CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70356 of 2024

(Arising out of Order-in-Original No.VNS-EXCUS-000-COM-0040-2022-23 dated 13/01/2023 passed by Commissioner of Central Goods & Services Tax, Varanasi)

M/s Param Vaishnavi Jv, **.....Appellant**

(Room No.2, Gidhauli, Mugalsarai-232101)

VERSUS

Commissioner of Central Excise &

CGST, Varanasi **....Respondent**

(9, Maqbool Alam Road, Varanasi)

APPEARANCE:

Shri Kunal Kumar Alok, Advocate for the Appellant
Shri Abhishek Mukherjee, Authorised Representative for the Respondent

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

FINAL ORDER NO.70264/2026

DATE OF HEARING : 29 July, 2026
DATE OF DECISION : 29 July, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.VNS-EXCUS-000-COM-0040-2022-23 dated 13/01/2023 passed by Commissioner of Central Goods & Services Tax, Varanasi. By the impugned order following has been held:-

"ORDER

(i) I, hereby confirm the demand of Rs.2,61,93,151/- (Rupees Two Crore Sixty One Lakh Ninety Three Thousand One Hundred and Fifty One Only)against the Noticee i.e. M/s Param Vaishnavi (Jv), prop. Suchitra Kumari, Room

No-02, Gidnauli, Mugalsarai, Chandauli 232101 under Section 73(1) of the Finance Act, 1994.

(ii) I, order for recovery of interest at appropriate rate on confirmed amount, under Section 75 of the Act, ibid.

(iii) I, impose a penalty of Rs.2,61,93,151/- against the Noticee under the provisions of Section 78 of the Act. However, the Noticee has an option to pay 25% of the penalty payable, provided they pay the service tax, due interest and penalty imposed, within a period of 30 days of receipt of this order.

(iv) A penalty of Rs.10,000/- is imposed against the Noticee under the provisions of Section 77(1) of the Act for failure to get them registered under Section 69 of the Act.

(v) A penalty of Rs.10,000/- is also imposed against the Noticee under the provisions of Section 77(2) of the Act for failure to file ST-3 return under Section 70 of the Act, ibid."

2.1 Appellant having GSTIN -09AARFP2579C1ZU, are engaged in providing services namely "General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels, General construction services of other civil engineering works n.e.c, General construction services of long-distance underground/overland /submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works., Electrical installation services including Electrical wiring & fitting services, fire alarm installation services, burglar alarm system installation services., Engineering services for industrial and manufacturing projects" under Section 22 of CGST Act, 2017. However, the said taxpayer has rendered services under pre GST Regime without having Service Tax Registration, under Section 69 of erstwhile Finance Act 1994 read with Rule 4 of erstwhile Service Tax Rules, 1994 to their clients, and received the substantial amount during the F.Y. 2015-16 & 2016-17.

2.2 Accordingly, they are required to pay Service Tax as per the calculation in table below:-

Financial Year	Receipts as per 26AS	Service Tax (Inclusive of Cess)			
		@ %	Due	Paid	Sort Paid
Oct 15 to March 16	44540905	14.50	6458431	0	6458431
2016-17	131564804	15	19734720	0	19734720
Total	176105709		26193151	0	26193151

2.3 Show cause notice dated 16.04.2021 was issued to the appellant asking them to show cause as to why:-

> *"(i) An amount of Service Tax (including applicable cesses) Rs.2,61,93,151/-(Rupees Two Crore Sixty One Lakh Ninety Three Thousand One Hundred and Fifty One Only) not paid during the period should not be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994.*
>
> *(ii) Interest at appropriate rate on the above demanded arnount should not be demanded and recovered from them under Section 75 of the said Act ibid.*
>
> *(iii) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 as amended, for suppression of facts with intent to evade the payment of Service Tax.*
>
> *(iv)Penalty should not be imposed upon them under Section 77(1) of the Act ibid for contravention of Section 69 of the Act read with the provisions of Rule4 of the Rules ibid.*
>
> *(v) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for violation of Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 by not filing the ST-3 Returns to the department."*

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

2.5 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Kunal Kumar Alok, Advocate for the appellant and Shri Abhishek Mukherjee Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submitted in the same matter enquiry was conducted by the authorities in jurisdiction of Ranchi Commissionerate, for the same period. The authorities therein found nothing against the appellant and had closed the enquiries/ investigations after verification as is evident from the letter dated 17.08.2022 of the Superintendent CGST & CX Range VII, Ranchi South Division. Hence the proceedings pursued by the Varanasi Jurisdiction would amount to double jeopardy and needs to be set aside on this ground itself.

3.3 Authorized Representative reiterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

> *"3.2 I find that no written defense submissions have been made by the Noticee, which only shows that the noticee has nothing to submit in their defense. Here, I would like to discuss the provisions of Section 33A (1) of the Central Excise Act, 1944, made applicable to all Service Tax matters under Section 83 of the Finance Act, 1994 as amended.*
>
> > ***"33A. Adjudication procedure.***
> >
> > *(1) The adjudicating authority shall, in any proceeding under this chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires."*
>
> *In the case, sufficient/ time opportunity have been given to the Noticee to submit their defence but they neither submitted defence reply nor attended any of the personal hearings given to them for their defence.*

3.3 I have gone carefully through the facts on records. The issue in brief is that the Department has alleged that the Noticee was providing services to their customers for which they had received payments, which was taxable under the provisions of Service Tax laws but due Service Tax was not paid by the Noticee.

3.4 From the facts on record, I find that as per the information received from the Third-party sources, the Noticee had received payments from their customers on account of providing taxable service amounting to Rs.17,61,05,709/- during the period year 2015-16 and 2016-17.

3.5 It is an admitted fact that that in the GST regime, the Noticee is engaged in providing taxable services to their customers. These services were not exempted from payment of Service tax during earlier tax regime. Meanwhile, the Noticee have not got themselves registered as required under Service Tax Act/Rules and they have never informed that they are providing taxable services to their customers. It has been alleged on the basis of CBDT data that payments has been received by the Noticee, during the financial year 2015-16 and 2016-17 against services rendered to their clients, which was taxable under the provisions of law.

3.6 The Noticee during the period 2015-16 and 2016-17 received a total amount of Rs.17,61,05,709/- from their customers. The Noticee was given sufficient opportunities to put-forth their defense, but neither had they submitted any reply nor document evidencing that they have not charged or received any service tax from their customers.

It has not been contested by the Noticee that the services provided by them, enjoyed any kind of exemption. Also, the Noticee have not stated that they were providing any other kind of services or had any other source of Income/Business, from where they could have received the *payments, declared by them to the Income Tax authorities. Instead the Noticee intentionally refrained from participating in the investigation conducted by the Departmental officers or replying to the queries raised by them. Even after issuance of Demand cum show Cause Notice, I find that the Noticee did not attend the proceedings or submitted any other version explaining the reasons of not taking Service Tax registration, paying due service tax or following the procedures, as mandated. This clearly shows that the Noticee has something to hide with regards to their business activities with intent to evade due tax.*

3.7 From the above, I am of the opinion that there is no dispute about the nature of services provided and considering the provisions of Section 67 of the Finance Act, 1994, as amended read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, as amended, I find that the Noticee was liable to pay due service tax on the gross value received by them, which they failed to do. Moreover, by not submitting defense reply and by not responding to the opportunities of personal hearings given on several dates from February, 2022 to December, 2022; they have ceased opportunity to put their defence before the adjudicating authority. The Noticee did not provide any documents explaining nature of taxable services, payment of Service Tax by way of self-assessment and in absence of such documents; I proceed to adjudicate the case ex-parte on the basis of facts / evidence available on record with the department.

3.8 In view of discussions supra, I find that the Noticee is liable to pay demanded Service Tax amounting to Rs.2,61,93,151/- (including applicable Cesses) on consideration received against taxable services provided by them, during the period 2015-16 and 2016-17 under Section 73(1) of the Finance Act, 1994.

3.9 As far as the demand of interest is concerned, I find that when the liability to pay Tax has been confirmed, then there can be no immunity from payment of appropriate interest on such Tax liability. It is in built provision that in the event of failure of timely payment of tax amount into the credit of the Government exchequer, the same has to be paid along with the interest. Therefore in view of the settled law, I hold the Noticee are liable to pay the interest in terms of Section 75 of the Finance Act, 1994.

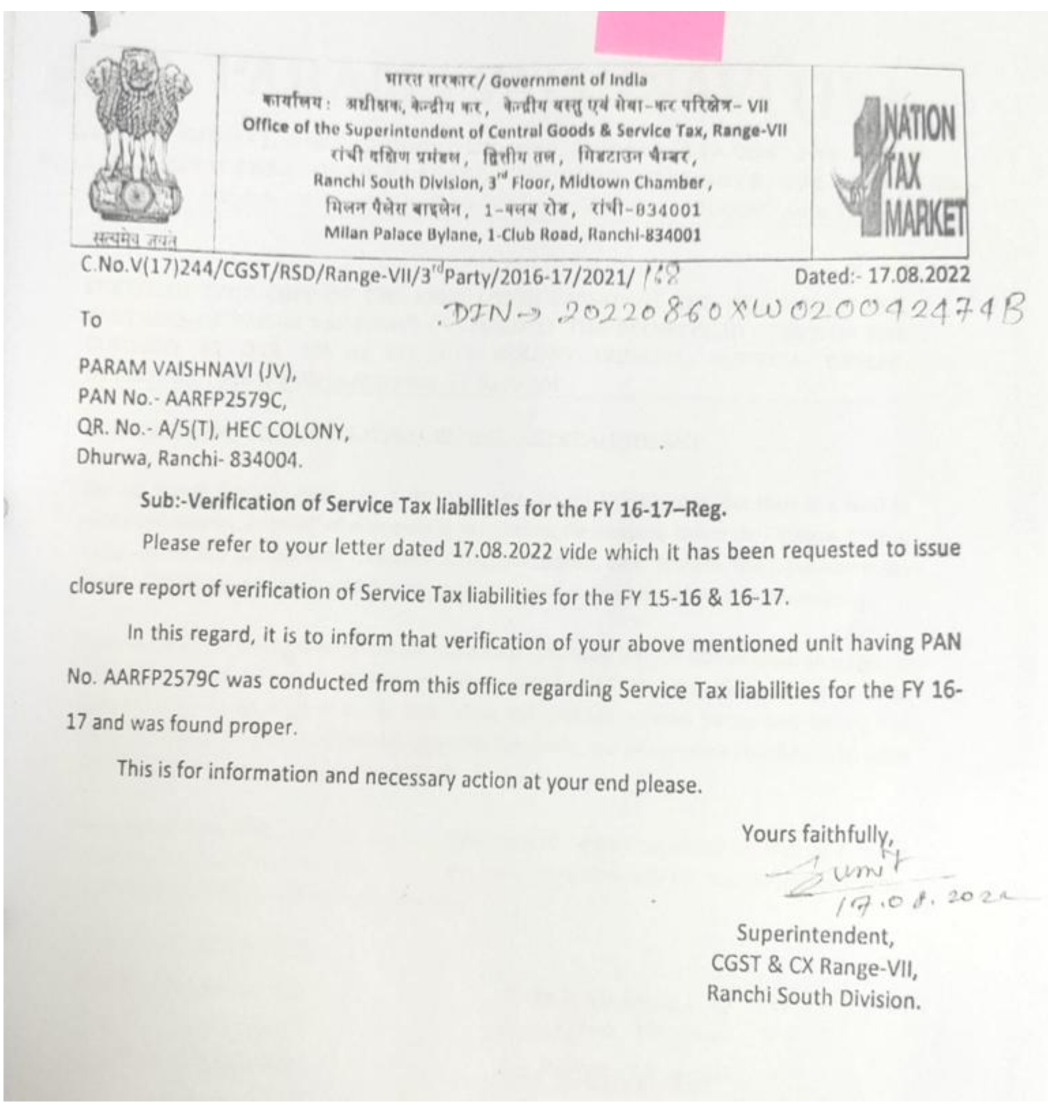
4. The Noticee suppressed the facts from the department with intent to evade the payment of Service Tax; therefore, they are liable for imposition of penalty under Section 78 of the Act.

In their decision in the case of Sidexo SVC India Pvt. Ltd. v. Commissioner 2015 (38) S.T.R. J202 (S.C.), the Apex Court while admitting the Appeal, has held that "the assessee has failed to provide evidence towards bona fide belief of non-liability of Service Tax under Business Auxiliary Services and no attempt was made by them to ascertain its tax liability and accordingly penalty is imposable."

In the case of Care & Cure Pvt. Ltd. v. Commissioner 2015 (38) S.T.R. J437 (P & H), Hon'ble High Court has held "that since the appellant did not get themselves registered with the department and did not pay Service Tax, the penalties under Sections 76, 77 and 78 of the Finance Act, 1994 were simultaneously imposable as the penalties under these sections operate in different fields."

4.1 I, also find that the Noticee has neither taken registration under Section 69 nor filed ST-3 returns under Section 70 of the Act, therefore, they have rendered themselves liable for imposition of penalty under Section 77(1)(a) and Section 77(2) of the Act, respectively."

4.3 In the matter, we observe that the proceedings in the present case have been initiated on the basis of the information received from the income tax authorities. The said information has been forwarded to all the jurisdictions where the appellant with PAN Number AARFP2579C was registered under the GST regime. In GST regime the registration is to be taken by any person who is engaged in supply of goods or service in each of the state where such goods or services are supplied. As the appellant was registered under GST regime in the state of Jahrkhand, Bihar and Uttar Pradesh, the same information was received by the jurisdictional officers in Uttar Pradesh and in Jharrkhand. On the basis of information so received enquiries/ investigations were carried out in the jurisdiction of Ranchi Commissionerate. After due verification of the liability of service tax for same period superintendent, CGST & CX Range -VII, Ranchi South Division did not find anything to proceed against the appellant. He has issued a letter dated 17.08.2022 to the appellant. The same is reproduced below:-



सत्यमेव जयते

भारत सरकार/ Government of India
कार्यालय: अधीक्षक, केन्द्रीय कर, केन्द्रीय वस्तु एवं सेवा-कर परिक्षेत्र- VII
Office of the Superintendent of Central Goods & Service Tax, Range-VII
रांची दक्षिण प्रमंडल, द्वितीय तल, मिडटाउन चैम्बर,
Ranchi South Division, 3rd Floor, Midtown Chamber,
मिलन पैलेस बाइलेन, 1-क्लब रोड, रांची-834001
Milan Palace Bylane, 1-Club Road, Ranchi-834001

C.No.V(17)244/CGST/RSD/Range-VII/3rd Party/2016-17/2021/ 148 Dated:- 17.08.2022

DIN → 20220860XW0200092474B

To

PARAM VAISHNAVI (JV),
PAN No.- AARFP2579C,
QR. No.- A/5(T), HEC COLONY,
Dhurwa, Ranchi- 834004.

Sub:-Verification of Service Tax liabilities for the FY 16-17–Reg.

Please refer to your letter dated 17.08.2022 vide which it has been requested to issue closure report of verification of Service Tax liabilities for the FY 15-16 & 16-17.

In this regard, it is to inform that verification of your above mentioned unit having PAN No. AARFP2579C was conducted from this office regarding Service Tax liabilities for the FY 16-17 and was found proper.

This is for information and necessary action at your end please.

Yours faithfully,
Sumit
17.08.2022
Superintendent,
CGST & CX Range-VII,
Ranchi South Division.

4.4 After due verification, officers in the Ranchi Jurisdiction have concluded that there is no service tax liability on the appellant. That being so, the present proceedings which has been initiated in respect of the said period on the basis of the same documents would amount to double jeopardy.

4.5 Further we observe that in the present case it is evident that the show cause notice issued to the appellant was served by way of affixing the same under a panchanama dated 27.04.20121. Copy of letter dated 13.07.2023 issued by the jurisdictional officers is reproduced below:

सत्यमेव जयते

कार्यालय आयुक्त
केन्द्रीय वस्तु व सेवाकर एवं केन्द्रीय उत्पाद शुल्क
9 -मकबूल आलम रोड, वाराणसी ,221002
OFFICE OF THE COMMISSIONER
Central Goods & Services Tax & Central Excise,
9, Maqbool Alam Road, Varanasi-221002

F.No.VI (GST)ST(12)Adj.-07/2021 | 5036 Dated: 13.07.2023

To,

M/s Param Vaishnavi (JV),
(Partnership), Suchitra Kumari,
Room No-02, Front of Kashi Netra Sadan,
Dr. Keshari Sai Mandir, Gidhauli,
Ward No. 01, Mugalsarai, Chandauli 232101.

Sir,

Sub: Issue of Certified copy of SCN No. 03/Commr./VNS/2021 dated 16.04.2021-Reg.

Please refer to your office letter dated 21.06.2023 on the subject matter.

In this context, it is to inform that the subject Show Cause Notice No. 03/Commr/Vns/2021 dated 16.04.2021 issued in the name of M/s Param Vaishnavi (JV) Prop. Suchitra Kumari, Room No-02, Gidhauli, Mugalsarai, Chandauli 232101 had already been served by way of drawing a Panchnama dated 27.04.2021 and also by affixing the copies thereof on the notice board of the office under provisions of para 1(c) of Section 37C of the Central Excise Act, 1944 which is squarely applicable in Finance Act, 1994. In addition to this, the said SCN was also sent to your registered e-mail under GST.

However, as requested, a certified copy of the subject Show Cause Notice is enclosed herewith for filing an appeal before the Hon'ble CESTAT against Order-In-Original No. VNS-EXCUS-000-COM-0040-2022-23 dated 13.01.2023 passed in case of M/s Param Vaishnavi (JV) Prop. Suchitra Kumari, Room No-02, Gidhauli, Mugalsarai, Chandauli 232101.

Encls: As above.

Yours faithfully,
13.7.23
Assistant Commissioner (Adj.)
Central GST & Central Excise,
Commissionerate, Varanasi.

4.6 From the facts as available it appears that appellant was never party to the investigations/ enquiries made by the officers in the jurisdiction of the Varanasi Commissionerate. It is also on record that the appellant had also not submitted any reply to the show cause notice or have attended the personal hearings. All these facts clubbed together along with the letter of the Superintendent in jurisdiction of the Ranchi Commissionerate is enough to hold that the impugned order has been passed without verification of the facts in the matter. If Ranchi Jurisdiction concludes against the liability to service tax after causing verification, then can Varanasi jurisdiction come to contrary conclusion without verification of any documents etc., just on the basis of the information provided by the income tax authorities.

4.7 In view of the above, we find no merits in the impugned order and set aside the same.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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