IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75292 of 2025

(Arising out of Order-in-Appeal No.419/ST-Kol/ST/Kol-S/2024-25 dated 17.10.2024 passed by Commissioner of CGST & Central Excise, Kolkata South)

M/s Shiv Aspraval Gupta Corporate Consultant Pvt.Ltd.
(OM Towers,7th Floork Unit No.706,32 Chowranghee Road,Kolkata-700071)

Appellant

VERSUS

Commissioner of CGST,Central Excise, Kolkata South
(180,Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

Appearance:
Shri Arvind Behati,Chartered Accountant for the Appellant
Shri S.K.Dikshit, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76492/2025

DATE OF HEARING : 05 JUNE 2025

DATE OF PRONOUNCEMENT : **11 JUNE 2025**

Per Ashok Jindal :

The appellant is in appeal against the impugned order denying Credit of Service Tax amounting to Rs. 54,81,000/- along with interest and penalty of Rs. 54,91,000/- under Section 77(1)(c)(iii)read with Section 78 of the Finance Act.

2. The facts of the case are that the appellant as a financial intermediary was engaged in providing taxable services during the relevant period and the Appellant was engaged by one M/s Kesoram Industries Limited (KIL) vide an Agreement dated 13 August 2015, inter alia, for liasoning and negotiating charges towards pre-payment of loans and obtaining No Due Certificate from the financial institutions**.** The said work was outsourced/sub-contracted to one Mr.Amitabh Ghosh

then representing M/s Prabhav Industries Limited (PIL) and the same was formalized through a Memorandum of Understanding ('MOU') dated 2 January 2016. The said service provider was duly registered with the Service Tax Department which provided the services to the appellant and raised invoices dated 14.03.2016 for providing the said services. The appellan availed the cenvat credit on the said invoice and reflected the same in the ST-3 Returns.

2.1 An investigation was conducted in October 2017 in the context of inadmissible CENVAT Credit availed by one M/s Design Tech Systems Limited which extended to the extant service provider, a Show-cause Notice dated 20 April 2021 was issued to the Appellant alleging wrongful and fraudulent availment of CENVAT Credit on the strength of the Invoice raised by the service provider, namely PIL. It is the case of the Revenue that the said service provider is a shell entity not engaged in any legitimate business by placing reliance on (a) incriminating statements tendered by a Chartered Accountant, Mr Chirag Mehta, the alleged manager/controller of the service provider, Mr Shrish Shah and the then Director of the service provider, Mr. Antony IsabuEask, (b) an alert communication dated 7 August 2017 from 'SEBI' identifying a list of 331 suspected shell companies, which included the name of the service provider.

2.2 It is also alleged by the Revenue that no tax was discharged by the said provider and neither were such services used by the appellant for provisions of an output service so as to warrant the availament of cenvat credit under Rule 3 of the Cenvat Credit Rules, 2004.

2.3 The adjudicating authority confirmed the demand by denying the cenvat credit as mentioned in Paragraph (1) hereinabove.

2.4 The appellant filed the appeal before the ld.Commissioner (Appeals), who confirmed the order of the adjudicating authority. Being aggrieved with this order, the appellant is before us.

3. The ld.Chartered Accountant appearing on behalf of the appellant submits that the input services availed from the service provider has a direct nexus and was integral to the provision of output services to Kesoram Industries Ltd. Therefore, without disputing much less investigating the provision of such output services to KIL, it was improper on the part of the revenue department to jump to the conclusion that no underlying service was rendered by PIL.

3.1 It is the submission that as per agreement dated 2 March 2016, the execution of the said scope of work is evidenced by a letter dt. 2 March 2016 from KIL, which *inter-alia* specifically confirmed the receipt of "No Dues Certificate" from various financial institutions viz. Syndicate Bank, IndusInd Bank, State Bank of India, while processing the payment for the services rendered by the appellant.

3.2 It is the contention of the appellant that it would be pertinent to note that the department has neither investigated KIL nor the appellant. Moreover, neither of the authorities have discredited these evidences nor rendered any finding controverting the provision of these output services to KIL. Therefore, the *bonafide* nature of the appellant's transaction with KIL has not been disputed. Under these circumstances, the appellant is at a complete loss to appreciate as how the revenue could jump to the conclusion that PIL has not rendered any service

when the work awarded by KIL was carried out by the appellant with assistance from PIL as would be evident from the scope of work entrusted to PIL.

3.3 The ld.Chartered Accountant further submitted that the appellant was a *bonafide* purchaser of input services for value from PIL on the basis of a valid and effective service tax registration issued to PIL by the service tax department and the credit of service tax was availed by the appellant on the strength of an agreement, legitimate tax invoice including payment of consideration through proper banking channel to PIL not entailing any violation of Rule 3, Rule 4 or Rule 9(1) of the CCR as alleged or at all.

3.4 He further submitted that non-deposit of service tax by PIL in respect to the tax invoice raised upon the appellant can be no ground to deny service tax credit to the appellant alleging violation of Rule 3 of the Cenvat Credit Rules especially when there is no evidence of connivance of the appellant with PIL.

3.5 To support, he relied on the decision of the Hon'ble Jharkhand High Court in the case of Commissioner of Central Excise, East Singhbhum Vs. Tata Motors Limited reported in 2013 (294) ELT 394 (Jhar.) and he also relied on the decision of this Tribunal in the case of L.G.Electronics India Pvt.Limited Vs. Commissioner of Central Excise & Service Tax, Noida reported in 2017 (48) STR 248 (Tri.-All.).

3.6 He further submitted that the alert letter dated 7 August 2017 from SEBI identifying the list of 331 suspected shell companies including PIL was issued after about 16 months from the date of the impugned transaction. Moreover, PIL continues to be listed on the stock exchanges as evident from the BSE website and shares of PIL were

traded till 2019. Therefore, it cannot be expected that the appellant has any knowledge of the alleged wrong doing by PIL when the appellant transacted with PIL in 2016.

3.7 He further submitted that the alleged incriminating statements of the persons, which have been relied upon as evidence, have no evidentiary value as the procedure prescribed in Section 9D of the Central Excise Act as made applicable to the Finance Act was not followed.

3.8 He further submitted that the decision relied upon by the learned Commissioner (Appeals) in the impugned order was rendered in the context of availability of ITC in the GST regime, which inter alia contains a specific condition in Section 16(2) of the GST Act that ITC can be availed by the recipient/purchaser only if tax has been paid by the supplier. There was no provisions in the Finance Act. Therefore, such decision cannot be relied upon.

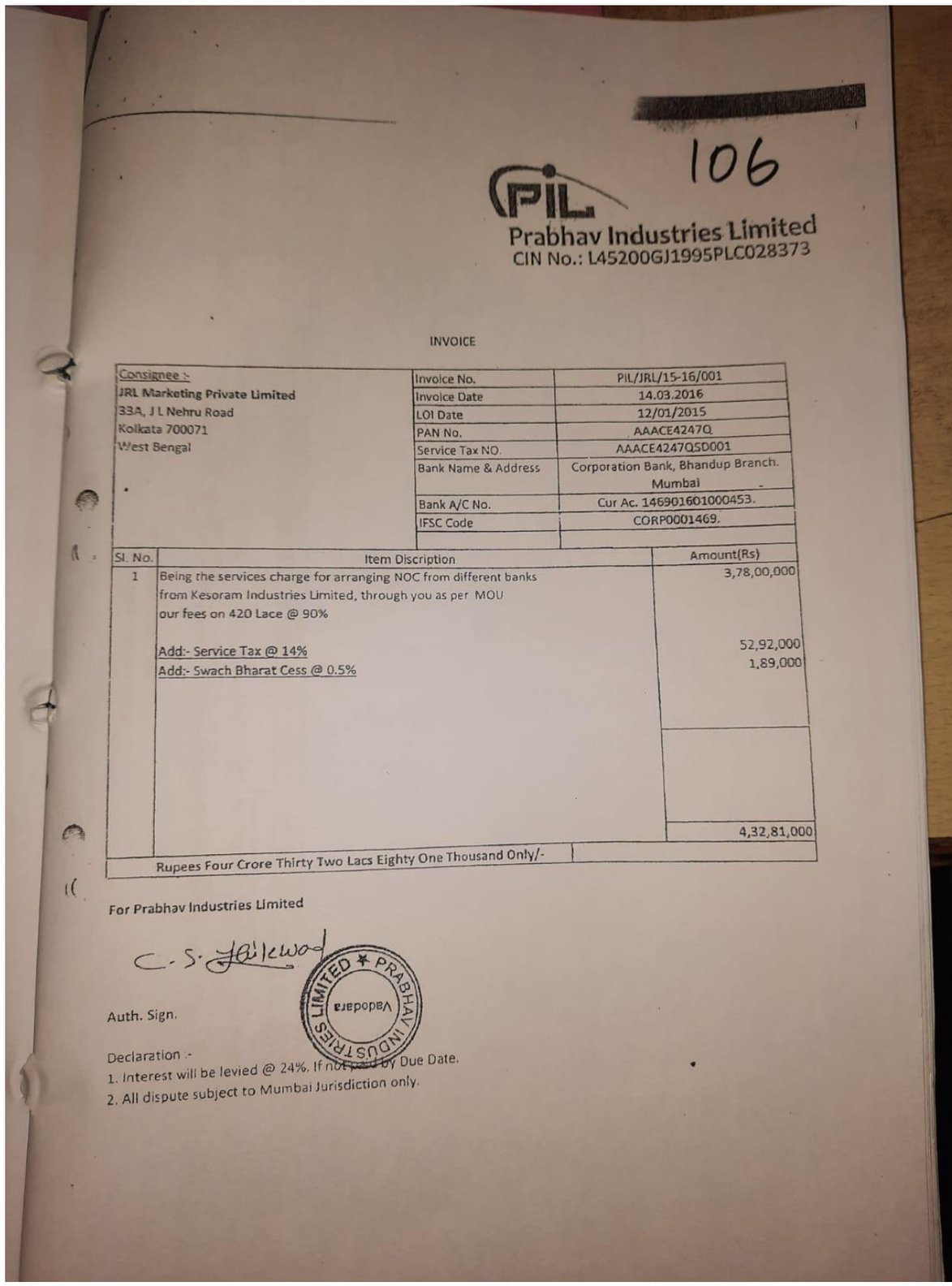
3.9 Finally, he submitted that the extended period of limitation cannot be invoked in this case as the appellant has disclosed the availment of cenvat credit in their ST-3 Returns filed in 2016 and no evidence has been adduced by the Revenue to establish connivance of the appellant with PIL so as to justify the alleged fraudulent availment of cenvat credit by the appellant and the show-cause notice has been issued to the appellant only on 20.04.2021 by invoking extended period of limitation.

4. On the other hand, the ld.A.R. for the Revenue, has supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in this case, the cenvat credit sought to be denied to the appellant on the ground that the alleged services provided to the appellant is a shell companies as per alert letter issued by SEBI on 07.08.2017 and the service tax has not been paid to the appellant. During the course of investigation, a Certificate was also relied upon to deny the cenvat credit, but there is certain facts on record that the appellant entered into an agreement to provide the services to KIP towards pre-payment of loans and obtaining No Due Certificate from the financial institutions,the said service was outsourced to PIL by the

appellant and PIL has raised invoice on the appellant for providing the said services. For better appreciation, the said invoice is extracted herein below :



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PIL

Prabhav Industries Limited
CIN No.: L45200GJ1995PLC028373

INVOICE

Consignee :-		
JRL Marketing Private Limited 33A, J L Nehru Road Kolkata 700071 West Bengal	Invoice No.	PIL/JRL/15-16/001
	Invoice Date	14.03.2016
	LOI Date	12/01/2015
	PAN No.	AAACE4247Q
	Service Tax NO.	AAACE4247QSD001
	Bank Name & Address	Corporation Bank, Bhandup Branch. Mumbai
	Bank A/C No.	Cur Ac. 146901601000453.
	IFSC Code	CORP0001469.

Sl. No.	Item Discription	Amount(Rs)
1	Being the services charge for arranging NOC from different banks from Kesoram Industries Limited, through you as per MOU our fees on 420 Lace @ 90%	3,78,00,000
	Add:- Service Tax @ 14%	52,92,000
	Add:- Swach Bharat Cess @ 0.5%	1,89,000
		4,32,81,000

Rupees Four Crore Thirty Two Lacs Eighty One Thousand Only/-

For Prabhav Industries Limited

C. S. Jaiswal

PRABHAV INDUSTRIES LIMITED Vadodara

Auth. Sign.

Declaration :-
1. Interest will be levied @ 24%, If not paid by Due Date.
2. All dispute subject to Mumbai Jurisdiction only.

and KIL has also obtained No Due Certificate with regard to pre-payment of loans from the financial institutions. These facts are admitted facts.

6.1 In these circumstances, it is required to be seen that whether the appellant has obtained the NOC through PIL or not ? However, as per the appellant, it is stated that the said service has been outsourced.

6.2 In fact, in this case, the denial of cenvat credit is on the basis of three grounds, namely,

(a) that on the basis of Alert letter dated 07.08.2017 issued by SEBI ;
(b) Non-payment of service tax by PIL and
(c) various statements recorded during the course of investigation.

7. Admittedly, the Alert letter has been issued by SEBI on 07.08.2017 whereas the appellant has obtained the NOC through PIL on 14th March, 2016. Therefore, the denial of cenvat credit cannot be based on the Alert letter issued by SEBI, which is much later about 16 months from the date of obtaining of the NOC through PIL.

8. Further, non-payment of service tax by PIL cannot be a reason to deny the cenvat credit to the appellant as held by the Hon'ble Jharkhand High Court in the case of Tata Motors Limited (supra), therein the Hon'ble High Court has observed as under :

> *"**5.** Learned counsel for the department in this appeal has relied upon firstly upon Rule 57G. It has been urged that the said Rule provides for Modvat credits in these words :*
>
> *"Every manufacturer intending to take credit on the duty paid on inputs…"*
>
> ***6.** Placing reliance upon the underlined words, it has been urged that unless the duty has been paid on inputs, no Modvat credit can be availed by the assessee."*

9. Further, in the case of L.G.Electronics India Pvt.Limited (supra), this Tribunal has observed as under :

> *"**3.** Appellants submitted before the Original Authority that the invoices issued by M/s. BVI HR Practice Private Limited were containing all the particulars prescribed under Section 4A of Central Excise Act, 1944 and that appellants paid Service Tax to M/s. BVI HR Practice Private Limited for services provided and the service for which Service Tax was paid by appellants to the Service Receiver was an input service for them and said Service Tax was admissible to them as Cenvat credit as per Rule of Cenvat Credit Rules, 2004. They have further submitted that the appellants has availed the Cenvat credit on the basis of invoices raised by M/s. BVI HR Practice Private Limited wherein Service Tax valued and Service Tax therein separately shown and paid by the appellants and the invoices were in compliance with provisions of Rule 4A of Service Tax Rules, 1994 and this is how the document was in conformity with the provisions of sub-rule (1) of Rule 9 of Cenvat Credit Rules, 2004. They have further submitted that as provided under sub-rule (7) of Rule 9 of Cenvat Credit Rules, 2004 which provides that credit on input services can be availed once payment has been made on the full value of the service including Service Tax and this is how they were eligible for said Cenvat credit. They have further submitted that it is practically not feasible for any service recipient to ask each and every service provider to show the proof of the tax deposited by it with the Government and that non-deposit of tax by the service provider cannot be a ground to deny credit to the service recipient. They have further pointed out that through Sections 73 and 73A of Finance Act, 1994 law has provided legal remedy to the Department for recovery of Service Tax not paid as well as Service Tax collected but not deposited with the exchequer and it is not the responsibility of the service receiver to ensure payment of Service Tax by service provider. They have further contended*

that the extended period of limitation was not admissible to be invoked in the present show cause notice though the allegation was made on the show cause notice that is connivance of the appellant with the service provider but such an allegation has not been supported by any evidence. The Original Authority did not appreciate the submissions of the appellant and through Order-in-Original Nos. 48-52/Commissioner/Noida/2013-14, dated 29-1-2014, adjudicated the said show cause notice and confirmed the demand and disallowed the Cenvat credit of Rs. 3,32,76,600/- to the appellant. He imposed equal penalty on appellant. Further, he imposed penalty of Rs. 10 lakhs on appellant. He further imposed penalty of Rs. 5 lakh on Shri Bharat Bhushan Sharma, Authorized Signatory of the appellant Company. Aggrieved by the said Order-in-Original Nos. 48-52/Commissioner/Noida/2013-14, dated 29-1-2014, the appellant is before this Tribunal. The grounds of appeal are same as that were stated before the Original Authority.

4. *…….*

5. *Having considered the rival contentions, we find that the argument put forth by the appellant before the Original Authority has great force of law. We find that the show cause notice did not bring forward any evidence to establish that there has been collusion between the appellant and the service provider for evasion of Service Tax and for availing inadmissible Cenvat credit. Therefore, the invocation of extended period in the said show cause notice is not sustainable. We, therefore, hold that the said show cause notice, so far as, relates to denial of Cenvat credit to the appellant, imposition of penalty on appellant, proposal for imposition of penalty on its Authorized Signatory & proposal of demanding interest from the appellant is unsustainable. We, therefore, modify the impugned Order-in-Original to the extent that the demand confirmed in respect of Cenvat credit of Rs. 3,32,76,600/- is set aside, order for recovery of interest on the said demand is set aside, imposition of penalty of Rs.*

3,32,76,600/- on appellant is set aside, imposition of penalty of Rs. 10 lakhs on the appellant is set aside and imposition of Rs. 5 lakhs on Shri Bharat Bhushan Sharma, Authorized Signatory is set aside. In above terms both the appeals are allowed.

10. Further, in the case of M/s Bayer Material Science Pvt. Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax, Noida reported in 2018 (8) TMI 1168 (CESTAT-Allahabad), this Tribunal has held as under :

"5. After hearing the ld.AR appearing on behalf of the Revenue and on examination of the sample invoices in question, we note that the appellant has admittedly procured the Cenvatable services of construction of factory from M/s. Keil India Engineering Pvt.Ltd. and all the requisite particulars stand mentioned in the said invoices so raised by the service provider. The service provider is also registered with the Service Tax department for their Delhi unit, but their NOIDA unit, who has actually provided the services were not registered. However, registration number stands given in the invoice along with the amount of Service Tax. The appellant is neither expected nor is under any legal obligation to find out that the Service Tax so mentioned in the invoices stands actually paid by the service provider or not.

6. In terms Rule 4(7) of Cenvat Credit Rules readwith Rule 9 of Cenvat Credit Rules, the only requirement of the assessee is to pay the value of the services as also the quantum of service tax as assessed in the invoice raised by the service provider and then to avail the credit. The assessee cannot be held responsible for any default in non-deposit of duty by the service provider and the credit of the service tax paid by him to the service provider for further deposit in the exchequer kitty cannot be denied to him on account of the lapse of the service provider. The Revenue's remedy, in these types of cases lies at the end of service

provider, for initiating proceedings against him, in respect of the short levy of service tax.

7. We further note that the said issue of non-payment of tax or duty by the person responsible for payment of such tax or duty and the consequent availment of Cenvat Credit, as reflected in the invoices, has been the subject matter of various decisions. The Hon'ble Supreme Court in the case of CCE, Jalandhar vs. Kay Kay Industries reported in 2013 (295) E.L.T. 177 (S.C.) has observed that the assessee cannot verify from the department whether the duty has actually been paid by the manufacturer or not. Similarly, the Hon'ble Jharkhand High Court in the case of CCE, East Singhbhum v. Tata Motors Ltd. reported in 2013 (294) E.LT. 394 (Jhar.) has observed that it is unreasonable to expect buyer of such inputs to go and verify accounts of supplier or to find out from the Central Excise Department whether duty has actually been deposited or not. In such a scenario, the recipient cannot be denied the credit. Similarly, the Hon'ble Rajasthan High Court in the case of J.K.Industries Ltd. v. Union of India reported in 2008 (223) E.L.T. 372(Raj.) observed that as the assessee having fulfilled the requirement which were within his domain he cannot be denied the Modvat credit on account of any fault committed by the seller. The Hon'ble Punjab & Haryana High Court in the case of CCE, Delhi-Gurgaon v. Myron Electricals Pvt.Ltd. [2008 (11) S.T.R. 85 (P & H) has held that the credit cannot be denied on the ground that invoices were issued by the dealer from premises other than for which Central Excise registration was granted.

8. Inasmuch as the appellant has admittedly paid the Service Tax amount to the service provider, along with value of the goods, the fact that the said service provider has not further deposited the same with the government, cannot lead to denial of credit to the present appellant. As such we find no merits in the stand of the Revenue resulting in passing of the present impugned order vide which the credit stands denied to them. Accordingly the impugned order is set aside and appeal is allowed with consequential relief to the appellant."

11. Admittedly, the Revenue has not proved any connivance of the appellant with PIL and the appellant has paid the service tax, on which they have taken cenvat credit on all the requirements in terms of Rule 9 (1) of the Cenvat Credit Rules, 2004, which are reflected in the invoice. Therefore, the cenvat credit cannot be denied on the ground of non-payment of service tax by the service provider, who is registered with the Service Tax Department as service provider.

12. We further take note of the fact that the statement which has been relied upon by the adjudicating authority in the impugned order to deny the cenvat credit, did not examine in terms of Section 9D of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 as held by the Hon'ble Punjab & Haryana High Court in the case of Ambika International Vs. Union of India reported in 2018 (361) ELT 90 (P & H), wherein the Hon'ble High Court held that the statements recorded during the course of investigation, have no evidentiary value unless and until tested in terms of Section 9D of the Central Excise Act, 1944. In that circumstances, the said statements cannot be the basis to deny the cenvat credit to the appellant.

13. We further take note of the facts that the cenvat credit was taken by the appellant on 14.03.2016, which has been duly reflected in their Books of Account as well as in their ST-3 Returns. In that circumstances, the show-cause notice issued to the appellant is highly barred by limitation. In that circumstances, the appellant succeeds on limitation also.

14. In view of the above, we hold that the cenvat credit cannot be denied to the appellant on merits as well as limitation. Consequently, no penalty can be imposed on the appellant.

15. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the open court on **11.06.2025**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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