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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76135 of 2017

(Arising out of Order-in-No. 161/Pr. Commr/ST-I/KOL/2016-17 dated 28.02.2017 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Principal Commissioner of Service Tax, **: Appellant**
Service Tax-I Commissionerate,
Kolkata, Kendriya Utpad Shulk Bhawan,
(2nd Floor), 180, Shantipally, Rajdanga Main Road,
Kolkata-700107

VERSUS

M/s. BTL EPC Ltd. **: Respondent**
(formerly Bengal Tools Ltd.),
2, Jessore Road, Dum Dum, Kolkata-700 028

APPEARANCE:

Shri R. K. Agarwal, Authorized Representative for the Appellant

Shri Arun Kumar Agarwal, C. A. for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.77355/2025

DATE OF HEARING / DECISION: 26.08.2025

Order: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent is registered as a service provider for providing taxable services, namely, 'erection and commissioning', 'business auxiliary service', 'renting of immovable property', and as a recipient of taxable services, namely, 'transport of goods by road', 'works contract

service' and 'rent-a-cab service', and filing their S.T.-3 Returns regularly.

3. On verification of the S.T.-3 Returns available in ACES database, it was found that the respondent were utilizing abnormally high CENVAT Credit to discharge their Service Tax liability and had paid Service Tax after the due date, but interest was not paid on late payment of Service Tax. This gave rise to the reasonable belief that the assessee's declaration as regards availment of CENVAT Credit in S.T.-3 Returns may be mis-stated. Therefore, a letter dated 23.11.2015 was issued to the respondent requesting them to submit documents like copy of balance sheet, copy of Form 26AS and CENVAT documents, for verification. Subsequently, summons dated 15.02.2016 were issued to the respondent to submit the said documents, but they did not submit the documents as asked for.

4. Therefore, the premises of the respondent were visited by officers of the Anti-Evasion Unit of the Service Tax-I Commissionerate for examination of records under Rule 5A (1) of the Service Tax Rules, 1994 on 27.05.2016. The respondent was requested to provide documents like copy of Form 26AS, copy of agreement(s) with clients, copy of CENVAT documents, along with copy of ledger, Ledger of works contract, manpower recruitment, legal and professional fees, GTA, rent-a-cab, etc., for verification

5. The respondent provided copy of Form 26AS, CENVAT ledger and ledger for legal charges, carriage inwards and outward charges for 2011-12 to 2014-15. Upon examination of the records submitted by the respondent, certain anomalies regarding the

service income appeared to be present vis-à-vis the Form 26AS, balance sheet and S.T.-3 returns, which needed clarification. Accordingly, summons were issued to the respondent, asking for certain documents.

6. On verification of the documents submitted by the respondent, it appeared that the respondent had not declared the correct taxable value in their S.T.-3 Returns for the period from 2011-12 to 2014-15.

7. Shri Amulya Kishore Bhowmik, General Mananger (P&A) of the respondent-company appeared on 06.09.2016 and gave a written statement. In his voluntary statement, Shri Amulya Kishore Bhowmik stated, inter alia, M/s. Bengal Tools Limited is a manufacturer of material handling equipment's Air pre-heater basket, pressure vessels, heat exchanger, defence equipments, part of electric furnace, etc and the company is engaged in turnkey contracts (EPC-engineering procurement company), drawing the design, erection of machines, etc.

8. It was also stated their income in the balance sheet is shown as income from sale of manufactured goods, income from rendering service erection & commissioning service business auxiliary service, etc. Form 26AS is a consolidated information about tax deducted at source against the payment made against the service of payments of interest, dividend, etc.

9. He also stated in his voluntary statement that the balance sheet income as "drawing & design charges and sale of engineering service" is shown in S.T.-3 Returns as 'business auxiliary service' and

'erection & commissioning charges' are shown in S.T.-3 Returns as 'erection & commissioning service'.

10. From a study of the documents supplied, it was alleged by the Revenue that there was a huge difference in the figures shown in the respondent's S.T.-3 Returns vis-à-vis the amounts received as per Form 26AS. Therefore, a Show Cause Notice dated 06.10.2016 was issued to the respondent, to demand Service Tax amounting to Rs.16,87,16,833/- along with interest and to impose penalty on the respondent.

11. The matter was adjudicated and the ld. adjudicating authority, after verifying all the records placed before him, passed the impugned order wherein he has confirmed the demand of Service Tax amounting to Rs.5,60,066/-, along with interest, and imposed an equivalent amount as penalty; a demand was also confirmed to the tune of Rs.72,070/- for the irregular CENVAT Credit availed by the appellant, along with interest and equivalent amount of penalty was also imposed to this extent. However, the ld. adjudicating authority has dropped the major part of the demand raised against the respondent.

12. Aggrieved by the said order, the Revenue is before us, on the grounds that: -

(i) The basic allegation behind the demand of Service Tax of Rs.15,57,64,877/- was that the values declared in the S.T.-3 Returns, though nearly equal to the balance sheet figures in respect of some years, are much lower than the respective figures of Form 26AS in all the four Financial Years from 2011-12 to 2014-15 and the ld. adjudicating authority, without going into any independent exercise for arriving at the correct taxable value, has solely relied on the calculation done by the respondent, which shows that as a service provider, the respondent has paid more tax than the payable consideration, considering Form 26AS as the source document, and declared more value in the S.T.-3 Returns compared to what should have been as per the Form 26AS figures. While undertaking this exercise of comparison, the amount of tax payable was calculated at 40% of the amount reflected under Section 194C of the Income Tax Act considering this amount as value received against provision of works contract service, but as per the S.T.-3 Returns filed by the respondent, as a provider of service, they paid tax on 'erection and commissioning service', 'business auxiliary service', 'renting of immovable property service' and 'consulting engineer's service' and they always paid Service Tax at the full rate on all these services during the entire period covered under the impugned notice. So, during the material period, the respondent, as a provider of service, has never paid Service Tax on works contract service. In other words, Service Tax was never paid at abated rate on the value declared by the respondent in their S.T.-3 Returns.

(ii) When in the audited balance sheets, income is reflected under the head 'erection and commissioning charges' and in the S.T.-3 Return also, Service Tax has been shown as paid under 'erection and commissioning service' at full rate, it is difficult to comprehend as to why the amount of tax payable according to Form 26AS is required to be calculated at the abated rate for the purpose of comparison as has been done in the impugned order.

(iii) The acceptance of the respondent's contention that the amounts reflected under Section 194C are amounts received in respect of works contract service by the ld. adjudicating authority without giving any cogent explanation to that effect or referring to any documentary evidence produced before him, is improper and unjustified.

(iv) Therefore, the said demand dropped by the ld. adjudicating authority is required to be confirmed as payable by the respondent.

13. On the other hand, the Ld. Consultant appearing on behalf of the respondent submitted that the respondent contested the issue and filed a detailed reply, along with a calculation sheet showing the amounts shown in Form 26AS, which includes tax deductions on interest income under Section 194A of the Income Tax Act, 1962, which cannot be termed as 'Service Tax', and for the remaining amounts shown in Form 26AS, wherein deductions have been under Section 194C, 194I, 194H and 194J, the respondent has offered explanations and after considering those explanations, the ld. adjudicating authority found that the respondent has paid more tax than that payable by the respondent. Accordingly, it is his submission that the ld. adjudicating authority has rightly dropped the demand against the respondent vide the impugned order. Therefore, it is prayed by the Ld. Consultant for the respondent that the impugned order be

affirmed and the appeal filed by the Revenue be dismissed.

14. Heard the parties and considered their submissions.

15. Admittedly, in this case, the demand of Service Tax has been raised in the Show Cause Notice, of Rs.15,57,64,877/- against the respondent, on the basis of the difference observed between Form 26AS obtained from the Income Tax Department and the S.T.-3 Returns filed by the respondent before the Revenue. The respondent explained the said difference through a comparative chart, and after comparison, it was concluded by the ld. adjudicating authority that the respondent has paid Service Tax more than the amount payable by them. For the sake of ready reference, the said calculation is reproduced hereunder: -

> Form 26AS for the impugned years reflect total income (WHICH IS NOT THE VALUE OF TAXABLE SERVICE) as follows:

Financial year	Total Income as per Form 26AS (in Rs.)
1	2
2011-12	555772988
2012-13	511955881
2013-14	478912602
2014-15	743913184

15.1. The above amounts included all the types of income including those who have no relation with service tax like the amounts reflected against Bank interest under 194A which represents Interest received from Bank. This is not a taxable income. Thus, only after deduction of the amounts under 194A the taxable income can be arrived.

15.2. For convenience a summary of Form 26AS for the impugned period is given below:

YEAR	194C	194I	194A	194H	194J	Total
2011-12	53,46,96,104	3,97,080	88,23,022	-	1,40,83,820	55,80,00,026
2012-13	49,94,64,886	4,04,496	1,18,83,339	-	31,42,654	51,48,95,375
2013-14	43,25,30,219		1,79,45,424	7,709	4,49,00,295	49,53,83,647
2014-15	71,50,33,652		1,54,99,445	40,696	1,33,39,390	74,39,13,183
Total	2,18,17,24,861	8,01,576	5,41,51,230	48,405	7,54,66,159	2,31,21,92,231

15.3. Out of the above only the Income under 194C, 194H, 1941 and 194J are taxable. The narrations for 194C, 194H, 1941 and 194J are as follows:

194C: Payments for Contractors and sub-contractors

194H: Commission or brokerage

1941: Rent income

194J: Fees for professional or technical services

15.4. Following this the taxable income for the impugned years comes as follows:

Year	Section	Total Amt.	Total Cum Tax Value	Tax Rate	Effective Rate	Taxable Value [applying Sec 67(2)]	Tax
2011-12	194C	534696104	534696104	10.30%	4.12%	51,35,38,325	2,11,57,779
2012-13	194C	499464886	499464886	12.36%	4.94%	47,59,52,817	2,35,12,069
2013-14	194C	432530219	432530219	12.36%	4.94%	41,21,69,067	2,03,61,152
2014-15	194C	715033652	715033652	14%	5.60%	67,71,15,201	3,79,18,451
2011-12	194H	0	0	10.30%		0	0
2012-13	194H	0	0	12.36%		0	0
2013-14	194H	7709	7709	12.36%		6,861	848
2014-15	194H	40696	40696	14%		35,698	4,998
2011-12	194J	14083820	14083820	10.30%		1,27,68,649	13,15,171
2012-13	194J	3142654	3142654	12.36%		27,96,951	3,45,703
2013-14	194J	44900295	44900295	12.36%		3,99,61,103	49,39,192
2014-15	194J	13339390	13339390	14%		1,17,01,219	16,38,171
2011-12	194I	397080	397080	10.30%		366723	37,773
2012-13	194I	404496	404496	12.36%		360000	44,496

On the basis of the above table tax due for the impugned period comes as follows:

	2011-12	2012-13	2013-14	2014-15
194C	2,11,57,779	2,35,12,069	2,03,61,152	3,79,18,451
194H	0	0	848	4,998
194J	13,15,171	3,45,703	49,39,192	16,38,171
194I	37,773	44,496	0	0
Total	2,25,10,722	2,39,02,268	2,53,01,192	3,95,61,620

14 | Page

15.5. From above it is clear that even if Form 26AS is considered as source data they should have paid S Tax amounting to Rs. (2,25,10,722+ 2,39,02,268 + 2,53,01,192 + 3,95,61,620) i.e. Rs.111275803/-.

The payment details as have been reflected in ST-3 returns as service provider are given below. Details of ST-3 statement are enclosed for ready reference.

2011-12	2012-13	2013-14	2014-15	Total
23833728	26002359	32884506	33824441	116545334

15.6. From above it can be seen that they have paid Rs. 116545334/-i.e. they have paid more if Form 26AS is considered as the source document.

15.7. In ST-3 return tax has been calculated applying the tax rate directly on the service value for the reason that they have maintained accounts for materials supplied separately. If the taxable value of the amount reflected under 194C is taken the service value for each year in terms of Form 26AS comes as follows:

	2011-12	2012-13	2013-14	2014-15
W.C. (194C)	(534696104/104.12)* 100*40%=205415330	(499464886/104.94)* 100*40%=190381127	(432530219/104.94)* 100*40%=164867627	(715033652/105.6)* 100*40%= 270846080
Comm. (194 H)	0	0	7,709	40,696
Pr. Fee (194 J)	14083820	3142654	44900295	13339390
Rent (194 I)	397080	44,496	0	0
Total	219896230	193568277	209775631	284226166

15.8. Thus, in terms of Form 26AS the total taxable value to be reflected in the ST-3 during the impugned period was Rs. (219896230 + 193568277 + 209775631 + 284226166) i.e. Rs.907466304/- whereas they reflected the same in terms of the SCN as follows:

Financial year	Taxable value shown in ST-3 returns (in Rs.)
1	4
2011-12	224578020
2012-13	210735042
2013-14	266148301
2014-15	273660499
Total	975121862

15.9. Thus, again it can be noticed that they have declared a higher taxable value in our ST-3 return than the one arrived at from Form 26AS for the impugned period.

15.10. They sincerely believe that the above submission is enough to consider the demand of Rs. 155764877/- as not justifiable.

16. On going through the said calculations, the ld. adjudicating authority dropped the demand of Rs.15,57,64,877/-.

17. We have also gone through the said submission of the respondent before the ld. adjudicating authority and we find that while demanding Service Tax from the respondent, tax was demanded in respect of amounts deducted under Section 194A of the Income Tax Act, which deduction represents interest receipts from the bank. The total amount shown is Rs.5,41,51,213/-

18. On which also Service Tax has been demanded. In effect, while issuing the Show Cause Notice, mind was not applied to the extent as to whether on interest income, Service Tax is chargeable or not.

19. For the rest of the amount shown in Form 26AS, we find that the same has been explained by the respondent, as per the table reproduced hereinabove.

20. Further, we take note of the fact that this Tribunal in the case of South Eastern Coalfields Ltd. vs Commissioner of Central Excise & Service Tax (2024) 17 Centax 245 (Tri.-Del) has held as under: -

> *"6. I address the first issue as to whether any demand can be sustained on the basis of the difference between the figures of ST-3 returns and the Trail Balance, I find that it is a settled principle of law that service tax can be levied only when there is clear identification of a service provider service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, I am of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns or balance sheets without proving that such service has been rendered by the appellant and consideration thereof has been received. I find that the Tribunal in the case of Synergy Audio Visual Workshop (P) Ltd., v. Commissioner [2008(10) STR 578(Tri.Bang)] held as follows:*
>
> > *"5.1 The other ground is for confirming demands is that the appellant had shown certain amounts due from the parties in their Income-tax returns and Revenue has proceeded to demand service tax on*

> *this amount shown in the Balance Sheet. The appellants have relied on a large number of judgements which is settled the issue that amount shown in income tax returns or balance sheet are not liable for service tax..."*

6.1 I find that the Tribunal in a catena of decisions has held that it is well settled law that no demand can be confirmed by comparing the ST -3 returns with balance sheet figures, in the absence of any evidence to the contrary that income in the balance sheet, if excess, reflects the provision of taxable service. As it is the Revenue authorities who have made the allegations of on payment of tax, and as such, the onus to prove the said allegation lies with them to substantiate the allegations. In Kush Constructions v. CGST, Kanpur [2019(24)GSTL 606(Tri. All.)] it was held as under:

> *"1. We note that without further examining the reasons for the difference in two, revenue has raised the demand of the basis of difference between the two. We note that revenue cannot raise the demand on the basis of such difference without examining the reasons for the said difference and without establishing that the entire amount received by the appellant as reflected in the said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption*

> *or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same is set aside the impugned order and allow the appeal."*

21. In the case of *Piyush Sharma v. Commissioner of C.G.S.T. & C.Ex., Patna [2023 (10) TMI 736 – CESTAT, Kolkata]*, again this Tribunal observed as under: -

> *"10. In this case, the appellant has contended that the demand has been raised on the basis of Form-26AS supplied by the Income Tax department. Although summons were issued to the appellant and the appellant did not join the proceedings, therefore, the demand has been raised on the basis of Form-26AS. Admittedly, no investigation has been conducted in this case at the end of the appellant by the adjudicating authority. Being the appellant a registered service provider and filing their Service Tax returns, in that circumstances, the demand cannot be raised on the basis of Form-26AS obtained from the Income Tax Department."*

22. As the ld. adjudicating authority has dropped the demand after consideration of the calculation sheet submitted by the respondent, , in view of that, the ground raised by the Revenue that the ld. adjudicating authority has not made any independent enquiry before dropping the demand is not sustainable.

23. In view of the above, we find that the ld. adjudicating authority has rightly dropped the demand raised against the respondent, after due verification of the records. Consequently, we do not find any infirmity in the impugned order.

24. In the result, we affirm the impugned order and dismiss the appeal filed by the Revenue.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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