CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70177 of 2026

(Arising out of Order-in-Appeal No.361/ST/Alld/2024 dated 04/07/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad)

M/s Praveen Kumar Shukla, **.....Appellant**
(14/13-201, Shristi Apartment,
Lukerganj, Allahabad-211001)

VERSUS

Commissioner of Central Excise &

CGST, Allahabad **....Respondent**

(38 MG Marg, Civil Lines, Allahabad)

<u>APPEARANCE:</u>

Shri Vishwas Pandey, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70253/2026

DATE OF HEARING : 02 June, 2026
DATE OF DECISION : 02 June, 2026

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.361/ST/Alld/2024 dated 04/07/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No.18/DIV-II-KSL/2023 dated 14.12.2023 wherein following has been held:-

"ORDER

(i) I confirm the demand of service tax (including cesses) of 294848/(Rupees Two Lakhs Ninety Four Thousand Eight Hundred Forty Eight Only), under the provision of proviso to Section 74 (1) of the Finance Act, 1994 read with

Section 142, Section 173 and Section 174 of CGST Act, 2017.

(ii) I confirm the demand of interest and order for its recovery, at the applicable rates, on the amount of 294848/(Rupees Two Lakhs Ninety Four Thousand Eight Hundred Forty Eight Only) as mentioned at (i) above, under the provision of Section 75 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(iii) I impose a penalty of 294848/(Rupees Two Lakhs Ninety Four Thousand Eight Hundred Forty Eight Only) upon the party under the provision of Section 78 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017. The party shall be liable for reduced penalty specified in second and third proviso to Section 78 of the Finance Act, 1994, subject to fulfillment of conditions specified therein.

(iv) I impose a penalty of 10,000 (Ten Thousands) only under Section 77(1)(a) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(v) I impose a penalty of 10,000 (Ten Thousands) only under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(vi) I impose a penalty of 10,000 (Ten Thousands) only under Section 77(1)(c) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(vii) I impose a penalty of 10,000 (Ten Thousands) only under Section 77(1)(d) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(viii) I also impose a penalty of 10,000/- (Rupees Ten Thousand Only), upon the party under the provisions of Section 77(2) of the Finance Act, 1994, for non-filing of

returns, read with Section 142, Section 173 and Section 174 of CGST Act, 2017."

2.1 Appellant having PAN No.AVLPS6959C has received certain incomes as per their ITR towards provisions of services. He was not registered with the department for payment of service tax nor was filing any return as required.

2.2 On the basis of information received from the Income Tax Department for the Financial Year 2016-17 and 2017-18 (upto June, 2017) Appellant had received consideration towards provisions of service as detailed below:-

Period	Gross receipt against sale of service as declared in ITR
F.Y. 2016-17	1965650

2.3 As appellant was not registered for filing ST-3 returns, appellant was vide letters/summons dated 25.05.2021, 07.09.2021 & 28.09.2021 were asked to furnish following documents:-

(i) Balance sheet and profit & loss account for the financial year 2016-17 & 2017-18.

(ii) Form-26AS for the financial year 2016-17 & 2017-18.

(iii) Copy of contract letter and all Bills issued during the aforesaid period.

2.4 Appellant could not provide the requisite information and evidences for verify the nature of service and eligibility of any exemption or abatement. Therefore, the service tax short paid during the period 2016-17 was computed as detailed in table below:-

Financial Year	Value of service	Rate of Tax	Service Tax payable @applicable rates	Service Tax paid as per ST-3 Returns	Outstanding amount off Service Tax to be paid
2016-17	1965650	15%	294848	0	294848

2.5 As the appellant has suppressed the material facts from the department by not taking registration and not filing ST-3 returns while providing taxable services, show cause notice dated 21.10.2021 was issued to the appellant asking them to show cause as to why:-

"(i) Service Tax amounting to Rs.2,94,848/-(Rupees Two Lakh Ninty Four Thousand Eight Hundred Forty EightOnly) (including cesses) should not be demanded and recovered from them under the proviso to the Section 73 (1) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017.

(ii) Due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of Finance Act, 1994read with Section 142, Section 173 and Section 174 of CGST, 2017.

(iii) Penalty should not be imposed upon him/them under Section 78 of the Finance Act, 1994read with Section 142, Section 173 and Section 174 of CGST, 2017 for failure to pay Service Tax and suppressing the facts and value of taxable service with intent to evade payment of Service Tax.

(iv) Penalty should not be imposed upon them under Section 77 (1) (a) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017 for not taking registration.

(v) Penalty should not be imposed upon them under Section 77 (1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017for not maintaining the proper records.

(vi) Penalty should not be imposed upon them under Section 77 (1)c) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017for not furnishing documents and information called by the officer.

(vii) Penalty should not be imposed upon them under Section 77 (1) (d) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017for not depositing the Service Tax electronically.

(viii) Penalty should not be imposed upon them under Section 77 (2) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017 for not filing ST-3 Return for the period 2016-17."

2.6 Appellant responded to the show cause notice vide letter received on 30.10.2023 but did not attend the personal hearing given to him on 06.10.2023, 18.10.2023 & 27.10.2023. Thus, the said show cause notice was adjudicated as per the Order-in-Original referred in para 1 above.

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Vishwas Pandey, Advocate for the appellants and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- There was only an error in the ITR filed, whereby they have indicated the amount to be received under the head of sale of service whereas he is only providing or selling agricultural-plant saplings and seeds to the railways or their officers.
- The said sale of plant saplings and seeds do not qualify the sale of service and trading activity. Hence, they are not liable to pay service tax.
- Even in the Form 26AS no amount has been deducted by any of the person or the service recipient under Section 194C of the Income Tax Act which is for work contract service under the heading demand has been made.
- In a similar matter Hyderabad Bench of this Tribunal in the case of M/s GopiChenna Final Order No.30078-30079/2024 dated 26.02.2024 has set aside the demand.

3.3 Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 For upholding Order-in-Original, impugned order records as follows:-

> *"4.4 The main issue in the instant case is to ascertain whether the value of services shown in ITR for the period 2016-17 of the appellant pertains to non-taxable services or not?*
>
> *4.4.1 It is observed that appellant has shown Rs.19,65,650/ in the ITR for the period 2016-17 as value of services and it has been claimed that the same has been erroneously shown against the code of value of services instead of sale of goods/plants etc. In order to ascertain the factual correctness of the claim of the appellant, it is observed that all the documentary evidences in support of the activities done by the appellant needs to be examined.*
>
> *4.4.2 The appellant has made available some documents like copy of Form 26AS for the period 2015-16, 2016-17 and 2017-18, copy of ITR along with P&L A/c for the period 2016-17, sample copy of cash memo's, copy of Running Bills of Tender No. Re/Tender/Civil/502/805 dated 07.06.2020, copy of registration and allotment of TIN under UPVAT Rules, details of registered dealer of Commercial Taxes department.*
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> *4.4.3 On going through the Form 26AS of the appellant, it is seen that no payments has been received by them during the period 2015-16, 2016-17 and 2017-18. Also copies of sample cash memo did not contain complete details of buyers of the goods, quantity and rate of the goods. Therefore, in absence of these vital details in the cash memo's, these documents cannot be considered to be proper document in support of sale of goods. Further, on perusal of the running bills pertaining to Central Organization for Railway Electrification, Headquarters Allahabad, it is observed that the same pertains to Tender*

No. Re/Tender/Civil/502/805 dated 07.06.2020 whereas the value of services in the instant case pertains to period 2016-17. It is observed that the said running bills do not pertains to relevant period and therefore the same has no relevancy with the instant case.

4.4.4 On going through the registration of TIN, it is observed that the appellant has obtained registration under UPVAT Rules for Work Contractor and Order Supplier. The appellant has submitted that the registration for work contractor has been obtained by him in anticipation of some contracts from railways for horticulture activities and maintenance of plants etc. but it has been submitted that they failed to get any work during the impugned period and he had been engaged in supply of seasonal vegetable and flower only. However, it is observed that the appellant did not produce any documentary evidences like bills/invoices, purchase orders, cash receipt details/documents, VAT returns, ledger, Bank Statement etc. to show the transactions pertaining to sale of the nursery plants/seedlings in support of its claim. Thus, the appellant has failed to substantiate its claim that amount of Rs.19,65,650/- shown in their ITR/P&L A/c for the period 2016-17 pertains to trading of goods. Therefore, in absence of any supporting evidences, the claim of the appellant cannot be considered to be pertaining to non-taxable activities of sale of nursery plants/seedlings.

4.4.5 Thus, it is observed that appellant has received Rs. 19,65,650/- as value of services during the period 2016-17 as per their ITR and P&L A/c and therefore the same is consideration in lieu of providing services defined under Section 65B(44) of the Act. Further the appellant has failed to show the consideration on account of any non-taxable services under Section 66D of the Act or any exempted nature of services as per Notification No.25/2012-ST dated

20.06.2012, therefore the same is consideration on account of taxable services under Section 65B(51) of the Act and leviable to service tax under Section 68 of the Act. Accordingly it is found that confirmation of demand of service tax of Rs.2,94,848/ on the taxable value of Rs. 19,65,650/- against the appellant for the period 2016-17 in the impugned order is proper and sustainable.

4.4.6 Further, it is observed that the appellant has failed to deposit the service tax liability of Rs.2,94,848/- during the period 2016-17 within the stipulated period of time limit, therefore they are also liable for payment of interest under Section 75 of the Act.

4.4.7 I find that under self assessment procedure prescribed under the statute, the appellant were required to assess & pay their Service Tax liability correctly, whereas the non-payment of Service Tax could be detected only during the data received from the Central board of Indirect Taxes & Customs. The appellant had also not obtained service tax registration with the Department. Thus, I find that there was suppression of facts with the intent to evade payment of Service Tax, on the part of the appellant. Thus, I find that the suppression of facts and contravention of the statutory provisions with intent to evade payment of Service Tax are present in this case and as such confirmation of demand of Service Tax along with interest and imposition of penalty under Section 78 of the Act is proper and sustainable.

4.4.8 It is observed that violation of the provisions of the Act read with Rules by act of the appellant of non-registration under service tax, non-maintenance of accounts and records, non-furnishing of documents and information called for by the officer, non-deposit of service tax electronically and non-filing or returns for the period 2016-17 is apparent on records available and therefore, penalties imposed under 77(1)(a), 77(1)(b) and 77(1)(c), *Section 77(1)(d) and Section 77(2) of the Act are proper and justified.*

4.5 It is observed that the appellant has contested that the case against them has been based on value of services shown in ITR during 2016-17, which has been erroneously filled during filing of ITR, whereas the said amount pertains to sale of plants and seedlings and they have not provided any taxable service during the period 2016-17. The appellant has relied upon a Final Order No. A/30078-30079/2024 dated 26.02.2024 of CESTAT, Regional Bench, Hyderabad wherein it has been held that the department is under obligation to prove that the appellant rendered such and such service and to such and such person and the consideration was received towards rendering of such service. Without doing the saine, demand merely on the basis of figures does not survive.'

4.5.1 It is observed that though the appellant have relied upon a number of case laws that the demand solely raised on the basis of figures of ITR/26AS is not sustainable and imposition of penalties not justified in their case but they have not given any justification as to how these decisions are applicable to the facts of their case, especially after introduction of negative list of services. I also find that the Hon'ble Supreme Court in the case of Punjab National Bank vs. R.L. Vaid 2004 (172) E.L.T. 24 (S.C.), has held at Para 5, as under:

> *"5 We find that the High Court has merely referred to the decision in R.K. Jain's case (supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. There is always peril in treating the words of a judgment as though they are words in a*

Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases.

4.5.2 Similarly, the Hon'ble Supreme Court in the case of CCE, Bangalore vs. Srikumar Agencies 2008 (232) E.L.T. 577 (S.C.), inter alia, held, as under:

Precedents Court decision not statute - Reliance thereon without discussion of facts Decisions not to be relied upon without discussing similarity of facts Judgments of courts not to be construed as statutes - Circumstantial flexibility, additional or different fact may make a world of difference between conclusions in two cases

4.5.3 In view of the above judicial pronouncement I find that mere citing of courts/tribunal judgment is not sufficient but applicability needs to be discussed explicitly."

4.3 I find that impugned order upholds the Order-in-Original by stating that the appellant has not been able to produce the documents to establish that they were selling the goods against which they received consideration on which demand of service tax has been made. In absence of any such documents, appellant's claim cannot be accepted and the demand of service tax needs to be upheld. For not agreeing with the decisions coated impugned order refers to certain decisions including that of Hon'ble Supreme Court to said that just reliance on a decision is not sufficient without showing relevance.

4.4 I find that appellant had categorically stated before the Adjudicating Authority and Appellate Authority that he was selling or trading in goods- plant saplings and seeds, trading of these goods was exempted under VAT, hence not VAT was being paid in respect of trading of these goods without going into the details of said contention. The said contention has been rejected.

4.5 From the facts of the case, I find that the entire demand is based on the information received from the Income Tax Department without further investigation into the nature of work done. It is also evident and undisputed that Form 26AS of the appellant for the relevant period do not show any receipt towards provisions of any services on which TDS would have been deducted under Section 194 C of the Act.

4.6 It is also not the case, that the appellant had not responded to the show cause notice, Order-in-Original specifically records the submissions made by the appellant and also the contentions raised vis-à-vis is being engaged in trading of the goods. When the appellant has taken such a specific stand, it needs to have been inquired into and the findings recorded at the time of adjudication.

4.7 From the business activities of the appellant, I find sufficient reason for appellant to have a bonafide belief that he was not required to registered with the department or pay any service tax. In view of the bonafide belief entertained by the appellant, I do not find any merits in the demand made by invoking extended period of limitation. Hon'ble Supreme Court in the case of Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)] has held as follows:-

> *"**21.** The Revenue contended that of the three categories, the conduct of the appellant falls under the case of "willful misstatement" and pointed to the use of the word "misutilizing" in the following statement found in the order of the Commissioner of Customs, Raipur in furtherance of its claim :*
>
> *"The noticee procured 742.51 kl of furnace oil valued at Rs. 54,57,357/- without payment of customs duty by misutilizing the facility available to them under Notification No. 53/97-Cus., dated 3-6-1997"*
>
> ***22.** We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or*

misstatement. The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, Sixth Edition (pp 1599) defines "willful" in the following manner :-

"Willful. Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass…

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done…"

23. *In the present case, from the evidence adduced by the appellant, one will draw an inference of bona fide conduct in favour of the appellant. The appellant laboured under the very doubt which forms the basis of the issue before us and hence, decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did the appellant decide to claim exemption. Even if one were to accept the argument that the Development Commissioner was perhaps not the most suitable repository of the answers to the queries that the appellant laboured under, it does not take away from the bona fide conduct of the appellant. It still reflects the fact that the appellant made efforts in pursuit of adherence to the law rather than its breach.*

24. *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 v. Ashok Kumar & Ors. - (2005) 8 SCC 760 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."*

25. *Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In Aban Loyd Chiles Offshore Limited and Ors. (supra), this Court made the following observations :*

"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :

'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such

averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...." *(Emphasis supplied)*

26. *Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful* *default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant."*

4.8 In the following decisions also it has been held that extended period of limitation could not have been invoked for making the demand when the person entertained a bonafide belief about non taxable nature or exempted nature of the services provided.

- Anand Nishikawa Co. Ltd. Vs CCE, Meerut 2025 (188) ELT 149;
- Infinity Infotech Parks Ltd. Vs UOI 2014 (36) STR 37;
- CCE, Chennai Vs Chennai Petroleum Corporation Ltd. 2007 (211) ELT 193;

4.9 I also find that in the case of M/s GopiChenna Final Order No.A/30078-30079/2024 dated 26.02.2024 this Tribunal has held as follows:-

"7. On going through the records of the case, it is clear that the cases are made on the basis of third party data i.e., amounts reflected in Income Tax Returns and in Form 26AS. Revenue takes the stand that in the Negative List regime, Department is not obliged to prove the provision of a particular service to demand service tax and further, the Appellants could not explain that the difference satisfactorily. I find that this is not the correct approach; exigibility to service tax depends on the service provider, service rendered, service recipient and the consideration thereof. Unless these four elements have been connected logically, demand of service tax cannot be confirmed merely on the basis of figures reflected in other statutory records. Be it pre or post-Negative List regime, the Department is under obligation to prove that the Appellants have rendered such and such service and to such and such persons and that the consideration was received towards the rendering of such service. Without

doing the same, demand merely on the basis of figures does not survive.

8. I find that Tribunal has been continuously holding that such demands are not sustainable. I find that Chandigarh Bench of this Tribunal in the case of Indian Machine Tools Manufacturers Association Vs. CCE, Panchkula (supra) held as follows:

> *"11. Coming to third and final issue as to whether any demand can be sustained on the basis of difference between the figures of ST-3 Returns and the balance sheets, we find that it is a settled principle of law that service tax can be levied only when there is a clear identification of service provider, service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, we are of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns like Income Tax Returns or balance sheets without proving that such service has been rendered by the assessee and consideration thereof has been received. Similarly, no service tax demand can be raised and confirmed on the basis of notional income. We find that Tribunal in the case of Synergy Audio Visual Workshop (P) Ltd. – 2008 (10) STR 578 (Tri-Bang.) held that:*
>
> > *5.1 The other ground for confirming demands is that the appellants had shown certain amounts due from the parties in their Income-tax returns and Revenue has proceeded to demand service tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has*

> *settled the issue that amounts shown in the Incometax returns or Balance Sheet are not liable for service tax. In view of these judgments, the appellant succeeds on this ground also. The impugned order is set aside and the appeal is allowed."*

8.1 Also the Tribunal in the case of M/s Raj Mohan Vs. Commissioner of CGST, Panchkula (supra), held as follows:

> *"3. I have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions and case laws filed by the respective sides. Learned Counsel for the appellant submits that on merits as well as on limitation no Service Tax can be demanded from the appellant. Per Contra, learned Authorised Representative re-iterated the submissions recorder in the impugned order and prays for dismissal of appeal filed by the appellant. So far as the issue about differences in the figures reflected in ST-3 Returns and in form 26AS is concerned it has been settled by way of various decisions of the Tribunal that the Revenue cannot raise the demand on the basis of merely differences without establishing that the entire amount received by the appellant as reflected in form 26AS is consideration for services provided because it is also not proper to presume that the entire differential amount was on account of consideration for providing services without verifying it. It is the specific case of the appellant that the amount shown in Form 26AS by the service recipient have not been received by the appellant. I also agree with the submission of learned Counsel that the burden to prove the allegations is upon the department that the appellants have received the extra payment on*

which the TDS of Rs.3,74,121/-(since form 26AS reflects TDS) has been deducted by the service recipient. My aforesaid view is also supported by the decision of the Tribunal in the matter of Qwest Engineering Consultant Pvt. Ltd. v/s Commissioner CGST, Central Ex. Allahabad; 2022 (58) GSTL-345 (Tri-All.)in which the co-ordinate Bench of the Tribunal has held that form 26AS is not a statutory document for determining the taxable turnover under the Service Tax as form 26AS is maintained on cash/receipt basis by the Income Tax department for the purpose of TDS etc. whereas the Service Tax is chargeable on mercantile basis (approval basis) on the services provided. Similarly, in the matter of Kush Construction v/s CGST Nachin, ZTI, Kanpur;2019 (24) GSTL-606 (Tri-All.) also it has been held that differences in figures reflected in ST-3 Returns and form 26AS cannot be basis for raising Service Tax demand without examining the reasons for such differences and without examining whether the amount as reflected in the said Income Tax Return was the consideration for providing any taxable services or the difference was due to any exemption or any abatement. Even otherwise in various decisions of the Tribunal it has been held that the figures in form 26AS are already included in Income Tax Returns in the Profit & Loss account and balance sheet which is a public document and the ST-3 Returns were also filed by the appellants regularly therefore, no suppression can be alleged and no evidence has been adduced by the Revenue to establish melafide intention for evasion of Service Tax and therefore extended period cannot be invoked. The recent decision of the Tribunal on this issue of extended period in such type of cases is by the Kolkata Bench of the Tribunal vide order dated

23/02/2022 in the matter of Service Tax Appeal No. 75792 of 2021 titled as M/s. Luit Developers Pvt. Ltd. v/s. Commissioner CGST & Central Excise, Dibrugarh. So far as the demand of Rs. 38,357/- based on four invoices is concerned, I am unable to find any document in the case records in support of appellant. The appellant has failed to adduce any evidence/document in support of their claim that the said amount has not been received by them or that the invoices/bills were cancelled. Rather it has been submitted by the learned Counsel that the appellant has made a submission before the lower authorities that they were ready to pay the service tax amount involved on the said invoices in order to avoid the interest liability and in the written submission herein it has been mentioned by the appellant that the service tax has been deposited by them. Therefore accordingly this issue is decided against the appellant."

9. In view of the above, I find that the Impugned Orders cannot be legally sustained;"

4.10 In view of the above, I find that the demand is hit by limitation and the findings recorded in the impugned order in this regard cannot stand in the eyes of law. The impugned order lacks merit and the same is set aside.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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