CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 52182 OF 2022

[Arising out of the Order-in-Original No. 43/Commr/Del East/AP/2021 dated 29/11/2021 passed by Commissioner, CX & GST Commissionerate, Delhi – 110 002.]

Gurinder Singh Sikka (Director) ......**Appellant**
M/s G.S. Promoters Private Limited,
C-60, Sikka House, Main Vikas Marg, Preet Vihar,
Delhi – 110 092.

Versus

Commissioner, CX & GST ....**Respondent**
Commissionerate,
Delhi East, C.R. Building,
Delhi – 110 002.

WITH
SERVICE TAX APPEAL NO. 52183 OF 2022

[Arising out of the Order-in-Original No. 43/Commr/Del East/AP/2021 dated 29/11/2021 passed by Commissioner, CX & GST Commissionerate, Delhi – 110 002.]

Harvinder Singh Sikka (Director) ......**Appellant**
M/s G.S. Promoters Private Limited,
C-60, Sikka House, Main Vikas Marg, Preet Vihar,
Delhi – 110 092.

Versus

Commissioner, CX & GST ....**Respondent**
Commissionerate,
Delhi East, C.R. Building,
Delhi – 110 002.

AND
SERVICE TAX APPEAL NO. 55224 OF 2023

[Arising out of the Order-in-Original No. 43/Commr/Del East/AP/2021 dated 29/11/2021 passed by Commissioner, CX & GST Commissionerate, Delhi – 110 002.]

M/s G.S. Promoters Private Limited, ...**Appellant**
C-60, Sikka House, Main Vikas Marg, Preet Vihar,
Delhi – 110 092.

Versus

Commissioner, CX & GST ....**Respondent**
Commissionerate,
Delhi East, C.R. Building,
Delhi – 110 002.

APPEARANCE:

Shri Siddarth Malhotra, Advocate for the appellant.
Shri Rajeev Kapoor, Authorized Representative for the Department

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51126-51128/2026

DATE OF HEARING : 29.04.2026.
DATE OF DECISION : 03.07.2026.

P.V. SUBBA RAO

M/s G.S. Promoters Pvt. Ltd.[1] filed Service Tax Appeal No. 55224 of 2023 to assail the order-in-original No. 43/Commr/Delhi East/AP/2021 dated 26.11.2021[2] passed by the Commissioner of Central Tax, GST, Delhi East, New Delhi. Shri Harvinder Singh Sikka, the Director of the assessee filed Service Tax Appeal No. 52183 of 2022 to assail the same impugned order. Shri Gurinder Singh Sikkia, Director also filed Service Tax Appeal No. 52182 of 2022 to assail the same impugned order.

2. We have heard Shri Siddarth Malhotra, learned counsel for the appellants and Shri Rajeev Kapoor, learned authorized representative for the Revenue and perused the records.

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1. **Assessee**
2. **impugned order**

3. The appellant was registered with the service tax department and was providing services related to residential construction between the year 2013 and 2017. Gathering intelligence, the Anti Evasion Branch of the Commissionerate initiated investigation and obtained copies of the balance sheets of the appellant for the period 2012-2013 to 2016-2017 and the ST-3 returns and sought party-wise details of income, etc. Despite issue of numerous letters and summons the assessee did not provide the requisite details.

4. Therefore, based on the available information, a show cause notice dated 30.10.2018 was issued to the three appellants herein demanding service tax demand of Rs. 6,72,71,775/- and seeking to deny Cenvat credit of Rs. 3,49,15,271/- and further proposing to impose penalties. These proposals were confirmed in the impugned order by the Commissioner. He imposed an equal amount of penalty on the assessee and penalty of Rs. 1,00,000/- each on Shri Harvinder Singh Sikka and Shri Gurinder Singh Sikka for not furnishing detailed information to the department "with intention to evade payment of service tax".

Submissions of the appellant

5. The main submission of the assessee is that the demand of service tax has been made on the difference between the amounts shown as receipts in the balance sheets and in the ST-3 returns. Therefore, it was presumed that the full value of the services was not reflected in the ST-3 returns.

6. The submission of the appellant is that the balance sheets were prepared as per accounting standard AS-7 and ST-3 returns were prepared and filed as per the point of taxation rules. Therefore, there was a difference between the two sets of figures.

7. As far as the Cenvat credit is concerned, the allegation in the impugned order is that the appellant had wrongly availed Cenvat credit wrongly while availing the benefit of Notification No. 26/2012-ST dated 20.06.2012. According to the learned counsel, this allegation was wrong and the appellant had only availed Cenvat credit on the inputs on which no exemption was taken under the Notification. Further, he also submitted that the Notification No. 26/2012-ST only barred availment of Cenvat credit on the inputs and not on input services. Therefore, the demand on this count also cannot be sustained.

8. In view of the above, according to the appellant the entire demand of service tax as well as recovery of Cenvat credit cannot be sustained and they need to be set aside.

9. Learned counsel also submitted that the assessee was registered with the service tax department and has been paying service tax and filing returns and, therefore, extended period of limitation could not have been invoked in this matter and major part of the demand falls within the extended period of limitation.

Submission of the Revenue

10. Learned authorized representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference.

Findings

11. We have considered the submissions advanced by both sides and perused the records.

12. There are two issues to be decided on merits :-

(a) Demand of service tax of Rs. 6,72,71,775/- on the difference between the receipts shown in the balance sheet and in the ST-3 returns ;

(b) Cenvat credit of Rs. 3,49,15,371/- said to have been availed on the goods cleared on the exemption Notification No. 26/2012-ST dated 20.06.2012.

13. With respect to the first issue of demand of service tax, the appellant submitted that there was no short payment of service tax at all. The figures in the balance sheets and those in the ST-3 returns were different because different accounting methods were adopted to calculate them. The balance sheet was prepared as per accounting standard AS-7. The ST-3 returns were filed as per the point of taxation rules as the assessee was required to file. The assessee had also made this submission before the Commissioner but the Commissioner did not agree with this contention for the reason that the assessee had not submitted

any evidence for receipt of advances, payment of service tax thereon and adjustment of advance amounts against the agreed amount and payment of service tax on the balance amount. For this reason, the Commissioner did not accept the contention of the assessee. The Commissioner does not dispute that ST-3 returns have to be filed as per the point of taxation rules and the balance sheet could have been prepared following the different standard as required. In our considered view, the assessee should be given an opportunity to present documents and evidence to the Commissioner so that the two sets figures between the balance sheets and ST-3 returns can be re-reconciled and duty, if any, payable may be determined.

14. As far as the allegation of wrong availment of Cenvat credit is concerned, the undisputed legal position is that if the appellant had availed the benefit of Notification No. 26/2012-ST dated 20.06.2012 and paid service tax at an abated rate and it will not be entitled to avail Cenvat credit on inputs. The appellant's contention is that it could still availed Cenvat credit on the input services as there was no restriction on availing such Cenvat credit in the notification.

15. The Commissioner did not accept this contention stating that the assessee had failed to provide nexus between the input services on which it had availed Cenvat credit and its output services and denied the Cenvat credit.

16. As these are factual disputes which require verification, we find this a fit case to remand to the Commissioner to decide afresh after giving the appellants an opportunity to present their case and all relevant documents in support. Without passing any remarks on the merits of the case, leaving all questions open, we remand the matter to the Commissioner to decide after giving the assessee a reasonable opportunity of being heard.

17. In view of the above, the impugned order is set aside and all three appeals are allowed by way of remand to the Commissioner to decide after giving an opportunity of being heard to the parties.

(Order pronounced in open court on 03/07/2026.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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