

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH, COURT NO. 3**

**SERVICE TAX APPEAL NO. 55575 OF 2023**

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-095-23-24 dated 15-05-2023 passed by the Commissioner(Appeals) CGST, Customs & Central Excise, Raipur]

**Ajitabh Mishra**

H. NO. 13, SBI Colony, Main Road  
Sunder Nagar, Raipur (C.G.)

**....APPELLANT**

Vs.

**Commissioner of Central Excise &  
CGST, Raipur**

GST Bhawan, Tikrapara, Raipur (C.G.)

**.....RESPONDENT**

**Appearance:**

Shri Varun Gaba, Advocate for the appellant

Shri Vishwa Jeet Saharan, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**Date of Hearing :16.05.2025**

**Date of Decision:30.05.2025**

**Final order No. 50805/2025**

**BINU TAMTA:**

1. Challenge in the present appeal is to Order-in-Appeal No. RPR-EXCUS-000-APP-095-23-24 dated 15.05.2023, whereby the Commissioner (Appeals) confirmed the demand of service tax.

2. Briefly stated, the appellant is a civil contractor and was engaged in the activity of construction of residential buildings,

primarily for individuals and acquaintances, who got the houses built for their own use as residence. During the relevant period, the appellant also carried out construction activity for Samudhayik Bhavan for Rajput Niswarth Seva Sangh. On the basis of information gathered from Income Tax Department, it was noticed that an amount of Rs.1,32,60,229 was shown as receipts towards provision of services during the period 2013–2014. On that basis, it appeared that the appellant was providing taxable services, but they have short paid the due service tax leviable thereon. Show cause notice dated 12.10.2018 was issued to the appellant proposing demand of service tax of Rs.16,38,964 along with interest and penalty under the provisions of the Finance Act, 1994. On adjudication, the demand was confirmed and by the impugned order, the appeal filed by the appellant was rejected. Hence, the present appeal has been filed before this Tribunal.

3. Heard Shri Varun Gaba, learned counsel for the appellant and Shri Vishwa Jeet Saharan, the Authorised Representative for the Revenue.

4. On merits, the learned counsel has raised the contention that the residential construction work other than those pertaining to Rajput Nisvarth Seva Sangh is exempted from service tax in view of Entry Number 14(b) of Notification No. 25/2012–ST dated 20.06.2012, which reads as under:-

“14.Services by way of construction, erection, commissioning, or installation of original works pertaining to;

(b) a single residential unit otherwise than as a part of a residential complex.”

5. The learned counsel has also relied on the definition of “single residential unit” and “residential complex” as defined in Section 2(ze) 2(zc) of the notification. The appellant has also produced the affidavits of the parties for whom he had carried out the construction work. In respect of Samudhayak Bhavan for Rajput Nisvarth Seva Sangh, he submitted that it is of charitable nature as the land for the same was allotted to them by Chhattisgarh Government and fund was allotted by the Member of Parliament by “Sansad Nidhi”, MLA by “Vidhayak Nidhi” and Chief Minister of Chattisgarh by “Sweksha Anudan” and hence no service tax is payable thereon. The appellant has also raised several other issues like the show cause notice being vague, benefit of cum-duty tax, valuation, and penalty etc. The learned Counsel has also challenged the invocation of the extended period of limitation on the ground that he bonafide believed that the activities carried out by him are not exigible to service tax.

6. The learned Departmental Representative contested the appeal by reiterating the findings of the Authorities below. Referring to the decision of the Supreme Court in the case of **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company** <sup>1</sup>, he submitted that it is for the appellant to establish that he is eligible for the exemption which applies in respect of construction of single residential unit and is not part of a residential complex. In respect of Samudayik Bhavan, he submitted that the appellant has not provided

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<sup>1</sup> 2018(361) ELT 577 (SC)

the relevant documents in support of their contention that they are eligible for the exemption. The learned Authorised Representative has disputed the affidavits submitted by the appellant as there is discrepancy in the names and the amount. It is further submitted that the appellant had not disclosed the facts of receiving the amount for providing such taxable services to the department with an intent to evade payment of service tax and hence the extended period of limitation has been rightly invoked and the penalty under Section 78 of the Act is justifiable.

7. Before going into the merits of the case, it would be appropriate to consider the issue of limitation raised by the appellant. From the submissions of the appellant, I find that it is not a case of suppression of facts, fraud or collusion, which would justify the invocation of the extended period. The appellant has duly reflected the receipt of the said amount which they had received from their service receivers in the income tax returns and the balance sheet which is a public document and accessible to the Revenue Authority. In fact, the case has been made against the appellant on the basis of the records of the income tax returns. The learned Counsel for the appellant has relied on series of decisions by the Tribunal as under:

- a. **C.S.T., New Delhi Vs. Kamal Lalwani – 2017[49] S.T.R. 552 [Tri.-Del.]**
- b. **Shri Balaji Industrial Products Ltd. Vs. Commr. Of Cus. & C. Ex., Jaipur- 2019 [370] E.L.T.280[Tri.-Del.]**
- c. **Antares Services Pvt. Ltd. Vs. Commissioner of C. Ex., Chandigarh – 2024[388] E.L.T.200[Tri.-chan.]**
- d. **Balajee Machinery Vs. Commissioner of CGST & Excise, Patna-II-**

- e. **Maa Kalika Transport Pvt. Ltd. Vs. Commissioner of CGST & C.Ex., Rourkela. -2023[79] G.S.T.L. 263[Tri. Kolkata]**
- f. **Om Sai Professional Det. & Security Ser. P. Ltd. Vs. C.C.E., Guntur-2008(10) S.T.R.59[Tri.-Bang.]**

8. In **Central Sales Tax, New Delhi versus Kamal Lalwani (supra)**, it has been categorically observed that all the activities undertaken by the appellant were a part of the reflection made in the balance sheet and income tax returns in which case no suppression or malafide can be attributed to the assessee. Revenue has not been able to produce any evidence on record to show that tax, which, according to the Revenue was payable, was not being paid on account of any malafide. Hence the extended period would not be available to the Revenue. Similarly in **Shri Balaji Industrial Products Ltd (supra)** the Tribunal noticed that admittedly, the appellant was recording the entire activity in their balance sheet, which is a proper document and as per the settled law, it cannot be said that they suppressed anything with a malafide intention. Since there was confusion as to the liability of the tax, the Tribunal held that there can be a bonafide belief on the part of the assessee, especially even when the entire activities are being reflected in the books of accounts. Accordingly, the demand was maintained only for the normal period. Reiterating the decision in the case of **Balaji Machinery (supra)**, the Tribunal in the case of **Antares Services Private Limited (surpa)** held that where the demand is merely on the basis of data obtained from the Income Tax Department, it cannot be alleged that there was suppression, etc. on the part of the assessee. To justify the invocation of extended period, the settled principle of law is that once the declaration has been made

with the Income Tax Department, there cannot be any suppression of facts and, therefore, the extended period of limitation cannot be invoked. Applying the above principle to the instant case, I find that in view of the exemption provisions, the appellant was under a bonafide belief that the services provided are not taxable. This seems to be evident by the fact that in the balance sheet and the income tax returns filed by them, they have fully described the receipt of the amount towards the services received. At the relevant time, the normal period prescribed for issuing the show cause notice was 18 months, however the show cause notice dated 12.10.2018 was issued raising the demand for the period 2013–2014. The demand raised is, therefore, barred by limitation and in view of the discussion, above the extended period is not invocable. Hence, the entire demand is quashed on the ground of time bar.

9. Since the issue of limitation has been decided in favour of the appellant, it is not necessary for me to go through the contentions raised on merits by the appellant. The impugned order, is therefore set aside and the appeal is, accordingly, allowed.

[pronounced on 30<sup>th</sup> May, 2025.]

**(BINU TAMTA)**  
**MEMBER (JUDICIAL)**