CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70881 of 2018

(Arising out of Order-in-Appeal No.139/ST/ALLD/2018 dated 12.03.2018 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s Creative Star Events, **.....Appellant**
(104A/293-A, Rambagh, Kanpur)

VERSUS

Commissioner of Central Excise &
CGST, Allahabad **....Respondent**
(38, M.G. Marg, Civil Lines, Allahabad-211001)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70083/2026

DATE OF HEARING : 10.03.2026
DATE OF PRONOUNCEMENT : 24.03.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.139/ST/ALLD/2018 dated 12.03.2018 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad.

2. Briefly stated, the facts of the case are that the Appellant was engaged in providing services as a coordinator/manager between parties wanting to organize events and service providers and had obtained its Service Tax registration in the F.Y. 2011-12. A Search was conducted by the Revenue on 09.10.2015, wherein certain loose papers, computer printouts, pen drives etc., were seized from the premises. Based on such loose papers and computer printouts, the Revenue had issued a

Show Cause Notice[1] dated 21.12.2016 proposing to demand Service Tax of Rs.65,44,934/- under the head of 'Event Management Service[2]' alongwith interest and penalty for the period from F.Y. 2011-12 to 2015-16. Subsequently, an Order-in-Original dated 25.04.2017 was passed against the Appellant, wherein the Revenue, after allowing cum tax benefit to the Appellant, had confirmed a demand of tax of Rs.57,62,098/- along with applicable interest and penalty of Rs.57,62,098/- under Section 78, Rs.40,000/- under Section 77(1) and Rs.5,000/- under Rule 15A of CENVAT Credit Rules[3]. The Appellant had filed an Appeal dated 04.07.2017 before the Commissioner (Appeals) Allahabad, who had passed an Order-in-Appeal No.139/ST/ALLD/2018 dated 12.03.2018 wherein the OIO was modified to the extent that the total penalty under Section 77(1) is reduced to Rs.10,000/- and penalty of Rs.5,000/- imposed under Rule 15A of CCR is set aside. The other contents of the OIO were upheld and remained unchanged. Subsequently, the Appellant filed the present Appeal before the Tribunal. Further, the Appellant had also submitted a Written Submission dated 23.04.2025 at the time of hearing, which has been duly considered by us. The Revenue in the present case has confirmed a demand of Service Tax of Rs.57,62,098/- along with interest and imposed penalties under Sections 78 & 77 of the Finance Act, 1994 based on two main allegations/issues :-

- Short/non-payment of Service Tax of Rs.57,30,825/- on the amount received by the Appellant in the concerned period which is allegedly taxable under the head 'Event Management Services'
- Cenvat Credit of Rs.31,273/- allegedly irregularly availed by the Appellant without any valid documents in violation of the Cenvat Credit Rules, 2004.

3. The Appellant in its Appeal and Written Submission has relied on the following grounds: -

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[1] SCN
[2] EMS
[3] CCR

- *That the proceedings undertaken and demand confirmed on the basis of loose papers, computer etc. seized during search are illegal and unsustainable.*
- *That the statements of the partners of Appellant firm relied upon by the Revenue are inadmissible and irrelevant, as –*

  – *Such statements are in violation of Article 20(3) of the Constitution of India.*

  – *Such statements made to the Departmental Officers in response to Summons are inadmissible and cannot be relied upon in accordance with Section 23 of the Bhartiya Sakhshya Adhiniyam, 2023.*

  – *Such statement recorded would not have any evidentiary value as the same are not sworn statements taken under oath.*
- *That the Appellant was not engaged in the provision of Event Management services and the demand confirmed therein is unsustainable.*
- *That even otherwise, the majority amount received was in lieu of payments to be made to service providers on behalf of service recipient and the taxable value as per Section 67 shall only be confined to the commission received by the Appellant.*
- *Extended period of limitation is not invocable.*
- *No interest or Penalty is leviable in the present case*.

4. We also observe that the Appellant has relied on various judgements in his Grounds of Appeal as well as his Written Submission and during the arguments before us. We have duly perused through such judgements and taken the same into consideration *vis-à-vis* the facts of the present case. Now, we take up the first issue of demand of Service Tax of Rs.57,30,825/- under the category EMS on the entire amount received from various customers. The Adjudicating Authority in

Para 6.11 of the Order-in-Original has determined that the services rendered by the Appellant fall under the category of "EMS" inasmuch as that the Appellant was engaged in the planning and organization of weddings, exhibitions, musical programs etc. and hired the services of various third-party services providers like photographers, studios etc., in the capacity of an event manager. The Appellant in the Grounds of Appeal contends that the services provided by him do not fall under the category of EMS. The arguments forwarded by the Appellant in his Written Submission dated 23.04.2025 are reproduced below: –

> *"The Appellant respectfully submits that he just worked as a coordinator between the service recipients and service provider. As per the <u>Circular No. 68/17/2003</u> dated 28-11-2003, "Where the event is organized or managed by the sponsor himself, no service tax is payable under event management category". Hence, no service tax will be levied on the Appellant.*
>
> *There is no evidence of Appellant having rendered service of managing an event on behalf of the customer. Department has itself acknowledged in Para 4.2 of the Show cause notice that the Appellant firm was working on commission basis while the gross amount received from customer/person wanting to organize the event was to be transmitted to ultimate service provider.*
>
> *As a coordinator, "negotiation" is essential part of Appellant's business, inasmuch as that the service recipient prefers to pay amount to the service provider through the Appellant on account of trustworthiness and goodwill created by the Appellant. Thus, the Appellant himself is not the service provider. He is just the co-ordinator and the negotiator acting on behalf of the service recipients. In view of the same, the Appellant acts as a sponsor who manages and organizes the even himself, by receiving services form various service providers.*

Thus, it is evident that the activity of coordinator undertaken by the Appellant would not classify as 'event management service' as defined u/s 65(40) of the Finance Act, 1994 and the demand confirmed is unsustainable."

5. On perusal of the copies of invoices as well as other documentary evidences brought on record, we fail to find any merit in the Appellant's contention of working as an event coordinator. The definition of EMS as provided in Section 65(40) of Finance Act, 1994 is self-evident, wherein any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment … or any event falls under its scope. The services provided by the Appellant to its customers in the present case fall squarely under such definition and we concur with the Adjudicating Authority that the activity carried on by the Appellant is taxable under EMS. With respect to the Circular No.68/17/2003 dated 28.11.2003 relied upon by the Appellant, we find it clear that a sponsor of an event is the person paying for it and since the events organized by the Appellant were paid by his customers, the Appellant was not engaged in organizing of events in the capacity of a sponsor. Hence, we uphold the contention of the Adjudicating Authority inasmuch as that the services provided by the Appellant would fall under the ambit of EMS.

6. Next, we consider the issue of determination of taxable value with respect to such EMS provided by the Appellant. The Adjudicating Authority in Para 6.14 of OIO has relied on Section 67 of Finance Act to contend that the gross amount charged by the Appellant from its customers would be the actual taxable value. The Adjudicating Authority in Para 6.19 of OIO has rejected the Appellant's contention that the taxable value shall be confined to the commission of 8-10% received by the Appellant, by stating: –

"As regards the argument of the party that they have retained only 8-10% of the payment received by them on account of office expenses, transport and other expenses

and that major part of such payments received by them were paid to actual services providers. I have examined the provision of Section 67 of the Finance Act as well as CBEC Circulars and I find that the gross amount charged for rendering the services is the taxable value for the purpose of discharging service tax and no deduction is allowed for the services received for rendering the services. I also take into cognizance the fact that the party has admitted the correctness of the figures in these charts and annexure. The party has never disputed these figures even during the course of defence. None of the statements tendered by the party have been retracted. In these circumstances the statements tendered by the party are relevant for the purpose of proving the facts as per provisions of Section 9D of the Central Excise Act, 1944. I therefore hold that the figures incorporated in the Show Cause Notice for the purpose of valuation of taxable services are correct."

7. The Appellant in the Grounds of Appeal as well as the Written Submission has also relied upon Section 67 to contend that the taxable value shall only be confined to the commission of 8-10% received by the Appellant for the services provided and not on the remaining amount received in lieu of payment to be made to various service providers on behalf of service recipient. In this regard, the Appellant has placed heavy reliance, in its Written Submission as well the oral arguments, on the landmark judgment of the Hon'ble Supreme Court in the case of UOI vs. M/s Intercontinental Consultants and Technocrats Pvt. Ltd. [2018-TIOL-76-SC-ST].

8. Before going into the merits of this issue, we observe that the following facts have been admitted by both parties and are not in dispute in the present case: –

- That the Appellant received various amounts from the service recipients, the majority of which were in lieu of payment to be made to third party service providers on behalf of the service recipient.

- The Appellant charged a commission of 8-10% on the services provided to the service recipient, which is also evidenced from copies of invoices brought on record.
- That service tax has already been paid by the Appellant on the commission of 8-10% in its ST-3 returns.

9. Thus, we observe that the only dispute is with respect to the interpretation of Section 67 of the Finance Act, 1994 *vis-à-vis* the facts of the present case. In this regard, we find it necessary to first consider Section 67 of the Act, as reproduced below :–

"SECTION 67. Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

(i) in a case where the provision of service is for a consideration in money, be the ***gross amount charged by the service provider for such service provided or to be provided by him****;*

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a)"consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

(c)"gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

10. Additionally, we find it prudent to consider the judgment of **Hon'ble Supreme Court in the case of UOI vs. M/s Intercontinental Consultants and Technocrats Pvt. Ltd**. [2018-TIOL-76-SC-ST] relied upon by the Appellant, the relevant paras are reproduced below: –

"24) In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any

other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 01, 2006) or after its amendment, with effect from, May 01, 2006.

25) This position did not change even in the amended Section 67 which was inserted on May 01, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of subsection (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider."

11. We find that the dispute pertaining to the interpretation of Section 67 of the Finance Act, 1994 is no longer *res integra* and has been conclusively settled by Hon'ble Supreme Court in the abovementioned judgement. In view of the same, the taxable value computed in accordance with Section 67 shall be the gross amount charged by the service provider for such service provided or to be provided by him, with an emphasis on the term 'such'. In the present case, the Appellant is engaged in the provision of EMS and received a commission of 8-10% in lieu of the same. The remaining amount received by the Appellant is in lieu of payments to be made to third party service providers on behalf of the service recipient. Hence, for the concerned EMS, the gross amount charged by the Appellant is confined only to the commission of 8-10%. The remaining amount is not for the provision of EMS by Appellant and hence cannot form part of taxable value. We do not find any merit in the contention and interpretation of the Adjudicating Authority in this regard. Consequently, we observe that the Adjudicating Authority in the present case has erred in its interpretation of Section 67 of the Finance Act, 1994. As far as the OIA is concerned, we observe

that the First Appellate Authority has not undertaken any discussion or provided any reasoning for its decision and solely relied upon the discussion undertaken in the OIO. Hence, we do not find any need to separately discuss the same. Accordingly, we hold that the taxable value with respect to the EMS provided by the Appellant shall be confined to the Commission of 8-10% received by the Appellant. Since the Appellant has already paid the service tax on such commission in its ST-03 returns as has been admitted by the Revenue and can be evidenced from the records, we set aside the demand of Rs.57,30,825/- upheld in the impugned OIA.

12. Next, we move on to the issue of demand confirmed on the notional valuation made by the Revenue on the basis of amounts deposited in bank accounts and entries appearing in loose papers and computer printouts seized during the search. The Revenue in the present case has relied upon the loose papers, computer print outs etc. to raise demand by alleging the existence of certain clandestine transactions. The Adjudicating Authority in Para 6.27 & 6.28 of the OIO has held such loose papers and computer print outs to be admissible by relying on Section 36B of Central Excise Act, 1944 and has determined that the demand confirmed on the basis of the same is sustainable. The Appellant in its Grounds of Appeal as well as its Written Submissions has relied upon various case laws to contend that such assumptions of clandestine transactions and notional determination of demand is illegal and unsustainable. The Appellant contends that such loose papers, computer printouts etc. relied upon by the Revenue are inadmissible and irrelevant to the present proceedings. Further, it is contended that demand cannot be confirmed on the basis of such loose papers without the Revenue being able to make out a clear chain of causation linking the Appellant to such alleged clandestine transactions. We find it relevant to briefly reproduce the various case laws relied upon by the Appellant in this regard in its written Submission dated 23.04.2025 :–

*"C.**1** **Hon'ble Supreme Court of India in the case of Common Cause a Registered Society & Ors. Vs. UOI & Ors. [2017-TIOL-27-SC-MISC]** held that investigation cannot be initiated on the basis of records not maintained in the regular course of business and where respondent has not been able to make out a clear case of taxing income in the hands of the applicant firm on the basis of such documents.*

*C.2 **Hon'ble Supreme Court of India in the case of CBI vs. VC Shukla & Ors. [(1998) 1 SCR]** held that –*

"A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets (which we have already found to be not admissible in evidence under Section

34) are admissible under Section 9 of the Act to support an inference about the correctness, still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof."

*C.3 **Tribunal (All) in the case of M/s Shree Radhey Radhey Ispat Pvt. Ltd. Vs. Commissioner, Central Excise, Lucknow [Excise Appeal No.50407 of 2015]** held that –*

"25. It is a well settled law that resumption of loose slips or private records resumed from the third party, or statements recorded behind the back of the Appellant cannot be made the basis of confirming demand on the Appellants unless the same are proved to be linked to the Appellant. Further, even it is assumed such entries existed, but that does not prove that the Appellant in fact made any such higher amount of payment in absence of any corroborative evidence."

C.4 ***Tribunal (All) in the case of Commissioner of CGST Meerut Vs. M/s B.N. Viz. And Others, [ST Appeal No.70285 of 2019]*** *held that –*

"4.4 We find that the Commissioner (Appeals) has decided the matter before him by holding that there are no corroborative evidences available on record to establish the case made out against the Respondent on the basis of second set of data retrieved. In absence of any such averment, we do not find any merits in this appeal. It is incorrect to say that the judgment relied upon by Commissioner (Appeals) while deciding the appeal, were in respect of the goods and not in respect of services. It is the ratio decidendi, which Commissioner (Appeals) has followed, which is reproduced below:

> *"Though the confessionals statement may be the starting point of investigations but in view of the other evidence available on record and in the absence of the other evidence indicating. clandestine removal, the same cannot be made the sole basis for deciding against the assessee. To the same effect is the decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. Dhingra Metal Works 2010-TIOL-693-HC-DEL-IT laying down that though an admission is extremely important piece of evidence, it cannot be said to be conclusive."*

4.3 Accordingly, we do not find any infirmity in the order of the Commissioner (Appeals) to this extent."

C.5 ***Hon'ble Madhya Pradesh High Court in the case of Beni vs. Bisan Dayal [A. I. R 1925 Nagpur 445]*** *held that –*

"Where it was observed that entries in books of accounts are by not themselves sufficient to charge any person with liability ,the reason being that a man cannot be allowed to make evidences for himself by what he chooses to write an his own books behind the back of the parties.

There must be independent evidence of transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another."

*C.**6 Hon'ble High Court in the case of Hiralal vs. Ram Rakha [A. I. R. 1953 Pepsu 113]** held that –*

"the Rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

C.7 Further, reliance is also placed on the following case laws which hold that demand cannot be imposed on the basis of loose papers, records seized during search. CESTAT Delhi – Commissioner of C. Ex., Bhopal Vs. Handa Disc [2006 (3) S.T.R. 739]

- *CESTAT Delhi – Sky Channel Network Vs. CCE [2017-TIOL-665-CESTAT-DEL]*
- *CESTAT Kolkata – M/s Makers Castings P. Ltd. Vs. Commissioner of CGST &C.Ex. [EA No.75409 of 2020]*
- *CESTAT Kolkata – Attitude Alloys P Ltd & Ors. Vs. Commissioner of C.Ex [EA No.517-519 of 2011]*

13. We have perused through the above-mentioned case laws relied upon by the Appellant, including two judgements by the Hon'ble Supreme Court, judgements of the High Court's as well as the judgements of this Bench. In this regard, we would also like to refer to the decision of this Bench in the case of **M/s**

Shyam Construction Vs. Commissioner of Customs, Central Excise & Service Tax, Kanpur [Service Tax Appeal No.70516 of 2016], wherein it was held that :–

> *"36. Further, we move onto the demand of service tax of Rs.24,40,589/- on cash receipts alleged to have been received by the Appellant form its buyers over and above the Agreement cost. During the course of the search of the Appellant's premises, certain loose paper records were resumed which have been provided as RUD-22 and RUD-43 in the SCN. It is observed that such records mention certain entries with certain amounts under the head 'INTT'.*
>
> *Xxxxxxxx xxxxxxx xxxxxx*

40. We have perused the rival contentions, the evidences brought on record, the arguments as well as the various case laws relied on by both parties. We find pertinent to mention the following facts with respect to this allegation:–

- *That a few loose sheets of paper were recovered during search of appellant's premises.*
- *That such sheets denote certain entries, with certain amounts written under the head 'INTT'.*
- *That no other indication is present on the sheet or on any other evidence proving that such amounts refer to cash received.*
- *No excess cash or any prominent traces of such excess cash have been found from the appellant.*
- *No cross verification has been done from third parties regarding payment of cash to appellant.*
- *No proper explanation has been provided by appellant with respect to such loose paper.*
- *No evidence has been brought on record from either the appellant or the Department to prove their contentions.*

41. We observe that as per the judgements relied upon by Appellants, in case of allegation of clandestine removal on the basis of loose papers, it is the burden of Department to *prove that there is a chain of events which show that there was such clandestine removal. The linking of such lose paper to the Appellant is the Department's responsibility. We also take into account the judgements of this Bench in the two cases mentioned below, in a similar set of circumstances :–*

Xxxxxxx xxxxxxx xxxxxxxxx

43. On a careful reading of such case laws, we find that the burden of proof lies on the Revenue with respect to the following aspects :–

- *That such entries refer to cash received*
- *That such entries are legitimate, i.e. are substantiated with other evidence*
- *That cash has actually been received by Appellant from any of its buyers.*

44. We find that it is the minimum requirement to prove the above-mentioned aspects for there to be a basis chain of events which may potentially indicate clandestine removal by Appellant. However, no evidence has been brought on record by Revenue. We note that no cross-verification has been done by the Revenue with the buyers to determine whether any cash was paid by them to the Appellant. We do not find any merit in the Adjudicating Authority's contention that since no evidence has been brought on by Appellant; such entries refer to cash received for clandestine removal. Tax payer cannot be expected to provide justification for any loose sheet of paper which is not a part of its books of account in absence of any credible evidence supporting the legitimacy of such paper. We find that the Adjudicating Authority has failed to establish even a proper reasoned chain of events based on any evidence which may lead to a believable probability of receiving cash in excess of agreement. Accordingly, we are of the view that the allegation of receiving cash by Appellant over and above the agreement cannot be sustained. Thus, we set aside the demand of Rs.24,40,589/- confirmed in impugned Order."

14. We find that it is a settled legal position that the loose papers, computer printouts etc. resumed during the search which are not a part of the taxpayer’s books of accounts are *prima facie* inadmissible, unless and until the Revenue succeeds to bring on record substantive evidence proving its authenticity and admissibility. As per Section 34 of the Evidence Act, 1872 (corresponding to Section 34 of Bhartiya Sakhshya Adhiniyam 2023) entries in the books of account regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Since in the present case the concerned loose papers, computer printouts etc. are not a part of entries in the books of accounts the same are irrelevant and inadmissible. With respect to the Adjudicating Authority’s reliance on Section 36B of Central Excise Act, 1944; we refer to the decision of the Tribunal in the case of **Attitude Alloys (P) Ltd. Vs. Commissioner of Central Excise, Bhubaneswar-II** [Excise Appeal Nos.517-519 of 2011(Tri.-Kol)] :–

> *“12.8. Section 65B of Evidence Act is parimateria with Section 36B of the Central Excise Act, 1944. From the above observation of the Hon'ble Apex Court, we find that unless the conditions of Section 65B(2) of the Evidence Act, which is pari materia with Section 36B(4) of the Central Excise Act are complied with, no reliance can be placed on any computer printouts. Admittedly, the procedure set out in Section 36B has not been followed in this case. Thus, following the judgement of the Hon‘ble Apex Court and the other decisions cited above, we hold that the data resumed from the computer print out alone cannot be relied upon to demand duty, without any corroborating evidence. 16.3. In the instant case we find that the investigation has not brought in any corroborative evidence to substantiate the allegation of clandestine removal. In view of the above findings, we hold that the*

> *investigation has failed to establish the alleged clandestine clearance of goods by the Appellants and hence the demands confirmed in the impugned order are not sustainable."*

15. In the present case, a certificate as required in Section 65B(4) has not been brought on record by the Revenue to prove the authenticity of the concerned computer print outs. Hence, in view of the above judgement and in the absence of any corroborative evidence, we do not find any merit in the argument raised by the Adjudicating Authority. Further, we find that even if such loose papers, computer printouts etc. are considered admissible, as held by this Tribunal in various cases, it is the burden of the Revenue to establish a clear chain of causation proving the existence of alleged transactions and linking such transactions with the Appellant. We observe that the Revenue has admitted in the impugned OIO that the demand has been confirmed on the basis of the loose papers, computer printouts etc. and amounts credited in bank accounts. We observe that it is an established fact that such loose papers, computer printouts etc. are not a part of the books of accounts and the Revenue has not brought on record any corroborative evidence to substantiate the same. The Revenue has solely relied upon the contention that such loose papers, computer printouts etc. have been allegedly admitted by the Appellant in its statement. Further, we observe that while the Revenue has brought on record various charts and computations forming part of RUDs of SCN on the basis of which the demand has been confirmed, all such charts and computations have been prepared by the Revenue based solely on the loose papers, computer printouts etc. resumed during the search.

16. We do not find any merit in this contention of the Adjudicating Authority. We will discuss the relevance and admissibility of the statements relied upon by Revenue in the subsequent Paras. Nevertheless, we find that mere acknowledgement by the Appellant that such loose papers have

been resumed during the search does not amount to an admission of guilt nor would it act as sufficient corroborative evidence to prove the authenticity and admissibility of such documents. We observe that the Revenue has failed to bring on record any substantive evidence to prove the authenticity and admissibility of the loose papers, computer printouts etc. relied upon. The Revenue has also not been able to link the amounts credit in the bank accounts connected to the Appellant to the alleged transactions by way of any evidence. Hence, we find that a chain of causation between the alleged clandestine transactions and the Appellant has not been prima facie established in the present case. In this regard, we also observe that since the charts and computations relied upon by the Revenue are produced by the Revenue itself based on such loose papers, computer printouts etc., such charts and computation are also irrelevant and inadmissible and cannot form the basis for confirming demand. Accordingly, we hold that the loose papers, computer print outs etc. relied upon by the Revenue are inadmissible and irrelevant in the present case and the demand of Rs.57,30,825/- confirmed on the basis of the same is hereby set aside.

17. Next, we take up the issue of demand of Cenvat Credit of Rs.31,273/- allegedly irregularly availed by the Appellant in violation of the Cenvat Credit Rules, 2004. The Adjudicating Authority in Paras 6.23 to 6.26 of OIO has confirmed demand of such Cenvat Credit on the allegation that the same has been availed on ineligible transactions and without the relevant documents. We observe that no submissions have been made nor any reasoning provided by the Appellant in this regard either in the Appeal or in the Written Submission. The Appellant has neither pressed on the grounds nor substantiated the credit availed by producing invoices. Hence, we are inclined to uphold said demand of Cenvat Credit of Rs.31,273/- along with interest and penalty.

18. Now, we take up the issue of the admissibility and relevancy of the statements relied upon by the Revenue in the

impugned Orders. The Revenue in the present case has extensively relied upon the statements of Shri Rohit Babu and Shri Abhinav Srivastava (partners of Appellant firm). The Adjudicating Authority has relied on the sole contention that the concerned loose papers, computer printout of pen drives and computer hard disk have been allegedly authenticated by the partner of the firm in their statement provided in response to summons issued by Revenue. The Appellant, on the other hand, contends that such statements relied upon by the Revenue are inadmissible and irrelevant, and the demand confirmed on the basis of the same is illegal and unconstitutional. The first argument raised by the Appellant pertains to such statements being in violation of Article 20(3) of the Constitution of India, and is reproduced below:–

> *"That demand confirmed based on such statements is in violation of Article 20(3) of the Constitution of India, the relevant extract of which is reproduced hereunder –*
> ***"20. Protection in respect of conviction for offences.—***
>
> ***(3) No person accused of any offence shall be compelled to be a witness against himself."***

The Hon'ble **Supreme Court of India** in the case of State of Bombay vs. Kathi Kalu Oghad, [Cr Appeal Nos.110, 111 & 146 of 1958, date of Decision 04.08.1961] has observed that :–

> *"'to be a witness' may be equivalent to 'furnishing evidence' in the sense of making oral or written statements.*
>
> *Thus, it is evident that it is a Fundamental Right of the Appellant that he must not be compelled to be a witness against himself, and the same has been violated in the present case."*

19. On a perusal of the same, we find that in the present case, the partners of the Appellant firms are being compelled to make

statements against themselves and their firm, and hence are being compelled to act as a witness against themselves. In consideration of the punitive nature of the present proceedings, we find that Article 20(3) would be applicable herein. Further, we observe that no discussion has been undertaken by the Revenue in this regard and no reasoning has been provided with respect to the legality and admissibility of the concerned statements. Consequently, we hold that the statements relied upon by the Revenue are in violation of the Fundamental Right of the Appellant and are unconstitutional and void. We observe that the Appellant has also contended that such statements provided to Revenue officers are inadmissible under Section 23 of the Bhartiya Sakhshya Adhiniyam, 2023 and since such statements are not sworn statements taken under oath, they do not have any evidentiary value. We have perused through the judgments of the High Courts as well as the Apex Court relied upon by the Appellant in this regard. Since we have already held that the statements in question are in violation of Article 20(3) of the Constitution of India, we do not find any requirement to dive further into the issue. Nonetheless, we observe that the High Court has conclusively held in the cases referred that for a statement to have evidentiary value, the person taking the statement must be authorized to administer oath and to record sworn statement, which is not the case in the present proceedings. Accordingly, we hold that the statements relied upon by the Revenue to confirm demand are unconstitutional, inadmissible and have no evidentiary value; and the demand confirmed on their basis is set aside.

20. On a perusal of the OIO as well as the impugned OIA, we find that the main contention of the Adjudicating as well as the First Appellate Authority is the alleged lack of evidence on part of the Appellant to prove the unsustainability of the demand confirmed and to prove the non-existence of clandestine transaction. Particularly in the case of impugned OIA, wherein the First Appellate Authority has passed an Order upholding demand merely on the ground that the Appellant has not

brought on record evidence to disprove the contentions of the Adjudicating Authority. We find that the Adjudicating as well as the First Appellate Authority have erred inasmuch that they have illegally shifted their burden of proof onto the Appellant. In this regard, we refer to the decision of this Bench in the case of **M/s Shyam Construction Vs. Commissioner of Customs, Central Excise & Service Tax, Kanpur** [Service Tax Appeal No.70516 of 2016], wherein it was held that :–

> *"47. We observe that the Adjudicating Authority has placed repeated emphasis in the impugned Order on the alleged lack of evidence on part of the Appellant to prove the non-taxability of concerned activities/transactions. We find it necessary to state that burden of proof with respect to allegation of taxability of a transaction lies upon the Revenue.*
>
> *48. The Finance Act, 1994 does not provide for any provision wherein the burden of proof with respect to alleged taxability of a transaction is on the taxpayer. Unless and until the taxpayer claims the benefit of an exemption notification (in which case the burden of proving the applicability of such notification is on the taxpayer), the burden of proving that a particular transaction falls under the taxable service is on the Revenue.*
>
> *49. Since the allegation of taxability of a transaction is made by the Revenue in the first place, according to Sections 101 & 103 of Evidence Act, 1872 (corresponding to Sections 104 & 106 of Bhartitya Sakhshya Adhiniyam, 2024); burden of proving the same shall lie on the Revenue. Especially for the period before the Negative list regime, where only those transactions which were specifically mentioned in the Finance Act were taxable, the burden of proving the same would remain on the Revenue.*
>
> *50. We observe that the throughout the impugned Order, the Adjudicating Authority has denied the Appellant's contentions and confirmed demand based on an alleged*

lack of evidence. Irrespective of the un-sustainability of the demand as discusses in the above paragraphs, we find that the burden of proving the taxability was on the Revenue and the same has not been discharged. No documentary evidence has been brought on record by the Revenue to support its allegations.

51. In view of the same, we are of the view that the entire demand confirmed in the impugned Order based on unsubstantiated allegations by contending lack of evidence on part of Appellant is to be set aside."

21. This Bench has made a similar observation in the case of **M/s Ratan Housing Development Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax, Kanpur** [Service Tax Appeal No.70613 of 2017]. We find no reason to deviate from the position taken by us in the above mentioned cases. Further, with respect to the allegations of clandestine transactions based on loose papers, computer print outs etc.; in view of the case laws relied upon by the Appellant as discussed in Para 14 & 15, we find that it is trite that burden of proof in such cases shall lie upon the Revenue. Hence, we find that the burden of proving the taxability was on the Revenue and the same has not been discharged. No documentary evidence has been brought on record by the Revenue to support its allegations. In light of the same, we are of the view that the entire demand confirmed in the impugned Order based on unsubstantiated allegations by contending lack of evidence on part of Appellant is to be set aside.

22. Thus, on a thorough perusal of the impugned OIA, OIO, SCN, Appeal, Written Submission and evidences brought on record, we are of the view that the demand confirmed in impugned Order is erroneous and is to be set aside. However, before concluding; we find it necessary to consider the issue of invocation of extended period of limitation. The current dispute pertains to the F.Y. 2011-12 to 2015-16; and the impugned SCN was issued on 21.12.2016 by invoking the extended period of

limitation under the Proviso to Section 73 of Finance Act, 1994. The Appellant has provided extensive contentions arguing that there was no fraud, willful misstatement or suppression of facts and that the Appellant had cooperated throughout the proceedings. It has been contended that even if there was a short/nonpayment of tax, the same was based on a *bona fide* belief of non-taxability and there was no intent to evade tax in the present case. Various case laws have been quoted by the Appellant in support of the same. The Adjudicating Authority has also discussed this issue in the impugned Order. However, on a perusal of the same, we find that the entire argument forwarded in the Order for the invocation of extended period of limitation is that there was short/non-payment of service tax by Appellant, thereby denoting a willful suppression of facts.

23. We have duly examined the entire demand confirmed and based on a careful consideration in the preceding paragraphs, we have come to a conclusion that out of the total demand confirmed of Rs.57,62,098/-; only a demand of Rs.31,273/- is legal and proper and the remaining demand is to be set aside. Consequently, the entire basis of argument of the Adjudicating Authority for invocation of extended period of limitation falls apart. We observe that no evidence or even reasoning has been brought on record by the Adjudicating Authority to show that there was any fraud or suppression of facts by the respondent. On the contrary, in view of the fact that nearly all of the demand confirmed is unsustainable, it is observed that the Appellant has acted in a *bona fide* manner and there was no intention to evade tax. In this regard, we would also like to refer to the following judgments of the Hon'ble Supreme Court of India, the relevant extract of which is reproduced below :–

Easland Combines Coimbatore vs. Collector of Central Excise Coimbatore [2003 (3) SCC 410] –[Appeal (civil) 2693 of 2000]

"*It is settled laws that for invoking the extended period of limitation duty should not have been paid, short levied or short* *paid or erroneously refunded because of either fraud, collusion, wilful mis-statement, suppression of fact or contravention of any provision or rules.* ***This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a license which is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."***

M/S. Uniworth Textiles Ltd. vs. Commnr. Of Central Excise, Raipur [2013 (9) SCC 753]–[2013-TIOL-13-SC-CUS]-[2013-(288)-E.L.T. 161 (S.C.)]

"*Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that "the Appellants had not brought anything on record" to prove their claim of bona fide conduct, on the Appellant.* ***It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India Vs. Ashok Kumar & Ors. that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."***

Akbar Badruddin Jiwani vs. Collector of Customs [1990 (47) E.L.T. 161 (SC)] – where it was held that to impose penalty, the burden of proving that the Appellant had *mens rea* or dishonest intention is on the respondent.

24. In view of such judgments, it is evident that mere failure to pay tax does not amount to fraud, willful misstatement or suppression of facts and the burden of proving the same is on the Revenue. As discussed above, no evidence or even a legitimate reasoning has been brought on record by the Revenue

to prove that there was an intent to evade tax on part of Appellant. Hence, we hold that the extended period of limitation is not invocable in the present case. Consequently, the entire demand confirmed in impugned Order is to be set aside and the entire proceedings are time barred.

25. With regards to penalty under Section 78 of Finance Act, 1994; since we have come to the conclusion that extended period of limitation is not invocable in absence of any fraud, willful misstatement or suppression of facts, then, penalty under Section 78 is also set aside. Further, since the entire proceedings are barred by limitation, the penalty under Section 77 of Finance Act, 1994 is also set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on **24.03.2026**)

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

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS