

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60262 of 2024

[Arising out of Order-in-Original No. 10/ST/COMM/SML/2023-24 dated 14.02.2024
passed by the Principal Commissioner of CGST, Shimla]

Bharat Hydel Projects Pvt Ltd

9-PPCL Colony, Opposite Radha Swami Satsang,
Udya Vihar, Haridwar By-Pass, Dehradun,
Uttarakhand 248001

.....Appellant

VERSUS

**Principal Commissioner of Central Excise,
Goods & Service Tax, Shimla**

Commercial Parking Complex, Ground & First floor,
Chhotta Shimla, Shimla, Himachal Pradesh 171002

.....Respondent

APPEARANCE:

Dr. A. S. Gill, Advocate for the Appellant

Mr. Anurag Kumar and Mr. Goverdhan Dass Bansal, Authorized
Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60914/2025

DATE OF HEARING: 24.06.2025

DATE OF DECISION: 30.07.2025

S. S. GARG:

The present appeal is directed against impugned order dated
14.02.2024 passed by the Principal Commissioner of Central Goods &
Service Tax, Shimla, whereby the learned Principal Commissioner has

confirmed the demand of service tax amounting to Rs.2,29,07,968/- under the provisions of Section 73 of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017 along with interest under Section 75 of the Finance Act and also imposed a penalty of Rs.22,90,797/- under Section 76 and a penalty of Rs.40,000/- under Section 70 of the Finance Act read with Rule 7C of the Service Tax Rules, 1994.

2. Briefly stated facts of the present case are as under:

2.1 The appellants are engaged in construction of Tunnel which is a taxable service under 'Works Contract Service' as declared under Section 66E(h) of the Finance Act, 1994 as amended. The appellants have provided the services to M/s Patel India Ltd - M/s Gammon India, Joint Venture Entity, for construction of Rampur Hydro Power Project on subcontract basis for the period 2013-14. As per the department, the services provided by the appellants were taxable under Works Contract Services. The appellants had received an amount of Rs.57,42,62,289/- during the period 2013-14 for Tunnel and Road construction work on which service tax amounting to Rs.2,83,91,528/- was payable by the appellants.

2.2 The appellants had already been issued SCN dated 15.06.2012 and Statement under Section 73(1A) dated 16.07.2013 for the period from 01.04.2007 to 31.03.2013, which were adjudicated vide Order-in-Original No. CHD-CEX-CHD-001-COM-47-48-2014 dated 18.06.2014. The demand in the present case pertains to subsequent period i.e. from 01.04.2013 to 31.03.2014 and is on the same

grounds as discussed in earlier SCN. The grounds for issuance of the present demand were not repeated for the sake of brevity and may be read as same as mentioned in the SCN dated 15.06.2012 and the Statement under Section 73(1A) dated 16.07.2013.

2.3 The SCN dated 15.06.2012 and the Statement under Section 73(1A) dated 16.07.2013 were adjudicated by the Commissioner of Central Excise, Chandigarh-I vide Order-in-Original No. CHD-CEX-CHD-001-COM-47-48-2014 dated 18.06.2014, vide which the Commissioner of Central Excise, Chandigarh-I confirmed the demand of service tax of Rs.1,27,49,110/- along with interest and penalties in respect of SCN dated 15.06.2013 but dropped the demand of Rs.6,86,23,957/- in respect of Statement under Section 73(1A) dated 16.07.2013. Aggrieved by the portion of the order prejudicial to its interests, the appellants filed an appeal (ST/55070/2014) before the CESTAT. The department also filed an appeal (ST/55329/2014) before the CESTAT.

2.4 When the said appeals were pending before the CESTAT, the department issued another Statement under Section 73(1A) dated 20.04.2015.

2.5 The CESTAT, Chandigarh bench, vide its Final Order dated 26.10.2018, allowed the appeal of the appellants and dismissed the appeal of the department. Aggrieved by the CESTAT's order, the department filed an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 28.08.2023, dismissed

the appeal filed by the department on limitation leaving the questions of law open.

2.6 After the decision of Hon'ble Supreme Court, the Statement under Section 73(1A) dated 20.04.2015, which was kept in call-book, was recalled and taken up for adjudication.

2.7 The present case is based on the Statement under Section 73(1A) dated 20.04.2015 ('deemed SCN') as no separate SCN was issued to the appellants. The appellants replied to the Statement dated 20.04.2015 vide their letter dated 15.11.2023 and appeared before the Principal Commissioner of CGST, Shimla for personal hearing and submitted that Satluj Jal Vidyut Nigam Ltd is a joint venture of Government of India and Government of Himachal Pradesh and was incorporated on 24th May, 1988 as a joint venture to plan, investigate, organize, execute, operate and maintain power projects in the Satluj River Basin in Himachal Pradesh and at any other place in India and abroad and is a governmental authority; Satluj Jal Vidyut Nigam Ltd entered into a works contract with M/s Patel-Gammon Joint Venture, for development of Rampur Hydro Power Project; M/s Patel-Gammon Joint Venture further awarded certain orders relating to their main contract of construction of Tunnels to the appellants.

2.8 On 14.02.2024, the learned Principal Commissioner passed the impugned order confirming the demand along with interest and penalties. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order which emanated from the Statement dated 20.04.2015 issued to the appellants under Section 73(1A) of the Finance Act, 1994 is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.1 The learned Counsel further submits that the Statement dated 20.04.2015 ('deemed SCN') issued under Section 73(1A) is neither a valid SCN nor a valid Statement under Section 73(1A) and thus void *ab initio* in as much as it neither fulfills the mandatory ingredients of SCN nor of the Statement under Section 73(1A); moreover, the alleged deemed SCN dated 20.04.2015 is vague and cryptic.

4.2 He further submits that the impugned order is beyond the scope of SCN, passed without application of mind and is also in violation of principles of natural justice and principles of judicial discipline and also of Master Circular dated 10.03.2017 issued by CBIC.

4.3 He further submits that the Statement dated 20.04.2015 issued under Section 73(1A) is not on same grounds *vis a vis* the SCN dated 15.06.2012. He further submits that the SCN dated 15.06.2012 was issued mainly for two services namely "site formation" as classified under Section 65(105)(zzza) and "supply of tangible goods" as classified under Section 65(105)(zzzzj), whereas the service alleged in the impugned Statement dated 20.04.2015 is "works contract service" which falls under Section 65(105)(zzzzc).

4.4 He further submits that the Statement under Section 73(1A) dated 20.04.2015 was issued during the negative list regime, whereas the earlier SCN was issued under the positive list regime. But there is no discussion in the impugned order regarding the application of new notification under which the demand has been confirmed. He further submits that instead of the Statement under Section 73(1A) dated 20.04.2015, a fresh SCN merited to be issued independently for introducing the new grounds.

4.5 He further submits that the Revenue in the Statement under Section 73(1A) dated 20.04.2015 clearly states that the grounds for issuance of this demand are not being repeated here for the sake of brevity and may be read as same as discussed in the SCN dated 15.06.2012. He further submits that the Statement under Section 73(1A) / deemed SCN dated 20.04.2015 though allegedly issued on the same grounds as the SCN dated 15.06.2012, but the Revenue has changed the classification of the service, which is not permitted as per the requirement of valid Statement under Section 73(1A). He submits that the Statement under Section 73(1A) dated 20.04.2015 is not valid and thus is void *ab initio*.

4.6 He further submits that it is a settled law that the SCN is the foundation on which the department builds up their case and the department cannot subsequently urge new grounds which were never raised in the SCN. In this regard, he refers to Master Circular No. 1053/02/2017-CX dated 10.03.2017 specifying therein the

ingredients of SCN, which are missing in impugned Statement/deemed SCN dated 20.04.2015.

4.7 He further submits that the foundation of the proceeding in the case suffers from material irregularity in law and hence is not sustainable being contrary to the provisions of Section 73(1A). In support of this submission, he relies on the following decisions:

- Dharambir Singh & Co. vs. CCE, Noida – 2018 (8) GSTL 440 (Tri. All.)
- Shubham Electricals vs. CCE, Rohtak – 2015 (40) STR 1034 (Tri. Del.) / CCE vs. Shubham Electricals – 2016 (42) STR J-312 (Delhi)
- R. Ramdas vs. CCE, Puducherry – 2021 (44) GSTL 258 (Mad.)
- CCE, Bangalore vs. Brindavan Beverages Pvt Ltd & ors – Supreme Court Order dated 15.06.2007 in Civil Appeals Nos. 3417-3425 of 2002 and 4398 of 2003
- Aditya Medisales Ltd vs. State of Jharkhand – (2023) 12 Centax 162 (Jhar.)

4.8 The learned Counsel further submits that the demand has been confirmed under works contract service without issuing/serving proper and valid SCN.

4.9 He further submits that the adjudicating authority though has discussed in detail the provisions of Mega Notification No. 25/2012 dated 20.06.2012 (applicable w.e.f. 01.07.2012) and Sr.No. 13, knowing very well that no such thing has even been mentioned in the alleged Statement/deemed SCN dated 20.04.2015.

4.10 The learned Counsel further submits that for the earlier period, the same issue has been decided in favour of the

assessee/appellants by this Tribunal vide Final Order dated 26.10.2018, where by the Tribunal allowed the appeal of the assessee/appellants and dismissed the appeal of the department and the department filed an appeal before the Hon'ble Supreme Court against the order of the Tribunal dated 26.10.2018 and the same was dismissed on limitation and therefore, the decision of the Tribunal becomes final.

4.11 He further submits that it is a settled law that decisions of the higher judicial forum are binding on the Revenue officers. In support of this submission, he relies on the CBIC's Instruction F.No. 201/01/2014-CX.6 dated 26.06.2014 and also on following decisions:

- Union of India vs. Kamalakshi Finance Corporation Ltd – 1991 (55) ELT 433 (SC)
- RBF RIG Corporation Mumbai vs. CC (Imports), Mumbai – (2011) 3 SCC 573
- Triveni Chemicals Limited vs. Union of India & ors – (2007) 2 SCC 503
- Commr of Income Tax, Bhopal vs. Ralson Industries Ltd – (2007) 2 SCC 326
- Smt. Kausalya Devi Bogra and others vs. Land Acquisition Officer, Aurangabad & ors - (1984) 2 SCC 324

4.12 The learned Counsel further submits that on merits also, the matter is squarely covered within four corners of Clause 12(a) of Mega Exemption Notification No. 25/2012 which was valid up to 31.03.2015.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record. We find that in the present case, the entire proceeding emanated from the Statement under Section 73(1A) dated 20.04.2015 on the same grounds on which earlier SCN dated 15.06.2012 and Statement under Section 73(1A) dated 16.07.2013 were issued. We find that it is clearly stated in the impugned order that the present demand is being raised on the same grounds as discussed in the earlier SCN dated 15.06.2012 and Statement under Section 73(1A) dated 16.07.2013. Further, we find that the SCN dated 15.06.2012 and the Statement under Section 73(1A) dated 16.07.2013 were decided by a common order-in-original dated 18.06.2014 by the Commissioner of Central Excise, Chandigarh-I and against the said order-in-original, two appeals were filed, one appeal bearing no. ST/55070/2014 by the assessees/appellants and another appeal bearing no. ST/55329/2014 by the department. We also find that this Tribunal, vide Final Order dated 26.10.2018, allowed the appeal of the assessees/appellants and dismissed the appeal of the department. We also find that against the Tribunal's order dated 26.10.2018, the department filed an appeal before the Hon'ble Apex Court and the Hon'ble Apex Court vide its order dated 28.08.2023 dismissed the appeal of the department on limitation. We also find that when the earlier appeals were pending before the Tribunal, the another Statement dated 20.04.2015 under Section 73(1A) of the Finance Act was issued, on the basis of which, the impugned order has been passed confirming the demand along with interest and imposing the penalties.

7. Further, we find that once the earlier SCN dated 15.06.2012 has attained finality then the present deemed SCN dated 20.04.2015 under Section 73(1A) being issued on the same grounds as stated in the earlier SCN, should have been dropped by following the judicial discipline by the adjudicating authority.

8. We also find that as per the requirement of Section 73(1A), the demand can only be raised on the same grounds, whereas in the present case, earlier SCN dated 15.06.2012 was issued mainly for two services namely "site formation" as classified under Section 65(105)(zzza) and "supply of tangible goods" as classified under Section 65(105)(zzzzj), whereas in the present Statement dated 20.04.2015, the alleged service tax demand is under the head of "works contract service" as classified under Section 65(105)(zzzzc), which cannot be done as per settled law.

9. We also find that in the impugned order, the learned Principal Commissioner has discussed in detail the provisions of Mega Notification No. 25/2012 dated 20.06.2012 but has not discussed about the change in the regime from positive list to negative list. Therefore, as held in various decisions (cited supra), the adjudicating authority cannot improve upon the SCN and also cannot go beyond the grounds taken in the SCN. In this regard, we may refer to the judgment of Hon'ble Apex Court in the case of **CCE, Chandigarh vs. Shital International – 2010 (259) ELT 165 (SC)** wherein it has been held that it is trite law that unless the foundation of the case is laid in the SCN, the Revenue cannot be permitted to build up a new

case against the assessee. On the same issue, the Tribunal in the case of **Amar Coach Builders vs. CCE, Jalandhar – 2005 (191) ELT 621 (Tri. Del.)**, has held as under:

“4. It is not open to the Commissioner to travel beyond the scope of show cause notice and order filing of an appeal, pleading a ground, which is not specified as a ground for raising demand in the show cause notice. This was the view expressed by the Tribunal in the case of *CCE vs Swastik Coaters Pvt. Ltd.* [1999 (107) E.L.T. 533 (T)]. Accordingly the impugned Orders confirming the demand of duty against the Appellants on an entirely new ground cannot be sustained. We, therefore, set aside the impugned orders and allow the appeals.”

10. Further, we observe that once the Tribunal has decided the matter in favour of assessees/appellants vide its order dated 26.10.2018 and the Revenue's appeal has been dismissed by the Hon'ble Apex Court, it is incumbent upon the learned adjudicating authority to follow the same as the demand has been raised on the same grounds by following the judicial discipline. In this regard, we may refer to the decision of Hon'ble Allahabad High Court in the case **CCE, Agra vs. Okay Glass Industries – 2015 (330) ELT 872 (All.)** wherein the Hon'ble High Court, after referring to various decisions of the Hon'ble Supreme Court on judicial discipline, has held as under:

“18. In view of the above discussion, we do not find any error in the observations made by the Tribunal with regard to “judicial discipline”. In the case of *State of West Bengal & Ors. v. Shivananda Pathak & Ors.*, (1998) 5 SCC 513 (Para-28), Hon'ble Supreme Court held that if a judgment is overruled by the Higher Court, the judicial discipline requires that the Judge whose judgment is over-ruled must submit to that

judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, re-write the overruled judgment.

19. In the case of *Bihar State Government Secondary School Teachers Association v. Bihar Education Service Association and others*, (2012) 13 SCC 33 (Para-43), Hon'ble Supreme Court held that when the judgment of a Court is confirmed by the Higher Court, the judicial discipline requires that Court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment.

20. In the case of *Kishore Samrite v. State of Uttar Pradesh and others*, (2013) 2 SCC 398 (Para-29), Hon'ble Supreme Court held that judicial discipline and propriety are the two significant facets of administration of justice. Every Court is obliged to adhere to these principles to ensure hierarchical discipline on the one hand and proper dispensation of justice on the other.

21. In the case of *RBF RIG Corporation, Mumbai v. Commissioner of Customs (Imports), Mumbai*, (2011) 3 SCC 573 (Para-25) = 2011 (264) E.L.T. 486 (S.C.), Hon'ble Supreme Court laid down the law that if for any reason, the subordinate authority is of the view that the directions issued by the Court are contrary to statutory provision or well established principles of law, it can approach the same Court with necessary application/petition for clarification or modification or approach the superior forum for appropriate reliefs. We may note here that in the present case, as we have already noticed, the appellants have not questioned the final order of the Tribunal dated 27-2-2012, which order has attained finality.

22. In the case of *Triveni Chemicals Limited v. Union Of India & Anr*, (2007) 2 SCC 503 (Para-9) = 2007 (207) E.L.T. 324 (S.C.) = 2007 (5) S.T.R. 177 (S.C.), Hon'ble Supreme Court held it was obligatory on the part of the authorities concerned to comply with the order passed by the Collector (Appeals). The authorities were bound to do so in view of the doctrine of judicial discipline.

23. In the case of *Union of India and others v. Kamlakshi Finance Corporation Ltd.*, 1992 Supp (1) SCC 443 (Para-6), Hon'ble Supreme Court held the High Court has rightly criticised the conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

24. In the case of *Commissioner of Income Tax, Bhopal v. Ralson Industries Ltd.*, (2007) 2 SCC 326 (Para-9) = 2007 (214) E.L.T. 166 (S.C.) = 2007 (7) S.T.R. 497 (S.C.), Hon'ble Supreme Court held that when an order is passed by a higher authority, the lower authority is bound thereby keeping in view the principles of judicial discipline. In the case of *Bhopal Sugar Industries Ltd. v. I.T.O.*, AIR 1961 SC 182 (Paras 8 & 9), Hon'ble Supreme Court held that if a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice.

25. In the case of *Smt. Kausalya Devi Bogra and others v. Land Acquisition Officer, Aurangabad and another*, (1984) 2 SCC 324 (Para-6), Hon'ble Supreme Court held that judicial discipline requires and decorum known to law warrants that appellate directions should be taken as binding and followed. In the hierarchical system of Courts which exist in this country, it is

necessary for each lower tier, including the Courts of Appeal, to accept loyally the decisions of the higher tiers.”

11. In view of our analysis above, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 30.07.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)