

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75488 of 2023

(Arising out of Order-in-Original No. 12/ST/Ayukt/2023 dated 15.03.2023 passed by the Commissioner of C.G.S.T. and Central Excise, Patna-I Commissionerate, Central Revenue Building (Annexe), 3rd Floor, Bir Chand Patel path, Patna – 800 001)

M/s. Rama Construction

: Appellant

Vill. & P.O.: Aunta,
PIN – 803 303, District: Patna

VERSUS

Pr. Commissioner of C.G.S.T. and Central Excise : Respondent

Patna-I Commissionerate,
Central Revenue Building (Annexe), 3rd Floor,
Bir Chand Patel Path, Patna – 800 001

APPEARANCE:

Shri S.K. Goyal, Chartered Accountant, for the Appellant

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

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 76540 / 2025

DATE OF HEARING: 16.04.2025

DATE OF DECISION: 18.06.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The facts of the case are that M/s. Rama Construction, Vill. & P.O.: Aunta, PIN – 803 303, District: Patna (hereinafter referred to as the “appellant”) is a Government registered contractor and provides works contract services. During the material period, the appellant rendered works contract services related to the Central and State Governments.

2. On the basis of verification of documents obtained from the Income Tax Department, such as Form 26AS, along with Profit & Loss Account of the appellant for the relevant period, and on comparison of the same with the S.T.-3 Returns filed by the appellant for the said period, it was alleged by the Revenue that the appellant had not paid appropriate Service Tax during the period under dispute. It also appeared to the Revenue that the appellant had failed to submit any document to show that the amounts so received were from services which fall under the Negative List or covered under any of the entries mentioned in the Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012. Thus, it appeared to the Revenue that the amounts received by the appellant were considerations received towards rendering of taxable services for which appropriate service tax was not paid by the appellant.

3. Accordingly, a Show Cause Notice dated 16.04.2019 was issued to the appellant proposing to demand Service Tax of Rs.5,54,77,142/- (inclusive of cesses) for the period from April, 2013 to March, 2017.

3.1. The said notice was adjudicated by the Principal Commissioner of C.G.S.T. and Central Excise, Patna-I Commissionerate vide the impugned Order-in-Original No. 12/ST/Ayukt/2023 dated 15.03.2023 wherein the Id. adjudicating authority has confirmed the demand of Service Tax of Rs.5,54,77,142/- (inclusive of cesses), along with interest and imposed an equal amount of tax as penalty under Section 78 of the Finance Act, 1994, besides imposing penalties of Rs.10,000/- each under Section 77(1)(c)(ii),

Section 77(1)(c)(iii) and Section 77(2) of the Finance Act, 1994.

4. Aggrieved by the confirmation of the said demands, the appellant has filed this appeal.

5. At the outset, the Ld. Counsel appearing on behalf of the appellant submitted that they had not received the copy of the Show Cause Notice dated 16.04.2019, until 30.12.2022. In this regard, he has referred to a letter dated 23.04.2025 submitted by the Department offering comments on the documents submitted by the appellant, in which it is categorically mentioned that the Range Officer has intimated that the Show Cause Notice was sent through Registered Post to the registered address of the appellant on 16.04.2019, but was returned undelivered on 24.04.2019. In this regard, the Ld. Counsel for the appellant points out that the said Notice was returned undelivered on 24.04.2019, but the Department has resorted to delivery of the same through the Inspector also on 16.04.2019. The letter dated 24.06.2019 reveals that the Inspector found the premises to be locked and hence he has drawn a Panchnama to the effect that nobody was available in the said registered premises. The appellant submits that thereafter, the Departmental Officers affixed the said Show Cause Notice in the Notice Board on 16.04.2019 itself, which is in violation of Section 37C(1)(c) of the Central Excise Act, 1944.

5.1.1. In this regard, the Ld. Counsel for the appellant referred the 'Despatch Register' pertaining to the dispatch of the above said Show Cause Notice, wherein it is observed that dispatch of the said Show Cause Notice through postal authorities, sending the

same through the Inspector for delivery and affixing the said Notice in the Notice Board – all have been recorded as done on the same day, i.e., 16.04.2019, which is legally not correct. As per Section 37C, the method of delivery by affixing of the Notice in the Notice Board can be resorted only after exhausting the other two options. In the present case, the Notice was returned undelivered by the postal authorities only on 24.04.2019. Thus, resorting to delivery of the Notice by display in the Notice Board on 16.04. 2019 itself establishes that the department has not followed the methods of dispatch as prescribed under Section 37C of the Central Excise Act, 1994. Thus, the Ld. Counsel for the appellant contends that the documents submitted by the Department itself clearly reveal that the impugned Show Cause Notice was not served to the appellant, until 30.12.2022 when the said Notice was finally communicated via e-mail.

5.1.2. In view of these submissions, the Ld. Counsel for the appellant submits that the Show Cause Notice pertaining to the period from 2012-13 to 2015-16 served on 30.12.2022, is beyond the period of five years and hence the Notice is void abinitio. Thus, the appellant submits that the demand confirmed on the basis of this Show Cause Notice is legally unsustainable and liable to be set aside.

5.2. It is the submission of the appellant that the services provided by them are specifically exempt as per clauses 12, 13(a) and 14 of the Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012; however, the impugned order has confirmed the demand on the basis of the figures mentioned in Form 26AS and Profit & Loss Account of the appellant without investigating into the nature of the income

shown in Form 26AS or the reasons for non-payment of Service Tax. The appellant contends that they are eligible for the benefit of clauses 12, 13(a) and 14 of the Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012 and hence, the demand confirmed by not extending the said benefit is legally not sustainable.

5.3. In support of their contention, the appellant submitted a work sheet containing the list work orders containing all the works executed by them during the material period.

5.4. The appellant also contended that the demand cannot merely be confirmed on the basis of data available in Form 26AS or Income Tax Returns. In support of this contention, the appellant placed reliance on the decision in the case of *M/s. Luit Developers Pvt. Ltd. v. Commissioner of C.G.S.T. & Central Excise, Dibrugarh [Final Order No. 75120 of 2022 dated 23.02.2022 in Service Tax Appeal No. 75792 of 2021 – CESTAT, Kolkata]*.

5.5. It is further submitted by the appellant that they were registered with the Department and filing their Returns and thus, have not suppressed any information from the Department. The appellant pointed out that they have filed 'nil' Return during the period from October 2013 to March 2014 as they were under the bona fide belief that the services rendered by them were eligible for exemption under the Notification No. 25/2012-S.T. It is their submission in this regard that if the Department had not accepted their claim under the exemption Notification and 'nil' rate of duty, they could have raised objection during the time of scrutiny of the Returns filed by them. Thus,

the appellant claims that they have not suppressed any information from the Department and that in fact all the information for raising the demand has been gathered from their Profit & Loss Account only. Thus, the appellant contends that the demand confirmed by invoking the extended period of limitation is not sustainable. For the same reason, the appellant submits that the penalties imposed on them under Sections 78, 77(1)(c)(ii), 77(1)(c)(iii) and 77(2) of the Finance Act, 1994 are not sustainable.

5.6. In view of these submissions, the appellant prayed for setting aside the demands confirmed in the impugned order and allowing their appeal.

6. On the other hand, the Ld. Authorized Representative of the Revenue submits that the appellant had been given various opportunities to submit details regarding the services rendered by them; however, the appellant failed to submit the said documents. Therefore, it is his submission that the Id. adjudicating authority had no alternative but to consider the other documents like Form 26AS and Income Tax Returns to arrive at the Service Tax liability and accordingly, the impugned demand has been confirmed on the basis of the appellant's own documents. Thus, the Ld. Authorized Representative of the Revenue contends that the demand of duty, along with interest and penalties, confirmed in the impugned order, are sustainable.

7. Heard both sides and perused the appeal records.

8. We have taken note of the contention raised by the appellant as regards non-receipt of the Show Cause Notice dated 16.04.2019 until 30.12.2022. In support of this claim, the Ld. Counsel appearing for the appellant has referred to the letter dated 23.04.2025, submitted by the Department, offering comments on the relied upon documents submitted by the appellant. We have perused the said letter dated 23.04.2025 submitted by the Department wherein, in the response offered comments to "Para(3.1 & 3.2)", wherein it has been mentioned as under: -

"Para(3.1 & 3.2):- As per case record, the Show Cause Notice issued vide C.No. V(88)Patna(Central)/SCN Cell/Adjn(H)/2019/5835 dated 16.04.2019 was sent to the concerned Range office to serve the SCN to the noticee(Appellant). The Range office as well as concerned CGST & CX Patna Central Division has been asked to forward the copy of acknowledged receipt in token of service of the said notice. In reply through email Patna Central Division has intimated that the said SCN was sent through registered post at the registered address of the noticee but it was returned undelivered (copy of the envelope returned undelivered is enclosed). Further, Inspector of Kadamkuan Range has visited the premises of the noticee to serve the said SCN but the noticee/assesse found non-existence at the registered address. Accordingly, a panchnama to this effect was drawn at the spot (copy of Panchnama enclosed). Efforts to serve the said SCN were taken by the Jurisdictional Range Officer.

Further, in terms with provisions of section 37 (c) of Central Excise Act 1944 which has been made applicable in service tax matters also under the provisions of section 83 of the Finance Act 1994, a copy of the SCN dated 16.04.2019 was also affixed

on the notice Board of the CGST & CX Patna-1 Commissionerate (Xerox copy of the relevant portion of dispatch register in enclosed herewith for ready reference)s. Section 37C(c) of the Central Excise Act, 1944 stipulates that if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

...

Since, the notice has been affixed on the notice board also, as per provisions of the law it shall be deemed to have been served on the date on which the notice is affixed on the notice board. The said notice bearing letter of even no. 5839 dated 16.04.2019 was affixed at notice board on 16.04.2019. Hence, it has been served upon to the noticee."

8.1. In this regard, we have also examined the provisions of Section 37C(1)(c) of the Central Excise Act, 1944, which mandates that if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), a copy may be affixed on the Notice Board of the officer or authority concerned. For the sake of ready reference, the relevant clauses of the said Section are reproduced below: -

"Section 37C. Service of decisions, orders, summons, etc. —

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due [or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.”

(Emphasis supplied)

8.1.1. Thus, we find that the Show Cause Notice is to be affixed in the Notice Board only after the efforts as mentioned in clauses (a) and (b) of Section 37C(1) are unsuccessful. Only after failure to serve the Notice through Postal Authorities and even by sending an Officer in person, the Notice could be affixed in the Notice Board, for service.

8.1.2. However, in the present case, from the copy of the 'Despatch Register' referred to by the appellant, we find that the dispatch of the Show Cause Notice through Post, sending of the Officer for dispatch and display in the Notice Board, are all happened on the same date i.e., 16.04.2019. For better appreciation of the facts, copy of the said 'Despatch Register' of the Department is scanned and reproduced below: -

DESPATCH REGISTER											
Issue No. देने की क्रम	Month मास	Date तारीख	Name & Address नाम व पता	Place जगह	Subject विषय	File Head	Stamp Received Rs. मिलान प्राप्त दिनांक	P. पं.	Stamp Used Rs. उपयुक्त दिनांक	P. पं.	Remarks टिप्पणी
5829	II (3)	16/04/2019	ET/M/S.C. Report	CCST	Ac. (C-20)	Representation of women members on the Board					
5830	V (68)		Patna Central Jail/HQ/1/2018		W.P. (ON) Anti-nationality and some other persons (Patna)	State of Bihar					
5831					The Dy. Commissioner, (C-20), Patna						
5832					The Superintendent, (C-20), Kosiwali Bazar, Patna						
5833					The Dy. Commissioner (Adm.) (C-20), Patna						
5834					The Notice Board						
5835	V (88)		Patna Central Jail/HQ/1/2018		N.B. Kame Construction Co. Ltd., 204, Chauraha, Patna	Removal of Show C					
5836					Road No-12, Rajmohal Naga, Patna-801018						
5837					To The Dy. Commissioner, Kosiwali Bazar						
5838					To The Dy. Commissioner (Adm.) (C-20), Patna						
5839					To Notice Board						
5840	I (15)	12-04-2018	A Executive Engineer (Civil)		Patna Central Jail/HQ/1/2018	Revised cases estimate of foundation					
5841					A.E. (Civil), Patna	Patna C.R. Colony, Calcutta					
5842	V (90)		Patna Central Jail/HQ/1/2018		Military Engineer	SCN					
5843					Deputy Commr, C-20, Kosiwali Bazar						
5844					Super, C-20, Kosiwali Bazar						
5845					Acting J.C., C-20						

Milan

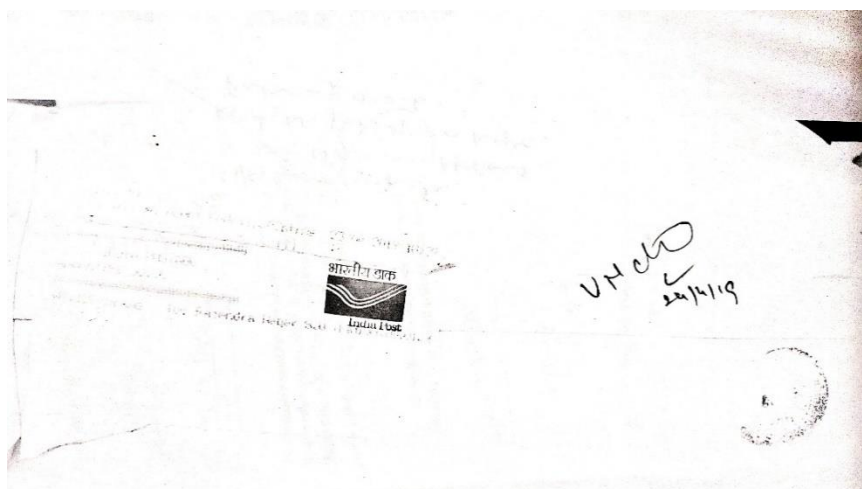
No. 5825 dated 16.04.2019

To,
M/s Ramesh Construction,
D-204, Chatterjee Apartment,
Road No. 12, Rajendra Nagar,
Patna - 800016.

प्रति,
श्री. श्री. जी. ए. एस. टी. प्रो. प्र.
का कार्यालय
पटना (मि. प्र.) प्रमो.
पटना - 800016

पटना - 800016

EMS SPEED POST
EF 37022057 6IN



8.2. These evidences indicate that the Postal Authorities had returned the Show Cause Notice in question undelivered only on 24.04.2019. Therefore, it is seen that even before the Show Cause Notice was returned by the Postal Authorities as undelivered, the Department has attempted service of the same through the Departmental Officer and affixed the same on the Notice Board, which is not as per the methods of service envisaged in the Section 37C.

8.3. Further, from the facts recorded by the Id. adjudicating authority in the impugned order, we find that the authorities verified the GSTN Portal of the appellant and found the e-mail address of the appellant and communicated the Show Cause Notice vide e-mail dated 30.12.2022. The relevant paragraph of the impugned order is reproduced below: -

"6.1 Due to change in Adjudicating Authority fresh date of personal hearing was granted vide letter dated 22.11.2022 for appearance on 24.11.2022 however, letter communicating the personal hearing was returned by the postal authorities with remark "Left". A new date of personal hearing was granted vide letter dated 30.12.2022 for appearance on 11.01.2023 but again no one appeared. The GSTN portal of the noticee was searched on the basis of their PAN number and it was found that GSTIN 10AALFR1568D2ZH is allotted to the noticee and is shown as active having principal place of business as 'Aunta, Auna, Aunta, Patna, Bihar-803303'. On the said portal the registered email id as sspsinha2009@yahoo.com and registered Mobile No. 8271871939 is also found mentioned. Therefore, a fresh date of personal hearing date was fixed to be held on 11.01.2023 which was communicated/sent vide letter dated 30.12.2022 on the address shown as principal place of business. The noticee vide their letter dated 10.01.2023 sought adjournment for one month on the pretext of collection of documents. A new mobile number 9431018635 was also found mentioned on the letter dated 10.01.2023. Fresh date of personal hearing was granted vide letter dated 30.01.2023 for personal hearing to be held on 08.02.2023 and was sent on both addresses, however, no one again appeared for personal hearing. Due to non response from the noticee, third and final date of hearing was

fixed on 06.03.2023 which was communicated vide letter dated 16.02.2023 and was also sent on the registered email id as sspsinha2009@yahoo.com. The noticee were also contacted/informed on the registered Mobile No. 8271871939 and 9431018635 but again the noticee preferred to abstain. I thus find that sufficient opportunity has been provided to them in terms of Section 33A of the Central Excise Act, 1944, made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Since the noticee did not turn up for hearing in spite of having given ample opportunities and since the issue cannot be kept pending in perpetuity, I proceed to decide the case on the basis of available facts and evidences on records.”

8.3.1. Thus, we find that the facts available on record indicate that the Show Cause Notice was served to the appellant only on 30.12.2022. We observe that the appellant has been registered with GST and their address details are available in the GSTN portal. The authorities could have verified the GSTN Portal and found out the current address of the appellant and communicated the Show Cause Notice prior to 30.12.2022, but it was done only on 30.12.2022.

9. In this case, admittedly, the period covered by the Show Cause Notice is from 2012-13 to 2015-16 while the said Show Cause Notice has been served to the appellant only on 30.12.2022, which is beyond the period of five years as prescribed under proviso to Section 73(1) of the Finance Act, 1994. Consequently, we find that the Show Cause Notice itself is rendered void ab initio and thus, the demands raised in the Show Cause Notice are not sustainable. Hence, we agree with the submission made by the

appellant in this regard that the demands confirmed against them in the impugned order on the basis of the said Show Cause Notice are unsustainable. However, we find that most of the period falls within the period are excluded for computation of the period of limitation due to COVID, as held by the Hon'ble Apex Court. Thus, we proceed to examine the other submissions made by the appellant in this case.

10. From the Show Cause Notice, we observe that the Department has taken the data from the Income Tax Returns and Form 26AS of the appellant and assumed that the entire amount shown therein has been received as consideration received on account of taxable services rendered. The Id. adjudicating authority has merely confirmed the demand based on such a presumption. We observe that there is no investigation or verification conducted before issue of the Notice to ascertain as to whether the entire consideration had been received on account of rendering of any taxable service by the appellant or not. In view of the above, we hold that the demand confirmed on the basis of the data available in the Income Tax returns and 26AS statements of the Appellant is legally not sustainable. We are of the view that the demand confirmed only on the basis of the details available in the Income Tax Returns and Form 26AS without any investigation, is not sustainable. We find that this view has been taken by this Tribunal in the case of *M/s. Luit Developers Pvt. Ltd. v. Commissioner of C.G.S.T. & Central Excise, Dibrugarh* [Final Order No. 75120 of 2022 dated 23.02.2022 in Service Tax Appeal No. 75792 of 2021 – CESTAT, Kolkata] wherein this Tribunal has held that a demand cannot be raised merely on the basis of the data

available in the Income Tax Returns or Profit & Loss Account alone; there must be corroborative evidence to substantiate the non-payment of Service Tax. The relevant paragraphs of the said decision are reproduced below:-

"11. I also find force in the submission of the Ld Counsel for the appellant that figures reflected in Form 26AS cannot be used to determine Service Tax liability unless there is any evidence shown that it was due to a taxable service as held in Kush Constructions(supra). Also, figures shown to Income Tax authorities cannot be used to determine Service Tax as held in Synergy Audio Visual Workshop Pvt Ltd(supra) and Deluxe Enterprises(supra).

12. I find that the Service tax demand for the period April 2014-September 2014 is beyond the extended period of 5 years. I also find that the Department has done audit of the appellant for February, 2014-15 as per Detailed Manual Scrutiny Report dated 15.12.2017, which includes checking of Form 26AS as clearly mentioned in Para 5.2 of CBEC Circular No 185/4/2015-ST dated 30.6.2015 vide F.No 137/314/2012 and therefore no suppression can be alleged for this period. I also find that as held in Gannon Dunkerley & Co Ltd (supra), since the appellant was filing all ST-3 Returns regularly, the Department's stand that it could examine the factual position only on receiving details of Form 26AS cannot be sustained because CBEC Circular No. 113/7/2009-S.T., dated 23-4-2009 vide F.No. 137/158/2008-CX. 4 and CBEC Circular No 185/4/2015-ST dated 30.6.2015 vide F.No 137/314/2012 categorically puts duty on the Assessing Officer to effectively scrutinize the returns at the preliminary stage. I also find that proviso to Section 73(1) has not been invoked in the operative part of the SCN and therefore extended period cannot be invoked as held in Satish Kumar and Co (supra). I also find that invoking extended period cannot be sustained for part of tax demand raised on RCM basis by virtue of it being a revenue neutral situation since the appellant is eligible for credit if it had done tax payment as also held in Universal Dredging & Reclamation Corporation Ltd (supra).

13. I also find that the appellant is a Pvt Ltd Company and figures in Form 26AS are already included in Revenue from Operations in the Profit/Loss Account of Balance Sheet, which is a public document, and therefore no suppression can be alleged as held in Hindalco Industries Ltd(supra). I also find that the Department has not adduced any positive evidence to show malafide intention for evasion of service tax and therefore extended period cannot be invoked as held in Pushpam Pharmaceuticals Limited(supra).

14. Therefore, in view of the above discussions and decisions cited, the entire demand fails on merits as well as on limitation. Thus, there can be no imposition of Service tax, interest and penalty on the appellant. The impugned order cannot be sustained and is set aside. Accordingly, the appeal is allowed with consequential benefits."

10.1. Consequently, we hold that the demand of Service Tax of Rs.5,54,77,142/- confirmed in the impugned order, along with interest, is not sustainable and accordingly, the same is set aside.

11. We also observe that the demand has been raised against the appellant by invoking the extended period of limitation. It is a fact on record that the appellant has been registered with the Service Tax Department and has been filing their Service Tax Return for the period from October 2013 to March 2014 claiming 'nil' rate of duty. No objections were raised by the Department when the appellant filed such Returns. In case the Departmental entertained any objection regarding the nil rate of duty claimed by the appellant, it could have called for information as and when such Returns were filed by the appellant. In these circumstances, we are of the view that there is no suppression of fact with intent to evade payment of Service Tax established against the appellant in this

case. Accordingly, we hold that the demand confirmed by invocation of the extended period of limitation is not sustainable. On perusal of the demand confirmed, we find that the period covered in the impugned order is from 2012-13 to 2015-16 while the said Show Cause Notice was issued on 16.04.2019 and served to the appellant only on 30.12.2022. Even if the date of Notice is considered as 16.04.2019, the entire demand has been confirmed by invoking the extended period of limitation. Thus, we hold that the entire demand confirmed in the impugned order is liable to be set aside on the ground of limitation.

11.1. For the same reason, we hold that no penalty is imposable on the appellant under Section 78 of the Finance Act, 1994.

12. We also observe that penalties have been imposed in the impugned order under Section 77(1)(c)(ii), Section 77(1)(c)(iii) and Section 77(2) of the Finance Act, 1994. It is a fact on record that the appellant has filed their Return for the period from October 2013 to March 2014 but not filed their statutory Returns for the subsequent period under the impression that they were eligible for the benefit under the Notification No. 25/2012-S.T. dated 20.06.2012. Even if the appellant is eligible for the said exemption, they were liable to file 'nil' Returns during the relevant period. As the appellant has failed to file the periodical returns after March 2014, we do not interfere with the penalties imposed under Sections 77(1)(c)(ii), 77(1)(c)(iii) and 77(2) of the Act.

13. In view of the above we pass the following order: -

- (i) The demand of Service Tax of Rs. Rs.5,54,77,142/-, along with interest, confirmed in the impugned order, is set aside.
- (ii) The penalty imposed on the appellant under Section 78 of the Finance Act, 1994 is also set aside.
- (iii) The penalties imposed on the appellant under Sections 77(1)(c)(ii), 77(1)(c)(iii) and 77(2) of the Finance Act, 1994 are upheld.

14. The appeal is disposed of in the above manner.

(Order pronounced in the open court on **18.06.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd