

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 3**

SERVICE TAX APPEAL NO. 51723 OF 2019

[Arising out of Order in Appeal No. 24/ST/DLH/2019 dated 26/04/2019 passed by the Commissioner (Appeals-I), Central Tax, GST & Central Excise, New Delhi]

**M/S EXOTICA HOUSING &
INFRASTRUCTURE PROJECTS PVT LTD**APPELLANT

228, Basement, Jagriti Enclave,
Anand Vihar, New Delhi-110092

Vs.

**COMMISSIONER OF CGST & CENTRAL
EXCISE-DELHI EAST**RESPONDENT

Office of Commissioner of CGST,
Customs and Central Excise,
Room No.134, C.R. Building,
I. P. Estate, East Delhi.

WITH

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Room No.134, C.R. Building,
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Vs.

**M/S EXOTICA HOUSING &
INFRASTRUCTURE PROJECTS PVT LTD**RESPONDENT

228, Basement, Jagriti Enclave,
Anand Vihar, New Delhi-110092

Appearance:

Shri R.S. Sharma, Advocate for the assessee/party
Shri Shashank Yadav, Authorised Representative for the department

CORAM:

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO'S.51788-51789/2025**DATE OF HEARING : 12/08/2025**
DATE OF DECISION : 24.11.2025**P.V. SUBBA RAO**

The Order dated 26.4.2019¹ passed by the Commissioner (Appeals)² partly allowing the appeal filed by M/s. Exotica Housing and Infrastructure Pvt. Ltd.³ and modifying the Order in Original dated 22.4.2016⁴ passed by the Additional Commissioner is assailed by Revenue in Service Tax Appeal No. 52065 of 2019 and by the assessee in Service tax Appeal No. 51723 of 2019.

2. The assessee was registered with the Service Tax department for providing taxable services viz., Construction services in respect of Commercial and Industrial Buildings and Civil Structures, Construction of Residential complex service and Works Contract Service. Receiving intelligence that the assessee had not paid service tax properly, the department launched an investigation and issued a Show Cause Notice dated 22.4. 2016⁵ demanding service tax of Rs. 1,47,50,811 with interest, proposing to deny CENVAT credit of Rs. 43,92,897/- with interest and to impose penalties. The proposal to demand Service Tax under the proviso to Section 73 (1) and deny CENVAT credit under Rule 14 of the CENVAT Credit Rules, 2004⁶ read with the proviso to Section 73 (1) were made by invoking extended period of limitation.

1 Impugned order
2 Commissioner
3 Assessee
4 OIO
5 SCN
6 CCR

3. The Additional Commissioner had, in his OIO, confirmed the proposals in the SCN. On appeal, the Commissioner passed the impugned order only upholding the denial of CENVAT credit of Rs. 16,06,960/- with interest and an equal amount as penalty and set aside the rest of the OIO.

4. Revenue's appeal is on the ground that the Commissioner (Appeals) erred in accepting and considering documents as evidence during the proceedings before him which had not been produced before the Additional Commissioner and such acceptance is a violation of Rule 5 of the Central Excise (Appeal) Rules, 2001.

5. The assessee's appeal is on the ground that the SCN was issued on 22.4.2016 covering the period October 2010 to March 2015 beyond the normal period of limitation and the ingredients to invoke extended period of limitation were not present in the case. The case of the assessee is that it was registered with the Service Tax department and had been filing returns regularly. Its records for the period 2010-11 to 2011-12 were earlier audited by the Audit Group. The demand was made on the basis of balance sheets which are public documents and therefore, all information was in public domain and the assessee did not suppress any facts.

6. We have heard learned counsel for the assessee and learned authorized representative for the Revenue and perused the records. We first proceed to examine if the extended period of limitation was correctly invoked in this case because if we find that the SCN was time-barred, it will not be necessary to

examine the merits of the case. The undisputed legal position is that extended period of limitation can be invoked under the proviso to section 73(1) to demand service tax or to recover CENVAT credit only if the non levy, non-payment or short levy or short payment of service tax (or wrong availment of CENVAT credit) is due to:

- a) Fraud; or
- b) collusion; or
- c) wilful mis-statement; or
- d) suppression of facts; or
- e) contravention of any provisions of the Act or Rules with an intent to evade.

7. The SCN invoked extended period alleging that the assessee had suppressed willingly and knowingly facts regarding taxable amount and their tax liability of service tax with intent to evade. The relevant portion of the SCN is reproduced below:

"18. Whereas, the said assessee had not paid service tax on the taxable services provided by them. Therefore, it appears that the party evaded the service tax liability in contravention of Sec. 66/66B, 66E, 67 and 68 of the Finance Act 1994 read with rule 4, 6 and 7 of the Service Tax Rules 1994 by suppressing willfully and knowingly the facts regarding taxable amount and their liability of the service tax with intent to evade service tax. Therefore, the service tax not paid/short paid, total amounting to Rs. 1,47,50,811/- (including cesses) in respect of 'Construction of Complex' and 'Goods Transport Agency' as worked out above appears recoverable under Sec. 73(1) of the Finance Act 1994 by invoking provision of extended period of 5 years of demand. Further the party during the period 2010-11 (Oct-March) to 2011-12 were not entitled to CENVAT credit and they are liable to pay/ reverse CENVAT of Rs. 43,92,897/- under Rule 4, 6 & 9 of Cenvat Credit Rules read with Sec. 73(1) of the Finance Act 1994 by invoking provision of extended period of 5 years of demand. Besides, the party also appears liable to pay interest in terms of sec. 75 of the Act ibid and penalty under section 76, 77 and 78 of the Act and penalty under section 15(3) and 15A of Cenvat Credit Rules, 2004 ibid."

8. A perusal of the SCN shows that the entire demand was based on the ST-3 Returns filed by the appellant and its balance sheets, details of service tax paid and other records. The SCN

could have been issued by the Range officer who received the ST-3 returns at the time of scrutiny examining these records within the normal period of limitation. If any tax has escaped assessment or any ineligible CENVAT credit taken was not recovered in time for the reason that the Range officer did not scrutinize the returns and issued SCN within time, the responsibility for that rests squarely at the doorstep of the officer. Inaction by the officer does not imply suppression by the assessee. In this case, it is also to be noted that the assessee's records were also audited before.

9. We, therefore, find that there was no justification for invoking extended period of limitation in the present case and therefore, the SCN was time-barred. Consequently, the OIO passed by the Additional Commissioner and the impugned order by the Commissioner partly upholding it cannot be sustained.

10. The impugned order is set aside and the assessee's appeal 51723 of 2019 is allowed and Revenue's appeal 52065 of 2019 is dismissed. The assessee will be entitled to consequential relief, if any.

[Order pronounced on 24th November, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)