CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51977 of 2024

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-155-24-25 dated 26.06.2024 passed by the Commissioner of Central GST & Central Excise (Appeals), Raipur]

M/s. Manisha Mukim **...Appellant**
House No.-55, Aishwarya Residency,
Telibandha, Raipur,
Chhattisgarh - 492001

VERSUS

Commissioner of Central Excise
and Service Tax, Raipur **...Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur, Chattisgarh - 492001

APPEARANCE:
Ms. Prerna Jain Kala, Advocate for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 06.01.2026
DATE OF DECISION: 06.01.2026

FINAL ORDER NO. 50055/2026

DR. RACHNA GUPTA

Present appeal is filed to assail the Order-in-Appeal bearing No.155-24-25 dated 25.06.2024. The facts in brief which culminated into the said order are as follows:

1.1 The department received an information from the Income Tax Department about the appellant earning/receiving an amount of Rs.46,65,922/- and an amount of Rs.15,600/- during the Financial Year 2013-14 and 2014-15. The appellant was called upon to submit documents to explain the said income. However, no reply was received. Accordingly, vide the Show Cause Notice bearing

No.31/2018 dated 15.10.2018 served upon the appellant presuming the aforesaid income to be an income against rendering taxable services, the service tax amounting to Rs.5,78,636/- for the aforementioned both the financial years was proposed to be recovered along with interest at the appropriate rate and the proportionate penalties. The said proposal was confirmed vide the Order-in-Original No.70/2021-22 dated 31.03.2022. The order was announced ex parte. The appeal against the said order has been rejected vide the impugned order. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms. Prerna Jain Kala, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has objected the adjudication submitting that the show cause notice is based on third party information and without any investigation on part of the service tax department. Since the third party information/income tax return cannot form the basis of proposing and confirming the demand of service tax, the order under challenge is liable to be set aside on this score itself.

3.1 The issuance of show cause notice is also objected on the ground that the show cause notice was not served at the correct address. Learned counsel mentioned that the income tax returns/Form 26 AS of the appellant is, admittedly, is the basis of the said show cause notice. The appellant has mentioned the correct address in the said Form 26 AS as 55, Aishwarya

Residency, Telibandha, Raipur, Chattisgarh but the show cause notice was served at the address Dhariwal Bada, Halwal Lane, Sadar Bazaar, Raipur. It is alleged that the show cause notice was intentionally sent at the wrong address which again is the reason that no sanctity can be attached to suchshow cause notice. The order of adjudication based on such show cause notice is liable to be set aside on this ground. Learned counsel has relied upon the decision of this Tribunal in the case of **M.Pandidurai Vs. Commr. of GST & Central Excise reported as SCC Online CESTAT 3464.**

3.2 The show cause notice is also objected as being barred by time as in the Year 2018, the demand for the Financial Year 2013-14 and 2014-15 has been proposed. There is no evidence produced by the department to prove any positive act on part of the appellant which may amount to suppression or mis-representation of fact. With these submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that the Order-in-Original in this case was passed on 31.03.2022. The appeal against the said order was filed before Commissioner (Appeals) in March 2023. Commissioner (Appeals) has given due consideration to the fact that the show cause notice was not served upon the appellant properly. The appellant also could not appear before the original adjudicating authority and the Order-in-Original came to their notice only on 30.03.2023. Accepting the said date that the appeal filed before him on 23.05.2023 was acknowledged to be well within

time and the impugned order/Order-in-Appeal was passed. It is submitted that those observations are sufficient to counter the submissions made by the appellant for challenging the veracity of impugned show cause notice.

4.1 While submitting on merits, learned Departmental Representative mentioned that only document available with the department was income tax return of the appellant/Form 26 AS. The income earned during impugned financial years was mentioned to be the income received in terms of Section 194H which is the income from commission or brokerage. It is submitted that when the Authorized Representative of the appellant appeared before Commissioner (Appeals) at the time of personal hearing, it was duly acknowledged that the appellant is providing commission agent services to various banks. The said income is the income from a taxable activity but the appellant is not registered under service tax department nor was filing any service tax returns. It is impressed upon that this fact in the light of the appellant’s own admission not only supports the confirmation of demand under the impugned order, in addition, it supports the concealment/suppression of relevant facts on part of the appellant thereby justifying the invocation of extended period of limitation. With these submissions and impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

5. Having heard the rival contentions, perusing the entire records. It is observed and held as follows:

5.1 Apparently and admittedly the impugned show cause notice is based upon the information received from the income tax department in the form of income tax return/Form 26 AS. No doubt the demand of service tax cannot be confirmed based on third party data/information. However, from the said information/the document Form 26 AS, it is clear that the appellant was declaring having an income that too from commission brokerage. This fact in the documentary evidence is held sufficient evidence with the department to proceed with the impugned show cause notice.

5.2 Further, I observe that at the first available opportunity of representation given to the appellant i.e. before Commissioner (Appeals), the appellant has readily accepted itself to be a commission agent for banks. In the light of the Indian Evidence Law admissions need no further proof. This observation is again sufficient for me to not to consider the submissions made on part of the appellant to challenge the veracity of the impugned show cause notice.

5.3 The activity of a commission agent is nowhere mentioned in Section 66D of the Finance Act/the negative list introduced w.e.f. 01.07.2012. The period in question is the Financial Year 2013-14 and 2014-15 i.e. post negative list. This observation is sufficient for me to hold that the appellant was earning income against rendering taxable service. The appellant was required to be registered with the service tax department. Apparently and admittedly, the appellant is not registered nor was filing any service tax returns. Keeping in view the appellant’s admission for rendering the taxable activity, non-declaration before the service tax department is held to be an act of suppression of facts from the department. I do not find any infirmity when the department issued the show cause notice while invoking the extended period of limitation.

6. In the light of entire above observations, the findings arrived at by Commissioner (Appeals) in Para 9, 10 and 11 of the impugned order, I have no reason to disagree. The findings of the impugned order are accordingly upheld even with respect to imposition of penalty and the demand of interest. The authorities relied upon by the appellant are found not applicable to the facts and circumstances perculiar to the present case. In totality of discussion, the order under challenge is upheld and the appeal is hereby dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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