

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70465 of 2019

(Arising out of Order-in-Original No.39/Commr./NOIDA-CUS/2018-19 dated 24.01.2019 passed by Commissioner of Customs, Noida)

M/s Earthcon Constructions Pvt. Ltd.,Appellant
(B-11, Sector-1, Noida)

VERSUS

Commissioner of Customs, NoidaRespondent
(Noida)

WITH

- (i) Service Tax Appeal No.70437/2019 (Earthcon Constructions Pvt. Ltd.);**
- (ii) Service Tax Appeal No.70461/2019 (Shri Shadab Khan, Director);**
- (iii) Service Tax Appeal No.70462/2019 (Shri Obaid Tanveer, Director);**

(Arising out of Order-in-Original No.39/Commr./NOIDA-CUS/2018-19 dated 24.01.2019 passed by Commissioner of Customs, Noida)

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the Appellant
Shri Raju Sakthivel, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NOs.- 70548-70551/2025

DATE OF HEARING : 05.08.2025
DATE OF PRONOUNCEMENT : 06.08.2025

PER BENCH :

These four appeals have been filed against Order-in-Original No.39/COMMR/NOIDA/CUS/2018-19 dated 24-01-2019 passed by Commissioner of Customs, Noida. The learned Commissioner has held as under :-

- A. Confirmed the demand of Rs.1,47,57,013/- towards service tax short/not paid during 01-04-2012 to 31-03-2017. Ordered to appropriate the amount of Rs.65,00,000/- already deposited by the assessee.
- B. Confirmed the demand of Rs.37,89,467/- towards service tax short/not paid on preferential location charges during 2015-16 to 2016-17.
- C. Confirmed the demand of Rs.19,65,925/- towards service tax short/not paid under reverse charge mechanism for the year 2014-15 to 2016-17.
- D. Confirmed the demand of Rs.15,57,043/- towards service tax short/not paid on the commission/consulting services during 2015-16 to 2016-17.
- E. Demanded interest under Section 75 of Finance Act, 1994.
- F. Imposed penalty of Rs.2,20,69,448/- under Section 78 of Finance Act, 1994 for suppression of facts with intent to evade payment of service tax.
- G. Imposed penalty of Rs.10,000/- under Section 77 for contravention of provisions of Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994.
- H. Imposed penalty of Rs.1,00,000/- each upon Shri Shadab Khan and Shri Obaid Tanveer, Director of M/s Earthcon Construction Pvt. Ltd and Shri Subhash Kumar Bansal, CFO under Section 78A of Finance Act, 1994 for their Act of omission and commission.
- I. Imposed penalty of Rs.10,000/- each upon Shri Shadab Khan and Shri Obaid Tanveer, Directors of M/s

Earthcon Construction Pvt. Ltd and Shri Subhash Kumar Bansal, CFO under Section 77(1)(c)(iii) of Finance Act, 1994.

2.1 Appeal No. ST/70465/2019 has been filed by M/s Earthcon Constructions Pvt. Ltd¹, challenging the demand/penalties as stated in para 1(A) to para 1(G) above.

2.2 Appeal No. ST/70461/2019 has been filed by Shadab Khan challenging the penalties imposed on him under Section 78A and Section 77(1)(c)(iii) of Finance Act, 1994.

2.3 Appeal No.ST/70462/2019 has been filed by Obaid Tanveer challenging the penalties imposed under Section 78A and Section 77(1)(c)(iii) of Finance Act, 1994.

2.4 Appeal No.ST/70437/2019 has been filed by the Department challenging the impugned order on the ground that the demand of Rs.52,99,353/- for the period July, 2010 to March, 2012 should have been confirmed in the operative part of the order and the amount already deposited should have been appropriated. It is also on the ground that there should have been demand for interest under Section 75 and equal penalty under Section 78(1) on the amount of Rs.52,99,353/-.

3. The brief facts of the case are that M/s ECPL are engaged in providing "Construction of Residential Complex Service" and "Real Estate Agent Service". A team of DGGI Officers visited the Appellant's premises on 01-12-2015 under the belief that M/s ECPL had not been paying service tax liability properly. During visit they resumed certain documents. During investigation, it was gathered that M/s ECPL had filed its ST-3 returns for 2010-11 on 19-01-2013. During investigation, it was further found that M/s ECPL had been paying service tax on a lesser value, which was worked out by them after deducting cost of land and construction material in terms of Notification No.12/2003 -ST dated 20-06-2003. M/s ECPL had not filed ST-3 returns since

¹ M/s ECPL

October, 2014. During investigation statements of Subhash Kumar Bansal, Shri Jitendra Kansal & Shadab Khan were recorded. On scrutiny of ST-3 return for the period 01-07-2010 to 31-03-2012, it was alleged that M/s ECPL should have paid service tax Rs.99,41,740/- but has paid service tax Rs.46,42,387/- resulting in short payment of tax Rs.52,99,353/-. Shadab Khan, Director of M/s ECPL in his statement dated 20-12-2017 admitted that differential service tax of Rs.52,99,353/- for the period 01-07-2010 to 31-03-2012 was payable at their end; that during the course of investigation, they had deposited Rs.65 lakhs towards their entire liability of Rs.52,99,353/- for the period 01-07-10 to 31-03-2012 and additional amount of Rs.1,20,0647/- is a part deposit for the F/Y 2012-13 onwards. On the basis of scrutiny of audited Balance Sheet for the year 2012-13 to 2016-17, it was alleged that M/s ECPL has short paid service tax Rs.1,47,57,013/-. It was alleged that they had received sum of Rs.139,65,98,300/- as value of services on construction of residential complex from their customers during the period 2012-13 to 2016-17; that they were liable for payment of service tax Rs.4,70,32,340/- but paid Rs.3,22,75,327/- resulting in short payment of service tax Rs.1,47,57,013/-. It was also alleged that Appellants had short paid service tax Rs.37,89,467/- on amount received by them from customers under the head preferential location charges (PLC). The investigating officers observed that Appellants had included the amount of Rs.3,71,45,452/- received by M/s ECPL on account of PLC charges in the gross amount of taxable services and accordingly paid service tax on abated value. It was alleged that M/s ECPL was not eligible for abatement of 70% or 75% and were liable for payment of service tax on its 100% amount. In addition to above, service tax Rs.15,57,043/- was demandable on commission/consultancy income Rs.1,05,96,114/- received during 2015-16 and were also liable for payment of service tax Rs.19,65,925/- on reverse charge basis. Accordingly, a Show Cause Notice² dated 16-01-2018 was

² SCN

issued proposing to demand Service tax Rs.2,73,68,801/- as per details given below :-

(a) Service tax short paid for the period 01-07-10 to 31-03-12	52,99,353
(b) Service tax short paid for the period 01-04-12 to 31-03-17	1,47,57,013
(c) Service tax payable on account of Preferential Location Charges (PLC)	37,89,467
(d) Service tax not paid on commission / consultancy income	15,57,043
(e) Service tax short paid on reverse charge basis	
	<u>19,65,925</u>
Total	
	<u>2,73,68,801</u>

4. The amount of Rs.65 lakhs deposited during investigation was proposed to be appropriated. The SCN also proposed to impose penalties on M/s ECPL under Section 78 and 77 of Finance Act, 1994 in addition to penalties under Section 77 and 78 (A) on Shri Shadab Khan (Director), Obaid Tanveer (Director) and Shri Subhash Kumar Bansal, CFO. By way of Appeal No.ST/70465/2019, M/s ECPL has challenged all the demands of service tax, imposition of penalty and invocation of extended period of limitation. It has also been submitted that demand of Rs.52,99,493/- is even beyond the extended period of limitation of 5 years. Shri Shadab Khan and Shri Obaid Tanveer have challenged imposition of penalty on them.

5. The learned Chartered Accountant Shri Kapil Vaish appeared on behalf of M/s ECPL, Shadab Khan and Obaid Tanveer. He submitted a synopsis / written submission during personal hearing. His submissions would be considered hereunder while dealing with the various issues. The learned Departmental representative reiterated the grounds of appeal of

appeal No.ST/70437/2019 and supports the impugned order on other issues.

6. We find that following issues are arising for our consideration in these appeals :-

- A. Whether M/s ECPL has short paid service tax Rs.1,47,57,013/- during 01-04-2012 to 31-03-2017 (Issue No.1).
- B. Whether M/s ECPL has short paid service tax Rs.37,89,467/- during the period 2015-16 and 2016-17 on amount received as prime location charges (PLC) (Issue No.2).
- C. Whether M/s ECPL was liable for payment of service tax Rs.15,57,043/- during 2015-16 and 2016-17 on commission/consultancy income received (Issue No.3).
- D. Whether service tax Rs.19,65,925/- is demandable from M/s ECPL on account of service tax short paid on reverse charge basis (Issue No.4).
- E. Whether demand of service tax Rs.52,99,353/- for the period 01-07-2010 to 31-03-2012 is beyond the extended period of limitation of 5 years and therefore not maintainable (Issue No.5).
- F. Whether even otherwise extended period of limitation could not have been invoked for demanding service tax from M/s ECPL (Issue No.6).
- G. Whether interest and penalty is demandable from M/s ECPL as confirmed in the impugned order and whether interest and penalty is also demandable on Rs.52,99,353/- from M/s ECPL in terms of the departmental appeal No. ST/70467/2019 (Issue No.7).
- H. Whether penalties of Rs.1,10,000/- each are sustainable on Shadab Khan and Obaid Tanveer (Issue No.8).

Whether M/s ECPL has short paid service tax Rs.1,47,57,013/- during 01-04-2012 to 31-03-2017 (Issue No. 1)

(i) Table 3 of SCN proposed to demand service tax
Rs.1,47,57,013/- as per details given below :-

Year	Total value of services received (Rs.)	Abatement @ 75% and 70% for 2016-17 on the total value of services received (Rs.)	Total taxable amount after abatement (Rs.)	Service tax payable @ 12.36%, 14% w.e.f. 01-06-2015, 14% w.e.f. 15-11-2015 & 15% w.e.f. 01-06-2016 (Rs.)	Total service tax deposited (Rs.)	Differential service tax liable to be paid by ECPL (Rs.)
2012-13	269267589	201950692	67316897	8320369	6208600	2111769
2013-14	238529089	178896817	59632272	7373639	5992220	1381419
2014-15	491140826	368355620	122785207	15176251	11422726	3753525
2015-16	198017655	148513241	49504414	7178140	5841905	1336235
2016-17	199643141	139750199	59892942	8983941	2809876	6174065
Total	1396598300	1037466568	359131732	47032340	32275327	14757013

(ii) The impugned order confirmed the said demand in para 6.4 and appropriates the amount of Rs.65,00,000/- - Rs.52,99,353/- =Rs.12,00,465/- deposited during investigation.

(iii) The learned Chartered Accountant appearing on behalf of M/s ECPL submitted that the aforesaid SCN considered the gross taxable receipt as Rs.139.65 crore. However as per Appellants, the gross taxable receipt towards construction of residential complex service has been Rs.102.56 crore and the difference in receipt of Rs.37.10 crore is on account of following receipts/income accounted under the head gross revenue in the Profit & Loss Account.

(a) Due to percentage of completion method (POCM)
Rs.25,25,55,003/-

(b) Sale of property
Rs.70,00,000/-

(c) Unsecured loan transferred to P&L Account
Rs.3,76,06,111/-

(d) Write back of provisions for expenses.
Rs.95,05,639/-

(e) Other income due to TDS deducted
Rs.51,72,800/-

(f) Booking amount received after completion
Rs.5,91,67,926/-

(g) Total Rs. **37,10,07,479**/-

(iv) Liability for payment of service tax on each of the above receipts is being discussed hereunder.

(v) **Difference due to recognition of revenue on percentage of completion method - Gross amount Rs.2525.55 Lakhs.**

7. Learned counsel for the Appellants submitted that as per accounting policy disclosed in annual accounts, they have been recognizing revenue from Real Estate Projects and construction contract on percentage of completion method. In this method of accounting, revenue is recognized on the basis of percentage of actual cost incurred to the total cost of project. It has been

submitted that during the relevant period, they have recognized additional amount of Rs.25.25 crores in addition to the actual amount received from customers. Their submission is that amount of Rs.25.25 crores has been recognized in Profit & Loss Account without actual receipt from customers and the same is liable to be reduced from gross revenue for the purpose of computing taxable receipt during 2012-13 to 2016-17. The learned Chartered Accountant drew attention to Schedule XIII of the Annual Accounts, which is relating to Significant Accounting Policies and Notes to Account. Relevant portion related to revenue recognition reads as under:–

“Revenue Recognition

Real Estate and construction contracts Revenue from real estate projects and construction contracts is recognized on the percentage of Completion Method (POC) of accounting. Revenue under POC method is recognized on the basis of percentage of actual costs incurred, including land, construction and development cost of projects under execution. The stage of completion under the POC method is measured on the basis of percentage that actual cost incurred on real estate projects including land, construction and development cost bears to the total estimated cost of the project. The estimates of the projected revenues, projected profits, projected costs, costs to completion and the foreseeable loss are reviewed periodically by the management and any effect of changes in estimates is recognized in the period such changes are determined”.

8. The learned Chartered Accountant further drew our attention to certificate issued by SKMR and Associates, Chartered Accountants certifying that M/s ECPL had recognized

amount of Rs.25,25,55,003/- as additional revenue on the basis of percentage of completion method, as per following details:-

Year	Amount (Rs.)
2013-14	6,89,13,050
2014-15	4,27,91,773
2015-16	5,08,50,180
2016-17	<u>9,00,00,000</u>
Total	<u>25,25,55,003</u>

9. The learned Chartered Accountant have also submitted relevant vouchers relating to entries passed in books of accounts towards recognizing additional revenue on account of percentage of completion method. We find that as per provisions of Rule 3 of Point of Taxation Rules, 2011, service tax is payable at the time when the invoice for the service is issued. However, in the case where person providing the service receives the payment before issue of invoice, the service tax is payable at the time when such payment is received. Further in terms of proviso to Rule 3 in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service. In view of aforesaid provisions of Rule 3 of Point of Taxation Rules, 2011, recognition of revenue, on the basis of percentage of completion method has no relevance with regard to payment of service tax. This issue relating to demand of service tax on the basis of revenue recognized in the Profit & Loss Account (on the basis of percentage of completion method) had come up for consideration before the Hon'ble Madras High Court in the case of Firm Foundations & Housing Pvt. Ltd. reported in 2018 (16) G.S.T.L. 209. In the said case, the

assessee had been following percentage of completion method which is prescribed for accounting of revenue in Profit & Loss Account by the construction industries. On the basis of percentage of completion method, the assessment orders were passed on the basis of income so recognized in Profit & Loss Account. The Hon'ble High Court held that the foundation of the assessment is flawed and that the reporting of income in the Profit & Loss Account cannot be the basis of assessment, it being irrelevant for the purpose of determination of service tax payable. Relevant portion of the Hon'ble High Court's order is as under :-

"15. AS 7 thus provides for a detailed methodology for the reporting and determination of the percentage of income from the contract over the term of the project and sets out the mode of computation for arriving at the same. The basis of such recognition and reporting is the apportionment of the income earned and expenditure incurred over the tenure of the project. This is entirely different and distinct from the scope, object and application of the Point of Taxation Rules that seeks to set out a methodology for determination of when the service was rendered and consequently when the receipt of income from such rendition be taxed.

16. The emphasis and thrust of each methodology is in alignment with the different purposes that they bear reference to - AS 7, in the context of the preparation of financials, addresses the 'how much' of the transaction over the term of contract whereas Rule 3 of the Rules addresses the 'when' in relation to the rendition of service for computing taxability under the Finance Act, 1994.

17. The basis of the addition by the respondent is clear from the SCN wherein he states that 'further, on verification of the profit and loss account of the assessee for the financial years 2012-13, 2013-14 and 2014-15 along with Service Tax Payment shown in the ST3 returns,

it appears that the assessee have not paid the appropriate Service Tax.' Despite the explanation offered by the petitioner to the effect that it is the Point of Taxation Rules that would govern the determination of time of rendition of service and consequent accrual of receipt and liability to tax thereof, and not the P and L accounts of the petitioner, the respondent persists in adopting the financials for the determination of service tax liability as well.

18. *The foundation of the assessment is thus, in my view, flawed. The SCN calls upon the assessee to produce material in support of its stand and, at paragraph No. 11, states that the audited balance sheets for the financial years 2012-13, 2013-14 and 2015-16, statement recorded from the VP of the petitioner, worksheet and written submissions are the basis of issuance of the SCN. By way of replies, the petitioner on 22-9-2016, 28-2-2017 and 11-4-2017 explains yet again that the P and L account cannot be the basis of the assessment. The impugned order is passed notwithstanding the objections raised, and negating the same.*

19. *Clause (i) of the proviso to Rule 3 specifically provides for determination of the point of taxation in cases of continuous supply as in the case of the petitioner herein.*

XXXXXX

XXXXXXXXXX

XXXXXX

24. *Rule 3(a) and (b) provides for the point of taxation to be either the point of raising of invoice [Rule 3(a)] or in a case where the service provider has received the payment even prior to the time stipulated in the invoice, upon receipt of such payment [Rule 3(b)]. In the present case, no invoice is said to have been raised. However, the petitioner confirms that it has, in fact, received lump sum advances corresponding to several initial landmarks in the contract, even prior to the achievement of such landmarks. As per the provisions of Rule 3(b), the entire sum received thus becomes taxable upon receipt and according to Mr. Prabhakar, has been offered to tax.*

25. Instead of such determination by application of the provisions of Rule 3, the respondent relies upon the P and L accounts to conclude that the amounts reflected therein have not been offered for service tax. The reporting of income in the P and L being irrelevant for the purposes of determination of service tax payable, the basis of the impugned assessment is erroneous”.

10. Respectfully following the aforesaid judgement of Hon’ble Madras High Court, we hold that appellants were not liable for payment of service tax on amount of Rs.25,25,55,003/- which has been recognized as additional revenue in Profit & Loss Account on the basis of percentage of completion method. Its impact on service tax demanded has been computed later.

Sale of property at Jasola, New Delhi – Gross amount Rs.70.0 lakhs.

ECPL has submitted that they purchased a flat at first floor at plot No. 43, Pocket No.2 Jasola Vihar, New Delhi on 15-04-2013. Subsequently they agreed to sale that property to Mr. Abdul Khalil. During the year 2013-14, M/s ECPL received amount of Rs.70 lakhs against sale of said property. The learned Chartered Accountant drew our attention to the sale deed dated 18-06-2015 for sale of said property for sum of Rs.92 lakhs. Out of it, sum of Rs.70 lakhs had been received and recognized as revenue in the year 2013-14. They also produced copy of ledger account of Abdul Khalid, wherein amount of Rs.70 lakhs so recognized had been transferred to Profit & Loss Account as sale of property. The learned Chartered Accountant submitted that it being a sale of completed flat, is in the nature of transfer of title in immovable property and does not fall in the definition of service as given in Section 65B(44) of Finance Act, 1994. From perusal of page 4 of sale deed dated 18-06-2015, we find that Appellants ECPL had purchased the said property vide purchase deed dated 15-04-2013 from M/s H. N. Realcon Pvt. Ltd. We find

that as per section 66B of Finance Act 1994, service tax is payable on the value of services. Further section 65(B)(44) defines the word 'service'. As per the said definition, 'service' does not include any activity which constitutes a transfer of title in immovable property. Receipt of Rs.70 lakhs during 2013-14 is towards sale of immovable property which had been purchased by appellant M/s ECPL on 15-04-2013. Therefore, the said receipt of Rs.70 lakhs during 2013-14 cannot be considered to be a receipt towards provision of service. We therefore, hold that appellants were not liable for payment of service tax on the said amount of Rs.70 lakhs received during 2013-14. It's impact on service tax demanded has been computed later.

Unsecured loan transferred to Profit & Loss Account – Gross amount Rs.376.06lakhs.

11. The learned Chartered Accountant submitted that a sum of Rs.376.06 lakhs had been lying in M/s ECPL's books of account as unsecured loan. In view of provisions of Section 41(1) of Income Tax Act, 1961 and Board Resolution dated 18-07-2014, the said amount was transferred to the P & L Account as revenue from operation during F/Y 2013-14. Our attention was drawn to a Chartered Accountant's certificate issued by M/s Deepak Gulati & Associates, certifying that amount of Rs.376.06 lakhs had been booked on account of cessation of liability under Section 41(1) of Income Tax Act, 1961 for the year F. Y. 2013-14 as per Board's resolution dated 18-07-2014 and the same has been shown as income as per provisions of Income Tax Act, 1961, under the Profit & Loss Account as revenue from operation during the F/Y 2013-14. The learned Chartered Accountant further drew our attention to details of amount received from various persons during 2009-10 to 2013-14 which had been received as loan but is found to be no longer payable. The learned Chartered Accountant submits that the recognition of aforesaid amount of Rs.376.06 lakhs in Profit & Loss Account is not towards any service. It had been recognized as revenue as per the provisions of Income Tax Act. Therefore, it has been

claimed that service tax was not payable on amount of Rs.376.06 lakhs and is liable to be reduced from the gross revenue of the Appellants. From the perusal of details of loan written off and also the Chartered Accountant's certificate, we find that the aforesaid amount of loan had been received by appellants in earlier years and the same has been transferred to Profit & Loss Account as 'other income' as per provisions of Income Tax Act, 1961. The said amount had not been received towards provision of any service and therefore we hold that Appellants were not liable for payment of service tax on the amount of Rs.3,76,06,111/-. Its impact on service tax demanded has been computed later.

Provision for expenses – Written back – Gross amount Rs.95.05 lakhs.

12. It has been submitted that during the period earlier to 2014-15, appellants had made certain provisions towards payment of sales tax, works contract tax etc on estimated basis. The said provision for payment of taxes had though been made but has not actually been paid as it was found to be not payable. As per provisions of Section 43B of Income Tax Act, the said none payment of tax has been treated as income and therefore transferred to Profit & Loss Account. The learned Chartered Accountant drew our attention to the Ledger Account of other income and also the Chartered Accountant's Certificate certifying that amount of Rs.95,05,639/- relating to provision for payment of sales tax, works contract tax etc had been written back during 2014-15 and was recognized as revenue in Profit & Loss Account. We find that the aforesaid amount of Rs.95,05,639/- had not been received from any customer towards provision of any service. Therefore we hold that appellants were not liable for payment of service tax on amount of Rs.95,05,639/-. Its impact on service tax demanded has been computed later.

Other income due to TDS deducted – Gross amount Rs.51.72 lakhs.

13. It has been submitted that during the year 2014-15, Appellants found that Ayaz Mobin and Mr. Irfan Yaseen Khan had deducted TDS on gross amount of Rs.51,72,800/-. The said amount was appearing in form 26AS. Therefore, for the purpose of Income Tax, the said gross amount was accounted for in the Books of Accounts and were disclosed as gross revenue in Profit & Loss Account. In support, the learned Chartered Accountant drew our attention to Form 26AS for the year 2014-15 wherein Ayaz Mobin had deducted TDS on amount of Rs. 35 lakhs. Similarly, Mr. Irfan Yaseen Khan deducted TDS on amount of Rs.16,72,800/-. Accordingly, Appellants would have accounted for this amount as income for the purpose of Income Tax Act. It has been submitted that the said amount of Rs.51.72 lakhs had never been received by M/s ECPL. Therefore, it was written off during 2018-19. We find that the said amount of Rs.51.72 lakhs was never received by M/s ECPL. They accounted for the amount of Rs.51,72,800/- for the purpose of Income Tax only. Subsequently, in the year 2018-19, M/s ECPL has written off the said amount. In support, ledger account of Mr. Irfan, Yaseen Khan and Ayaz Mobin had been submitted. We therefore, hold that M/s ECPL were not liable for payment of service tax on amount of Rs.51.72 lakhs. Its impact on service tax demanded has been computed later.

Booking amount received after completion – Gross amount Rs.591.67 Lakhs.

14. It has been submitted that M/s ECPL has been engaged in construction and sale of residential units under various projects. The completion certificate for its Yuvraj Residential Project was received on 24-03-2014 and JT Residency project was completed on 30-06-2013. In support, they submitted "Completion Certificate" issued by the Development Authority. It has further been submitted that Appellants received Rs.591.67 lakhs from Customers (first booking) after receipt of completion certificate. It has been submitted that as per Section 66E (b) of Finance Act, 1994, they were not liable for payment of service tax on amount

of Rs.591.67 lakhs. M/s ECPL has also submitted customer wise, year wise details of said receipts. The total amount received is Rs.5,91,67,926/-. It had been contended that in all these cases, the residential unit had been first booked after its completion. Section 66E of Finance Act, 1994 defines certain services as declared services. Clause `b' of Section 66(E) reads as under:—

66E. Declared Services.—The following shall constitute declared services, namely:—

(a)

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation. — For the purposes of this clause,—

(I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

15. In the present case, the amount of Rs.591.67 lakhs has been received after issuance of completion certificate. We therefore hold that the amount so received does not fall in the category of declared service. Moreover, on completion of construction activity, it becomes an immovable property and therefore, it does not fall in the definition of service. We therefore hold that M/s ECPL was not liable for payment of service tax on amount of Rs.5,91,67,926/-. Its impact on service tax demanded has been computed later. **In view of our findings in preceding paragraphs, we hold that M/s ECPL was not liable for payment of service tax on amount of Rs.37,10,07,479/- as per details given below :-**

- (h) Due to percentage of completion method (POCM)
Rs.25,25,55,003/-
- (i) Sale of property Rs.70,00,000/-
- (j) Unsecured loan transferred to P&L Account
Rs.3,76,06,111/-
- (k) Write back of provisions for expenses.
Rs.95,05,639/-
- (l) Other income due to TDS deducted
Rs.51,72,800/-
- (m) Booking amount received after completion
Rs.5,91,67,926/-
- (n) Total
Rs.**37,10,07,479**/-

16. Therefore, M/s ECPL would be liable for payment of service tax on Construction of Complex Services on amount of

Rs.1,39,65,98,300/- - Rs.37,10,07,479/- = Rs.1,02,55,90,821/. The Appellants have submitted that the liability for payment of service tax on amount of Rs.1,02,55,90,623/- would be Rs.3,34,30,933/-. The said computation has been certified by SKMR & Associates, Chartered Accountant. We therefore hold that Appellants were liable for payment of service tax Rs.3,34,30,933/- for the period 01-04-2012 to 31-03-2017 on construction of complex service. As per table 3 of Order-in-Original, ECPL had already paid service tax Rs.3,22,75,327/-. Therefore, there is short payment of service tax Rs.3,34,30,933/- - Rs.3,22,75,327/- = Rs.11,55,606/- on construction of complex service. The issue relating to invocation of extended period of limitation, imposition of penalty and demand of interest on this account shall be dealt with separately.

1. Whether M/s ECPL has short paid service tax Rs.37,89,467/- during the period 2015-16 and 2016-17 on amount received as prime location charges (PLC)(Issue No. 2).

17. The SCN in para 11 (page 10) alleged that M/s ECPL has collected certain amounts from the buyers as preferential location charges but has not paid service tax appropriately. The details of amount payable on account of PLC charges have been given in Annexure C & D of the SCN. On perusal of allegations and annexure C & D, it stands accepted that M/s ECPL had already paid service tax on the said amount on abated value and the demand is on the remaining 70%/75% amount. The impugned order in para 6.5 holds that Appellants were liable for payment of service tax on entire amount received as preferential location charges. The learned Commissioner observed that benefit of Notification No.26/2012 dated 20-06-2012 is not available to the Appellants on preferential location charges. He observed that one of the condition for availing the abatement is that the value of land is included in the amount charged from the service receiver. He holds that the amount charged as PLC would

not include the cost of land and therefore, he confirms the demand of service tax Rs.37,89,467/-. The learned Chartered Accountant submits that there is no dispute that the total amount of Rs.391.36 lakhs received as prime location charges is already included in the gross revenue. The demand of service tax Rs.1,47,57,013/- (on construction of complex service) includes the service tax payable on abated value of Rs.391.36 lakhs. The only issue is whether appellants were eligible for abatement of 70%/75% under Notification No.26/2012 or they were liable to pay tax on 100% amount without abatement. The learned Chartered Accountant drew our attention to Section 66(F)(3) of Finance Act, 1994 which reads as under :-

Section 66(F)(3) – subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely –

(a) If various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) If various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation - for the purposes of sub-section (3), the expression ‘bundled service’ means a bundle of provision of

various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

18. The learned Chartered Accountant submitted that the amount received towards Prime location charges etc is naturally bundled with their construction activity in the ordinary course of business and that in series of cases, it has been held that preferential location charges towards garden view, road location, car parking, club, membership, electric sub-station charges etc is a bundled service. It is to be taxed at same rate as that of main service i.e. construction service. Entire consideration received is eligible for abatement. Reliance has been placed on following decisions :-

- Shreno Ltd. Vs. CCE reported in 2021 (54) GSTL 187 (Tri. – Ahmd.)
- Logix Infrastructure (P) Ltd Vs CCE reported in 2019 (25) GSTL 59 (T).
- Radhey Krishna Technobuild (P) Ltd Vs CCE reported in 2020 (43) GSTL 549 (T).

19. We find that the aforesaid issue of liability for payment of service tax on preferential location charges (PLC) is no more *res integra*. In the case of Shreno Ltd. Vs. CCE reported in 2021 (54) G.S.T.L. 187, it has been held that preferential location charges are bundled with construction of residential complex service and is to be taxed at the same rate as that of main service i.e. construction service. Similar views have been taken by this Tribunal in the other two cases cited by the Appellants. By following the aforesaid decisions, we hold that M/s ECPL is eligible for abatement of 70%/75% in terms of Notification No.26/2012 dated 20-06-2012 on amount received under the

head preferential location charges. As the demand of service tax on abated value is already included in the demand of Rs.1,47,57,013/-, the demand of Rs.37,89,467/- on preferential location charges is hereby set aside.

2. Whether M/s ECPL is liable for payment of service tax Rs.15,57,043/- during 2015-16 and 2016-17 on commission/consultancy income received (Issue No.3).

Annexure E to the SCN alleges that M/s ECPL received Rs.1,10,86,686/- during 2015-16 and 2016-17 as other income and is liable for payment of service tax Rs.15,57,043/- on the same. The breakup of Rs.1.11 crore is as under:-

Particulars	2015-16 (Rs.)	2016-17 (Rs.)	Total (Rs.)
Unit cancellation charges	117369	390572	507941
Commission and other income	10478745	100000	10578745
Total	10596114	490572	11086686

20. The learned Chartered Accountant submitted that the amount of Rs.5,07,941/- has been received/retained from the customers who after booking a unit/flat cancelled the same. The amount so received is not towards any service. Therefore service tax on the same is not payable. He relied following decisions:-

- Krishnapatnam Port Co. Ltd Vs CCE reported in 2023 (72) GSTL 259 (T).
- Lemon tree Hotel Vs CCE reported in 2020 (34) GSTL 220 (T).

21. We agree with the Appellant's contention that amount of Rs.5,07,941/- has not been received towards provision of any service. Therefore, demand of service tax on the said amount is

liable to be set aside. As regards amount of Rs.1,05,78,745/- received as commission and other income, the learned Chartered Accountant fairly conceded that Appellants were liable for payment of service tax on the said amount of Rs.1,05,78,745/-. He however submits that the Appellants had not charged service tax on the same and therefore this amount is to be treated as cum tax price. He further submits that the said amount had been received during 2015-16 and 2016-17. It falls within the normal period of limitation. Accepting the Appellants submission, we re-compute the liability as under :-

Year	Rate of tax	Gross amount (Rs)	Assessable value (Rs.)	Service Tax payable (Rs.)
2015-16	14%	6495791	5698062	797728
2015-16	14.5%	3982954	3478562	504391
2016-17	15%	100000	86956	13044
Total		10578745	9263580	1315163

In view of above, we confirm the demand of service tax Rs.13,15,163/-. The issue relating to imposition of penalty and demand of interest on this account shall be dealt with separately.

3. Whether service tax Rs.19,65,925/- is demandable from M/s ECPL on account of service tax short paid on reverse charge basis (Issue No. 4).

22. The SCN alleged that M/s ECPL have made considerable payment towards manpower supply and legal professional services under reverse charge mechanism. In terms of Notification No.30/2012 dated 20-06-2012, they were liable for payment of service tax on reverse charge basis. The calculation of service tax liability has been given in Annexure F to the SCN. The impugned order in para 6.6 confirms the said demand. The

Appellants do not dispute their liability for payment of service tax on reverse charge basis. However, they submitted that they are eligible for Cenvat credit for the amount of service tax payable on reverse charge basis on availing works contract services and legal services. In this connection they had relied following decisions :-

- Hyundai Motor India (P) Ltd Vs CCE reported (29) GSTL 452 (T).
As upheld by Hon'ble Supreme Court reported in 2020 (32) GSTL J54 (SC).
- NCR Corporation India (P) Ltd Vs CCE reported in 2021 (55) GSTL 6 (T).
- Indus Valley Partners (I) Pvt Ltd Vs CCE reported in 2024 (389) ELT 403 (T).

23. In the case of Hyundai Motor India (P) Ltd Vs. CCE reported (29) G.S.T.L. 452 (T), the demand of service tax was set aside on the ground of revenue neutrality. The said decision of this Tribunal has been up held by Hon'ble Supreme Court reported in 2020 (32) G.S.T.L. J54 (SC). We agree with the Appellants contention that they are eligible for Cenvat credit of the amount payable as service tax on reverse charge basis on availing legal services and works contract services. As per table 3 of the impugned order, Appellants had paid service tax Rs.3.22 crore during 2012-13 to 2016-17, besides payment of Rs.65 lakhs during investigation. Therefore if appellants had paid the said amount of Rs.19.66 lakhs on reverse charge basis, it would have availed its Cenvat credit and the corresponding payment of service tax through PLA would have been lesser. Therefore the entire exercise is revenue neutral. We therefore set aside the demand of Rs.19,65,925/- on the ground of revenue neutrality.

4. Whether demand of service tax Rs. 52,99,353/- for the period 01-07-2010 to 31-03-2012 is beyond the extended period of limitation of 5 years (Issue No. 5).

24. Para 2.8 of SCN alleges that Appellants have short paid service tax Rs.52,99,353/- during the period 01-07-2010 to 31-03-2012. It has been observed that ST-3 return for 2010-11 and 2011-12 (April - September) had been filed on 19-01-2013 and 08-02-2013. Para 21.3 of SCN alleged that since ST-3 return for 2010-11 (i.e. the first year) was filed on 19-01-2013. Relevant date in the instant case is determined as 19-01-2013 in terms of Section 73(6)(i)(a) of Finance Act 1994, wherein it is stipulated that 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, 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. After making above allegations, the SCN in para 24(a) proposed to demand service tax Rs.2,00,56,366/- for the period July, 2010 to March, 2017 under proviso to sub section 1 of Section 73 of the Finance Act, 1994, which includes Rs.52,99,353/- for the period 01-07-2010 to 31-03-2012. The learned Commissioner observed that the party has not disputed the service tax liability in any written as well as oral submission and requested to appropriate the amount deposited against their service tax liability. Accordingly, he found it to be a fit case for appropriation of the amount of Rs.52,99,353/- already deposited by the party. Since, the issue is not disputed and amount has already been deposited unconditionally, he refrained from further discussion on the issue. Further in the operative part of the order, there is no demand of service tax, interest or penalty for the period 01-07-2010 to 31-03-2012. In the service tax appeal No.ST/70437/2019, the Department has challenged the said order to the extent of (1) not confirming service tax amounting to Rs.52,99,353/- on the receipts from residential flats sold

under 'construction of residential complex service' from July, 2010 to March, 2012, alongwith its appropriation in the said Order-in-Original and (2) not taking into account the above amount of service tax, while ordering recovery of interest under Section 75 of the Finance Act, 1994 and imposing equal penalty under Section 78(1) of the Act, *ibid*. It has further been submitted that in view of provisions of section 73(6)(i)(a) of the Finance Act, 1994, the ST-3 returns for the period 2010-11 to 2011-12 having been filed on 19-01-2013/08-02-2013, demand of service tax falls within the extended period of limitation of 5 years. The learned Chartered Accountant appearing for ECPL has submitted that the demand is even beyond the extended period of limitation. He refers to the provisions of Section 73(1) which provides that in case of suppression of facts etc the SCN can be issued within a period of 5 years from the relevant date. The relevant date has been defined in Section 73(6) as under:-

Section 73(6) - 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;

25. The learned Chartered Accountant refers to clause `b' of Section 73(6)(i)(b) of the Finance Act, 1994 and contends that in the cases where assessee does not file his ST-3 returns, the limitation for issue of SCN commences from the due date of filing of ST-3 returns. He submits that in the present case limitation for issuing SCN had already started w.e.f. 25-10-2010 (for the period from July to September 2010), 25-04-2011 (for the period from October 2010 to March 2011), 25-10-2011 (for the period from April 2011 to September 2011) and 25-04-2012 (for the period from 01-10-2011 to 31-03-2012). He submits that once the limitation had already started from the due date of filing of the return, there cannot be any other date for computation of limitation period of 30 months or 5 years. The learned Chartered Accountant further submits that in terms of clause `a' of Section 73(6)(i), the limitation for computing time limit of 30 months or 5 years is from the date of filing of the said return. He submits that in case of delayed filing of ST-3 returns, the clause `b' already stands invoked and therefore clause `a' cannot be invoked further. He therefore pleaded that clause `a' of Section 73(6)(i) can be invoked only in the cases where ST-3 returns has been filed on or before the due date of filing. He further submits, that there cannot be 2 relevant dates or triggering points for the same cause of action. Once the ST return has not been filed on the due date, the clock of limitation starts from the very next day, now it cannot be paused and restarted from the date when the assessee files delayed ST return. Any contrary interpretation will frustrate the whole purpose of limitation period. The learned Chartered Accountant further submits that M/s ECPL filed its return on 19-01-2013/08-02-2013. Even if it is assumed that the relevant date is 19-01-2013/08-02-2013, the extended period of limitation cannot be

invoked as they *bona fide* believed that they were eligible for abatement of the value of land and goods/material in terms of Notification No.12/2003 dated 20-06-2003. He relied following decisions in support of his case :-

- Continental Foundation JT Venture Vs CCE reported in 2007 (216) E.L.T. 177 (SC).
- Shervani Indus. Syndicate Vs CCE reported in 2009 (14) S.T.R. 486 (T-Del).
- Premier Car Sales Ltd – Final order Nos. 70191-70192 dt. 24-04-2024.
- Suresh Kumar Bansal Vs UOI reported in 2016 (43) S.T.R. 3 (Del).

26. We note that the SCN proposed to demand service tax Rs.52,99,353/- under proviso to Section 73(1) of the Finance Act, 1994. As regards relevant date, we note that in terms of clause `b' of Section 73(6)(i) of the Finance Act, 1994, the limitation for issue of SCN (within 30 months or 5 years) had already commenced from the due date of filing of the ST-3 returns i.e. 25-10-2010 for April – September 2010 and so on. Once the limitation period has already commenced on due date of filing of ST-3 return, clause `a' of section 73(6) cannot be invoked to contend that the limitation period will restart from the date of filing of ST-3 returns, which is after the due date of filing. It is on record that where as the due date of filing of return for October 2011 to March 2012 was 25-04-2012, the SCN had been issued on 17-01-2018 much after the extended period of limitation of 5 years. We therefore hold that the demand of service tax Rs.52,99,353/- is even beyond the limitation period of 5 years and is not maintainable.

Whether even otherwise extended period of limitation could not have been invoked for demanding service tax from M/s ECPL (Issued No. 6).

27. In respect of demand of Rs.52,99,353/- for the period 01-07-2010 to 31-03-2012, Appellants alternative submission is

that they filed their returns on 19-01-2013/08-02-2013 for the period July 2010 to March 2012. It has been contended that after having filed the returns, extended period of limitation cannot be invoked. They mainly referred to Hon'ble Delhi High Court decision in case of Suresh Kumar Bansal. Further out of the demand of Rs.1,47,57,013/-, relating to construction of complex service, the demand of Rs.11,55,606/- has only been found to be the short payment. The said demand has been raised by invoking the extended period of limitation. The issue of invoking extended period of limitation had come up for consideration in the case of G. D. Goenka Pvt. Ltd. vide Final Order No.51088/2023 dated 21-08-2023 particularly when the Appellants assessee filed its ST-3 returns. Para 25 of the said order reads as under :-

"To sum up:

- a) The Appellant assessee was required to file the ST 3 Returns which it did. Unless the Central Excise officer calls for documents, etc., it is not required to provide them or disclose anything else.
- b) It is the responsibility of the Central Excise Officer with whom the Returns are filed to scrutinise them and if necessary, make the best judgment assessment under Section 72 and issue an SCN under Section 73 within the time limit. If the officer does not do so, and any tax escapes assessment, the responsibility for it rests on the officer.
- c) Although the Central Excise Officer is empowered to scrutinise all the Returns call for records and if necessary, make the best judgment assessment, if, as per the instructions of CBIC, the officer does not conduct a detailed scrutiny of same Returns and as a result is

unable to discover any short payment of tax within the period of limitation, neither the assessee nor the officer is responsible for such loss of revenue. Such a loss of Revenue is the risk taken by the Board as a matter of policy.

- d) Extended period of limitation cannot be invoked unless there is evidence of fraud or collusion or wilful misstatement or suppression of facts or violation of the provisions of Act or Rules with an intent.
- e) Intentional and wilful suppression of facts cannot be presumed because (a) the Appellant was operating under self-assessment or (b) because the Appellant did not agree with the audit and claimed that CENVAT credit was admissible; or (c) because the Appellant did not seek any clarification from the Revenue; or (d) because the officer did not conduct a detailed scrutiny of the Returns and the availment of CENVAT credit which is alleged to be inadmissible and was discovered only during audit”.

28. In respect of demand of Rs.52,99,353/- we note that the Appellants assessee had been paying service tax after availing benefit of Notification No.12/2003 dated 20-06-2003. It was a *bonafide* dispute on computation of liability for payment of service tax. By following the decision of Delhi Bench in case of G. D. Goenka Pvt. Ltd. (Supra), we hold that in the facts of present case, extended period of limitation could not have been invoked for demanding service tax Rs.52,99,353/-. In the case of Suresh Kumar Bansal Vs. UOI reported in 2016 (43) S.T.R. 3 (Del), the Hon’ble Delhi High Court has held that there was no mechanism for ascertaining the service component and therefore the levy itself would fail. It has been held that service tax could not be

levied on value of undivided share of land and that neither Service Tax (Valuation) Rules, 2006 nor Finance Act, 1994 have provisions to determine value of services covered under Section 65 (105) (zzzh). The said decision was for the period prior to 30-06-2012 and has been followed by Delhi High Court in following cases also:-

(a) Ruchi Goyal Vs NBCC (India) Ltd reported in 2019 (29) GSTL392(Del).

(b) Vaani Kapoor Vs CCE reported in 2019 (25) GSTL 534 (Del).

29. The Hon'ble Telengana High Court in the case of Vasudha Bommireddy Vs. AC of Hyderabad reported in 2020 (35) GST 52 (Telangana) has held that the ratio of law laid down in the case of Suresh Kumar Bansal (Supra) is applicable even for the period after 01-07-2012. We are of the view that when two High Courts have held that levy on construction of complex service itself would fail, when there is no mechanism to compute the liability, the extended period of limitation could not have been invoked even for demand of service tax Rs.11,55,606/-. Therefore, even the said demand is set aside on the ground of limitation. Demands on issue No.2 and 4 are related to demand of service tax on preferential location charges and service tax payable on reverse charge basis. We have already held that the demand is not maintainable on merits. For the reasons mentioned in preceding paragraphs, we also hold that extended period of limitation is not invokeable.

Whether interest and penalty is demandable from M/s ECPL as confirmed in the impugned order and whether interest and penalty is also demandable on Rs.52,99,353/- from M/s ECPL in terms of the departmental appeal No. ST/70467/2019 (Issue No. 7).

30. We have held that M/s ECPL is liable for payment of service tax Rs.13,15,163/- on commission service. This demand relates to the period 2015-16 and 2016-17, which falls within the normal period of limitation. It is also for the period after the date of visit of DGGI Officers on 01-12-2015. We therefore hold that Appellants would be liable for payment of interest on the said amount and also penalty equal to 10% as per provisions of Section 76 of Finance Act, 1994. However, this demand of tax, interest and penalty would be liable to be adjusted against amount of Rs.65 lakhs paid during investigation. On the issue of demand of service tax Rs.52,99,353/- and other demands, we have held that it is not maintainable either on merits or on limitation. Therefore, there is no question of M/s ECPL's liability for payment of interest and penalty on the same.

Whether penalties of Rs.1,10,000/- are sustainable on Shadab Khan and Obaid Tanveer (Issued No. 8).

31. The learned Commissioner has imposed penalty of Rs.1,00,000/- each on Shadab Khan and Obaid Tanveer under Section 78A of Finance Act, 1994. He held that the basic character of duty evasion is established beyond doubt and therefore penalty under Section 78A is imposable on them. Similarly, penalty of Rs.10,000/- each has been imposed on Shadab Khan and Obaid Tanveer under Section 77(1)(c)(3) for not appearing in response to the summons. We hold that most of the demands have been set aside either on merits or on limitation. Out of the demand of Rs.2.73 crores, demand of Rs.13.15 lakhs is only surviving. There appears to be no direct involvement of the two directors in the aforesaid short payment of service tax. We therefore, set aside penalties under Section 78A and 77(1)(c)(3) of Finance Act, 1994 on both the directors.

32. In Service Tax Appeal No.70437/2019 filed by revenue the prayer is for confirmation of service tax amounting to Rs.52,99,353/- on receipt for residential flats sold under construction of Residential Complex Service from July, 2010 to

March, 2012. We have already discussed this issue and held in above para Nos.27, 28 & 29 that demand for the period from July, 2010 to March, 2012 is beyond the period of limitation of five years and therefore not sustainable. Therefore, the prayer of revenue cannot be accepted. As a result appeal filed by revenue is dismissed.

33. To conclude, we hold that :-

- (i) Out of the various demands of service tax raised in the impugned order, demand of Rs.13,15,163/- on commission service is upheld. M/s ECPL is also liable for payment of penalty @ 10% under Section 76 of Finance Act, 1994 on amount of Rs.13,15,163/-. M/s ECPL is liable for payment of interest as per law on the aforesaid amount of Rs.13,15,163/-.
- (ii) All other demands of service tax, interest and penalty are hereby set aside in terms of our findings in preceding paragraphs.

34. Service Tax Appeal No.70465/2019 filed by M/s Earthcon Constructions Pvt. Ltd., is partially allowed. Service Tax Appeal No.70437/2019 filed by revenue is dismissed and remaining two appeals are allowed.

(Order pronounced in open court on - **06.08.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

LKS