CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. III

E-HEARING

SERVICE TAX APPEAL NO. 50849 OF 2021

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-139-2020-21 dated 24/02/2021 passed by The Commissioner (Appeals), CGST and Central Excise, Indore (M.P.).)

M/s Rakesh Bansal, **......Appellant**
Khasra No. 178, 179,
Village Dodkheda,
Khandwa – 450 116 (M.P.).

Versus

The Commissioner, **....Respondent**
CGST and Central Excise,
Manik Bagh Palace,
Indore (M.P.)

APPEARANCE:

Shri Mukesh Soni, Advocate for the appellant.
Shri Mahboob Ur Rehman, Authorized Representative for the Department

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

FINAL ORDER NO. 51118/2026

DATE OF HEARING/DECISION : 25.06.2026

P.V. SUBBA RAO

Shri Rakesh Bansal[1] has filed this appeal to assail the order-in-appeal dated 24.02.2021[2] in which the appellant's

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1. **the appellant**
2. **impugned order**

appeal was partly allowed by the Commissioner (Appeals) and was partly rejected.

2. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

3. Learned counsel submits that he is not contesting the demand on merits and is only contesting the demand on the question of limitation for the reason that the demand is under reverse charge mechanism and, therefore, it cannot be said that the appellant had any intention to evade payment of service tax. He further submits that after the introduction of GST as per section 142 of the CGST Act, 2017 any amount which the appellant would have been entitled to Cenvat credit can be claimed as refund in cash by him.

4. Learned authorized representative for the Revenue supported the impugned order. He further submits that in addition to the demand of service tax, the question of interest also needs to be decided. He further submits that any refund under section 142 of the CGST Act, is a separate proceeding and it cannot be decided at this stage because the appellant has not yet filed any refund claim at all.

5. Having considered the rival submissions, we find that the demand of the service tax is under reverse charge mechanism. The appellant would have been entitled Cenvat credit had he paid

the amount of service tax confirmed in the impugned order. Under such circumstances, it cannot be said that the appellant had an intention to evade payment of service tax. We note that learned counsel for the appellant has expressly stated that he was not contesting the demand on merits. As far as the penalty under section 78 of the Finance Act, 1994 is concerned, the ingredients necessary to impose this penalty are the same i.e. for invoking extended period of limitation under the proviso to section 73 (1) of the Act, i.e., if non-payment of service tax by reason of fraud or collusion or willful mis-statement or suppression of facts or violation of the Act or Rules with an intent to evade. Since the payment was under reverse charge, there could not be any intention to evade.

6. In view of the above, the penalty under section 78 cannot be sustained and is, accordingly, set aside.

7. In view of the above, we partly allow the appeal and set aside the impugned order in so far as it confirms demand of service tax beyond the normal period of limitation and imposed penalty. The matter is remanded to the Assistant Commissioner only for the purpose of calculation of demand of service tax within the normal period of limitation.

8. As far as any claim of refund under section 142 of the CGST Act is concerned, it is not part of present proceedings. If the appellant files a refund application, it may be dealt with and disposed of in accordance with the law.

9. The appeal is partly allowed and disposed of, as above.

(Order dictated and pronounced in open court.)

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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