that the activities performed by them were not under the ambit of taxable services, they did not comply with provisions of the Finance Act, 1994.*

12.2 As regards the taxability of the services provided by the party, as detailed in the impugned notice to show cause, the issues have been discussed eloquently in the foregoing paras and it has been established beyond doubt that the services provided by the party are well within the scope of taxability. Moreover, from facts of the case it has also transpired that the value of goods supplied during the course of provision of services have not been included in their taxable value for computing the payable amount of service tax by the party in contravention of Rule 3 of Work Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 supro

12.3. Non compliance of the provisions of Service Tax law has been ascribed to the bonafide belief of the party that their activities are not taxable. This appears a mere pretext to defend non payment of service tax and contraventions of the Service Tax law by the party because had they acted sincerely, authentically, their bonafides and the genuineness of their tax compliance would have concretely surfaced. But nothing has been placed before me to prove their 'bonafide belief. Therefore, I am not inclined to accept the party's plea of non taxability of the activities under taken by them and also the concept of their 'bonafide belief. In this regard, 1 place reliance on the decision of the CESTAT Interscape V/s Commissioner, Central Excise, Mumbai-1 [2006(198)ELT 0275 Tri.], wherein it was held that bona fide belief is not blind belief. Belief can be said to be bona fide only when it is formed after all reasonable considerations taken into account. In the present case, the party were aware of the fact that value of material supplied for execution of projects is *includible to arrive at gross value but they deliberately avoided the same with an intent to evade the payment of Service Tax.*

13. Invocation of extended period of limitation to raise the demand under discussion under the provisions of Section 73 of the Finance Act, 1994 has been assailed in the defence reply cum written submissions dated 22.02.2016 supra pleading that their records have already been audited by the department. It has been stated that suppression can be alleged when the statue requires and the assessee does not disclose the information or assessee suppresses the same when specifically asked for. It has also been stated that there is nothing to show that the party failed to submit any information to the department statutorily required.

13.1 I find that it has not been shown as to what specific records were already shown to audit and which were subsequently seen by the anti- evasion wing. It is also on record that in spite of repeated summons issued to the party they did not produce even the basic documents required to be maintained by any assessee in the ordinary course of business, namely Work order received by the party for Erection. Commissioning/Installation and Work Contract service from all their clients etc., for the period from 2009-10 to 2013-14, Service tax not charged from some of their clients in provision of Erection, Commissioning/Installation and Work Contract service (for any reason), for the period from 2009-10 to 2013, Ledger account and details of all payments received from all service receiver clients, for the period from 2009-10 to 2013-14, Copies of service bill/ Invoices received by them during the period 2009-10, 2010-11 and 2011-12, list/ ledger in respect of Debtors reflecting payments outstanding against them against bills raised by them in provision of service and complete balance sheets along with all schedules and annexures for the period 2009-10, 2010-11, 2011-12 and 2012-13."

4.3 The case against the appellants is with regards to determination of taxable value in respect of Works Contract Service, we find that the demand made against the appellants on the basis of calculation as indicated in para 13 and 16 of the show cause notice. The computation as indicated in the said paras are reproduced bellow:-

Table-1- computation of suppressed taxable service and Service Tax value of payable thereon		
YEAR	2010-11 (October' 10 to March'11)	2011-12
Value of services rendered as per b/s	27604747	46128244
Revenue from trading i.e. Goods consumed for services Total	5272185	28119464
Value of taxable services under work contract services	32876932	74247708
Add:-Opening debtors	0	11342723
Less:- Closing debtors	11342723	0
Net taxable amount under Work contract services	21534209	85590431
(-) value of Work contract shown in ST-3 Taxable value of	14733413	34266509
work contract service not mentioned in ST-3 return	6800796	51323922

Table-II Taxable value of Work Contract Services and Service Tax payable thereon (Amount in Rs.)				
Sl.No.	YEAR	2010-11	2011-12	Total
1	Value of Work Contract Services rendered as per B/S	27604747	46128244	73732991
2	Revenue from trading i.e. Goods consumed for services	5272185	28119464	73732991
3	Total Value of taxable services under work contract services	32876932	74247708	73732991
4	Add:-Opening debtors	0	11342723	11342723
5	Less:- - Closing debtors	11342723	0	11342723
6	Net taxable amount under Work contract services	21534209	85590431	107124640
7	Rates of Service Tax along with Ed. Cess and S & H.Ed. Cess	4.12%	4.12%	
8	Service Tax along with Ed. Cess and S & H.Ed. Cess payble on Work Contract services	887209	3526326	4413535
9	Value of other taxable services i.e Consulting services as mentioned in the Balance sheet		1220923	1220923
10.	Rates of Service Tax along with Ed. Cess and S & H.Ed. Cess		10.30%	
11	Service Tax along with Ed. Cess and S & H.Ed. Cess		125755	125755
12	Total Service Tax payable along	887209	3652081	4539290

	with Ed. Cess and S. & H.Ed. Cess			

4.4 From the above it is evident that the entire case is based on the figures taken from the balance sheet of the appellant. However while computing the taxable value and the tax payable certain error have been committed.

4.5 The note 17 and 19 of the balance sheet are reproduced bellow:-

Note No. '17' REVENUE FROM OPERATIONS :

* a) Sale of Products	94,271,648	32,876,932
b) Revenue from Services		
Job work Charges	1,220,923	-
TOTAL	95,492,571	32,876,932

* Sale of Products comprises of Electrical Equipmets/Accessories and are for:-

i) Manufactured Goods	20,023,940	-
ii) Traded Goods	28,119,464	5,272,185
iii) On Works Contract	46,128,244	27,604,747
	94,271,648	32,876,932

Note No. '18' OTHER INCOME :

Interest Income	2,305	247
Miscellaneous	441	-
TOTAL	2,746	247

Note No. '19' COST OF MATERIALS CONSUMED :

Opening stock	-	24,537,66
Add Purchases	47,084,563	-
	47,084,563	24,537,66
Less Closing stock	6,597,695	-
Cost of material consumed	40,486,868	24,537,66

Material consumed are indigeneous & comprises of Electrical Equipmets/Accessorics for :

i) Manufacturing Activity	16,010,295	-
ii) Executing Works Contract	24,476,573	24,537,66
TOTAL	40,486,868	24,537,66

4.6 From the note 17 reproduced above, it is evident that revenue from trading of goods has been indicated separately and revenue in respect of work contracts is indicated separately. In the case of the work contract the cost material consumed for work contract services is indicated therein. The reason for adding the value of traded goods to the value of work contract is not coming forth in the show cause notice. These traded goods are also different from the manufactured goods of the appellants. From the definition of work contract as understood, it is evident that the value of the goods supplied for execution of the work contract is included in the value of work contract. Making demand by adding the value of traded goods to the same would not be justifiable. Further, we also note from note 19 of the balance sheet that the value of materials consumed for providing Works Contract Service have been separately shown the value of these amounts are inclusive in the value of the Works Contract Service. Thus, addition of the value of traded goods cannot be justified. The impugned order without referring to the above proceeds to add the value of the traded goods on presumption that these were also part of the work contracts executed by the appellant.

4.7 We also note that the figures of debtors as shown in note 13 of the balance sheet are as follows:-

Note No. '13' TRADE RECEIVABLES :

Unsecured - Considered Good:-

i) Outstanding for a period exceeding six months from the date they were due for payment :	962,448		
ii) Others	13,863,130		11,342,723
TOTAL		14,825,578	11,342,723

4.8 The closing balance of the debtors for the year 2010-11 is shown as 1,13,42,723/- and for the year 2011-12 is shown as 1,48,25,578/-. While computing the tax liability, the show cause notice shows the closing debtors value for the year 2010-11 as 1,13,42,723/- and for the year 2011-12 is shown as 00, whereas as per the balance sheet for the year 2011-12 the closing value of debtors is 1,48,25,578/-. The figures indicated in the show cause notice table reproduced above do not reflect the correct figures. As per balance sheet, if this value is taken then the net taxable value would worked out as in the table in para 4.4 above.

4.8 Making corrections in table of computation of tax liability above , in terms of the above we find that the total tax liability will be determined as follows:

Sl. No.	Year	2010-2011	2011-2012	Total
1	Value of Works Contract Services rendered as per B/S	2,76,04,747.00	4,61,28,244.00	7,37,32,991.00
2	Revenue from trading i.e. Goods consumed from services	-	-	-

3	Total Value of Taxabale Services under works Contract services	2,76,04,747.00	4,61,28,244.00	7,37,32,991.00
4	Add: Opening Debtors	-	1,13,42,723.00	1,13,42,723.00
5	Less: Closing Debtors	1,13,42,723.00	1,48,25,578.00	2,61,68,301.00
6	Net Taxable Amount under Works Contract Services	1,62,62,024.00	4,26,45,389.00	5,89,07,413.00
7	Rate of Service Tax along with Ed. Cess and SHEC	4.12%	4.12%	4.12%
8	Service Tax along with Ed. Cess and SHEC on Works Contract Services	6,69,995.39	17,56,990.03	24,26,985.42
9	Value of Other Taxable Services i.e. Consulting Services as mentioned in the Balance Sheet		12,20,923.00	12,20,923.00
10	Rate of Service Tax along with Ed. Cess and SHEC		10.30%	10.30%
11	Service Tax along with Ed. Cess and SHEC		1,25,755.07	1,25,755.07
12	Total Service Tax Payable along with Ed. Cess and SHEC	6,69,995.39	18,82,745.10	25,52,740.48

4.9 Thus, the total service tax payable on the basis of the correct computation for the period October 2010 to March 2012 would be Rs.25,52,740.48 instead of Rs.45 lakhs as has been stated in the show cause notice and confirmed by the impugned order. Undisputedly, appellants have deposited service tax amounting to Rs.13,39,000/- + Rs.20,20,001/- as indicated in the show cause notice and in the impugned order, whereas the total demand has been worked out to Rs.25,52,740.48. In case of Vatsal Resources Pvt. Ltd. [2023 (68) G.S.T.L. 279 (Tri. - Ahmd.)] following has been held:

> *"**5.9** As regard the service provided to M/s. Mohan Infosolution Pvt. Ltd. and M/s. Windsor Machine Ltd., we find that in submitted affidavit Appellant fairly admitted that they have paid the service tax on the taxable service provided to remaining entities viz., M/s. Mohan Info Solutions Pvt. Ltd. and M/s. Windsor Machines Ltd.*

amounting to Rs. 6,55,327/-. We find that when the tax amount stands already deposited before the issuance of show cause notice, Show Cause Notice was not required to be issued under Section 73(3) of Act. Since the tax amount already been deposited by the assessee, We do not find any reason to uphold the penalty extent to the said service tax deposit amount."

4.10 Appellants had declared service tax amounting to Rs.20,37,164/- for the period April, 2012 to December, 2012 in ST-3 returns and also in their VCES application which was given on 18.11.2013. When the appellant have themselves declared the service tax in the ST-3 return filed for this period then again making the demand by way of a notice under Section 73 (1) of Finance Act, 1994 and imposing a penalty of the said amount on the appellant under Section 78 cannot be sustained.

4.10 We find that the appellants premises was visited by the departmental officers on 27.08.2013 when all the details with regards to short payment etc. were noticed and pressed by the officers, the manner of determination of payment of service tax was also brought to the knowledge of the revenue officers at that time. However, the show cause notice has been issued on 30.01.2015. When everything was declared and in the knowledge of department there could not have been any reason for invocation of extended period for making the demand of service tax. The entire demand is based on the figures taken from the balance sheet of the appellant which is a public document. In case of Hindalco Industries Ltd. [2003 (161) E.L.T. 346 (Tri. - Del.)], Delhi bench has held as follows:

"6. ….. Further, the finding of suppression of facts against the assessee is wholly unfair, apart from being incorrect. Balance Sheets of companies is a publicly available document. Therefore, the allegation that data stated in the Balance Sheet was suppressed from Central Excise authorities is not a viable allegation. The demand has to fail on the ground of limitation itself."

4.11 In view of the above, we do not find any merits in the impugned order and the same is set aside along with the penalties imposed on the appellants.

5.1 Appeals are allowed.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp