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

Service Tax Appeal No. 50180 of 2021

[Arising out of Order-in-Appeal No.271(CRM)ST/JDR/2020 dated 20.08.2020 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. Suwalka & Suwalka Properties & Builders Pvt. Ltd., **Appellant**
Near Petrol Pump, Bundi Road,
Kunhadi, Kota, Rajasthan-324 008.

VERSUS

Commissioner, **Respondent**
Office of the Commissioner,
Central Goods & Service Tax Commissionerate,
142-B, Hiran Magri, Sector-11,
Udaipur.

APPEARANCE:

Shri Rahul Lakhwani, Advocate and Ms. Diksha Khandal, Chartered Accountant for the appellant.
Shri Rajeev Kapoor, Authorised Representative for the respondent.

CORAM:

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

FINAL ORDER NO. 50341/2026

DATE OF HEARING/DECISION:27.02.2026

BINU TAMTA:

1. M/s. Suwalka & Suwalka Properties & Builders Pvt. Ltd. [1] is engaged in providing services for 'Construction of Residential Complex Services', 'Construction Services' other than 'Residential Complex

[1] the appellant

Service', 'Work Contract Services', 'Manpower Recruitment/Supply Services' and 'GTA Services'. On the basis of the audit conducted, it was noticed that the appellant had provided the services relating to 'Works Contract' and received the gross amount of Rs.11,15,49,530/-, however, they had shown the said amount as receipt against 'Sale of Services' in their financial statement for the year 2015-16. The appellant, therefore, had not paid service tax amounting to Rs.64,69,873/- and thereby contravened the provisions of the Finance Act, 1994. Show cause notice dated 31.10.2018 was issued to the appellant, which has been confirmed both by the order-in-original dated 28.05.2019 and the impugned order-in-appeal dated 20.08.2020. Being aggrieved, the appellant has preferred the instant appeal.

2. We have heard both the sides and perused the records of the case.

3. From the order of the Adjudicating Authority, we find that the appellant had neither submitted any defence reply to the show cause notice nor appeared for personal hearings despite several opportunities being granted and, therefore, the Adjudicating Authority decided the matter on merits *ex parte*. The relevant para of the order-in-original, which is self-explanatory is set-out below:-

> "**13.** Personal Hearing in the matter was fixed for 13.02.2019. But, no one appeared for personal hearing on the scheduled date. Therefore, another personal hearing was fixed for 27.02.2019, but the assessee vide letter dated 11.03.2019 submitted through their authorized person, Sh. Keshav Maloo, requested to adjourn the personal hearing for 3 weeks. Accordingly, third date of personal hearing was fixed for 27.03.2019. But, the service provider again vide letter dated 27.03.2019

> (received through e-mail from e-mail ID "suwalkaandsuwalka@gmail.com" on Wed, 27 Mar 2019 18:10:57 and through postal copy on 1.04.2019) requested to adjourn the personal hearing for another 10 days. To provide one more opportunity to the service provider to defend their case an another date of personal hearing was fixed for 24.04.2019. The letter of përsonal hearing was delivered by registered post as well as also through jurisdictional Assistant commissioner and a copy of the same was also sent through e-mail on the e-mail ID "suwalkaandsuwalka@gmail.com". On the online tracking portal of the Department of Post, the letter of the personal hearing is also shown delivered. But neither the service provider nor their any representative turned up for the personal hearing on the scheduled date. Even no written reply to the SCN has been filed by the service provider. As the sufficient opportunities to represent their case have already been afforded to the service provider to follow the principles of natural justice, but the service provider does not availed the benefit of the opportunities provided to him. Therefore, I decide the matter ex-parte on merit."

4. In the appeal filed, the Commissioner (Appeals) again observed that the appellant neither submitted any reply nor appeared for personal hearings and, therefore the issue was decided on the basis of the facts available on record. Para 5.3 of the order-in-appeal observed as under:-

> **"5.3** I observed that the appellant has also not putforth any arguments or evidences before me to counter the above finding of the Adjudicating Authority, therefore, I find no reason to interfere in the order of the adjudicating authority confirming the demand of service tax."

5. From the aforesaid orders of the authorities below, it is evident that the appellant had not argued the matter on merits and did not submit the requisite documents in that regard. Considering that the claim of the appellant is that the gross amount received by them was towards 'Sale of Service' whereas according to the Department, the said amount was towards the consideration for rendering the services

relating to 'Works Contract' and the appellant is required to substantiate his claim before the lower authorities. Keeping in view the interest of justice, we are of the view that the present case needs to be remanded back to the Adjudicating Authority for *de novo* adjudication. The appellant is directed to diligently attend the hearings and submit the requisite documents in support of their claim. The Adjudicating Authority may decide the issue on the basis thereof within reasonable time. It is made clear that if the appellant chooses not to provide necessary assistance, no further opportunity shall be granted.

6. In view of the peculiar facts and circumstances of the case, we set aside the impugned order and remand the matter back to the Adjudicating Authority. The appeal is, allowed by way of remand.

[Operative portion of the order already pronounced in the open court]

(BINU TAMTA)
Member (Judicial)

(HEMAMBIKA R. PRIYA)
Member (Technical)

Ckp.