

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

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 50245 of 2024

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-172-23-24 dated 05.10.2023 passed by the Commissioner (Appeals), CGST & Central Excise, Indore)

M/s Kirodiwal Associates

(Prop. Shri Dinesh Kumawat),
197, Shraddha Shree Nagar,
Indore

Appellant

Versus

**Commissioner, CGST & Central Excise,
Indore**

Manik Bagh Palace, Hqrs., Indore

Respondent

Appearance:

Present for the Appellant: Ms. Priyanka Goel, Advocate

Present for the Respondent: Shri Rohit Issar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

**Date of Hearing : 10/09/2025
Date of Decision : 06/11/2025**

Final Order No. 51678/2025

Dr. Rachna Gupta:

The present appeal is filed to assail the Order-in-Appeal No. 172/2023-24 dated 05.10.2023. The facts which culminated into the said order, succinctly, are as follows:

2. M/s Kirodiwal Associates¹ is engaged in providing taxable services and thus is registered with the Service Tax department. During the exercise carried by the department for unearthing of

1 the appellant herein

service tax evasion, verification and monitoring of third party data for the financial year 2015-16, as received from the Income Tax Department, it was observed that the value of gross receipt from service as shown by appellant in the Income Tax Return² for the financial year 2015-16 was Rs. 1,24,91,872/-. However, the gross value of service provided as was shown by the appellant in the ST-3 returns filed was Rs. 1,08,11,345/- Hence there was the difference of value of services received of an amount of Rs. 16,80,527/-. Appellant was called upon to explain the said difference vide letter dated 21.10.2022 with the subsequent reminders dated 27.11.2020 and 7.12.2020. But no response nor any document was received from the appellants. The service tax liability on the aforesaid amount of difference was calculated as Rs. 2,43,637/-. The aforesaid short paid service tax was proposed to be recovered along with the interest and the appropriate penalties vide the Show Cause Notice No. 15-165/2020-21 dated 17.12.2020. The proposal was initially confirmed vide Order-in-Original No. 36/2022-23 with the imposition of penalty of the equal amount of Rs. 2,43,637/- and an additional penalty of Rs. 637/- under Section 78 of Finance Act with additional penalty of Rs. 10,000/- under Section 77(1)(c) of the Finance Act, 1994. In an appeal against the said order, the order in original is upheld and Commissioner (Appeals) has dismissed the appeal vide the impugned order in appeal. Being aggrieved the appellant is before this Tribunal.

3. I have heard Ms. Priyanka Goel, learned counsel for the appellant and Shri Rohit Issar, learned Authorized Representative for Revenue.

4. Learned counsel for the appellant mentioned that the order under challenge is not sustainable as the demand has been confirmed based on third party data. The CBIC Circular No. 137/47/2020-ST dated 23.04.2021 is relied upon. Otherwise also 26AS is denied to be a statutory document. Learned counsel has relied upon the following decisions:

- (i) **Vatsal Resources Pvt. Ltd. Vs. CCE, Surat-1³;**
- (ii) **Shresth Leasing & Finance Ltd. Vs. CCE, Surat-1⁴;**
- (iii) **Quest Engineers & Consultant Pvt. Ltd. Vs. CCE, Allahabad⁵;**
- (iv) **Ganpati Mega Builders (i) Pvt. Ltd. Vs. CCE & ST⁶.**

5. Learned counsel further submitted that service tax has been computed while including the value of service tax itself. The differential value arrived at is merely an act of assumption. It is submitted that the difference arose due to accounting treatment and classification of receipt. The difference of value in ITR and ST-3 was purely for the reason that certain services rendered by the appellant were exempted services. The correct value whereof was disclosed in the accounts. The appellant was eligible to the benefit of Entry No. 14(b) of Notification No. 25/2012-ST dated 20.06.2012 vis-à-vis providing services by way of construction of original works relating to single residential unit. It is submitted that seen from

3 2023 (68) GSTL 279 (Tri.-Ahmd.)
4 2023 (68) GSTL 143 (Tri.-Ahmd.)
5 2022 (58) GSTL 345 (Tr.-All.)
6 2022 (58) GSTL 324 (Tri.-All.)

the said prospective, the appellant has discharged its proper service tax liability and there is no short payment of service tax.

5.1 Finally, it is submitted that the show cause notice was issued beyond the normal period of 30 months without any valid ground for invoking proviso to Section 73(1) of Finance Act, 1994. Allegations if suppressions are purely baseless. Show cause notice is, therefore, barred by time. Confirmation of any demand proposed under such show cause notice is liable to be set aside. Learned counsel has relied upon following decisions:

- (i) **Pappu Crane Services Vs. CCE⁷;**
- (ii) **ACE Creative Learning Pvt. Ltd. Vs. Commr. of CT, Bengaluru⁸;**
- (iii) **Balajee Machinery Vs. CCE, Patna⁹;**
- (iv) **Shahnaz Ayurvedics vs. CCE¹⁰.**

With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

6. While rebutting these submissions, learned Departmental Representative has foremost reiterated the findings arrived at in the adjudication orders of the department. It is submitted that despite enough opportunities were provided to the appellant to produce the relevant documents as that of contract, invoices etc to show their claim of exemption and the nature of services provided by them during the period of financial year 2015-16. But they did not provide any such document. The appellant apparently had not assessed the correct amount of service tax and failed to reflect the

7 ST Appeal No. 70707 of 2018-(DB)
 8 2021 (51) GSTL 393 (Tri.-Bang.)
 9 2022 (66) GSTL 440 (Tri.-Kolkata)
 10 2004 (173) ELY 337 (All.)

same properly in ST-3 returns. The non-disclosure of the fact is unearthed by the department at the time of audit. This is sufficient to hold that the appellant had willfully suppressed facts with intent to evade the payment of service tax. Learned Departmental Representative has relied upon the decision of this Tribunal vide Final Order No. 54537 dated 06.03.2024 (DB) (in the case titled as **Warsi Bulcon Vs. Principal Commissioner CCE & ST**)¹¹. With these submissions and impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

7. Having heard the rival contentions, I observe that the demand under challenge is with respect to short paid amount of service tax on the differential amount calculated by comparing the amount shown by the appellant in the Income Tax return filed before the Income Tax department with the amount shown in service tax returns filed before the service tax department. There is no denial to the fact that the service tax returns were regularly been filed by the appellants. The copy of such returns are also on record. Perusal thereof reveals that the nature of service is mentioned in the return as construction of residential complex service. Perusal also reveals that the appellant has declared about, its entitlement for benefit of exemption Notification No. 25/2012-ST of Serial No. 14(b). The said entry is with respect to exemption with respect to construction of single residential unit.

7.1 The value of taxable service and service tax payable has also been elaborately mentioned in part (b) of the ST-3 returns including the value charged against the export of service provided

11 (2024) 17 Centax 37 (Tri.-Del)

or to be provided. The net taxable value is also clearly mentioned therein. It was the duty of the department to scrutinize those service tax returns at the appropriate time. The show cause notice proposing the demand of short paid service tax of financial year 2015-16 was proposed on 17.12.2020. Since there is no apparent suppression of facts as observed above, the department is held to have wrongly invoked the extended period of limitation. It has been settled position of law that once return is filed, it is the responsibility of the officer to scrutinize the return and its prerogative to call for any documents or other evidence from the assessee and to make the best judgment assumption. This entire exercise has to be completed at the appropriate stage within reasonable time. In case of any shortcoming, the notice of recovery of service tax short paid or Cenvat credit wrongly availed has to be issued within the normal period provided under Section 73(1) of the Finance Act. If the officer fails to complete the scrutiny and to raise a demand within the normal period and the demand gets barred by limitation, the responsibility for that rest squarely on the officer who failed in his duty.

7.2 Neither the fact that the assessee operating self assessment procedure nor that it had failed to assess the tax liability correctly means that the assessee had committed a fraud or guilty or willfully mis-stated or suppressed any fact or violated any provision of the act or rules with intent to evade. If any of these factors are alleged they should be established in the show cause notice and in the order else the demand will not sustainable. I draw my support from the decision of this Tribunal in the case of **Indian**

Railway Catering And Tourism Corporation Ltd. Vs. CST-Delhi-I¹²

8. In the present appeal, as apparent from the show cause notice is that the assessee furnished its returns on time and with requisite disclosure. It was the officer who failed to scrutinize the returns in time. The decision of **Warsi Builcon** (supra) as relied upon by learned Departmental Representative is not applicable due to the above reasons. Finally, it is an admitted fact that the sole basis for the impugned demand is the difference in income shown in the Income Tax returns from the amount shown taxable in service tax Returns. The difference has duly been explained by the appellant. The department has not produced any evidence to show that the appellant was not entitled to exemption of Notification No. 25/2012. The demand solely based on comparison with Income Tax returns and form 26AS is not sustainable without proper enquiry and analysis as has been held by Hon'ble Supreme Court in the case of **Jai Prakash Industries Ltd. Vs. CCE, Chandigarh¹³**.

9. In the totality of entire above discussion, the confirmation of demand is held improper. The order under challenge is accordingly set aside. Consequent thereto, the appeal stands allowed.

(Pronounced in open Court on 06.11.2025)

(Dr. Rachna Gupta)
Member (Judicial)

RM

12 2025 (30) Centax 76 (Tri.-Del.)
13 2002 (146) ELT 481 (SC)