CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60401 of 2024

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-23/2024-25 dated 18.04.2024 passed by the Commissioner (Appeals), CGST Chandigarh]

M/s Cheema Construction **......Appellant**
16/1, Thakurdwara,
Manimajra, Chandigarh 160101

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh-I **......Respondent**
Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

APPEARANCE:

Shri Ashok Goyal C.A. and Shri Sahil Garg, C.A., for the Appellant

Shri Kanish Saini, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60464 /2026

DATE OF HEARING: 21.05.2026
DATE OF DECISION:24.07.2026

The present appeal is directed against the impugned order dated 18.04.2024 passed by the Commissioner (Appeals), CGST Chandigarh, whereby the learned Commissioner (Appeals) has confirmed the demand of service tax amounting to Rs. 9,22,761 along with interest and equal penalty under Section 78 by invoking the extended period of limitation.

2. Briefly the facts of the present case are that on the basis of third party data received from the Income Tax Department for the year 2016-2017 & 2017-2018, it was observed that there was a difference between the receipts from services as per income tax returns and no ST-3 returns filed by the appellant for the said period. Accordingly, a show cause notice dated 13.04.2022 was issued to the appellant for recovery of service tax amounting to Rs. 32,84,941/- along with penalties under Section 77 and 78 of the Act was also proposed. After following the due process, the adjudicating authority vide the Order-in-Original confirmed the demand of service tax of Rs. 15,07,787/- along with interest under Section 73 and Section 75 of the Act and penalties of Rs. 10,000 and Rs. 15,07.787/- were also imposed under Section 77 and 78 respectively of the Act and demand of Rs. 17,77,184 was dropped vide the Order-in-Original. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) who further reduced the demand amounting to Rs. 9,22,761/- along with interest and equal penalties. Hence, the present appeal.

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

4. Learned consultant for the appellant submits that the impugned order 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. He further submits that the Revenue has merely relied upon the discrepancy between the figures of Form 26AS and ST-3 returns to allege suppression of fact. He further submits that a mere

difference between the income tax data and service tax disclosures, without any corroborative evidence of intentional concealment, cannot be equated with fraud or deliberate suppression to justify invocation of extended period of limitation. He further submits that the entire demand is barred by time because the show cause notice is dated 13.04.2022 for the period October, 2016 to June, 2017 which is ex-facie barred by limitation as prescribed under Section 73 (1) of the Finance Act. He further submits that the Department has invoked the extended period mechanically without establishing any of the ingredients which are required to invoke the extended period of limitation. He also submits that it is a settled position of law that the extended period cannot be claimed as a matter of right; it can only be triggered if the Department establishes the existence of specific jurisdictional facts, namely fraud, collusion, willful misstatement, or the suppression of facts with a deliberate intent to evade tax. He also submits that no such malafide intent or deliberate suppression can be attributed to the appellant in the present case. The appellant is a registered Government contractor who was executing public works for the Chandigarh Administration under a bona fide belief that its activities were completely exempt from tax under the Mega Exemption Notification No. 25/2012. In support of his submissions, he relied upon the following decisions:

M/s Mahesh Kumar Chanani vs. Union of India reported in 2026 (186) taxmann.com 135 (Gauhati), wherein, the facts in that case were identical as in this case; in that case the petitioner was a proprietorship concern engaged in the execution of works contracts who asserted that its services stood exempted under the Mega Exemption Notification; despite the expiry of the statutory timelines, the department issued a Demand-cum-Show Cause Notice to the petitioner on 11.04.2022 for the financial year 2016-17 which was subsequently confirmed by the Adjudicating Authority via Order-in-Original. The petitioner challenged this order directly before the Hon'ble High Court on the grounds of expiry of the limitation period and the Hon'ble High Court, while quashing the entire demand in favour of the assessee, held as under:

> *17. In the case at hand, the Demand-cum-Show Cause Notice dated 11.04.2022 pertains to the financial year 2016-2017. Even assuming the applicability of the extended period, the notice has been issued beyond the statutorily permissible period.*
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> *18. The inevitable consequence thereof is that the very initiation of proceedings is vitiated in law. The Adjudicating Authority, lacking the foundational jurisdiction to proceed, could not have passed the impugned order dated 24.04.2024.*
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> *19. The defect is not a curable irregularity but goes to the root of the matter, rendering the proceedings non-est.*

4.1 The learned consultant further submits that the mechanical invocation of the extended period of limitation by the department is entirely based on a fundamental misconception of law. The revenue has merely relied upon the third-party data for recovery of service tax calculated on the gross amounts received on account of supply of services from operations in their Form 26AS/Income Tax after deduction of TDS by their deductors to allege suppression of facts. He also submits that a mere difference between the income tax data and service tax disclosures, without any corroborative evidence of intentional concealment, cannot be equated with fraud or deliberate suppression to justify extending the limitation period. In support of his submissions, he relied upon the following decisions:

- ***Antares Services (P.) Ltd. vs. Commissioner of Central Excise [2024] 160 taxmann.com 23 (Chandigarh CESTAT)***

- ***M/s Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur reported in 2013 (31) Taxmann.com 67 (SC).***

4.2 The learned Consultant for the appellant also submits that on merits also the appellant has a good case because the appellant was entitled to benefit of Notification No. 25/2012, as he was rendering the services to the Government Departments which are executed through continuous running bills. He further submits that the benefit of the said notification has wrongly been denied to the appellant.

5. On the other hand, learned authorized representative for the Revenue reiterated the findings of the impugned order and submits that the appellant has concealed the income from the Department and has not filed the return which amounts to suppression of facts

and therefore invocation of extended period is justified. In support of his submissions, he relied upon the following decisions:

- ***Rajesh Vs The Assistant Commissioner of CGST & C. Ex. Madhavaram Division, Chennai North Commissionerate- 2023-TIOL-911-HC-MAD-ST***
- ***Anil Gaur Vs CCE, Jodhpur- 2025-TIOL-1751-CESTAT-DEL***
- ***Avinash Azad Singh Tomar Vs CCE, Bhopal 2025-TIOL-1513-CESTAT-DEL***
- ***M/s Tata Steel Ltd. Versus Commissioner of Service Tax, Mumbai-l 2015 (11) TMI 1049 CESTAT MUMBAI (LB)***
- ***M/s Velocity Propbuild Commissioner of Central Excise & CGST, Noida -Pvt. Ltd. Versus 2025 (8) TMI 802 - CESTAT ALLAHABAD***
- ***BCCI Vs Commissioner of Service Tax, Mumbai-l-2014-TIOL-1774-CESTAT-MUM***
- ***BCCI Vs Commissioner of Service Tax, Mumbai-l 2015-TIOL-04-SC-ST***

6. I have considered the submissions of both the parties and perusals of the material on record, I find that the entire case has been made against the appellant only on the basis of third party data received from the Income Tax Department for the year 2016-2017 & 2017-2018 by invoking the extended period of limitation. I also find that though the Department has invoked the extended period of limitation but the ingredients which are required to

establish by the department for invoking the extended period of limitation namely, fraud, collusion, willful misstatement, or the suppression of facts with a deliberate intent to evade tax is not established. Further, I find this Tribunal in the case ***M/s Antares Services (P.) Ltd. vs. Commissioner of Central Excise***, (cited Supra), wherein, it was held that the demand raised by the Department by invoking the extended period of limitation entirely on the basis of third party information and data obtained from the Income Tax Department is not sustainable, the Tribunal vide setting aside the demand on the ground of limitation observed as under:

> "I find that the show-cause notice has been issued on the basis of third-party information. I find that though extended period has been invoked, no evidence of suppression, mis-statement, fraud, collusion etc., has been put forth. In the absence of the same, extended period cannot be invoked. I find that the Tribunal in the case of Balaji Machinery (supra) held that where the demand is merely on the basis of data obtained from Income-tax Department, it cannot be alleged that there was suppression etc. to justify the invocation of extended period. Therefore, I find that the impugned order is not legally sustainable."

7. Further, I find that the law laid down by the various Benches of the Tribunal and the Hon'ble Apex Court in the case ***of M/s Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur,*** (cited Supra), wherein, the Hon'ble Apex Court has examined the statutory pre-requisites for invoking the extended

period of limitation and dealt with the issue of whether every non-payment can be termed as a willful default. The Hon'ble Apex Court has held as under:

> "Every non-payment/non-levy of tax doesn't attract extended period. There must be some positive action which betrays negative intention of wilful default. For operation of extended period of limitation, intention to deliberately default is a mandatory prerequisite and inadvertent non-payment doesn't attract extended period of limitation. Burden of proving mala fide on part of assessee lies on shoulders of Department who alleges it and assessee cannot be asked to substantiate his bona fide conduct."
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> Para 12 (Page-9)
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> The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."

8. In view of the above discussions, I find that the impugned order is not sustainable on limitation and I set aside the same on limitation without going into the merits of the case.

9. The appeal is accordingly allowed on limitation.

(Order pronounced in the open court on 24.07.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

Kailash