

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

SERVICE TAX APPEAL NO. 51402 OF 2017

[Arising out of Order-in-Original No.ALW-EXCUS-000-COM-OO4-17-18 dated 05.05.2017 passed by the Commissioner, Central Excise & Service Tax, Alwar]

M/s. PNG Detective & Security Pvt. Ltd.

Appellant

102, 1st Floor, Opp. Housing Board,
Ganpati Mall, Bhiwadi, Rajasthan

Vs.

**Commissioner, Central Excise & Service Tax,
Alwar**

Respondent

A Block Surya Nagar,
Alwar-301001

Appearance:

Present for the Appellant : Shri Alok Yadav, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorised Representative

CORAM:

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

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing : 19.11.2025

Date of Decision: 02.02.2026

Final Order No.50203/2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s. PNG Detective & Security Pvt. Ltd.¹ against the Order-in-Original No. ALW-EXCUS-000-COM-OO4-17-18 dated 05.05.2017 passed by the Commissioner,

1. the Appellant

Central Excise & Service Tax, Alwar wherein the demand of service tax amounting to Rs.1,97,00,328/- under section 73 (2) was confirmed along with interest and equivalent penalty. Penalty of Rs.10,000/- under section 77 of the Finance Act, 1994 was also imposed.

2. The brief facts are that the appellant was registered for providing taxable service under the category of "security agency services". The department, based on intelligence, alleged that the appellant had not paid service tax on full value of the taxable services. It was also alleged that the appellant was also providing "Manpower Supply Agency" service. On completion of investigation, Show Cause Notice was issued and the matter was adjudicated vide the order dated 26.11.2013. The appellant filed an appeal before the CESTAT and the Tribunal vide Final order no. ST/A/52507/2016-CU(DB) dated 19.07.2016 remanded the matter back to the Adjudicating Authority. The Adjudicating authority has passed the impugned order dated 05.05.2017 confirming the demand. The present appeal is against the present order.

3. Learned counsel for the appellant submitted that the appellant provided services to a wide array of people/ segment in the society. Apart from security services, they also undertook repair & maintenance work for which consideration was paid. The impugned order has presumed that the receipts were for the consideration of services, without investigating from the concerned banks the source of such deposits and whether the said amounts were in respect of the services provided by the appellant. Learned Counsel contended that

the bank credit/deposit included re-deposit of the unspent cash withdrawn, bounced cheques, loans, fund transfers which were not receipts or payments or services. He further submitted that the credit entry in bank accounts also included the amount for goods sold, salary, bonus, ESI contribution, EPF etc. Learned counsel submitted that only service charges, charged in respective bills were liable to service tax and the remaining amount, which was more than 90%, on account of salary to guards, bonus, leave benefits, EPF cannot form part of taxable value.

3.1 Learned counsel also submitted that the impugned order has failed to appreciate the detailed submissions dated 06.04.2017 made pursuant to the Tribunal's remand order. No finding has been given specifically negating those submissions. The impugned order does not deal with any of the decisions relied upon by the appellant at the time of hearing. Consequently, the impugned order was non-speaking and the same had been passed without application of mind and deserves to be set aside. He further stated that the finding in the impugned order on basis of credit shown in the bank account and receipt shown under Income Tax Returns is wrong in as much the same are two different things and did not tally with each other. He contended that even if it is assumed that the said amounts were receipts of the consideration for services provided, the amount would have to be considered inclusive of service tax i.e. cum tax value.

3.2 Learned counsel submitted that the entire demand was barred by limitation in as much the appellant were registered with the

department and had regularly filed its returns. No objections were ever raised by the department on these returns. The documents were audited by the department and entire activity was within the knowledge of the department.

4. Learned authorized representative submitted that the intention of the appellant was apparent from the suppression of value of taxable service in the ST-3 returns throughout the material period. Learned authorized representative submitted that Mr. Anil Yadav, Managing Director of the company had deliberately avoided appearance before the officers to explain, refute or admit the tax details. Learned authorized representative contended that Mr. Anil Yadav did not disclose his bank accounts in which he was receiving the proceeds of services provided by him till it was unearthed by the department. Further, Mr. Anil Yadav in his statement had mentioned that their company was engaged in providing security services to various companies and sometimes they undertook the repair & maintenance work. He had further stated that the payments were received in cash and cheques and bills were generated manually & computerized as well. However, Mr. Anil Yadav mentioned that all records and 2 computers had been destroyed in a fire incidence occurred in June.

4.1 Learned authorized representative further contended that Mr. Anil Yadav had stated that the total amount of Rs.17,19,24,488/- was shown to be received against the services provided during the said period on which service tax of Rs.1,71,27,040/- was payable and out of which Rs.38,43,515/- was already paid by his company. He had

further accepted the correctness of the manner of calculation of Annexure-A and had also accepted that the total amount of service tax amounting to Rs.1,32,83,525/- was payable as per calculation of Annexure-A shown to him. Learned authorized representative contended that the appellant was also receiving payments against supply of labour which is classifiable under "Manpower Supply Agency service" and is taxable under section 65(68) read with section 65 (105) (k) of the Finance Act, 1994, but have not added this service in their existing registration. As regards the appellant's argument that department had not enquired from the concerned banks, learned authorized representative stated that it was a known fact that the banks never knows the source or on what account the said amount has been received by the depositor. The contention of the appellant that the bank credit includes re-deposit, it was noted that the appellant had never pointed out at any stage that the deposit also includes re-deposit, loan transfer, cheque bounce etc and that the impugned demand of SCN was incorrect. The said contention made now was nothing but an afterthought. The said contention was also not tenable in view of the confession made by the MD of the company. As per decision of the Hon'ble CESTAT, Mumbai in the case of **Bombay Intelligence Security (I) Ltd. Vs. Commissioner of service tax, Mumbai-II²**, there remains no doubt about inclusion of elements such as salary, ESI etc., in the value of taxable service for payment of service tax. The appellant could not explain that the gross value was

2. 2015 (038) STR 588 (Tri. Mum)

inclusive of service tax. Hence, learned authorized representative prayed that the appeal may be dismissed.

5. We have heard the learned counsel for the appellant and the learned authorized representative for the Department and perused the records.

6. The impugned order before us is consequent to a remand order of the Tribunal dated 19.09.2016 which is reproduced below:

"4. After having considered the rival submissions and considering the peculiar facts and circumstances of the case, it appears that the assessee did not cooperate with the lower authorities as well as before the Tribunal: But fact remains that the various materials collected by the Department were supplied on the same date of impugned order and the assessee was unable to file the response / rebuttal to that material. Hence, the Original Authority has passed the order ex parte.

5. In the interest of justice and by invoking the doctrine of audi alteram partem, we are of the view that the assessee should get fair chance to present his case. Hence, in the interest of justice, we set aside the order dated 26.11.2013 and remand the matter back to the Original Authority....."

7. Consequent to the aforesaid order the Commissioner undertook fresh adjudication. The impugned order has observed that the appellant had failed to cooperate initially with the investigations. Thereafter, Shri Anil Yadav, tendered his statement on 15.12.2021. Based on the said statement, the impugned order has noted the following:

"14.3.....Shri Anil Yadav accepted the correctness of the, said Annexure - 'A' and appended his dated signature in token of having seen it. He further stated that as per Annexure - 'A', total amount of Rs.17,19,24,488/- was shown to be received against the service provided during the said period on which Service Tax of Rs.1,71,27,040/- was payable and out of which Rs.38,43,515/- was already paid by his company. Further, he accepted the

correctness of the manner of calculation of Annexure - 'A'. He agreed that as per the Annexure - 'A' total amount of Service Tax amounting to Rs.1,32,83,525/- was payable. On being asked about the deposition of the due Service Tax, he replied that all the records of their company was destroyed in the fire incidence therefore the facts in the matter would be apprised after enquiry from their clients and after examination of their Bank statements. On being asked, he stated that the information in the matter would be made available within 10-15 days and the exact amount of due Service Tax would be deposited. **He further stated that the registration of his company was temporary and address was different from the given address. On being asked, he stated that they were not aware that it was compulsory to obtain permanent Service Tax registration number and changed address to be informed to the department. He gave assurance to take PAN based Registration with application for change of address."**

7.1 We note that the appellant had continued to provide taxable services and had not applied for permanent service tax registration, as mandated in the law. This is a clear violation. Further, it has been submitted before us that the computation of the demand is incorrect. Learned Counsel submitted that the demand has been made based on presumptions and not on the basis of any evidence. However, in this context, we note that the documents based on which the demand has been raised were retrieved from the resumed CPU on 15.12.2011 in the presence of Shri Anil Yadav and two independent witnesses. We are of the view that these documents are admissible as evidence and can be relied upon for the computation of the demand, as these have been retrieved in the presence of the appellant's Director, who has appended his signature as well. A panchnama has also been drawn in presence of 2 independent witnesses. In this context, we rely on the

Supreme Court judgment dated 20.08.2025 in ADG, Adjudication, DGRI vs Suresh Kumar & Co Impex and other in Civil Appeal Nos.11339-11342 of 2018 wherein the Court held as follows: -

"43. Keeping the aforesaid in mind, we are of the view and, more particularly, **considering the Record of Proceedings duly signed by the respondents, including the various statements of the respondents recorded under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962.** When we say due compliance, the same should not mean that a particular certificate stricto sensu in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C(4) of the Act, 1962."

(emphasis supplied)

7.2 In the instant case, the documents were retrieved in the presence of the appellant and two independent Panchas. Further, it has been admitted that these 16 pages were shown to Shri Anil Yadav at the time of recording his statements on 15.12.2011. He has appended his dated signature on these pages as his acceptance. Hence, the retrieved documents are held to be admissible.

7.3 Learned Counsel has further submitted that the department has relied on Bank statements which recorded deposits which comprised re-deposit of the unspent cash withdrawn, bounced cheques, loans, fund transfers which were not receipts or payments or services. The appellant has not submitted any reconciliation chart before us to substantiate their claims. However, we note that the Department had contacted some of the service recipients as listed in the retrieved computer documents based in Bhiwadi. These service recipients supplied the payments details along with copies of ledgers in respect

of the appellant. The impugned order has noted that on scrutiny of the copies of ledger provided by M/s Kamdhenu Ispat Limited (Paint Division), E-528 & 529 A, RIICO Industrial Area, Chopanki, District - Alwar, it was found that the appellant was also receiving payment against supply of labour. The supply of labour was duly classifiable under the category of Manpower Supply Agency Service', but the appellant had failed to add this service in the existing registration and had also not paid any service. This again illustrates violation of law.

7.4 We also note that the Assistant Commissioner, Income Tax, Circle-2, Alwar vide his office letter No.1576 dated 30.03.2012 supplied copies of the Income Tax Returns for the Financial Years 2006-07 to 2010-11. On the basis of these Returns, the following table containing the **details of Sales / Gross receipts of business or profession and opening & closing debtors was prepared by the Department:**

Details of Gross & Net receipts of M/s. PNG Detective & Security Pvt. Ltd., Bhiwadi as per Income Tax Returns supplied by the Income Tax Department, Alwar					
Year	Opening Debtors	Sale/Gross Receipts	Total	Closing Debtors	Net Sale/ Receipts (5-6)
1	2	3	4	5	6
2006-07	-	14518984	14518984	3036769	-
2007-08	3036769	30735969	33772738	7828479	25944259
2008-09	7828479	42972622	50801101	9923074	40878027
2009-10	9923074	45200435	55123509	10U1146	45012363
2010-11	10111146	61739658	71850804	9210953	62639851

7.4.1 It is pertinent to note that receipts have been calculated as per the Income Tax records, which reflect income from the appellant's business.

7.4.2 However, we note that the learned Counsel has not submitted any documentary evidence to negate these findings, whereas the

Department has relied on the information sent by the Income Tax department and other documents. This information cannot be disputed by the appellant as this was submitted by him, while filing the relevant returns with the Income Tax department. We also note that the Department has arrived at the demand, based on the ledger entries of the appellant wherein payments received in cash were recorded, as per the table below:-

Sr. No.	Name of the Unit	2006-07 (01.10.06 to 31.03.07)	2007-08	2008-09	2009-10	2010-11	2011-12 (01.04.11 to 30.09.11)
1	M/s. Ujala Pumps Pvt. Ltd., E-372, Indl. Area, Bhiwadi	-	-	-	--	200000	-
2	Jai Surgicals Ltd., SP-146 (L) Industrial Area, Bhiwadi	32513	-	-	-	-	-
3	Arte Form Design Pvt. Ltd., F-66, Indl. Area, Neemrana	-	-	-	-	-	17721
4	Mec Bearing Pvt. Ltd., G-949, Industrial Area, Bhiwadi	-	-	41687	57841	59872	-
5	Powerlite, F-1231, Industrial Area, Ghatal, Bhiwadi	-	-	-	-	4692	-
6	Shree Umesh Gupta Entp. Ltd., E-799, Industrial Area, Bhiwadi	-	-	-	-	10877	-
As per resumed Register (Printed Navy Blue Hans IMAGE Note Book) (Pages 1 to 217) (RUD-11)							
7	Dipin Chemical	-	-	-	-	8000	-
8	S.R. Steels	-	-	-	-	-	16440
9	Everest Battery	-	-	-	-	20270	15000
10	Sonutron	-	-	-	-	17600	25500
Total >>>>>>>		32513	0.00			321311	74661
Grand Total >>>>>>>							528013

7.5 We note that there are no specific submissions of the appellant to negate the above figures. We also note that the impugned order has, in a very detailed manner, elaborated the manner of calculation of the taxable value of the services provided by the appellant, based on the Bank statements, cash payments received account of providing taxable service, and the amount of TDS as per the Income Tax Returns. We also note that the said annexure was accepted by Shri

Anil Yadav, Managing Director. He has further stated in his statement that total amount of Rs.17,19,24,488/- was shown to be received against the service provided during the said period on which Service Tax of Rs.1,71,27,040/- was payable and out of which Rs.38,43,515/- was already paid by his company. Further, he accepted the correctness of the manner of calculation of Annexure - 'A' to the Show Cause Notice. Consequently, we are unable to accept the contention of the learned counsel that the computation of demand is incorrect.

7.6 Learned Counsel has submitted that the Bank credit / deposit entries also include re-deposit of the unspent cash withdrawn, cheque bounce, loans, fund transfers which are not receipts. Learned Counsel has also submitted that the Department has relied on the Bank Statements and not conducted any further investigation. We are unable to accept this contention. It is settled law that Bank statements are critical documents but need to be substantiated. The Department has prepared the table based on corroborated evidence whereas the appellant has not led any evidence to substantiate his claim. We find that this contention is not tenable as the statement of the Managing Director of the noticee recorded under Section 14 of Central Excise Act, 1944 as enumerated in the previous paragraph. We find that it is a settled legal principle that 'what is admitted need not be proved', as enshrined in Section 58 of the Indian Evidence Act. We draw support from the Supreme Court's judgment dated 15.4 2009 in Seth Ramdayal Jat vs Laxmi Prasad in Civil Appeal No. 2543 of 2009 wherein the Court held as follows:

"19. What, however, would be admissible is the admission made by a party in a previous proceeding. The admission of the appellant was recorded in writing. While he was deposing in the suit, he was confronted with the question as to whether he had admitted his guilt and pleaded guilty of the charges framed. He did so. Having, thus, accepted that he had made an admission in the criminal case, the same was admissible in evidence. He could have resiled therefrom or explained away his admission. He offered an explanation that he was wrongly advised by the counsel to do so. The said explanation was not accepted by the trial court. It was considered to be an afterthought. His admission in the civil proceeding was admissible in evidence.

"58 - Facts admitted need not be proved No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

In view of the aforementioned provision, there cannot be any doubt or dispute that a thing admitted need not be proved. [See Vice-Chairman, Kendriya Vidyalaya Sangathan and Another v. Girdharilal Yadav (2004) 6 SCC 325, L.K. Verma v. HMT Ltd. and Another (2006) 2 SCC 269, Avtar Singh and Others v. Gurdial Singh and Others (2006) 12 SCC 552, Gannmani Anasuya and Others v. Parvatini Amarendra Chowdhary and Others (2007) 10 SCC 296]"

7.7 In the instant case, we note that there is nothing on record to negate the admission made by the Managing Director of the appellant. Further, it is also on record that the said statement has not been retracted. Consequently, we are unable to accept learned counsel's contentions in this regard.

8. As regards the plea for cum tax benefit, we are in agreement that the benefit is to be extended to the appellant. In this context, we note that the Tribunal in **Bhagwat Security Services vs. Commissioner, Meerut**³ held that if service tax was not charged

3. 2006 (3) STR 763 (Tri.Del.)

separately from the client, then the gross amount would be treated as inclusive of service tax. Accordingly, we remand this issue to the original authority for the limited purpose of re-calculation of after duty extending the cum tax benefit, to the appellant.

9. As regards the submissions on the invocation of extended period, of suppression of facts, we note that the appellant had failed to get themselves registered under 'manpower recruitment and supply agency service', and had failed to file service tax returns in the manner and frequency as required under the Service Tax Rules, 1994. Hence, the invocation of the extended period is upheld. In this context, we draw support from this Tribunal's decision in the case of National Refrigeration vs. Commissioner of Central Excise, Jaipur I, vide Final Order No.50484/2023 dated 13.04.2023, wherein the Tribunal held as follows:

"10. The intention to evade payment of service tax and suppression of facts needs to be determined based on the evidence available on records. As long as the assessee is registered and continues to file returns as required and supplies information sought by the officers, nothing more is required from the assessee. The assessee is required to self assess its service tax, and the officer is required to carry out the scrutiny of the returns if filed or otherwise make best judgement assessment. The appellant had taken service tax registration and admittedly it had not filed any ST-3 returns. Even if the appellant was under the impression that it was not required to file returns or pay tax, there can be no justification whatsoever for the appellant to not reply to or provide information which is sought by the officers. Since the appellant had not supplied the information despite repeated reminders from the Range Superintendent, the Assistant Commissioner did what was best possible under the circumstances. He obtained details of the amounts received by the appellant from the Income Tax office and made an assessment. Under these circumstances, we find that the lower authorities were correct in concluding that the appellant had intention to evade payment of service tax and had suppressed providing the information. For the same reason, we find no reason to interfere with the penalties imposed as well.

11. In view of the above, the appeal is dismissed and the Impugned order is upheld"

10. In view of the above discussions, the following order is passed:

- (i) The demand as computed is upheld.
- (ii) Benefits of cum-tax benefit to be extended to the appellant.
- (iii) Invocation of extended period is upheld.
- (iv) The penalty under Section 73 to be recalculated as per the demand of service tax reworked as indicated in (ii) above.
- (v) Penalty under Section 77 is upheld.

11. The impugned order is upheld as indicated above and the appeal is allowed to the extent as indicated above.

(Order pronounced on **02.02.2026**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana