CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70006 of 2020

(Arising out of Order-In-Original No. LKO-EXCUS-000-COMM-ST-01-2019-20, dated 04.07.2019 passed by Commissioner, CGST & Central Excise, Lucknow)

M/s Shalimar Corp Ltd. **.....Appellant**
(Titanium Building, Shalimar Corporate Park,
Vibhuti Khand, Gomti Nagar,
Lucknow, Uttar Pradesh 226010)

VERSUS

Commissioner, CGST, Customs & Central Excise, Lucknow
....Respondent
(7-A, Ashok Marg,
Lucknow, Uttar Pradesh 226001)

APPEARANCE:

Mohammad Suhail Khan, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70284/2026

DATE OF HEARING : 09.07.2026
DATE OF DECISION : 13.08.2026

K. ANPAZHAKAN:

The present appeal has been filed by the Appellant assailing the Order-In-Original No. LKO-EXCUS-000-COMM-ST-01-2019-20, dated 04.07.2019 passed by Commissioner, CGST & Central Excise, Lucknow wherein Service Tax demand of Rs.2,14,01,202/- has been confirmed along with interest and equal amount of duty has been imposed as penalty, under Section 78 of the Finance Act, 1994.

2. Briefly stated facts of the case are that the appellant in the present case is M/s Shalimar Corp Ltd. (hereinafter referred to as the 'Appellant'), a company incorporated under the Companies

Act, 1956/2013, which is primarily engaged in business as sellers/purchasers of plots and as builders/developers of residential/commercial complexes and is registered with Service Tax Registration No. AADCS9234LST001, having registered office at 11th Floor, Shalimar Titanium Building, Vibhuti Khand, Gomti Nagar, Lucknow - 226010.

3. The impugned proceeding is the result of search conducted at the premises of M/s Gemini Developers, Gorakhpur and M/s Limelite Tradecom Pvt. Ltd. Gorakhpur wherein documents pertaining to residential project 'Shalimar Gallant' were recovered by the department

4. The project 'Shalimar Gallant', was developed in terms of builder agreement among M/s Shalimar Corp Ltd., M/s Gallant Udyog Limited & M/s Limelite Tradecom Pvt. Ltd. and revenue from sale of flats was shared by them. The project was launched for sale of plots for villas and residential complexes at Vigyanpuri, Mahanagar, Lucknow. Since, the project was offered for land as well as residential flats, the Appellant collected a sum of Rs. 27 crores for construction and sale of residential flats and Rs. 30 crores against sale of plots. That appellant has discharged due service tax liability on Rs. 27 crores vide challan dated 28.12.2016 which is on record in the impugned proceedings.

5. The present proceedings were initiated vide a Show Cause Notice dated 23.10.2018 based on third-party information, proposing a demand of tax of Rs. 2,14,01,202/- along with interest and penalty on the allegation of cash receipts of Rs. 57,71,662,950/- by the appellant in FY 2013-14 towards construction of flats. The appellant duly submitted a defence reply explaining in detail the unsustainability of the said demand.

However, disregarding such defence reply, the Department issued the impugned Order-in-Original dated 04.07.2019 confirming the entire demand.

6. It is pertinent to note that this proceeding is for subsequent period 2013-14 wherein show cause notice No. C. No. 20-ST/SAS/EA 2000/Gr.-7/Lko-1/20/12/4744 dated 01.08.13 for the period 2007-08 to 2008-09 & Show Cause Notice No. C.No.V(30) Adj/Lko/29/2011/10457 dated 11.10.2013 issued in C.N.V(30)Adj/LKO/29/2011/10457 dated 11.10.2013 for the period 2008-09 to 2011-12 have already been issued against the Appellant.

7. Aggrieved by the demand confirmed/upheld in said Order, the Appellant had filed the preset appeal before the Tribunal.

8. The submissions made by the Appellants are summarized as under:-

A. That the impugned Order is a non-speaking Order and hence is in direct violation of Supreme Court mandate and the Constitutional Right to Fair Trial –

The present Order is a non-speaking Order insomuch that it confirms the demand of alleged not-paid tax by providing no cogent reasoning whatsoever. The respondent has simply upheld the demand confirmed in OIO by repeating the allegations made in the Show cause Notice.

The Appellant referred the judgment of the Hon'ble **<u>Supreme Court of India</u>** in the case of **M/s Kranti Asso. Pvt. Ltd. & Anr v/s Masood Ahmed Khan & Ors on 8 September, 2010 [C.A. No.-007472-007472 / 2010]** wherein it was held that –

"51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. ……………………….."

d. Thus, the present Order which does not provide any cogent reasoning for upholding demand of tax is a non-speaking Order in direct violation of the Supreme Court mandate as well as the Constitutional 'Right to a Fair Trial'.

B. That tax has been paid in full by the Appellant suo moto on actual income of Rs. 27 crores with respect to project Shalimar Gallant –

- The project 'Shalimar Gallant' was launched for sale of plots for villas and residential complexes at Vigyanpuri, Mahanagar, Lucknow. The Appellant collected a sum of Rs. 27 crores for sale of residential flats under such project, and the same was duly reported in the Appellant's Financial Statements.

- Further, service tax amounting to Rs.1,31,62,646/- (including interest of Rs.19,51,828/-) was duly paid on such amount of 27 crores vide GAR-7 challan dated 28.12.2016, i.e. before the issuance of Show Cause Notice. The same has been admitted by the Department in Paras 3 & 8 of Show Cause Notice as well as Para 3 of impugned Order.

- Hence, the demand of tax, interest and penalty imposed on such amount of 27 crores in impugned Order, despite full payment of tax before issuance of Show cause Notice is without jurisdiction and illegal.

C. That no service tax is payable on the disputed amount of Rs. 30,71,62,950/- as the same was returned back to customers and was in lieu of sale of plots –

- The project 'Shalimar Gallant' was launched for sale of plots for villas and residential complexes at Vigyanpuri, Mahanagar, Lucknow. This project was approved and sanctioned by appropriate authority as is evident from copy of MAP submitted along with letter dated 10.05.2018.

- Since, the project was offered for land as well as residential flats, the Appellant collected a sum of Rs. 27 crores for sale of residential flats and Rs. 30 crores against sale of plots.
- The maps were later revised due to non-viability for construction of residential towers instead of selling plots for villas, and hence, Rs. 30,71,62,950/- received against sale of plots remained unaccounted which was subsequently returned back to the customers or appropriated with co-venture.
- **Accordingly, since no service was provided in the present case and no consideration as received inasmuch that the cash of Rs. 30,71,62,950/- was refunded back to customers, there is no liability to pay tax under Service tax regime.**

- **Even otherwise, since the amount of Rs. 30,71,62,950/- was received as advance against sale of plots for villas, the same amounts to sale of immovable property and would not be taxable as per Section 65B(44)(a)(i) of Finance Act, 1994.**

- **The Appellant had already submitted the following documentary evidences as proof of the above contentions, which have been disregarded by the Revenue without examining the same: –**

    - Copy of original and revised MAPs of project 'Shalimar Gallant';
    - A specimen copy of agreement to sale of land in case of its project 'Shalimar Paradise' unit to substantiate their claim in case of villas project the land is sold by a separate deed of conveyance. This supports the fact that Appellant Company has a model of sales wherein in case of villas project, land is sold by a separate deed of conveyance;

- Affidavit in support of their contention that impugned sum of Rs 30 crores pertains to sale of plot, henceforth, beyond purview of service tax.

D. That the proceedings undertaken and demand confirmed on the basis of unsubstantiated third party information seized during search are illegal and unsustainable –

The entire proceedings against the Appellant in the present case have been undertaken on the basis of certain unsubstantiated and uncorroborated third party information that have been seized by the Revenue during the search undertaken at the premises of a third party, as enumerated in Para 2 of Notice. It is an admitted and established fact that such third-party information do not form part of the books of accounts of the Appellant. These are irrelevant and unrelated to the Appellant's books of accounts and as such cannot form the basis of imposing demand. However, the Revenue has still confirmed demand on the basis of the same. It is a settled legal position that third party information do not form part of books of accounts and are irrelevant and inadmissible. **In this regard, the Appellant would like to place reliance on the following case laws –**

- **<u>Hon'ble Supreme Court of India</u>** 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.
- **<u>Hon'ble Supreme Court of India</u>** in the case of **CBI v/s 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 fom1ers' 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."

- **<u>CESTAT Allahabad</u>** in the case of **M/s Shree Radhey Radhey Ispat Pvt. Ltd. V/s 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."

- **<u>CESTAT Allahabad</u>** in the case of **Commissioner of CGST Meerut V/s 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."

- **<u>Madhya Pradesh High Court</u>** in case of **Beni v BisanDayal** [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."

- **<u>High Court</u>** in the case of **Hiralal v 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 re 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."

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 of third party :

- **CESTAT Delhi –** Commissioner of C. Ex., Bhopal V/s 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. V/s Commissioner of CGST & C.Ex. [EA No. 75409 of 2020]
- **CESTAT Kolkata** – Attitude Alloys P Ltd & Ors. V/s Commissioner of C.Ex [EA No. 517-519 of 2011]
- **CESTAT Allahabad** – M/s Shyam Construction v/s Commissioner of Customs, Central Excise & Service Tax, Kanpur [ST Appeal No.70516/2016]

E. Without prejudice to foregoing submissions, demand of service tax is liable to be re-quantified –

- The department has failed to provide **cum tax benefit** while computing service tax liability. As is evident from the records that service tax has not been separately collected from KDA hence, the Appellant is entitled to the cum tax benefit while computing tax liability.

- As per Section 67 of the Finance Act, 1994 where service tax is not separately collected from the service recipient the gross amount charged shall be treated as inclusive of service tax and service tax shall be calculated taking cum-tax benefit.

F. That the burden of proving taxability is on the Revenue and is undischarged –

The Revenue in impugned proceedings has imposed demand based on unsubstantiated presumption that the Appellant had received income of Rs. 30,71,62,950/- in lieu of sale of residential

Flats. No evidence has been brought on record by Department to prove such presumption and the evidences submitted by the Appellant have been mechanically disregarded. It is submitted that taking into consideration that the disputed period pertains to FY 2013-14, the Appellant has already provided all documents within its possession within the standards of reasonableness and practicality. **Even otherwise, the burned on proving taxability lies squarely on the Revenue and demand cannot be imposed based on presumptions**. 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. In this regard, Appellant places reliance on **decisions of this Bench** in the cases of **M/s Ratan Housing Development Ltd. V/s Commissioner of Customs, Central Excise & Service Tax, Kanpur** [ST Appeal No. 70613/2017] and **M/s Shyam Construction v/s Commissioner of Customs, Central Excise & Service Tax, Kanpur** [ST Appeal No.70516/2016].

G. Extended period of limitation is not invocable :–

Section 73 of the Act provides for an extended period of Limitation to issue a Show Cause notice in case of tax not paid/ short paid by reason of fraud, willful misstatement or suppression of facts. The burden of prima facie proving such fraud or suppression is on the respondent which has not been discharged in the present case. The respondent failed to show any incriminating evidence proving such malafide intention on part of the Appellant. The Appellant had not misstated or suppressed fact in any manner and all the transaction are duly recorded in the books of accounts thereby showing complete transparency on part of the Appellant. The Appellant has acted throughout in a bonafide manner and was under a bonafide belief that service tax was not applicable in the present case. Hence, the present issues relates to interpretation of complex legal provision rather than intent to evade tax.

Reliance is placed on the decision of the **Supreme Court of India** in the case of **Easland Combines Coimbatore vs Collector Of Central Excise Coimbatore** [2003 (3) SCC 410] wherein it was held that –

"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 licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."***

The burden of prima facie proving such fraud or suppression is on the respondent which has not been discharged in the present case. The respondent failed to show any incriminating evidence proving such malafide intention on part of the Appellant.

Reliance is placed on the decision of the **Supreme Court of India** in the case of **M/S. Uniworth Textiles Ltd vs Commnr. Of Central Excise, Raipur** [2013 (9) SCC 753], wherein it was held that –

"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."

In the present case, the period covered is FY 2013-14. The Show cause notice was issued as on 23.10.2018 and therefore, the entire demand is time barred. Thus, the invocation of extended Limitation period in the impugned order is unlawful.

H. No interest or Penalty is payable in the present case

The Appellant submits that the demand of service tax confirmed in the impugned order is not sustainable, the demand of interest and penalty thereon is liable to be set aside. Since, the underlying demand does not exist, there arises no question of interest or penalty. In the present case, there was no intent to evade tax on part of the Appellant nor was there any fraud, misstatement or suppression of facts. The present case is related to a *bonafide* legal interpretation issue and the Appellant was under a *bonafide* belief that service tax was not applicable on the service provided. Therefore, interest and penalty is not imposable in the present case and is liable to be set aside.

9. The learned Authorized Representative for the Revenue reiterates the finding recorded in the impugned order.

10. Heard both the sides and perused the appeal documents.

11. We observed that the Appellant has developed a project called 'Shalimar Gallant' in terms of builder development agreement. Since the project was offered for sale of land as well as residential complex, the Appellant collected a sum of Rs.27 crores for sale /construction of residential flats and Rs. 30 crores against sale of the plots.

12.1. We find that the Show Cause Notice dated 23.10.2018 was issued to the Appellant on the allegation that they had received Rs.57,71,62,950/- for the Financial Year 2013-14 towards construction of flats. However, we find that the Appellant returned back an amount of Rs.30,71,62,950/- regarding sale of flats due to non-viability of construction of residential towers. The Appellant has submitted evidence regarding returning of amount of Rs. 30,71,62,950/- received against the sale of plots. As the said amount was not received in connection with rendering of any taxable services, we hold that no Service Tax is payable on the amount of Rs.30,71,62,950/- returned back to the customers. In support of their claim of returning back this money the Appellant has submitted the Income Tax Assessment Order of the company by DCIT, Central Circle-30 New Delhi vide order dated 17.11.2021. Appellant submitted that the fact of return of Rs.30,71,62,950/- has not been disputed by the Income Tax Authority and the assessment has been completed allowing deduction of the said amount from their total income liable for income tax.

12.2. Even otherwise, we find that the amount of Rs. 30,71,62,950/- was received as advance against sale of plots for villas. As the amounts have been received in connection with sale of immovable property, we are of the view that the said amount is not liable to service tax as per Section 65B(44)(a)(i) of Finance Act, 1994. Accordingly, we hold that demand confirmed in the impugned order on the amount of Rs. 30,71,62,950/- received by the Appellant is legally not sustainable and hence we set aside the same.

13. Regarding the service tax liability of Rs.27 crores, confirmed in connection with rendering of service of 'Construction of Residential Complex Service', we find that the Appellant have paid the Service Tax amounting to Rs.1,31,62,646/- (including interest of Rs.19,51,828/-) vide GR-7 Challans dated 28.12.2016 before issuance of the Show Cause Notice. The relevant GR-7 Challan submitted by the Appellant is extracted below for ready reference.

'ANNEXURE - 7-B (100)

HDFC BANK
We understand your world

Taxpayers Counterfoil

Name of the Assessee	SHALIMAR CORP LIMITED
Complete Address	SHALIMAR TITANIUM,11TH FLOOR VIBHUTI KHAND,GOMTI NAGAR
	LUCKNOW,UTTAR PRADESH 226010

Assessee Code	A A D C S 9 2 3 4 L S T 0 0 1
Major Code	0 0 4 4
Location Code	5 6 0 9 0 6
Commissionerate Code	5 6
Division Code	0 9
Range Code	0 6

Accounting Code	Description of Tax	Amount in Rupees
00440334	CONSTRUCTION OF RES. COMPLEX	10,869,146.00
00440335	CONSTRUCTION OF RES. COMPLEX - OTHER RECEIPTS	1,951,828.00
00441509	Krishi Kalyan Cess Tax Receipts	155,024.00
00441493	Swachh Bharat Cess Tax	186,648.00
	TOTAL	13,162,646.00

HDFC BANK LIMITED

BSR Code	0510247
Date of Receipt	28/12/2016
Challan Serial No	50370
Tax Payment (Rs)	13,162,646.00
Drawn On	HDFC Bank Netbanking

Rupees (In words)	ONE CRORE(S) THIRTY ONE LAKH(S) SIXTY TWO THOUSAND SIX HUNDRED FORTY SIX ONLY
CIN	05102472812201650370
Debit Account No.	00782320003186
Payment Realization Date	28/12/2016 11:54:17

Please Save a copy of this Acknowledgement Receipt for your future reference.

Shalimar Corp Limited
Director

Shalimar Corp Limited Lucknow

13.1 We find that the payment of service tax has been admitted by the Department in Para 3 to 8 of the Show Cause Notice and Para 37 of the impugned order. Thus, it is evident that the Appellant has paid the Service Tax payable in respect of rendering of the service namely 'Construction of Residential Complex Service', before the issuance of the Show Cause Notice. Hence, we do not find any reason to demand the service tax from the Appellant by way of issue of the Show Cause Notice. Section 73 of the Finance Act, 1994 provides that if the service tax payable has been paid along with interest before the issuance of the Show Cause Notice, then there is no need to issue the Notice to demand the service tax. As the Appellant has already paid the Service Tax payable in this case along with interest, we hold that the penalty imposed in the impugned order, in connection with the service tax liability on the receipt of Rs.27 crores, is legally not sustainable and hence we set aside the same.

14. In view of the above, we pass the following order :-

(i) We hold that no Service Tax is payable on the amount of Rs.30,71,62,950/- received in connection with the sale of plots, as the money received has been returned back to the buyers.

(ii) We confirm the demand of Service Tax of Rs.1,31,62,646/- (including interest of Rs.19,51,828/-) paid by the Appellant on the amount of Rs.27 crores received, vide GR-7 Challans dated 28.12.2016. As the Service Tax demand along with interest has been paid before the issuance of the Show Cause Notice, no penalty is imposable and hence the Penalty imposed in the impugned order is set aside.

15. The appeal filed by the Appellant is disposed of in above terms.

(Pronounced in open court on 13.08.2026)

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Nihal