CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. IV

Service Tax Appeal No. 55477 Of 2023

[Arising out of Order-in-Appeal No. 88 (AK)ST/JDR/2023 dated 11.04.2026 passed by the Commissioner (Appeals) of Central Excise and CGST, Jodhpur]

Prompt Publicity & Vcare Solutions : **Appellant**
15, Ballabh Bari, Kota-324009

Vs

Commissioner of Central Excise & CGST-Jodhpur : **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed, Basni, Jodhpur-342003

Appearance:

Present for the Appellant : None

Present for the Respondent: Shri S.N. Singh and Shri Rohit Issar, Authorised Representative

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

FINAL ORDER No. 51450/2026

Date of Hearing:21.08.2026

Date of Decision:15.09.2026

HEMAMBIKA R. PRIYA

M/s Prompt Publicity & Vcare Solutions[1] have filed the present appeal against the Order-in-Appeal No. 88 (AK)ST/JDR/2023 dated 11.04.2026 wherein the Commissioner confirmed the demand of Service Tax amounting to Rs. 3,08,774/- along with interest and imposed appropriate penalties.

2. The brief facts of the case are that Shri Ativeer Jain Proprietor of M/s Prompt Publicity E-15, Ballabhbari, Kota-324007, registered

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1 The appellant

under Service Tax vide Registration No. AMGPJ3711RSD001 was providing taxable services as 'Advertising Agency Services'. During the course of verification of third party data received from Income Tax department, certain details i.e. type of service provided, copies of Balance Sheet, Profit & Loss account, 26AS, ITR, ST-3 returns filed etc. were called from the appellant for Financial Year 2016-17. On perusal of documents submitted by the appellant, it was noted that the appellant was engaged in providing 'Advertising Agency Service' to various service receivers during the period 2016-17. During scrutiny of documents, it was also observed that the appellant had another firm with the name Vcare Solutions which was not registered with Service Tax Department and appeared to be engaged in providing taxable services to various service recipients. The department also noticed that the appellant had certain gross receipt as per Form-26AS for the year 2016-17, ST-3 returns filed for the period 2016-17 and Return of Income Tax filed for the period 2016-17, and on examination, the department observed that the appellant had filed 'NIL' Return for the period April 2016 to September 2016. The ST-3 Return filed for the period October 2016 to March 2017, should gross receipt of Rs. 15,39,884/-, however, they had availed exemption of Rs. 10,00,000/- and paid Service Tax Rs. 80,983/- on the remaining amount i.e. Rs. 5,39,884/-. The appellant failed to produce any documentary proof to prove that the appellant was eligible for threshold exemption of Rs. 10,00,000/- during the year 2016-17. Based on the documents on record, and those submitted by the appellant, the department opined that the appellant had provided taxable service of Rs. 25,98,374/-on which they were liable to pay Service Tax Rs. 3,89,757/- for the period April 2016 to March 2017. A show cause notice dated 21.10.2021 was issued demanding service tax of Rs. 3,89,857/-. The adjudicating authority confirmed the demand of Rs. 3,89,857/- along with interest and penalties. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals) who in turn, rejected their appeal. Against the said order, the appellant is before me.

3. The case was out but no one appeared. A perusal of the file revealed that the appellant was provided several opportunities, but the learned counsel sought adjournments. Eighteen adjournments were sought from February 2024 onwards. Thereafter on 11.05.2026, last opportunity was granted and the case was listed for 02.06.2026. On 02.06.2026, learned counsel once again sought adjournment. Learned Single Member accepted the request and adjourned the case to 17.07.2026 as last opportunity. On 17.07.2026, one again adjournment was sought and the matter was listed for 21.08.2026. As no one appeared on 21.08.2026, the case has been taken up for hearing.

4. The grounds of appeal are considered. The appellant has submitted that the the larger period has been invoked in this case, and it is submitted that the Show Cause Notice[2] was issued on 21.10.2021 for the period 01.04.2016 to 31.03.2017 and provision u/s 73(1) of Finance Act 1994 interalia provides that the SCN ought

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2 SCN

to have been issued within 36 months from due date of filing of Service Tax Return. Accordingly, the SCN should have been issued by 01.05.2020 whereas it was issued on 21.10.2021 after expiry of around 16 months and 21 days and hence the entire demand raised is barred by limitation. It is further submitted that the extended period of 5 years can be invoked only if any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion, willful mis-statement, suppression of facts with intent to evade payment of service tax. In this context, it is submitted that the appellant filed the ITR for that period u/s 44AD of Income Tax Act 1961, wherein the net profit was arrived at presumptive basis and Balance Sheet and P & L account was prepared on the basis of documents/records available. It is also submitted that the appellant had submitted copy of Balance Sheet for 2016-17, ITR with the computation for A/Y 2017-18 relevant to F/Y 2016-17, Form 26AS for F/Y 2016-17, ST-3 Returns filed for the period April 2016 to March 2017, copy of sample invoices and sample Work Orders. The appellant did not suppress any facts from the Department as there is no gap/mis-match of figures in the ITR filed with Income Tax Department as well as Balance Sheet of the appellant. It is submitted that the extended period of limitation cannot be applied in this case on the basis of Judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Chandigarh vs. Punjab Laminates (P) Limited[3].

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3 [2006] 5 STT 432 (SC)

4.1 Further, it is submitted that the Commissioner (Appeals) had erred in not extending benefiit of CENVAT Credit of Rs. 59,997/-. The appellant submitted that during the period October 2016 to March 2017, the gross receipts was Rs. 17,63,824/- plus receipts from Vcare Solutions was Rs. 8,34,550/- for the period 01.04.2016 to 31.03.2017 totalling to Rs. 25,98,374/-. However, there was an oversight/clerical error wherein the gross receipts of Prompt Publicity was shown at Rs.15,39,884/- erroneously claiming benenfit of threhold exemption of Rs. 10,00,000/-. The receipts of Vcare Solutions was not mentioned under ST-3 filed on 23/07/2017. However, in the following month i.e. August 2017, when the ITR of appellant firms was being filed, the books were got reconciled and the arithmatical error was noted the receipt of Rs. 8,34,550/- had slipped from the Gross Receipts declared in ST-3 Return and Service Tax thereon filed on 23/07/2017 has been calculated and worked out at Rs. 80,983/- and has been paid in cash Rs. 2,755/- and Rs. 78,228/- through CENVAT Credit, out of the Cenvat Credit available in Books of Accounts Rs. 1,38,225/- and balance Rs. 59,997/-remained unutilized in the books of accounts. However, on account of oversight and clerical error, the gross value ot Rs. 8,34,550/- (attracting Service Tax Rs. 1,25,183) has slipped off from reporting in ST-3 Returns, and resultantly the appellant could not avail benefit of CENVAT credit available in the books of accounts Rs. 59,997/-, which was admissible to them.

4.2 The appellant submitted that Commissioner (Appeals) had erred in not extending benefit of Cum Tax to the appellant on the gross receipts of Rs. 8,34,550/- of Vcare Solutions. It was submitted that the appellant had declared the income u/s 44AD of Income Tax Act, 1961 on presumption basis and filed ITR for that period u/s 44AD.

5. Learned Authorized Representative for the Department submitted that the appellant had accepted in the grounds of appeal, that the due to clerical error the figures were wrongly mentioned in their ST-3 returns. Further, they had accepted that due to oversight, the figures for their other firm M/s VCare Solutions were not reported in their ST-3 returns. The claim of figures being not reported due to error or oversight does not appear proper since they have reported correct figures in their Income Tax returns. To deal with this lacuna in their contention, they have stated that ITR is filed u/s 44AD of the Income Tax Act, 1961 wherein the net profit is arrived at presumptive basis and Balance Sheet and P&L account was prepared on the basis of documents/ record available, and only for the purpose of filing of information to Service Tax Department. The appellant have accepted that their availment of threshold exemption of Rs 1 10,00,000/- was not proper. The appellant have themselves accepted that the claim was wrongly made in their ST-3 returns due to mistake/ oversight. The impugned order has discussed the issue and has found the claim not acceptable.

5.1 As regard the cum-tax benefit, learned Authorized Representative contended that the appellant had not submitted proper documents, viz., invoices or bills with the required details like, Registered address/name, Registration of Shop details, description of goods, etc. The appellant have accepted that their second firm was not registered, though both had the same proprietor Sh Ativeer Jain and Income tax returns were common for both. The impugned order has not found their documents proper and legal, to claim cum-tax benefit. The appellant have claimed that extended period cannot be invoked in their case, and stated in their grounds of appeal that they have not suppressed any facts, since they provided all the documents when called for by the Department. The appellant had not disclosed the correct figures in their ST-3 returns for period Oct -Mar, 2017 and further they had also not disclosed the income from their second firm M/s Vcare Solutions which was unregistered. All these acts of suppression was with an intent to evade tax. The appellant claimed ineligible benefit of threshold exemption which after the SCN was accepted to have been claimed due to mistake/oversight. Therefore, extended period has been correctly invoked and penalty is imposable on the appellants. The appellants have cited case laws where it has been held that penalty is not imposable in case of dispute of interpretation of notification. But they have failed to point out which notification is disputed and on which point. It may be noted that their claim of threshold exemption was not right, as accepted by themselves.

6. I have gone through the ground of appeal, learned AR's submissions and perused the records.

7. I find that the demand of service tax was raised on the basis of amounts received in the firm namely M/s Prompt Publicity and M/s Vcare Solutions which were the firm of/the appellant. During the financial year 2016-17, I find that the receipt in appellant's two firms was Rs. 17,63,824/- and Rs. 8,34,550/- respectively, totalling to Rs. 25,98,374/-. I find that the appellant in their grounds of appeal have admitted that the amount of Rs. 8,34.550/- was not shown due to oversight/clerical mistake. It has been further submitted that the gross receipt in the firm M/s Prompt Publicity was shown as Rs. 15,39,884/- instead of actual amount of Rs. 17,63,824/-. Further, the appellant have also admitted that they have wrongly availed benefit of the threshold exemption of Rs. 10,00,000/-. Consequently, I find that the appellant had not disclosed the correct taxable value and had short paid service tax as compared to their actual liability. I also note that the appellant had wrongly availed benefit of threshold exemption of Rs. 10,00,000/- which the appellant themselves have admitted and there is nothing on the record to prove their claim of admissibility of threshold exemption of Rs. 10,00,000/-. It is pertinent to note that once the appellant has been registered with the service tax department, the question of threshold limit exemption does not arise.

7.1 I note that the appellant has contended that the extended period has been wrongly invoked in the present case and has relied on judgement of Supreme Court. In the instant case, I note that the appellant has accepted that the taxable value was not correctly reflected in the ST-3 returns. I also note that the 2nd firm of the appellant was not registered. It is an admitted fact that the taxable value was shown lesser than actual in ST-3 returns filed by the appellant which clearly established their intent to evade service tax. Hence, the extended period has been correctly invoked in the instance case.

7.2 The appellant has sought for cum-tax benefit on the receipt of Rs. 8,34,550/-. In this regard, I find that the impugned order has noted that the appellant has submitted some of the sample copies of the bill raised from their service recipients and claimed that since they have not charged any service tax from their clients, hence, the benefit of cum-tax benefit must be extended. The order further notes that on perusal of the documents submitted by the appellant in support of their claim, the documents were found to be not proper as no particular details mentioned except the seal of the appellant's firm. Hence, the impugned order has held that the same cannot be considered as a valid invoice/document in view of the fact that the amount involved in all these documents constitute negligible amount of Rs. 8,34,550/-. The appellant has not submitted any documentary evidence before this Tribunal in support of their contention. Hence, I do not find any reason to differ with the findings.

7.3 Further, in the grounds of appeal, the appellant has contested that the credit of Rs. 59,997/- which was not utilized in payment of their tax liability may be allowed to them. In this regard, I find that the impugned order has observed that the appellant had not availed the credit of Rs. 59,997/- within prescribed time limit in their ST-3 returns, as provided under Finance Act, 1994 read with Cenvat Credit Rules, 2004. Thus the contention of the appellant at a much later stage does not hold ground. Hence, the impugned order has denied the benefit of the said cenvat credit. I find that no fresh evidence has been submitted before the Tribunal to agitate their eligibility to the credit.

7.4 In view of the above discussions, I find no reason to differ with the findings of the impugned order. Accordingly, the order is upheld. Consequently, the appeal stands dismissed.

(Order pronounced on 15.09.2026)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.