

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

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No.41629 of 2015

[Arising out of Order-in-Appeal No.115/2015(STA-I) dated 28.04.2015 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai 00 040]

**M/s. Maha Gowri Ganesha
Builders and Developers,**

No.303, Sri Laxmi Nest Apartment,
No.841/B, 5th Cross, 10th Main,
Indiranagar II Stage,
Bangalore-500 038.

....Appellant

Versus

Commissioner of GST & Central Excise

Chennai Outer Commissionerate,
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai-600 040.

... Respondent

And

Service Tax Appeal No.41631 of 2015

[Arising out of Order-in-Appeal No.114/2015 (STA-I) dated 28.04.2015 passed by Commissioner of Service Tax (Appeals-I) Newry Towers, 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai 00 040]

M/s. M.M. Enterprises (Dissolved firm),

No.303, Sri Laxmi Nest Apartment,
No.841/B, 5th Cross, 10th Main,
Indiranagar II Stage,
Bangalore-500 038.

....Appellant

Versus

Commissioner of GST & Central Excise

Chennai Outer Commissionerate,
No.2054, I Block, II Avenue,

... Respondent

12th Main Road, Anna Nagar,
Chennai-600 040.

APPEARANCE:

Shri S. Annamalai, Advocate for the Appellant
Ms. Rajni Menon, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.41349-41350/2025

DATE OF HEARING: 16.06.2025

DATE OF DECISION: 24.11.2025

Per: Shri P. Dinesha

These Appeals are filed by the Appellants against two separate impugned Orders-in-Appeal however, the issue being common in these Appeals the same were heard together and are being disposed by this order.

2. The Appellant is providing services in relation to acquisition, purchase/sale of real estate to their clients. M/s. M.M.Enterprises has since been merged with

M/s. Maha Gowri Ganesh Builders & Developers with effect from 01.04.2007 as it existed during the relevant period before dissolution and transfer of all assets and liabilities to M/s. Maha Gowri Ganesha Builders and Developers (newly formed partnership firm w.e.f. 01.04.2007) were engaged in the activities pertaining to real estate transactions. M/s. M.M. Enterprises had entered into a Memorandum of Understanding (MOU) with M/s. Sahara India Commercial Corporation, Lucknow (M/s. Sahara India, for short) for procurement of land for the projects of M/s. Sahara India. The MOU dated 27.03.2003 (Annexure I) was found to pertain to acquisition of land at Madurai by M/s. Sahara India. According to the MOU, M/s. Sahara India showed its inclination for purchase of land in the vicinity of 100 Acres for development of a residential township in and around the city of Madurai and M/s.M.M. Enterprises came forward with a proposal of 100 Acres of land situated in Village: Ayarnpapakudi Panchayat District Madurai with direct opening/access of at least 700 ft. on the NH7 (para 3 of MOU). The MOUs

prescribed the terms and conditions, as contained in clauses Nos. 1 to 18.

3. Heard Shri S. Annamalai, Ld. Advocate for the Appellant and Ms. Rajni Menon, Ld. Deputy Commissioner for the Respondent-Revenue.

4. It is the case of the Appellant, *inter-alia*,
- (a) that Show Cause Notice on the dissolved firm viz. M/s. M.M.Enterprises / M/s. Maha Gowri Ganesha Builders and Developers on 14.09.2010 by invoking the provisions of Section 73(1), 65(105)(v), 65(88) of the Finance Act, 1994 on the premise that the firm had provided taxable service under the category of the "Real Estate Agency Service".
 - (b) In connection with business of real estate the Appellant entered into a Memorandum of Understanding with M/s. Sahara India, the terms and conditions mentioned in the said MOU are to be treated for purchase and sale of

immovable properties in connection with the business of the Appellant.

(c) All the clauses in the said MOU fortify the contention of the Appellant that it is carrying on the business of trading in the real estate. The clauses of the MOU should not be construed as a 'service' in the Real Estate Agency.

(d) The Appellant purchased the property by making payment and entered into an Agreement cum Sale Receipt, further the sellers have executed the Power of Attorney, subsequently the Appellant sold to M/s. Sahara India or their nominees.

(e) Copy of the Income-tax returns, Profit & Loss Account, Balance Sheet and copy of the chart showing cost of acquisition, sale consideration and gross profit for the period from April 2005 to March 2007 were filed wherein it was mentioned under current assets

as the asset of the firm the entire amount paid towards Land-Acquisition under various classifications.

(f) The amount received from the M/s.Sahara India is treated as current liabilities treating the same as 'sundry creditors' of the firm.

(g) Difference between the sale consideration and cost of acquisition was shown as 'profit' from the activity of the Appellant for the period under consideration and the same was offered to Income tax.

(h) The Department knowingly the transactions are purchase and sales, levied the Service Tax on the gross profit of the Appellant.

(i) There are assessments of the firm and by no stretch of imagination it would come into the ambit of Real Estate Agency. The firm has invested amount for purchase of lands in order

to sell the same to M/s. Sahara India and other prospective purchasers. It is the business of the firm rather than calling it as 'service' as prescribed under the provisions of the Finance Act, 1994.

5. Without prejudice to the above, Ld. Advocate also contended that the reasons for invoking the provisions of Section 73(1) is that the Appellant suppressed the facts by non-filing and non-registration and contravened the provisions of the Sections 67,68,69 and 70 of the Finance Act, 1994 and Rules 4,6 and 7 of the Service Tax Rules, 1994. Hence, it was contended that the impugned demands have no legal stand and accordingly, it was prayed for setting aside the same.

6. He would thus question the jurisdiction of the Commissioner in holding the activity of the Appellant covered under the definition of "Real Estate Agency Service" and liable for Service Tax on the facts and circumstances of the case. He would also contend that the Commissioner erred in not adjudicating the specific

ground of the Appellant that the common single Show Cause Notice issued to the Appellant dissolved firm and the another firm which was not in existence during the dispute period, is bad in law on the facts and circumstances of the case.

7. Without prejudice to the above, he would also contend that the extended period under proviso to Section 73(1) of the Act was not invocable on the facts and circumstances of the case.

8. *Per contra*, Smt. Rajni Menon, Ld. Deputy Commissioner relied on the findings in the impugned order. She would further argue that the contention that *'..the appellant firm's business itself is buying and selling there is no need to get registration of the property in the name of the firm to sell the same to the prospective purchasers..'* is just a statement without any documentary evidence. It is her case with regard to the claim that *'mere nomenclature of the document "Power of attorney" will not construe the activity of the firm as Service..... but in the case of the appellant firm*

incurred losses in certain transactions... the amount received from M/s. Sahara India is treated as liability and shown under the head current liabilities...' that the Appellant had submitted the documents like the MOU, POA, etc. and hence, any contrary stand or view by the very Appellant to these documents is bereft of any truth; it was for the Appellant to prove to the contrary by furnishing supporting documents which having not been done, the above pleas of the Appellant lacks any credit. Further, it was for the Appellant to adhere to the Rules governing the disclosure in Profit and loss account, Balance sheet which is only known to them and the claims of 'loss' is again just an arguments without placing any supporting documents.

9. Regarding the contention that '*...the Appellant submits that without any evidence in the hands of the Department to hold that the Appellant firm carried out all the terms and conditions mentioned in the Memorandum of Understanding, it is not correct to arrive into the conclusion that the Appellant firm will fall under the definition of Real Estate Agent...'*, she would

argue that the Appellant has not filed the copy of any Sale Deed being registered in its name, is itself a sufficient reason to throw the above arguments of the Appellant.

10. With regard to various case law relied on by the Appellant, she would contend that in the case on hand it appeared as though the dissolution was clearly a device to evade tax payment by the erstwhile firm since the partner *viz.* Shri G. Dasaratha Rami Reddy has himself admitted in his statement recorded on 10.03.2010 that he is a partner in EIGHT Firms and interestingly, the address of M/s. M.M. Enterprises (dissolved) and M/s. Maha Gowri Ganesh Builders and Developers is one and the same. She would thus plead for sustaining the demands in the impugned order.

11. We have heard the rival contentions and perused the documents, case law, compilation and other relevant documents placed on record.

12. After hearing both sides, following issues arise for our consideration:

(i) Whether the impugned demand of Service Tax under Real Estate Agency Service is justified? and

(ii) Whether the demand raised after invoking the extended period of limitation is sustainable?

13. In the peculiarity of the facts involved in these Appeals, we would decide the issue of limitation first. The period involved is from April 2005 to March 2007 for which, the SCN dated 14.09.2010 came to be issued. The reason attributed in the SCN and the impugned Order-in-Appeal are that entire facts came to light only upon visit of the DGCEI to the Appellants' premises which otherwise would have gone unnoticed. Proviso to Section 73 (1) mandates recovery of service tax if not paid, not levied and has been short-levied or short-paid or erroneously refunded if the same is attributable to fraud, collusion, suppression of facts etc. but the Revenue has only contended that it was the visit of DGCEI detected the non-payment of Service Tax which, according to us is insufficient; it is the settled

position of law that the allegation should not only be of fraud or suppression etc., but the same should be proved to be with intent to evade payment of service tax.

14. From a reading of Section 78, we note that Section 78 could be pressed into service only when any service tax has not been levied, or has been short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to Section 73 (1). Here in the case on hand, we find that very invocation of extended period of limitation does not stand the test and hence, just because proviso to Section 73 (1) is invoked despite lack of merit, does not automatically lead to the imposition of penalty under Section 78. In the case on hand and hence, we do not find any merit in sustaining the penalty under Section 78.

15. Without establishing 'suppression', the provision cannot be invoked automatically and for that, Revenue has to necessarily ponder over the past conduct of the Appellant-Assessee first and then the treatment by the Revenue.

16. In this regard, we find support from the Hon'ble Supreme Court in the case of **M/s. Stemcyte India Therapeutics** *vide* its judgment dated 14.07.2025 in Civil Appeal Nos.3816-3817 of 2025 has relied on the judgments in:-

(i) **Padmini Products v. CCE**, (1989) 4 SCC 275.

(ii) **CCE v. Chemphar Drugs and Liniments**, (1989) 2 SCC 127

(iii) **Pushpam Pharmaceuticals Co. v. CCE**, 1995 Supp (3) SCC 462

(iv) **CCE v. Punjab Laminates (P) Ltd.**, (2006) 7 SCC 431.

and has held that "*in the absence of fraud, collusion, willful misstatement, or suppression of facts with an*

intent to evade payment of service tax, the invocation of the extended period of limitation under Section 73 of the Finance Act, 1994 is wholly unwarranted. Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation period. Accordingly, the show cause notice issued by the department is clearly time-barred. On this ground alone, the impugned order deserves to be set aside.”

17. In view of this alone, we are of the view that the demand raised by invoking the extended period of limitation is unsustainable and consequently we set aside the impugned order on this ground alone and allow the Appeals with consequential benefits, if any, as per law.

(Order pronounced in open court on 24.11.2025)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)