IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 42437 of 2016

(Arising out of Order in Appeal No.492/2016 (STA – I) dated 29.8.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

Altech Engineering **Appellant**
No. 9/5, Venkatesan Street
Tambaram East, Chennai – 600 059.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri V. Ravindran, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40490/2026

Date of Hearing: 08.12.2025
Date of Decision: 17.04.2026

Per M. Ajit Kumar,

This appeal is against Order-in-Appeal No. 492/2016 (STA–I) dated 29.08.2016 passed by the Commissioner of Service Tax (Appeals–I), Chennai (impugned order).

2. The appellant, registered with the Service Tax Department, is engaged in providing Commercial Construction Service. During the period from October 2007 to September 2012, the appellant allegedly received ₹4,10,58,956/- for construction services but failed to discharge service tax liability. Accordingly, a Show Cause Notice dated 19.04.2013 was issued proposing recovery of service tax amounting to ₹45,83,155/- along with interest and penalties. Upon

adjudication, the Original Authority confirmed a demand of ₹43,63,250/- with interest and imposed an equal penalty under Section 78 and a penalty of ₹5,000/- under Section 77 of the Finance Act, 1994. The appeal filed before the Commissioner (Appeals) was rejected, leading to the present appeal.

3. The learned Advocate Shri V.Ravindran appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

3.1 Shri V. Ravindran the Ld. Counsel for the appellant submitted as follows:-

A. The impugned demand has been raised merely on the basis of credits reflected in the appellant's bank statements, without any analysis of the nature of transactions, their classification, taxability, or eligibility for exemption. Such an approach is alien to the scheme of the Finance Act, 1994 and contrary to settled law.

B. The bank credits included several non-taxable and exempt receipts, inter alia:

(a) Consideration received during 2011 for construction of a residential complex comprising only six dwelling units, which did not fall within the definition of "Construction of Complex Service" during the relevant period (prior to 01.07.2012).

(b) A sum of ₹56,50,000/- relating to the above construction activity, which was nevertheless taxed without any factual or legal finding.

(c) Cash deposits not representing consideration for any taxable service.

(d) Receipts towards construction of water treatment plants, water retaining structures and allied buildings for the Tamil Nadu Water and Drainage Board (TWAD), executed as a sub-contractor to M/s Eco Protection Engineers Pvt. Ltd.

(e) Amounts received under Work Order No. EPE/WO/2011-12/THENI-STP/002 dated 20.04.2011 (₹2 crores), where the project was abandoned due to non-viability.

(f) Government infrastructure works for TWAD Board, which are expressly excluded from "commercial or industrial construction service" under Section 65(25)(b), as clarified by CBEC Circular No. 80/10/2004-ST.

(g) Construction works for Omayal Achi College of Nursing, including bus park, compound wall and allied facilities, not amounting to taxable services.

(h) Income-tax refund received from the Income Tax Department.

He relied on the following judgments in support of his submissions:

a. **Batra Motors & Travels Vs CCE., Delhi-III** - 2013 (30) S.T.R. 478 (Tri. - Del)

b. **Commr. of Service Tax, Ahmedabad Vs Purni Ads. Pvt. Ltd.** - 2010 (19) S.T.R. 242 (Tri. Ahmd)

C. The show cause notice and the adjudication order failed to consider purchase orders, bills, Income-tax returns, balance sheets, profit and loss accounts and VAT returns submitted by the appellant. The transactions were mechanically aggregated without proper scrutiny.

D. Had the transactions been properly analysed, non-taxable receipts would have been excluded while computing aggregate value, resulting in full exemption for 2007-08 and partial exemption for 2008-09 under Notification No. 6/2005-ST. The appellant had not opted out of the exemption, and its denial is therefore illegal.

E. There was no suppression of facts or wilful misstatement. The entire demand is based on information and bank statements furnished by the appellant. Invocation of extended period and imposition of penalty under Section 78 are therefore unsustainable. He placed reliance on the following judgments to support his submissions on limitation:

a) **Continental Foundation Joint Venture Holding v. CCE** - 2007 (216) E.L.T. 177

b) **Cadilla Laboratories v. CCE** - 2003 (152) E.L.T. 262

c) **Uniworth Textiles v. CCE** - 2013 (288) E.LT. 161

d) **Batra Motors & Travels Vs CCE., Delhi-III** - 2013 (30) S.T.R. 478 (Tri. - Del)

e) **Commr. of Service Tax, Ahmedabad Vs Purni Ads. Pvt. Ltd**. - 2010 (19) S.T.R. 242 (Tri. Ahmd)

F. The demand proceeds on a flawed "best judgment assessment" by taxing all bank receipts due to alleged non-availability of data prior to 2009, without calling for further information. This is contrary to Section 72, which mandates consideration of all relevant material.

G. It is well settled that best judgment assessment cannot determine the very nature of the taxable service or the taxable event by guesswork, as held in **Shubham Electricals v. CST & ST, Rohtak** [2015 (6) TMI 786].

H. The burden to establish taxability lies squarely on the department and cannot be shifted to the appellant merely by alleging non-submission of evidence. He placed reliance on the following judgments:

a) Hindustan Ferodo Vs CCE

b) **UoI Vs Garware Nylons** [1996 (9) TMI 193 Supreme Court]

c) **CCE Vs Urmin Products P. Ltd** [2023 (10) TMI 1112 Supreme Court]

I. Penalty is consequential to liability to service tax and its evasion being established. So is a demand for interest on service tax. For the reasons above the service tax liability did not arise in this case.

J. Further, the penalty u/s 78 is founded on the same grounds as for invoking longer limitation. For the reasons stated above, the case is not one attracting longer limitation. Consequently, the penalty imposed under section 78 is untenable as well.

The Ld. Counsel prayed that the impugned order be set aside and the appeal allowed with consequential relief.

3.2 Shri M. Selvakumar Ld. Authorized Representative, reiterated the findings in the OIO and submitted on behalf of revenue that:

A. Based on specific intelligence of non-payment of service tax on Commercial or Industrial Construction Service, the Department initiated verification and called for bills, bank statements, and VAT returns vide letter dated 18.11.2011.

B. The assessee furnished registration certificates, Income-tax returns, financial statements, bank statements, and VAT returns but failed to submit invoices and work orders despite a clear undertaking.

C. During 2009–10 to 2012–13, the assessee charged and collected service tax from clients.

D. Due to continued non-compliance, summons were issued; the proprietor failed to appear, made only partial payment of ₹2,50,000/-, and did not honour assurances of further payment.

E. A field visit revealed that the appellant had shifted his premises without intimation to the department. Subsequently repeated follow-ups and reminders failed to secure the required records.

F. In the absence of primary records, the Department had to call for and rely on third-party bank statements obtained from SBI, Indian Bank, and ICICI Bank.

G. Bank scrutiny revealed substantial receipts routed through an ICICI Bank account from 01.04.2007, much prior to service tax registration in August 2010.

H. The assessee made only selective and belated disclosure on 01.03.2013, admitting partial liability of ₹20,98,794/- for 2009–10 to 2012–13 (up to September 2012).

I. As no explanation was furnished for earlier receipts, liability for 2007–08 to 2012–13 was determined from bank records after allowing admissible abatements of 67% under Notification Nos. 01/2006-ST dated 01.03.2006 and 40/2010-ST dated 28.06.2010, resulting in tax demand of ₹45,83,155/-(Service Tax: ₹44,49,665/-, Education Cess: ₹88,993/-, SHE Cess: ₹44,497/-).

J. The assessee's conduct clearly establishes suppression of facts and intent to evade tax; the full extent of liability surfaced only through departmental investigation.

K. The assessee failed to substantiate SCN replies even during personal hearing.

L. Invocation of the extended period under Section 73(1) is justified, with liability to service tax, interest under Section 75, and penalties under Sections 76, 77, and 78.

He prayed that the appeal may be rejected.

4. We have heard both parties and examined the records. The dispute centers on the valuation of services rendered by the appellant. The Revenue alleged non-cooperation and suppression of facts by the appellant. It claimed that taxable services were provided and service tax was collected but not paid to the Government and hence confirmed the demand for the extended period based on third-party bank data after allowing abatements. The appellant, however, contends that the Revenue has failed to discharge its burden of proof, as the bank credits included non-taxable receipts such as residential construction prior to 01.07.2012, government and statutory receipts, abandoned project amounts, unrelated cash deposits, and income-tax refunds, which could not be mechanically treated as taxable consideration. It is further argued that resort to best-judgment assessment under Section 72 without analysis of supporting records is legally unsustainable, and that mere failure to pay tax or obtain registration does not constitute fraud, suppression, or misstatement so as to justify invocation of the extended period. The very fact that the proceedings are based on the information collected from the appellant and from their bank accounts would reveal that there was no mis-statement or suppression of facts from the appellant's side, as alleged.

5. It is settled law that the burden to establish the taxability of a service lies on the Revenue, to be discharged on the standard of preponderance of probability, not proof beyond reasonable doubt.

Mathematical precision is not required. At the same time, the assessee bears the onus to produce relevant information, particularly where facts and documents are within its exclusive knowledge. Once such material is furnished, the onus shifts to the Revenue to rebut it. In the present case, the appellant failed to furnish invoices and work orders despite repeated opportunities, including during the personal hearing. The appellant states that the proceedings are based on the information collected from the appellant and from their bank accounts would reveal that there was no mis-statement or suppression of facts from the appellant's side, as alleged. The appellants submissions are not acceptable. An assessee is expected to disclose fully and truly all material facts necessary for the assessment on his own, and necessarily so as called for. Especially in this case, when during 2009–10 to 2012–13, the assessee charged and collected service tax from clients. The mere availability of evidence is not enough, what is required is to make a full and true disclosure of information as called for by the department and if some material fact necessary for the assessment lies embedded in that mass of evidence being provided and which the assessee can easily uncover, it is the duty of the assessee to disclose it upfront.

6. The Order-in-Original records the Department’s efforts to obtain information from the appellant as follows:

> “2. On 21.12.2011, the assessee produced the following documents vide their letter dated 21.12.2011.
>
> 1) Copy of VAT & Service Tax (Registration) Certificate
>
> 2) Copy of Income Tax Return, Bolance Sheet, P & L Account for assessment year 2010-11 & 2011-12
>
> 3) Copy of Bank Statements.
>
> 4) Copy of VAT Returns.

3. The assessee assured in the above said letter that they would submit the Invoice copies and Work order as soon as possible, but, even after lapse of two months, there was no response from the assessee. Hence, a **summon dt. 06.03.2012** was issued to Shri. Dhanasekaran, Proprietor of M/s Altech Engineering to appear on 15.03.2012.

4. Shri Dhanasekaran did not appear on 15.03.2012 as per the direction of the summon, however he submitted a letter dt. 26.03.2012 thro' his messenger wherein he has stated that he has made a payment of Rs. 2,50,000/ towards service tax due vide Indian Overseas Bank's Challan No 1 dt. 15.03.2012 and assured to make further payment within ten days.

5 As the requisite particulars were not received from the assessee, once again **summons were issued on 23.08.2012, 28.09.2012 and 26.11.2012**. The SIR Team of Tambaram I Division have visited the address given in the ST 2 Certificate i.e. # 9/5, Venkatesan Street, Tambaram East, Chennai 600 059 on 13.12.2012 and found that the **assessee has shifted their premises** to No.74, Mahabalipuram Road, Kanakoil Pettai, Thirukazhukundram, Pin-603 109. Then, the assessee was contacted over phone and requested to furnish the documents. Further, **one more letter dt.05.01.2013** was addressed to the assessee requesting them to furnish the above said documents.

6. In the absence of copies of invoices issued by the assessee to his clients and in order to ascertain the quantum of service tax involved in this case, apart from pursuing with the assessee, details of payment received by the assessee were called for from the following Banks vide letter dt.04.01.2013:

1) State Bank of India, Tirukkalikundram, Chengelpet Taluk.

2) Indian Bank, Chengelpet,

3) ICICI Bank, Chengelpet"

(emphasis added)

The issuance of summons is governed by section 14 of the Central Excise Act, 1944, made applicable to Service Tax proceedings as per Section 83 of Finance Act, 1994. Crucially, under sub-section (3), such inquiries have the status of "judicial proceedings" within the meaning of Sections 193 and 228 of the Indian Penal Code states that the person so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statement and to produce such documents and other things as may be required. However unfortunately such summons were repeatedly ignored forcing the department to seek information from the Banks. Under these circumstances, the initial onus lay on the assessee to produce the information, consistent with the universally accepted principles of evidence, which they ignored without a word in explanation.

6. Although the strict provisions and standards of proof under the Evidence Act do not apply to departmental or tribunal proceedings, it is seen that this principle finds statutory recognition in Section 106 of the Indian Evidence Act, (Section 103 of the Bharatiya Sakshya Adhiniyam, 2023).

7. The Supreme Court in **Commissioner of Income Tax, Madras Vs Messrs. Best & Co.** [1966 SCR (2) 430 / AIR 1966 SC 1325], held that where the Revenue adduces sufficient direct or circumstantial evidence, an adverse inference may be drawn if the assessee withholds material exclusively in its possession. While the burden of proof remains constant, the onus is dynamic and shifts during adjudication, as reaffirmed in **Mahakali Sujatha Vs Future Generali India Life Insurance Co. Ltd.** - (2024) 8 SCC 712. Once the Revenue establishes a high degree of probability, failure by the assessee to rebut it results in the Revenue's burden being deemed discharged. Mere assertions regarding the nature of receipts and its inadequacy as proof do not constitute evidence. Accordingly, the appellant's averments lack merit.

8. While the appellant in this case have sought to rebut the data relied upon by the Revenue, they are being clever by not cooperating with the department in providing the information and material facts

called for, in the first instance. In **S.P. Chengalvaraya Naidu Vs Jagannath** [1994 (1) SCC 1] the Hon'ble Supreme Court in no uncertain terms observed:

> "...The principles of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. **The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands.** We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. **We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation**.... A fraud is an act of deliberate deception with the design of security something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... **A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.**"
>
> (emphasis applied)

It is well settled that as a general rule suppression of material facts, i.e. facts which, if disclosed, would have influenced the adjudication, disentitles a litigant from relief, as such conduct amounts to abuse of the adjudicatory process. **Silence may be treated as deception when there is a duty to provide information to the department enquiring into a matter pertaining to the appellant.** Especially when it is considered that the delay by the appellant in furnishing facts could lead to the SCN becoming time barred and that to after four summons were issued.

9. **The situation at hand is squarely covered by the latin maxim '*nullus commodum capere potest de injuria sua propria*', which means that no man can take advantage of his**

own wrong. However, it is in the interest of justice that truth be allowed to prevail. Determination of an issue on merits necessarily involves appreciation of facts and evidence, which we would have to call for afresh from the appellant. Although the Tribunal is the final fact-finding authority, and has coextensive power to reappreciate the evidence, we are faced with a situation where the complete information has not been disclosed by the appellant, even before us. We would hence have to call for the same. However, in the ordinary course it should be left to the Original Authority to find out the truth.

10. In **Shyam Sel & Power Ltd. Vs Shyam Steel Industries Ltd.** [(2023) 1 SCC 634], the Hon'ble supreme Court observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. **It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.** We are of the opinion that the same principle would also apply to the Tribunal.

11. In the light of the discussions we do not deem it necessary to examine the judgments cited by the appellant individually at this stage, as **the foundational issue of non-submission of material facts needs to be resolved**.

12. Accordingly, the matter is remitted to the ld. Original Authority for fresh adjudication. The adjudicating authority shall adhere to the principles of natural justice and grant the appellant a reasonable

opportunity of being heard, including the liberty to make oral and written submissions and to submit fresh documents and data pertaining to material facts relevant for deciding the issue, before passing a reasoned order. The appellant shall provide, without prevarication, the requisite information sought by the department and required to defend his case. The appellant shall also extend due cooperation to ensure the expeditious completion of the proceedings, which shall, in any event, be concluded within ninety days from the date of receipt of this order. The impugned order is modified to the above extent, and the appeal stands disposed of accordingly. Consequential relief, if any, shall follow in accordance with law. The appellant shall be eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 17.04.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex