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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76196 of 2017

(Arising out of Order-in-Original No.172/Pr.Commr/ST-I/KOL/2016-17 dated 31.03.2017 passed by Principal Commissioner of Service Tax-I, Kolkata.)

M/s. Gorkha Securities
(9, Rafi Ahmed Kidwai Road, Kolkata-700013.)

...Appellant

VERSUS

Principal Commissioner of Service Tax-I Commissionerate

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri A.D. Ray & Ms. Sanjukta Ray, Advocates for the Appellant (s)
Shri S.Dey, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77002/2025

DATE OF HEARING : 17.07.2025
DATE OF DECISION : 17.07.2025

Per : R. MURALIDHAR :

The Appellant is engaged in providing 'Manpower Supply Services'. On the ground that the Appellant has not paid the Service Tax for the period 2011-12 to 2014-15 based on the Income Tax Returns and Form-26AS, a Show Cause Notice was issued demanding Rs.6,83,93,523/-. The Appellant submitted that they are partnership firm and are required to pay only 25% of the Service Tax in terms of Notification No.30/2012-ST dated 20.06.2012. They also submitted that they have been paying Service Tax properly during the entire period. But in view of the illness and subsequent death of the Assistant engaged in filing the Service Tax Returns, they could not file the

Service Tax Returns. However, in spite of their providing all the documentary evidence, the Adjudicating authority has considered the Service Tax payment of Rs.2,45,24,962/- and Rs.58,66,440/- and confirmed the balance amount of Rs.4,38,68,561/- along with interest under Section 75 and has imposed equal amount of penalty under Section 78. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Counsel appearing on behalf of the Appellant submits that the Adjudicating authority has failed to consider the fact that the Appellant is running a partnership firm. In terms of Notification No.30/2012-ST dated 20.06.2012, the Appellant is required to discharge Service Tax to the extent of 25% only. The Balance Service Tax is required to be discharged by the recipient on Reverse Charge basis. If this fact is considered, the amount paid by the Appellant will fully take care of the Service Tax amount already paid by the appellant. He also takes the stand that mere relying on 26AS to quantify the demand is erroneous and cited various case laws in favour of the Appellant. Accordingly, he prays that the Appeal may be allowed by setting aside the impugned order.

3. The Ld.AR for the Department reiterates the findings of the lower authorities. He submits that after proper verification of the challans by which Service Tax was paid by the Appellant, the Adjudicating authority has already extended the benefit to the extent of Rs.2.45 Crores and Rs.58.66 Lakhs. Only where the Appellants were not in a position to bring in proper evidence towards the Service Tax payment. The balance demand has been confirmed. He submits that the principles of natural justice has been violated by the Adjudicating authority by passing the impugned order.

4. Heard both sides and perused the appeal papers and the submissions made.

5. We find that the Show Cause Notice was issued based on the Income Tax Returns and 26AS. However, we find that the Appellant is duly registered with the Department and also has been discharging the Service Tax from time to time. Therefore, the case law cited by the

Ld.Advocate would not come to their rescue. When the Appellant is registered and is also paying Service Tax, he is bound to follow the statutory provisions including that of filing of ST-3 Returns. We do not find any error in Adjudicating authority raising the demand and confirming the same after verification of the documents available before him. However, we also take note of the Ld.Counsel's submissions that the benefit of Notification No.30/2012-ST dated 20.06.2012 has not been extended to the Appellant. He also submits that some of the payments made by the Appellant have not been considered by the Adjudicating authority while passing the Order-in-Original. Considering these submissions, in the interest of justice, we take the view that the matter should be remanded to the Adjudicating authority.

6. We remand the matter to the Adjudicating Authority. He should give full opportunity to the Appellant to bring in evidence towards all the payments made by them by way of various Challans. The subsequently filed ST-3 Returns should also be taken into consideration and after proper verification about the structure of the Appellant firm, the benefit of Notification No.30/2012-ST dated 20.06.2012 should be extended if they are found to be eligible.

7. Since the issue pertains to the period 2011-12 to 2014-15, the Adjudicating authority is directed to complete the proceedings within four months from the date of receipt of this order.

8. The Appeal stands disposed off thus.

(Dictated and pronounced in the open Court.)

Sd/	Sd/
(RAJEEV TANDON)	**(R. MURALIDHAR)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

sm