

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

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 21211 of 2018

(Arising out of Order-in-Appeal No.BEL-EXCUS-000-APP-MS-162-2017-18 dated 20.01.2018 passed by the Commissioner of Central Tax (Appeals), Belagavi.)

Shri Abdul Saleem

Gafoor Manzil, Birla Area
Wadi - 585 225.
Kalaburagi.

Appellant(s)

VERSUS

**The Commissioner of Central
Tax**

Office of the Commissioner of Central Tax
No.71, Club Road,
Belagavi - 590 001.

Respondent(s)

APPEARANCE:

Shri Mahesh Kumar, Chartered Accountant for the Appellant

Shri M. A. Jithendra, Asst. Commissioner (Authorised Representative)
for the Respondent

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 21839 / 2025

DATE OF HEARING: 18.11.2025

DATE OF DECISION: 18.11.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding short payment of service tax and whether the appellant is eligible for claiming cum-duty benefit. Appellant is providing maintenance and repair service, cab service and industrial or commercial construction services. During audit, it was observed that they have not paid service tax on the entire amount of service charge received from the customers and also failed to collect and pay service tax on

few services provided by them. Accordingly, show-cause notice was issued on 13.11.2015 and the adjudicating authority as per the Order-in-Original dated 30.12.2016 confirmed the demand and also imposed penalty under various provisions of law. Aggrieved by said, an appeal was filed before Commissioner (A), who as per the impugned order dated 20.1.2018 upheld the Order-in-Original. Hence, the present appeal is filed.

2. When the appeal came up for hearing, the learned Chartered Accountant (CA) submits that the alleged differential duty was demanded based on the Form - 26AS of the Income Tax. It is only due to the omission on the part of service recipient in their accounting system and appellant had paid service tax for the principal amount received by them. Learned CA also drew our attention to the following Chart to substantiate that the differential amount demanded as per the show-cause notice is not as per the amount collected from the service recipient.

CALCULATION SHEET AS PER (PARA 10.1) IN ORDER-IN-ORIGINAL						
Sl. No.	Receipt by	Gross turnover as per Form 26AS	Gross Turnover as per P & L (as per Bills)	Difference amount arrived	Less service tax which includes in Form 26AS	Difference amount
		A	B	C = (A-B)	D	E=(C-D)
1	ACC Ltd. Wadi	1,83,18,101.00	1,63,84,204.00	19,33,897.00	17,18,620.66	2,15,276.34
2	ACC Ltd. Thondebhavi	5,03,619.00	5,03,619.00	-	55,399.89	55,399.89
	Total	1,88,21,720.00	1,68,87,823.00	19,33,897.00	17,74,020.55	1,59,876.45

To substantiate the same, learned CA drew our attention to ST-3 returns filed by the appellant for the relevant period and also the email communication dated 12.12.2017 submitted by the appellant to Commissioner (A) where it is stated that M/s. ACC Ltd. Wadi had deducted TDS, therefore, the turnover shown in Form 26AS is inclusive of service tax. Learned CA drew our attention to email dated 13.02.2018 showing the proof of refund of income tax and the confirmation received by them. Learned CA also drew our attention to the details of each bill against which service tax is paid by them and as per the evidence produced by the appellant, they have paid entire service tax as applicable. However, payment of said service tax is not reflected

in the Order-in-original and not appropriated as per the impugned order. As regarding extending the benefit of cum-duty, learned CA submits that though in the impugned order it is stated that cum-duty benefit is extended to the appellant, no such benefit is extended on the ground that appellant failed to submit documentary evidence to show that they have not collected the service tax in the invoice raised for such services. Learned CA further drew our attention to the following chart showing the actual service tax liability after adjusting the benefit of cum-tax for the Financial Year 2010-11 to 2013-14 and the same is reproduced below.

ANNEXURE IV TO SHOW CAUSE NOTICE														
Year	Gross Receipts from ACC, Wadi as per Bills for the year & Thodebhavi	Gross Receipts from Others Includes Cum-Tax Value	Total Receipts	Service Tax paid as per ST-3 Return	Service Tax paid not mentioned in ST-3 Returns	Total Value	Amount of Abatement	Taxable Value	Service Tax Payable	Service Tax Paid as per ST-3 Return	Service Tax paid not mentioned in ST-3 Returns	Total Differential Service Tax Payable	Demand of ST from other Service Receipts	Differential ST payable on receipts from M/s ACC Wadi
1	2	3	4 = (2+3)	5	6	7 = (4-5)	8	9 = (7-8)	10	11	12	13 = 10 - (11+12)	14	15
2010-11	14957060	197221	1515428	1362088	0	13792193	0	13792193	1420595.9	362088	0	58508	NIL	NIL
2011-12	16374918	610626	1698554	1465887	0	15519657	0	15519657	1598524.7	465887	0	132638	NIL	NIL
2012-13	16945858	876738	1782259	1793735	0	16028861	109200	15919661	1967670.1	793735	0	173935	NIL	NIL
2013-14	16596391	108372	1768012	1933614	13141	15615096	569491	15045605	1859636.8	933614	131410	-205387	NIL	NIL
TOTAL	6487422	276831	6764254	655532	13141	6095580	67869	6027711	6846427.4	55532	131410	159693	NIL	NIL

Less Paid	-250000
Payable	-90306.6
Less Pre-deposit	-61614
Refund Due	-151921

2.1 The learned CA further submits that the demand confirmed by the adjudicating authority by invoking extended period of limitation and penalty are also unsustainable since there is no allegation of suppression of fact for evasion of duty.

3. The learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the records produced by the appellant. As regarding the contention made by the appellant that the differential duty demanded for the service provided to ACC Ltd. Wadi and ACC Ltd. Thondebhavi, we find that as per the evidence produced by the appellant, the demand of differential duty is only based on the Form-26AS and the

invoices and evidence produced by the appellant including the email communication shows that the alleged differential duty is not sustainable since it was due to the omission on the part of the service recipient to produce the actual transaction value. However, since the appellant has not produced the evidence before the adjudicating authority, the same has not been considered by the adjudicating authority. Accordingly, for verification of the documents produced by the appellant, matter needs to be remanded to the adjudicating authority. As regarding extending the benefit of cum-duty benefit, if the appellant has not collected service tax on the services provided other than to M/s. ACC Ltd. Wadi and M/s. ACC Ltd. Thondebhavi and M/s. KEPCO Plant Service Eng. Co. Ltd., appellant is eligible to avail the benefit of cum-duty as held by the original authority. However, it appears that the said benefit is denied on the ground that the appellant has not produced sufficient evidence to substantiate such claim. We find that such finding is not correct when entire document related to such transactions including invoices for the relevant period were produced before the adjudicating authority and considering the same, the adjudicating authority ought to have given a clear finding instead of stating that appellant had failed to produce the documents to prove that they have not received the service tax from the service recipient. As regarding invoking extended period of limitation also, we find that there is no allegation that the appellant had made deliberate attempt to suppress the fact with an intention to evade payment of service tax. Thus, in the absence of any deliberate attempt on the part of the appellant to pay due amount, invoking extended period of limitation in terms of Section 73(1) of the Finance Act, 1994 and penal action under Section 78 of the Finance Act, 1994 for suppression of facts is unsustainable. Further, we find that the appellant is claiming that they have paid service tax as applicable for the relevant period by availing cum-tax benefit on the invoice value and also produced e-receipt for such payments. The adjudicating authority has to verify the details of such payment for

appropriation of the same towards the service tax liability. According, the impugned order confirming the demand and penalty are set aside. The appellant is directed to produce the document regarding the actual transaction value pertaining to M/s. ACC Ltd. Wadi and M/s. ACC Ltd, Thondebhavi and the adjudication authority is directed to confirm demand, if any, only on the actual transaction value. Further, as regarding the extending the benefit to cum-duty, adjudicating authority is directed to verify the document produced by the appellant and to extend the benefit of cum-duty if the appellant has not collected service tax from the service recipient as claimed by the them for the normal period. Accordingly, appeal is partially allowed by way of remand to the original authority.

(Operative portion of the order was pronounced in Open Court
on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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