CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41974 of 2016

(Arising out of Order-in-Original No. 32/2016 (C)(ST) dated 04.07.2016 passed by Commissioner of Central Excise, No.1, Goubert Avenue, Puducherry – 605 001)

M/s. TMP Manoharan & Co. **...Appellant**
Y-231, Block – 29,
Neyveli – 607 803.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Beach Road,
Pondicherry – 605 001.

APPEARANCE:

For the Appellant : Mr. V. Ravindran, Advocate
For the Respondent : Ms. G. Krupa, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40991 / 2026

DATE OF HEARING : 23.06.2026
DATE OF DECISION : 07.09.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. TMP Manoharan & Co., Neyveli, hereinafter referred to as "the appellant", against Order-in-Original No.32/2016 (C)(ST) dated 04.07.2016 passed by the Commissioner of Central Excise, Puducherry, whereby service tax of Rs.24,48,370/-, including an admitted liability of Rs.8,96,535/-, along with interest, late fee and penalties under Sections 77 and 78 of the Finance Act, 1994, was confirmed for April 2012 to March 2013. The proceedings originated from Show Cause Notice No.15/2015 (C)(ST) dated 22.04.2015, issued on the basis of comparison of the appellant's Balance Sheet, ST-3 Returns and Income Tax records. The Department alleged, inter alia, that the appellant had rendered Erection, Commissioning and Installation Service without registration, wrongly claimed abatement under Maintenance or Repair Service and short-paid service tax.

2. The appellant, registered under Manpower Recruitment or Supply Agency Service, Maintenance or Repair Service and Commercial or Industrial Construction Service, disputed the demand contending that the work executed for Graphite India was only Manpower Supply Service, that no work was executed for Siemens during the relevant period, and that the demand was based essentially on accounting differences without proper classification or verification of the underlying transactions. The appellant relied upon agreements, invoices, reconciliation statements and the earlier decision of this Tribunal in its own case. The Department, on the other hand, supported the impugned order on the ground that the discrepancies were detected during audit, the appellant had failed to file ST-3 Returns for

April-June 2012, had not obtained registration under Erection, Commissioning and Installation Service and had wrongly claimed abatement under Maintenance or Repair Service.

3. The Ld. Advocate Shri V. Ravindran for the appellant, submitted that the demand could not be sustained merely on the basis of the Balance Sheet and Income Tax records without first establishing the taxable service and taxable value. He submitted that the work for Graphite India was Manpower Supply Service, no work was executed for Siemens during the relevant period and the adjudicating authority had travelled beyond the allegations in the Show Cause Notice. He further submitted that the proceedings were based on the appellant's own statutory records and therefore involved neither suppression nor wilful misstatement. Reliance was also placed upon the earlier Final Order of this Tribunal in the appellant's own case.

4. The Ld. Authorized Representative Ms. G. Krupa, for the Revenue, supported the impugned order and submitted that the discrepancies between the Balance Sheet, Income Tax records and ST-3 Returns established short-payment of service tax. It was submitted that the appellant had failed to file ST-3 Returns for April-June 2012, had not

obtained registration for Erection, Commissioning and Installation Service and had wrongly claimed abatement. The Revenue accordingly supported invocation of the extended period and the consequential penalties.

5. We have considered the rival submissions, examined the records and the impugned order and perused the judicial precedents relied upon by both sides. The following questions arise for determination: -

i. Whether the service tax demand confirmed in the impugned order is sustainable on merits?
ii. Whether the extended period and the consequential interest, late fee and penalties are sustainable?

6. We now proceed to examine the issues framed for determination sequentially.

Issue No. (i): Whether the service tax demand confirmed in the impugned order is sustainable on merits?

7. The Department's case is essentially founded upon differences between the appellant's Balance Sheet; Income Tax records and ST-3 Returns. The appellant disputes the classification of the activities and contends that the receipts were not properly correlated with taxable services. At the outset, however, the amount of Rs.8,96,535/- requires separate treatment since the

adjudicating authority has recorded in paragraphs 22.1 and 29 of the Order-in-Original that the said amount was admitted by the appellant.

8. At the outset, it is necessary to examine whether the controversy already stands concluded by the earlier decision of this Tribunal in the appellant's own case. It is well settled that a Coordinate Bench should ordinarily follow an earlier decision rendered in the case of the same assessee involving identical facts and issues unless it is shown to be distinguishable or has been overruled by a Larger Bench, the jurisdictional High Court or the Hon'ble Supreme Court. Consistency in judicial decisions is an essential requirement of certainty in tax administration.

9. The appellant relied upon the decision of this Tribunal in *M/s. T.M.P. Manoharan & Co. v. Commissioner of Central Excise, Puducherry, 2023 (11) TMI 15 (CESTAT-Chennai) [Final Order No.40962/2023 dated 30.10.2023],* covering the earlier period. In that case, on substantially identical facts arising from scrutiny of the appellant's Balance Sheet, Income Tax records and statutory records, this Tribunal held that the Show Cause Notice failed to properly identify and classify the taxable services or correlate the receipts with the charging provisions of the Finance Act,

1994 and that invocation of the extended period was unsustainable. On comparison of the allegations in both proceedings, we find that the foundation of the present demand is substantially identical and the Revenue has not pointed out any material factual distinction warranting a different view. Judicial discipline therefore requires us to respectfully follow the earlier Final Order.

10. Even otherwise, under the scheme of the Finance Act, 1994, service tax can be levied only after the Department identifies the taxable service, classifies the activity under the appropriate charging entry and determines the taxable value in accordance with Section 67. Mere differences between the Balance Sheet, Income Tax records and ST-3 Returns cannot, by themselves, constitute the basis for confirming service tax liability. In the present case, the Show Cause Notice substantially proceeds on such accounting differences without first undertaking the above statutory exercise or verifying the underlying agreements, invoices, work orders and other contemporaneous records.

11. The appellant also relied upon CBEC Instruction F. No. 137/22/2012-Service Tax dated 28.09.2012 and Instruction F. No. 137/98/2006-CX-4 (Part-I) dated 22.02.2013. We have examined both these Instructions. The

first directed assessees to file ST-3 returns for the period from 1 April 2012 to 30 June 2012 in the existing format, while providing that returns for the subsequent period would be filed separately in the revised format. The second notified the revised ST-3 format and extended the last date for filing the return for the period July 2012 to September 2012 to 25.03.2013. These Instructions demonstrate that filing of ST-3 returns during the relevant period was governed by a transitional arrangement. Consequently, discrepancies or delay arising from the revised ST-3 return mechanism could not, by themselves, constitute evidence of suppression or justify confirmation of service tax demand without independent examination of the nature and taxability of the services rendered.

12. As such, the Revenue's approach is directly contrary to the decision of this Tribunal in *CCE & ST, Pondicherry v. A.M. Manickam & Others, 2017 (6) TMI 57 (Tri.-Chennai),* wherein it was held that a Show Cause Notice must clearly identify the taxable services, specify the appropriate taxable category and disclose the basis of computation of the demand. A vague or omnibus demand founded merely on financial statements without proper classification cannot be sustained. The ratio squarely applies here, where the Department has proceeded on consolidated

figures derived from the Balance Sheet and Income Tax records without first determining the taxable value relatable to each taxable service.

13. The same principle emerges from *CST v. Purni Ads Pvt. Ltd., 2010 (19) S.T.R. 242 (Tri.-Ahmd.),* where the Tribunal held that service tax cannot be confirmed merely on the basis of discrepancies between the Balance Sheet and the ST-3 Returns unless the Department first establishes that the receipts represent consideration for taxable services. It was further held that once the assessee furnishes reconciliation statements explaining the differences, the burden shifts to the Department to disprove the same by cogent evidence. In the present case, although the appellant produced agreements, invoices and reconciliation statements explaining the differences and asserted that the work executed for M/s. Graphite India Ltd. was only Manpower Recruitment or Supply Agency Service and that no work had been executed for M/s. Siemens during the relevant period, those explanations have not been objectively examined by the adjudicating authority.

14. The judgments in *Firm Foundations & Housing Pvt. Ltd. v. Principal Commissioner of Service Tax, 2018 (16) G.S.T.L. 209 (Mad.)* and *Balajee Machinery v. Commissioner*

of CGST & Central Excise, Bolpur, 2022 (66) G.S.T.L. 440 (Tri.-Kolkata) reinforce the same principle. The Hon'ble Madras High Court held that accounting entries in the Profit and Loss Account or financial statements cannot constitute the sole basis for determining service tax liability, while the Tribunal in Balajee Machinery held that figures reflected in the Balance Sheet or Income Tax records may justify investigation but cannot, by themselves, establish taxable value without examination of the underlying contracts, invoices and other contemporaneous evidence. In the present case, however, the adjudicating authority has substantially accepted the audit computation based on the Balance Sheet without undertaking the detailed verification required by law.

15. We also find merit in the appellant's submission that the adjudicating authority travelled beyond the allegations contained in the Show Cause Notice. The notice principally proceeds on differences between the Balance Sheet, Income Tax records and ST-3 Returns, whereas the impugned Order-in-Original introduces additional reasoning without first establishing, through the charging provisions of the Finance Act, 1994, that the disputed receipts constituted consideration for taxable services. Audit objections or accounting discrepancies may justify investigation, but they

cannot substitute legal proof. The burden of establishing taxability always rests upon the Department and has not been discharged in the present case.

16. In view of the foregoing, the disputed portion of the demand is unsustainable. The position, however, is different in respect of Rs.8,96,535/-, which the adjudicating authority has recorded in paragraphs 22.1 and 29 of the Order-in-Original as an admitted liability. We accordingly sustain the service tax liability of Rs.8,96,535/-, with applicable interest under Section 75, subject to adjustment of any amount already paid. The balance disputed demand is set aside. Issue No. (i) is answered accordingly.

Issue No. (ii): Whether the extended period and the consequential interest, late fee and penalties are sustainable?

17. Having sustained only the admitted liability of Rs.8,96,535/-, we now consider limitation and the consequential liabilities. The Revenue alleges suppression on the basis of non-filing of returns, non-registration and incorrect availment of abatement. The appellant submits that the proceedings were based upon its own Balance Sheet, Income Tax records and ST-3 Returns and that no suppression or wilful misstatement was established.

18. The proviso to Section 73(1), as applicable during the relevant period, permits invocation of the extended period only where the non-payment or short-payment of service tax is by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of the statutory provisions with intent to evade payment of service tax. The burden of establishing these ingredients lies squarely upon the Department. In the present case, the Show Cause Notice itself records that the demand was worked out by comparing the appellant's Balance Sheet, Income Tax records and ST-3 Returns. No incriminating documents, parallel accounts or independent evidence of deliberate concealment have been brought on record. The proceedings are therefore founded entirely upon the appellant's own statutory records, which substantially negatives the allegation of suppression.

19. The appellant's contention also stands fortified by the earlier Final Order of this Tribunal in its own case, wherein, on substantially identical facts, it was held that the Department was already aware of the appellant's activities through earlier audits and proceedings and that invocation of the extended period was therefore unwarranted. The Revenue has attempted to distinguish the earlier decision by contending that the present proceedings involved a more

detailed audit and examination of work orders. We are unable to accept the submission. The foundation of both proceedings remains the same, namely scrutiny of the appellant's disclosed statutory records, and no material factual distinction has been demonstrated. Nor has the Revenue brought to our notice any contrary judgment of the Higher Judicial Forum. Judicial discipline therefore requires us to respectfully follow the earlier Final Order.

20. The legal position is equally well settled. In *Chemphar Drugs & Liniments v. Collector of Central Excise, 1989 (40) E.L.T. 276 (S.C.), Pushpam Pharmaceuticals Co. v. Collector of Central Excise, 1995 (78) E.L.T. 401 (S.C.)* and *Nizam Sugar Factory v. Commissioner of Central Excise, 2006 (197) E.L.T. 465 (S.C.),* the Hon'ble Supreme Court consistently held that the extended period can be invoked only where there is a positive act of fraud, wilful misstatement or deliberate suppression with intent to evade duty and that mere omission, accounting discrepancy or difference in interpretation is insufficient. Applying these principles, we find that the present dispute essentially relates to classification of services, reconciliation of receipts and admissibility of abatement, all arising from the appellant's disclosed statutory records. The Department has therefore

failed to establish the statutory ingredients necessary for invoking the proviso to Section 73(1).

21. The Revenue relied upon paragraph 3.7 of CBEC Circular No.1053/02/2017-CX dated 10.03.2017, *Uniworth International Ltd. v. Commissioner of Central Excise, Nagpur, 2023 (385) E.L.T. 332 (S.C.), Uniworth International v. Commissioner of Central Excise, 2009 (244) E.L.T. 401 (Tri.-Del.)* and the judgment of the Hon'ble Kerala High Court in South India Bank Ltd. These decisions are distinguishable. The Circular merely states that a subsequent notice invoking the extended period is not automatically barred and does not dispense with the statutory requirement of establishing suppression with intent to evade tax. Uniworth International Ltd. referred to proved fraudulent misdeclaration and valuation of DTA clearances by a 100% EOU, while South India Bank Ltd. concerned with the maintainability of a writ petition against a Show Cause Notice. None of these decisions involved a demand founded merely on differences between Balance Sheet and ST-3 figures or dispensed with the requirement of independently establishing suppression. They therefore do not advance the Revenue's case.

22. As regards the consequences, interest under Section 75 is payable on the admitted service tax liability of

Rs.8,96,535/-, subject to adjustment of any amount already discharged.

23. Regarding, the penalty under Section 78, the disputed demand was substantially based on the appellant's Balance Sheet, Income Tax records and ST-3 Returns, and the larger demand has failed for want of proper establishment of the taxable service and taxable value. The admitted liability of Rs.8,96,535/- and the delay in filing returns do not, by themselves, establish fraud, wilful misstatement or suppression with intent to evade service tax. The penalty under Section 78 is therefore set aside.

24. In the result, the impugned Order-in-Original No. 32/2016 (C)(ST) dated 04.07.2016 is modified. The service tax liability of Rs.8,96,535/-, being the amount recorded as admitted, is sustained with applicable interest under Section 75, subject to adjustment of amounts already paid. The balance disputed service tax demand is set aside. Similarly, the penalty under Section 78 is set aside. Thus, the appeal is partly allowed in the above terms.

(Order pronounced in open court on 07.09.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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