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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76402 of 2016

(Arising out of Order-in-Original No. 08/Commr/ST-I/Kol/2016-17 dated 23.05.2016 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. H. S. Infrastructure & Services (P) Ltd. **: Appellant**
20, B. T. Road, Ground Floor,
Cossipore, Kolkata-700 002

VERSUS

Commissioner of Service Tax-I, Kolkata **: Respondent**
Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107

APPEARANCE:

Shri S. P. Sidhanta, Advocate for the Appellant
Shri D. Sue, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75535/ 2025

DATE OF HEARING: 19.02.2025
DATE OF PRONOUNCEMENT: 03.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No. 08/Commr/ST-I/Kol/2016-17 dated 23.05.2016 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs. 1,26,03,205/ including cesses, along with interest and penalty.

2. M/s. H. S. Infrastructure & Services (P) Ltd. (herein after referred as the appellant / HSISPL) are registered with the department for rendering of the following services:

(i) Maintenance or Repairing service

(ii) Consulting Engineer service

(iii) Erection, Commissioning and Installation service (iv) Works Contract service and

(v) Renting of immovable Property service.

2.1. The main clients of the appellant were Indus Tower Ltd, Vodafone Essar East Ltd, Vodafone Essar South Ltd, Nokia Siemens Networks (P) Ltd, Huchision Essar South Ltd, Bharti Airtel Ltd, Essar Telecom and Infrastructure Pvt Ltd, Tata Teleservice Ltd, Bharti Infratel Ltd, Idea Cellular Services Ltd., Reliance Infocom Engineering Pvt Ltd, Acme Telepower Ltd., etc.

2.2. The operations of HSISPL were closed down due to circumstances beyond their control, around July, 2010 and the balance sheet for FY 2011-12 onwards reflected "NIL" turnover. However, old payments received in the years following the closure had been reflected in the balance sheet for 2011-12. The appellant had duly filed their Service Tax return in ST-3 upto 2011-12-H1 (Apr 2011 to Sept 2011). This fact of closure of operations was not intimated to the service tax department.

2.3. Based on the intelligence received from the Directorate General of Central Excise Intelligence, Bangalore Zonal Unit and further developed by the officers of the Directorate General of Central Excise

Intelligence, Kolkata Zonal Unit, investigation was initiated against the appellant and documents were called for under Summons dated 06/01/2014. HSISPL submitted various documents and on verification of the documents, it was observed that the appellant has written off 'Bad debts' during the FY 2010-11 and 2011-12 and 'Credit notes' issued during the FY 2009-10 to 2010-11.

2.4. To verify the veracity of bad debts claimed to have been written off by HSISPL, summons were issued to the major clients of HSISPL and on the basis of replies received from the clients the investigation officers came to the conclusion that there is no truth in the claim of the appellant that they have written off bad debts. Accordingly, SCN was issued demanding service tax of Rs. 1,26,03,205/ including cesses, on the ground that the appellant has not written off the bad debts and credit notes. After due process, the said notice was adjudicated and the demands raised in the notice was confirmed along with interest and penalty.

3. The appellant submits that upto 01.04.2011, service tax was payable on realisation basis. Thus, no service tax payable on the amounts not received. It is their submission that an Amount of Rs.2,89,62,856 (including service tax of Rs. 20,02,395) during FY 2010-11 and Rs. 10,04,89,952 (including service tax of Rs. 1,02,19,013) during FY 2011-12 were declared as "Bad Debts" and Written off in the balance sheet and profit & loss account upto the end of Financial year 2010-11. The appellant submits that during the period under dispute, service tax was payable on realisation basis upto 01.04.2011 and after closure of the operations

of HSISPL in July, 2010, amounts realisable from a number of clients became permanent bad debts due to non-receipt of payments. Accordingly, a 'Settlement' was reached with some of them like Indus Towers Ltd, Acme Telepower Ltd. (Presently known as Acme Cleantech Solutions Ltd.), Vodafone Essar East Ltd and Vodafone Essar South Ltd, for squaring up of the account of HSISPL. Such amounts remained unrealised till date, but the said amount has been written off in the books of accounts. Thus, the appellant submits that no service tax was payable on such written off bad debts and Credit notes.

3.1. The appellant submits that the investigation officers taken the information relating to the 'Bad Debts' and credit notes written off as available in their books of accounts and demanded service tax. The Notice did not specify under which category of service, they were liable to pay service tax. The investigation has not brought in any evidence to substantiate the allegation that they have actually realised said amounts. On the contrary, they have submitted a Chartered Accountant's certificated confirming the writing off of the bad debts and credit notes. The adjudicating authority has ignored the certificate issued by the Chartered Accountant on the ground that there is no corroborative evidence given by the chartered accountant confirming the write off.

3.2. Thus, the appellant prayed for setting aside the demands of service tax along with interest and penalty confirmed in the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant has written off Bad debts during the FY 2010-11 and 2011-12 and Credit notes issued during the FY 2009-10 to 2010-11.

6.1. The Summary of bad debts written off by HSISPL during FY 2010-11 & 2011-12 as appeared in the SCN , (Annexure C-I to SCN) is furnished below:-

Chart-A

Period	taxable value (Rs.)	Service tax involved and realisable			
		Service tax (Rs.)	Education cess (Rs.)	Secondary & higher education cess (Rs.)	total service tax inclusive of cess
Bad debts written off in fy 2010-11/2011-12 declared/claimed pertaining to 2006-07 to 2008-09	30917517	3676104	73527	34890	3784521
Bad debts written off in fy 2010-11/2011-12 declared/claimed pertaining to 2009-10 to 2011-12	98532925	8191058	163831	81998	8436887
Total	12945280	11867162	237358	116888	12221408

6.2. In the impugned order, it has been alleged that HSISPL were liable to discharge Service Tax Rs.1,22,21,408/- including cess, which was realized but wrongly claimed to have been written off by HSISPL.

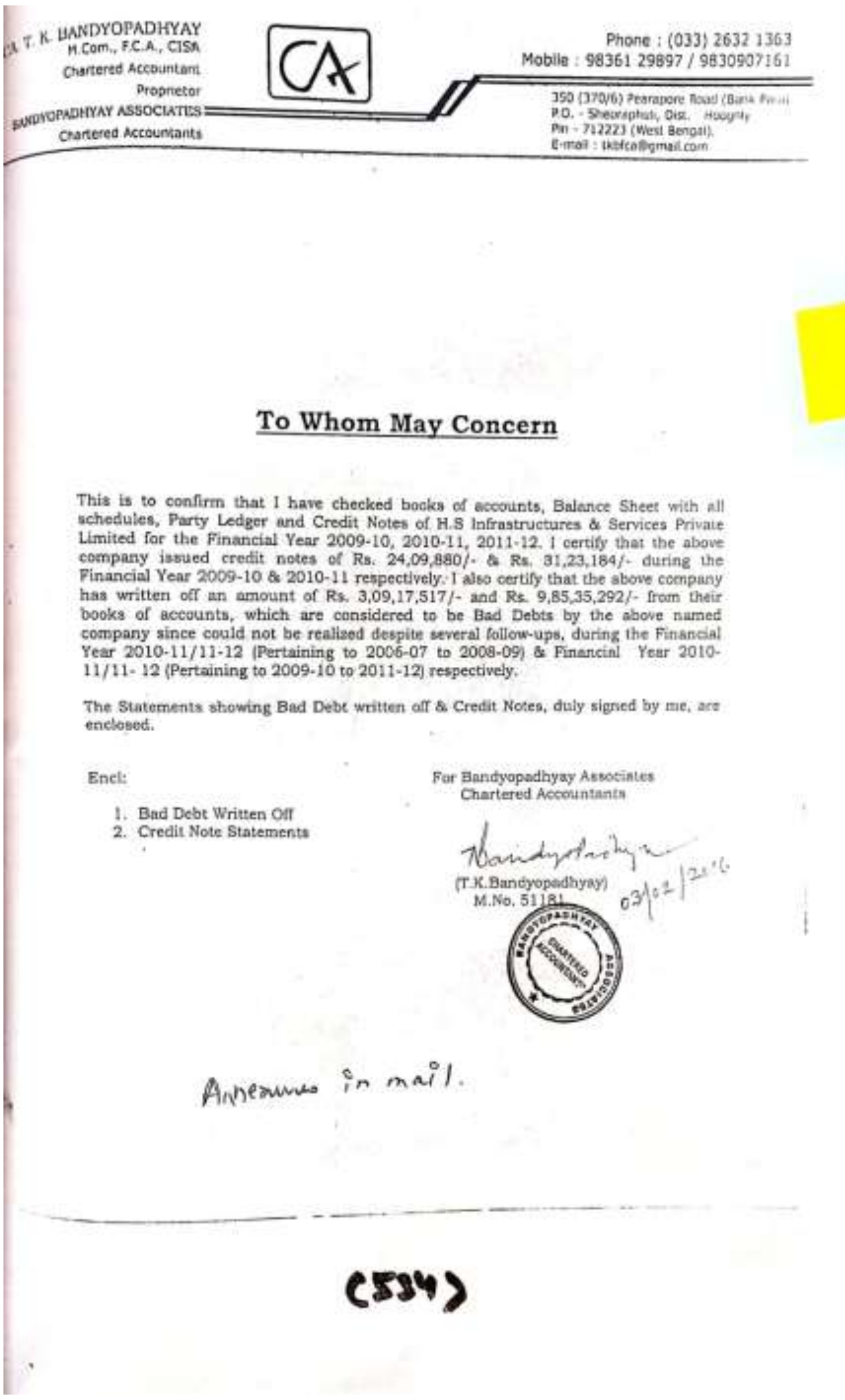
6.3. It has also been alleged in the impugned order that Credit Notes for service value of Rs.55,33,064/- involving service tax of Rs.3,81,797 was found to be indicated in the service tax realizable summary' & 'Invoice-wise credit note issued statement' for FY 2009-10 & 2010-11 (Annexure A-4 to SCN). Summary of credit notes issued by HSISPL during FY 2009-10 & 2010-are as follows:-

Chart-B

Period	taxable value (Rs.)	Service tax involved and realisable			
		Service tax (Rs.)	Education cess (Rs.)	Secondary & higher education cess (Rs.)	total service tax inclusive of cess
Credit notes issued during 2009-10	2,409,880	240,988	4,820	2,410	248,218
Credit notes issued during 2009-10	3,123,184	129,675	2,588	1,316	133579
	5,533,064	370,663	7,408	3,726	381,797

6.4. Accordingly, it is alleged in the impugned order that HSISPL were liable to discharge Service Tax Rs 3.81,797/- on the credit notes.

6.5. We find that the appellant submitted a Chartered Accountant's certificated confirming the writing off of the bad debts and credit notes. For the sake of ready reference, the said certificate is reproduced below:



CA T. K. BANDYOPADHYAY
M.Com., F.C.A., CISA
Chartered Accountant
Proprietor
BANDYOPADHYAY ASSOCIATES
Chartered Accountants

Phone : (033) 2632 1363
Mobile : 98361 29897 / 9830907161
350 (370/6) Pearapore Road (Bara Pirtala)
P.O. - Sheoraphuli, Dist. Hooghly
Pin - 712223 (West Bengal).
E-mail : tkbfca@gmail.com

To Whom May Concern

This is to confirm that I have checked books of accounts, Balance Sheet with all schedules, Party Ledger and Credit Notes of H.S Infrastructures & Services Private Limited for the Financial Year 2009-10, 2010-11, 2011-12. I certify that the above company issued credit notes of Rs. 24,09,880/- & Rs. 31,23,184/- during the Financial Year 2009-10 & 2010-11 respectively. I also certify that the above company has written off an amount of Rs. 3,09,17,517/- and Rs. 9,85,35,292/- from their books of accounts, which are considered to be Bad Debts by the above named company since could not be realized despite several follow-ups, during the Financial Year 2010-11/11-12 (Pertaining to 2006-07 to 2008-09) & Financial Year 2010-11/11- 12 (Pertaining to 2009-10 to 2011-12) respectively.

The Statements showing Bad Debt written off & Credit Notes, duly signed by me, are enclosed.

Encl:

1. Bad Debt Written Off
2. Credit Note Statements

For Bandyopadhyay Associates
Chartered Accountants

(T.K.Bandyopadhyay)
M.No. 51181
03/02/2016

Annexures in mail.

(534)

6.6. From the Chartered Accountant's certificate extracted above, we observe that the Chartered Accountant has categorically certified that an amount Rs.2,89,62,856 (including service tax of Rs. 20,02,395) during FY 2010-11 and Rs. 10,04,89,952 (including service tax of Rs. 1,02,19,013) during FY 2011-12 were declared as "Bad Debt" and Written off in the balance sheet and profit & loss account for the Financial year 2010-11. He has also certified that Credit Notes amounting to Rs.55,33,064/- has been written off.

6.7. We observe that the Ld. adjudicating authority has ignored the certificate issued by the Chartered Accountant on the ground that there is no corroborative evidence given by the chartered accountant confirming the write off. We observe that the Chartered Accountant is a responsible person who has been legally empowered to certify the correctness of the account maintained by the appellant. A Chartered Accountant verifies all the accounts of the appellant and after satisfying the correctness of the claims made by the appellant from the documents submitted by the appellant company, issues the certificate. He takes responsibility for the correctness of the certificated issued by him. If the department has any doubt regarding the correctness of the certificate issued by the Chartered Accountant, then they would have verified and substantiate the allegation with documentary evidence. In the present case, the Ld. adjudicating authority brushed aside the Chartered Accountant Certificate by saying that there is no corroborative evidence produced by the Chartered Accountant. He has not given any reason for arriving at such a conclusion. Thus, we do not agree with the finding of the adjudicating authority, in this regards, as there is no evidence available on record contrary to the write off certificate issued by the Chartered Accountant. Accordingly, we hold that the certificate issued by the Chartered Accountant can be relied upon. Therefore, we hold that the evidence available on record indicate that the appellant has written off bad debts totally amounting to Rs.12,94,52,808/- involving service tax of Rs.1,22,21,408/- and credit notes of Rs.55,33,064/- involving service tax of Rs.3,81,797/-.

6.7. We observe that prior to the insertion of the **Point of Taxation Rules, 2011, which has come into effect from 01.04.2011**, service tax is payable on receipt basis. The relevant provision under rule 6(1) of the said Rules is reproduced below, which was in force up to 01.04.2011 (to quote)

> "RULE 6. Payment of service tax. — (1) The service tax shall be paid to the credit of the Central Government, -
>
> (i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and
>
> (ii) by the 5th day of the month, in any other case,
>
> immediately following the calendar month **in which the payments are received**, towards the value of taxable services:"(unquote).

6.8. We observe that the Appellant paid service tax following the provisions of the above rule and so they were not liable to pay service tax on any amount which was not received. The Appellant having issued 'Credit Notes' and "Bad Debts Written Off", have no scope to receive any amount and so question of payment of service on the amount not received by them did not arise.

6.9. We find that this view is supported by the following decisions:-

(i) CESTAT, SZB, Bangalore in the case of BPL LTD. Versus COMMISSIONER OF SERVICE TAX, BANGALORE reported in 2006(4)S.T.R.307.

(ii) CESTAT, SZB, Bangalore in the case of COMMR. OF C. EX. (APPEALS-II), BANGALORE Versus TATA TELE SERVICES LTD. reported in 2014 (34) S.T.R. 43.

6.10. Thus, by relying on the decisions cited above, we hold that the appellant is not liable to pay service tax on the bad debts and credit notes which were written off as they have not received this amount.

6.11. Another ground raised by the appellant against the confirmation of the demand is that the authority who issued the notice has not classified the service. Since amount of service tax depends on the nature and character of service for the period prior to 30.06.2012, it is essential to classify the service. Since the notice has not classified the liability of service tax under any specific category of service, they contended that the notice is void of merit and is not maintainable. In this regard, the Appellant relied on the decision in the case of GSP INFRATECH DEVELOPMENT LTD. v. CCE., CUS. & S.T., BELGAUM reported in 2015 (39) S.T.R. 327 (Tri. - Bang.)

6.12. We find merit in the submission of the appellant that the Notice did not specify under which category of service, they were liable to pay service tax. We observe that prior to 30.06.2012, the notice must specify under which category of service, the demand has been made. The notice issued without specifying the category of service tax demanded is legally not sustainable. In the present case, we observe that the Notice has taken the information regarding the bad debts and credit notes written of from the books of accounts of the appellant and demanded service tax without specifying the demand of service tax under any particular category of service. Accordingly, we hold that the demand is not sustainable on this count also.

7. In view of the above findings, we set aside the demand of service tax confirmed in the impugned order. As the demand itself is not sustainable, the question of demanding interest and imposing penalties does not arise.

8. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 03.03.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP