

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

PRINCIPAL BENCH –COURT NO. 3

Service Tax Appeal No. 50900 of 2019

(Arising out of Order-in-Appeal No.25 (SM)ST/JPR/2019 dated 30.01.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur (Rajasthan)

M/S BEST CAPITAL SERVICES LIMITED

....APPELLANT

701,7th Floor, Ludaid Tower
Ashok Marg,
Bhagwan Das Road,
C-Scheme
Jaipur – 302005, Rajasthan.

Versus

**COMMISSIONER, CENTRAL EXCISE & CENTRAL
GOODS & SERVICE TAX, JAIPUR**

.....RESPONDENT

NCRB, Statue Circle, Jaipur (Rajasthan)

Appearance:

Present for the Appellant: Ms. Priyanka Goel, Advocate

Present for the Respondent: Shri Mehboor Ur Rehman, Authorised Representative

CORAM:

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

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 07/04/2026

DATE OF DECISION: 22/04/2026

FINAL ORDER NO. 50765 /2026

P.V. SUBBA RAO

M/s Best Capital Services Ltd.¹ filed this appeal to assail the Order in Appeal dated 30.1.2019² passed by the Commissioner (Appeals) upholding the order of the Additional Commissioner dated 27.9.2017 and rejecting the appellant's appeal. The facts which led to the issue of the impugned order are as follows.

1 The appellant
2 Impugned order

2. The appellant was registered with the service tax department for providing Banking Services and Legal Consultancy Services during the relevant period (July 2012 to September 2015).

3. During audit, it was found that the appellant had also provided service as a recovery agency to M/s. Barclays Investment & Loan India Ltd.³ and had neither declared these services nor paid any service tax on it. It was also found that the appellant had incurred some expenses for legal services on which it had not paid service tax under reverse charge mechanism. Accordingly, an SCN dated 12.2.2017 was issued to the appellant by the Joint Commissioner proposing to recover service tax of Rs. 86,85,051/- under the proviso to section 73(1) of the Finance Act, 1994⁴ along with interest under section 75 of the Act. Penalty was proposed to be imposed under section 78(1) of the Act.

4. The appellant resisted the proposals in the SCN which were, however, confirmed by the Additional Commissioner in her order dated 27.9.2015 as follows:

ORDER

"(i) I confirm the demand of Service Tax amounting to Rs. 86,85,051/- [80,44,083 + 5,75,770/- + 65,198] (Rupees Eighty Six Lakh Eighty Five Thousand Fifty including Cesses) only) and order for recovery of the same from M/s Best Capital Services Limited, 701, 7th Floor, Luhadia Tower, Ashok Marg, C- Scheme, Jaipur under Section 73(2) of the Finance Act, 1994.

(ii) I order to recover applicable interest from them under Section 75 of the Finance Act, 1994 for their failure to pay the Service Tax amount of Rs. 86,85,051/-.

(iii) I impose a penalty of Rs. 43,75,125/- [43,09,927 + 65,198] upon them under Section 78(1) of the Finance Act, 1994 as amended by the Finance Act, 2015 which is equivalent to 50% of the amount of service tax not so paid by them in respect of the transactions recorded during the period from October 2012 to 14.05.2015 and 100% of the service tax amount not so

paid by them in respect of the transactions recorded during the period from 15.05.2015 to September-2015.

However, in terms of clause (ii) of the 2nd proviso to Section 78(1) of the Finance Act, 1994 as amended by Finance Act, 2015, the benefit of reduced penalty @ 25% of the amount of service tax determined at Sr. No. (1) above, would be available to them if the service tax amount so determined is paid by them along with applicable interest and such reduced penalty amount within 30 days of receipt of this order."

5. Aggrieved, the appellant filed an appeal before the Commissioner (Appeals), who, by the impugned order, upheld the order of the Additional Commissioner. Hence, this appeal.

Submissions of the appellant

6. Learned counsel for the appellant made the following submissions:

- i) The appellant and Barclays had a verbal contract as a joint venture at the material time and the appellant received its share in the venture and did not pay any service tax as it was not liable to pay service tax.
- ii) Before 1 November 2012, no TDS was deducted by Barclays from the amounts paid to the appellant and there was no demand of service tax on the amounts paid to the appellant before that date.
- iii) The joint venture is not a partnership and it has no separate corporate designation.
- iv) Extended period of limitation was wrongly invoked in the case because there is nothing in the OIO or OIA to show that the appellant had suppressed any fact or misstated any fact with an intent to evade duty.
- v) The appellant was always under the Bonafide belief that they were not required to pay any service tax and hence extended period of

limitation could not have been invoked. Reliance is placed on the following decisions:

a. Rajasthan Housing Board, Division X vs Additional Commissioner, CGST, Jaipur⁵

b. BDS Décor Prefab P Ltd. vs Commissioner of CGST, Chandigarh⁶

c. Omaxe for EST Spa & Hills Developers Ltd vs Commissioner, CGST, Delhi East, New Delhi⁷

vi) Penalty under section 78 of the Finance Act also cannot be imposed for the same reason.

vii) The appeal may be allowed and the impugned order may be set aside.

Submissions of the Revenue

7. Learned authorised representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference. He prayed that the appeal may be dismissed.

Findings

8. It is undisputed that the appellant acted as the recovery agent for Barclays and received consideration for the service. It is also not in dispute that the appellant had not declared this service and the consideration that it had received for it.

9. The submission of the learned counsel is that the nature of arrangement between the appellant and Barclays was in the nature of a joint venture in which it received its share of Revenue. This submission

5 2026 (3) TMI 438- CESTAT, New Delhi

6 2026 (2) TMI 286-CESTAT, Chandigarh

7 2025 (11) TMI 1881- CESTAT, New Delhi

was rejected by the Commissioner (Appeals) in the impugned order because there was no documentary evidence of any joint venture. No evidence has been produced before us also to show that the appellant and Barclays had set up a joint venture in any form either as a separate entity or otherwise with a revenue sharing arrangement.

10. Any joint venture will be between two or more principals each contributing something to the venture and receiving its share of profits and revenues. Evidently, in this case, Barclays lent money to borrowers from whom it was not able to recover and had asked the appellant to recover the amounts and the appellant did so and received a commission. The appellant was not the lender, Barclays was. The amounts which it had lent had to be recovered from the borrowers and the appellant recovered them for Barclays from the borrowers. Thus, the appellant acted as the recovery agent and recovered the amounts for Barclays from the borrowers and Barclays gave the appellant a commission for its work. This is clearly a case of a service being rendered by the appellant to Barclays.

11. The appellant may have received as a percentage of the amount recovered by it, it is like any commission which is usually dependent on the principal amount. For instance, a realtor receives a commission as a percentage of the value of the property sold or a proportion of a month's rent let out but it does not mean that the realtor and the seller or the realtor and the landlord formed a joint venture. For something to be a joint venture, some agreement or arrangement must be there in which the two (or more) parties agree on principal-to-principal basis to run a business or venture sharing their costs, efforts and returns. No evidence has been produced before that there was any joint venture.

12. Learned counsel also submitted that Barclays had not deducted TDS (tax deduction at source) on the amounts paid to it and therefore, it must be treated as a joint venture. We disagree. Whether Barclays was required to deduct TDS from the amounts paid to the appellant or not and whether it had actually deducted TDS or not are matters for the income tax to decide. These are not before us. Even if Barclays failed to deduct TDS, it does not change the nature of the transaction between the appellant and Barclays.

13. Although the appellant was registered with the service tax, it had not declared the amounts which it had received for its services as recovery agent from Barclays nor paid any service tax on it. The demand of service tax invoking extended period of limitation therefore, needs to be upheld along with the penalties imposed on it.

14. In view of the above, the impugned order is upheld and the appeal is dismissed.

[Order pronounced on **22/04/2026**]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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