IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75242 of 2019

(Arising out of Order-in-Appeal No. 576/S.Tax-II/Kol/18 dated 12.10.2018 passed by the Commissioner of C.G.S.T. & C.X. (Appeal-I), Kolkata, GST Bhawan, 8th Floor, 180, Shantipally, Kolkata – 700 107)

M/s. Shuvam Enterprises **: Appellant**
71, Russel Street, Kanchana Building, 3rd Floor,
Kolkata – 700 071

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Kolkata South Commissionerate

APPEARANCE:

Shri Aditya Dutta, Advocate for the Appellant

Shri S.K. Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75014 / 2025

DATE OF HEARING / DECISION: 06.01.2025

ORDER:

M/s. Shuvam Enterprises, 71, Russel Street, Kanchana Building, 3rd Floor, Kolkata – 700 071 (hereinafter referred to as the "Appellant") are registered with the Service Tax Department for rendering clearing and forwarding agency services. On the basis of scrutiny of records of the Appellant for the period 2010-11 to 2013-14 by the Officers of the Survey, Intelligence and Verification (SIV) Branch, Service Tax-II Commissionerate, a Show Cause Notice has been issued to the Appellant demanding Service Tax of Rs.77,25,215/- under the categories of "clearing and forwarding agency service" and "goods transport agency (GTA) service".

1.1. On adjudication, the ld. adjudicating authority vide Order-in-Original No. 19/JC/ST-II/Kol/2017-18 dated 19.05.2017 has allowed the benefit of abatement claimed by the Appellant and confirmed the demand of Service Tax amounting to Rs.13,13,418/- (Rs.8,81,654/- under 'clearing and forwarding agency service' and Rs.4,31,764/- under 'GTA service'). The ld. adjudicating authority also demanded interest and imposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994. He imposed a penalty of Rs.10,000/- under Section 77 of the Act.

1.2. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the Order-in-Original dated 19.05.2017 vide the impugned Order-in-Appeal No. 576/S.Tax-II/Kol/18 dated 12.10.2018.

2. Aggrieved against the confirmation of the demands, the Appellant has filed this appeal.

3. The Appellant submits that the Show Cause Notice has been issued on 19.10.2015 covering the period from 2010-11 to 2013-14 on the basis of the data reflected in their balance sheet, Profit & Loss Account and S.T.-3 Returns; they have taken registration for clearing and forwarding agency services and filed returns regularly with the Department. The Appellant therefore submits that they have not suppressed any information regarding clearing and forwarding agency services rendered by them and accordingly, the demand confirmed in the impugned order by invoking the extended period of limitation on this service is not sustainable.

3.1. Regarding the demand confirmed under the category of GTA service, it is the submission of the Appellant that they have been paying Service Tax under the category of GTA service even though they had not obtained registration under this category; they have been collecting Service Tax from their customers under the category of GTA service and paying the same to the Department; however, they failed to file returns in respect of the GTA services rendered by them. The Appellant submits in this regard that they have filed returns under the category of GTA service category after 04.09.2013, when they took registration under the category of GTA service. Hence, the Appellant contends that the demand confirmed under the category of GTA Service by invoking the extended period of limitation is not sustainable.

4. The Ld. Authorized Representative of the Revenue submits that the Appellant have been collecting Service Tax under the category of GTA service but have not paid the same to the Department. He also submits that they have also not filed any return under the category of GTA service. Thus, he submits that the Appellant has suppressed information from the Department and hence, the extended period of limitation has been rightly invoked to demand Service Tax under this category.

4.1. Regarding the demand of Service Tax under the category of clearing and forwarding agency service, the Ld. Authorized Representative of the Revenue submits that the Appellant has not disclosed the full information or paid appropriate Service Tax for the entire period. Accordingly, he submits that the demand has been rightly confirmed in the impugned order under this category by invoking the extended period of limitation.

4.2. In view of the above, the Ld. Authorized Representative of the Revenue supported the confirmation of both the demands in the impugned order.

5. Heard both sides and perused the appeal records.

6. I find that the appellant has taken registration under the category of "clearing and forwarding agency service" and have been filing returns regularly. The Show Cause Notice was issued on 19.10.2015 covering the period from 2010-11 to 2013-14. The Show Cause Notice has been issued on the basis of the difference between the figures found in the balance sheet and S.T.-3 Returns. As the Appellant had been filing their Returns regularly under the category of clearing and forwarding agency service, I find that they have not suppressed any information from the Department. If there is any short payment of Service Tax under this category, then the demand should have been raised within the normal period of limitation.

6.1. In support of the contention that the demand cannot be raised on the basis of difference between the S.T.-3 Return and balance sheet figures by invoking the extended period of limitation, the Appellant has referred to the decision of this Bench rendered in the case of *M/s. Munna Construction v. Commissioner of Central Excise and Service Tax, Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014*

– *CESTAT, Kolkata]*. The relevant extract of the said decision is reproduced below: -

> *"12. Regarding confirmation of the demand of service tax by invoking the extended period of limitation, we observe that the Show Cause Notice has been issued on the basis of the data submitted by the Appellant, i.e., from their balance sheet, Profit & Loss Account and Form 26AS.The Appellant submitted that they had obtained registration with the service tax department in the year 2006 and have been filing their Returns. Accordingly, it is their submission that they have not suppressed any information from the Department and thus the extended period of limitation is not invokable.*
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> *12.1. In this regard, we observe that the Appellant had been filing their Returns and paying Service Tax regularly. They have registered with Service Tax Department since 2006, but till the date of audit conducted in 2011, the Department had not raised any objection regarding any short payment of Service Tax by the Appellant. We observe that the if the demand has been confirmed on the basis of the data submitted by the appellant, i.e., from their balance sheet, Profit & Loss Account and Form 26AS, then extended period of limitation is not invokable. We observe that this view has been held in various judicial pronouncements.*
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> *12.2. In the case of Arya Logistics v CCE & ST Rajkot [Service Tax Appeal No. 12389 of 2014], it has been held as under:*
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>> *"4. We have carefully considered the submissions made from both the sides and perused the records. On going through the entire facts of the case we are of the view that the case can be disposed of on the ground of limitation itself.*
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>> *4.1 We find that the issue involved in this case is regarding the demand of service tax for the period April 2008 to March 2011 on the ground that the appellant has availed in-eligible benefit of notification No. 1/2006-ST dated 1-3-2006 by discharging the service tax liability by availing Cenvat Credit and paid service tax after availing abatement of 70% of the gross amount. We find from the records and copy of ST-3 produced before us that appellant had been filing the ST-3 returns regularly to the Jurisdictional Range officers. It is on record that the appellant shown all the details in ST-3 returns. We find that Appellant has shown the category of Transport of Goods by Rail services in all the ST-3 returns and has*

also shown the fact that they were availing Cenvat Credit. In the said ST-3 return, admittedly against the "Column A1 -Name of Taxable Service" Appellant have shown name of service as Goods Transport Agency and Transport of Goods in Container by Rail Service. Further in column 5B appellant have shown the details of Cenvat Credit Taken and utilized.

4.2 It becomes clear from the ST-3 return that the fact that appellant were discharging Service tax on Transport of Goods in container by Rail service and availing Cenvat credit and utilized the Cenvat credit was in the knowledge of the Revenue. However show cause notice to the Appellant was issued on 26-2-2013. Inasmuch as the entire information was in the knowledge of the Revenue, the longer period of limitation is not available. In view of these facts the show cause notice should have been issued within the normal period of one year as prescribed under section 73(1), whereas the show cause notice for the period April 2008 to March 2009 was issued on 26-2-2013 i.e. after prescribed limit of one year. As per the above fact, there is no suppression of fact on the part of the appellant. We also find that it is admitted fact that the appellant have taken service tax registration and are filing the periodical returns regularly. The appellant have maintained proper books of accounts in the normal course of business. It is pertinent to note that the entire case of the department on merit is that since appellant have availed Cenvat Credit, they violated the condition of abatement notification No. 01/2006-ST. As discussed above the facts that availment of Cenvat Credit and payment of Service Tax on the abated value were declared in the ST-3 return. Hence, having all the facts were disclosed to the department, nothing prevented department from issue of show cause notice within normal period of one year. Therefore, the demand raised in the show cause notice is clearly time-barred.

4.3 Since the demand is not sustainable on limitation alone, we refrain from giving finding on merit of the case and the same is left open."

12.3. In the case of Balajee Machinery v Commissioner of CGST & Excise, Patna-II [2022 (66) G.S.T.L. 440 (Tri-Kolkata)], it has been held as under:

> *"10. In so far as the issue of limitation is concerned, we do not find any ingredient of fraud or suppression with an intent to evade payment of tax. In the case of Pappu Crane Services v. CCE, Lucknow (Final Order No. 71246 of 2019 in ST Appeal No. 70707 of 2018), the Co-ordinate Bench of Tribunal at Allahabad has held that where the demand is merely based on the data appearing in the Income Tax Portal, there cannot be said to any fraud or suppression so as to justify invocation of extended period of limitation. Therefore in the present case, in our view, the demand raised for the period up to March, 2015 is completely barred by limitation and accordingly the demand is set aside. Further, since there is no element of fraud or suppression, we are of the view that the entire penalty amount is liable to be set aside."*

12.4. It is also observed that in the case of Quest Engineers & Consultant Pvt. Ltd. v Commissioner, CGST & C Ex, All [2022(58) G.S.T.L. 345 (T-All)], it has been held that: -

> *"12. Appreciating the facts and circumstances, we find that the allegations of Revenue are frivolous, that it was only on enquiry it came to know about the affairs of the appellant, i.e. providing of taxable service in view of the admitted facts that appellant is a registered assessee under the Service Tax provision, and have been filing their returns and paying tax. It is not alleged by the Revenue that the appellant was not maintaining proper financial records, register and vouchers for their transaction. We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived.*
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> *13.We further hold that the extended period of limitation is not available to Revenue under the facts and circumstances. We further hold that the appellant is entitled to exemption under the Notification No. 25/2012-S.T.*

under Sl. No. 13(a) of the said notification for providing consulting engineer services in the matter of road construction. When road construction is exempt, every activity is exempt relating to the road construction including consulting engineer services. The appellant also relied on the ruling in Lord Krishna Real Infra Pvt. Limited v. Commissioner of Customs, CE & ST, Noida, Final Order No. 70126/2019, dated 27-12-2018. This Tribunal has held in other disputed cases, that even the barricade provided on the side of highway, maintaining greenery on the side or middle of highway, construction of any facility, refreshment centre for road users, is also part of the road construction and such activity is also exempt. Even the administrative building constructed by the concessionaire, for construction of the road or highway for administration and collection of toll etc. is part of road.

14.---

*15**.** Accordingly, in view of our findings, we allow the appeal and set aside the impugned order. We also hold that extended period of limitation is not available to Revenue. We also hold that appellant is also entitled to consequential benefits, in accordance with law."*

12.5. Accordingly, by relying on the decisions cited above, we hold that the demand cannot be raised in this case by invoking the extended period of limitation. Thus, we hold that the demand confirmed in the impugned order by invoking the extended period of limitation is not sustainable."

6.2. I find that the facts and circumstances of the present case on hand are similar to the cases referred to in the decision cited by the Appellant (*supra*). Hence, the ratio of the decisions cited above are squarely applicable to this case.

6.3. Accordingly, I hold that the demand of Service Tax confirmed in the impugned order by invoking the extended period of limitation under the category of 'clearing and forwarding agency service' is not sustainable. The Appellant is liable to pay Service Tax for the normal period of limitation confirmed in the impugned order. As there is no suppression of fact with intention to evade the tax established in this case, I hold that no penalty is imposable for the demand confirmed under this category for the normal period of limitation.

7. Regarding the demand of Service Tax under the category of GTA service, I find that the Appellant had not taken registration under the category of GTA service and not filed Returns in respect of this category. It is on record that the Appellant had been collecting Service Tax under the category of GTA service and had been paying Service Tax under the category of GTA service, but had not filed returns to that effect under the said category. I find that the Appellant has suppressed information regarding collection of Service Tax by them under the category of GTA service and not paid appropriate Service Tax to the Department. Hence, I find that the extended period of limitation has been rightly invoked to demand Service Tax under the category of GTA service. Therefore, I hold that the Appellant is liable to pay Service Tax of Rs.4,31,764/-, along with interest, under the category of GTA service.

7.1. Since the information regarding collection of Service Tax was suppressed, the Appellant shall also be liable to pay penalty equal to the Service Tax confirmed under this category.

7.2. Further, I observe that the Appellant had taken registration under the category of GTA service only on 04.09.2013. Hence, I find that penalty has been rightly imposed on them under Section 77 of the Finance Act, 1994. Accordingly, I uphold the penalty imposed for non-registration under Section 77 of the Finance Act, 1994.

8. In view of the above, I pass the following order:-

(i) The demand of Service Tax under the category of 'clearing and forwarding agency service' for the extended period of limitation is set aside. The Appellant is liable to pay Service Tax for the normal period of limitation. No penalty shall be imposable for the demand confirmed under this category for the normal period of limitation.

(ii) The issue is remanded back to the adjudicating authority for the purpose of quantification of the demand under the category of 'clearing and forwarding agency service'.

(iii) The Appellant is liable to pay the Service Tax of Rs.4,31,764/-, along with interest, under the category of GTA service. They are also liable to pay penalty equal to the amount of tax confirmed under Section 78 of the Finance Act, 1994.

(iv) The penalty imposed under Section 77 of the Finance Act, 1994 is upheld.

9. The appeal stands disposed of on the above terms.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd