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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75555 of 2024

(Arising out of Order-in-Original No. 03/S.Tax/Aayukt/2024 dated 16.01.2024 passed by the Principal Commissioner, C.G.S.T. and Central Excise, Patna-I, Central Revenue Building (Annexe), 3rd Floor, Birchand Patel Path, Bihar – 800 001)

M/s. SIS Limited **: Appellant**
[Formerly known as 'M/s. Security & Intelligence Services I. Ltd.]
Behind Capital Tower, Nishant Regency,
Patna – 800 001

VERSUS

Pr. Commissioner of C.G.S.T. and Central Excise **: Respondent**
Patna-I Commissionerate,
C.R. Building (Annexe), 3rd Floor, Birchand Patel Path,
Patna – 800 001

APPEARANCE:

Shri Aditya Dutta, Advocate, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 77549 / 2025

DATE OF HEARING: 26.09.2025

DATE OF DECISION: 15.10.2025

ORDER: [PER SHRI R. MURALIDHAR]

The facts of the case are that the appellants are registered with the Service Tax Department under Registration No. AAECS3538ASD130 for providing service under the category of Security/Detective Agency Service, Manpower Supply service, Business Support service etc. For undertaking such activities, they were regularly filing ST-3 Returns and paying requisite service tax amounts.

2. A Show Cause Notice dated 18.10.2019 was issued to for the period 2014-15 to 2016-17 on the basis of data available in the ST-3 Returns and CENVAT Credit register, etc., of the appellant, seeking to deny and recover CENVAT Credit totalling Rs. 6,64,39,561/-. The Show Cause Notice also alleged short payment of Service Tax of Rs. 29,381/- + Rs. 93,731/- + Rs. 2928/-, totalling Rs. 1,26,040/- as revealed from a scrutiny of ST-3 Returns. Further, CENVAT Credit of Rs. 13,20,704/- was sought to be recovered where services were rendered to educational institutions (exempted service) and reversal of CENVAT Credit was not calculated as per Rule 6(3A) of CENVAT Credit Rules (CCR),2004 resulting in less reversal amount of ineligible service tax credit.

3. After due process, the Ld. Principal Commissioner vide the impugned Order in Original No. 03/ST/Commissioner/2024 dated 16.01.2024, out of the total demand of Rs. 6,79,14,092/- [Rs. 6,64,39,561/- +Rs. 1,26,040/- +Rs. 13,20,704/- + Rs. 20,387/- + Rs. 7,400/-], confirmed a demand of Rs. 21,43,026/- + Rs. 13,20,704/- totalling Rs.34,63,730/-, along with interest, and dropped the rest of the demand. Being aggrieved, the appellant has filed the present appeal. The Revenue has not filed any appeal against the dropped demand of over Rs.6.45 crores.

4. The Ld. Counsel, appearing for the appellant, contests the confirmed demand mainly on the ground that SCN has been issued under C No. III(03)57/SCN-Pat/SIS/Tech/Audit/Pat/19-20/2903 dated 18.10.2019 during which time, the Board's instruction dated 21.12.2015 issued vide F. No.

1080/09/DLA/MIS/15 and subsequent clarificatory Circular issued vide F No. 1053/02/2017-CX dated 10.03.2017 were in existence. It is his contention that as per the aforesaid Instructions and Circular, Pre-Show Cause Notice consultation with the Principal Commissioner and Commissioner prior to issue of Show Cause Notice (SCN) in the cases where demand of duty was above Rs.50 Lakhs (except for preventive/offence related SCNs) was mandatory, which was not followed by the Revenue. It is submitted that Pre-Show Cause Notice consultation was made non-mandatory for suppression related cases vide Circular No.1079/03/2021-CX dated 11.11.2021 i.e. much after issuance of the instant SCN on 18.10.2019. Hence, on this technical ground, he submits that the entire proceedings are void and prays that the confirmed demand may be set aside.

4.1. He also cites the decision of the Hon'ble Apex Court in the case of *Suchitra Components v Commissioner of C.Ex., Guntur [2007 (208) E.L.T. 321 (S.C.)]* which has clearly laid down that oppressive circulars would be applicable prospectively and therefore, submits that the circular dated 11.11.2021 being oppressive in nature would be applicable prospectively i.e. from 11.11.2021.

4.2. The Ld. Counsel for the appellant also submits that in the present case neither any intimation/letter was issued to them for Pre-Show Cause Notice consultation nor any pre-Show Cause notice consultation was undertaken by the department before issuance of the said SCN even though the demand of service tax in the SCN was Rs. 6,79,14,092/- i.e. more than 50 lakhs; that this was violative of the Board's Instruction prevalent during the time when the SCN was issued. In such a situation, it is his submission that the SCN itself was not sustainable and as such confirmation of service tax of Rs. 34,63,730/- culminating from the SCN in question is not sustainable and void ab-initio. He also mentions that the same is supported by the judgment of the Hon'ble Gujarat High Court in the case of *Jay Mahakali Industrial Service v Union of India [(2025) 29 Centax 353(Guj)].*

4.3. On a specific query from the Bench, as to whether this stand was taken by the appellant at the Adjudication stage, the Ld. Counsel fairly concedes that this argument was not canvassed before the Adjudicating Authority. However, it has been submitted that the issue being that of question of law, the same can be raised even at the later appellate stage. For this, he relies on the judgment of *Macnair Exports Pvt. Ltd. v CC [2002(142) E.L.T. 593 (Tri - Bang)]* as upheld by the Hon'ble Apex Court in *[2003 (152) E.L.T. A87(SC)].*

4.4. Without prejudice to the above submissions, it is submitted by him that the entire demand was issued on the basis of B/S, P/L account and ST-3 Returns, which were always open to the department for any query/scrutiny and therefore, there has been no suppression in respect of the facts and figures based on which the SCN was issued. Therefore, the Ld. Counsel for the appellant contends that the extended period of limitation cannot be invoked. He submits that this observation is supported by the judgments passed in the cases of :-

i. *M/s. Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 (CESTAT, Kolkata)]*

ii. *M/s. Arya Logistics v Commissioner of C.Ex. & S.T., Rajkot [Final Order No. 11700 of 2023 dated 17.08.2023 in Service Tax Appeal No. 12389 of 2014 (CESTAT, Ahmedabad)]*

iii. *M/s. Balajee Machinery v Commissioner of C.G.S.T. & Excise, Patna-II [2022 (66) GSTL 440 (Tri.-Kol)]*

Therefore, it is his contention that the SCN issued on 18.10.2019 for the period 2014-15 and 2015-16 is barred by limitation of time since the said SCN was issued on 18.10.2019 i.e., after 30 months form the last date of filing of ST-3 Return for the period October 2015 to March,2016 on 25.04.2016.

4.5. In view of the above submissions, the Ld. Counsel for the appellant prays that the appeal be allowed.

5. The Ld. Authorized Representative appearing for the Revenue submits that in the present case, the SCN has been issued by invoking the extended period provisions. He states that the Board Circular is very clear that in case of suppression etc., there is no necessity to follow the procedure of pre-consultation prior to issue of SCN; the Circular dated 11th November 2021 uses the word 'reiterated', which shows that even prior to this date, and even under the earlier Circular dated 10th March 2017, there was no necessity to follow pre-consultation procedure in case of suppression, misstatement etc. Therefore, he justifies the confirmed demand.

6. Heard both the sides and perused the appeal papers and submissions made by both the sides.

7. The relevant portions of the Circulars are extracted below:

> **Circular No. 1053/02/2017-CX dated 10th March 2017**
>
> 5.0 Consultation with the noticee before issue of Show Cause Notice: Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/ offence related SCN's) mandatory vide instruction issued from F No. 1080/09/DLA/MISC/15 dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice.
>
> **Circular No.1079/03/2021-CX Dated 11th November, 2021**
>
> 5. It is, therefore, reiterated that pre-show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of: (a) fraud: or
>
> (b) collusion: or
>
> (c) wilful mis-statement: or
>
> (d) suppression of facts: or
>
> (e) contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the rules made there under with the intent to evade payment of duties or taxes
>
> 6. Trade, industry and field formations may be suitably informed.

7.1. A careful reading of the above Circulars would clarify that in the first Circular dated 10th March 2017, there is no whisper about suppression and non-suppression cases. A plain reading makes it clear that in both the cases, the pre-consultation procedure is mandated if the demanded amount is more than Rs.50 lakhs.

8. For the first time the Circular dated 11th November 2021, very specifically lists (a) to (e) cases, where such pre-consultation procedure need not be followed. The word 'reiterated' on its own cannot give any retrospective effect as has been canvassed by the Ld. Departmental Representative. Further, Paragraph 6 of the above Circular talks about the 'Trade and Industry and field formations' to be suitably informed. This itself clarifies that it is for future reference, since a specific change has been made as to how the pre-consultation procedure is to be followed.

9. Therefore, we are in agreement with the appellant that the required procedure of pre-consultation was not followed.

10. In the present case, it is also is seen that the Revenue has issued the Show Cause Notice demanding Rs.6.79 crores for the extended period. Out this demand, the Adjudicating authority has dropped the demand to the extent of Rs.6.45 crores [about 95% of the demand]. The Revenue is not aggrieved by the same and no appeal has been filed. Therefore, we take the view that no proper investigation was made while issuing the Show Cause Notice for the extended period. It is also on record that the data has been obtained from the ST 3 Returns and the Balance Sheets of the appellant. This also fortifies the view that there was no case of

suppression has been made out against the appellant, in the first place. Viewing this from another angle, it is more in the nature of a demand for the normal period only, which in any case, required pre-consultancy procedure to be followed, which has not been done in this case.

11. Coming to the case law cited by the appellant, we find that the Hon'ble Gujrat High Court in the case of *Jay Mahakali Industrial Service Versus Union of India [(2025) 29 Centax 353 (Guj.)],* has considered the issue in a very detailed way and interpreted various decisions of the High Courts and held as under: -

> *"12.1 The aforesaid Circular came up for consideration before this Court in case of L AND T Hydrocarbon Engineering Ltd. v. Union of India reported in 2022 (4) TMI 70. This Court while considering the facts of the said case held as under:*
>
> *ABSENCE OF MANDATORY PRE-SHOW CAUSE NOTICE CONSULTATION IS FATAL TO THE PRESENT SHOW CAUSE NOTICE.*
>
> *83 In view of the Circular No. 1053/2/2017-CX., dated 10th March 2017, it is clear that the Board had made the pre show cause notice consultation mandatory for the Principal Commissioner/Commissioner prior to the issuance of show cause notice in cases involving the demands of duty above Rs.50 lakh. Such consultation is required to be done by the adjudicating authority with the assessee as an important step towards reducing the necessity of issuing show cause notice.*
>
> *84 The contention of the learned A.S.G. that since the present case originated from the intelligence gathered from the DGGI such preconsulting is not*

required. The said contention runs contrary to the C/SCA/11308/2019 JUDGMENT DATED: 03/02/2022 recent clarification issued by the Board. For the very objection now being raised, a clarification was sought by the DGGI office from the Board as to whether the DGGI formations will fall under the exclusion category of the master circular dated 10th March 2017 read with the circular dated 19th November 2020. The Board vide the Circular No. F.No.116/13/2020-CX-3 Dated 11.11.2021 clarified that the exclusion from the pre-show cause notice consultation is case specific and not formation specific. Therefore, merely because in the present case, the case originated on account of investigation of the DGGI will not be a sufficient ground for not following the mandatory procedure prescribed by the Board which is binding on the department. Therefore, it was mandatory for the adjudicating authority in the present case to conduct the pre-show cause notice consultation and in absence of the same the present proceedings could be said to be bad in law and deserves to be quashed and set aside.

85 (i) Amadeus India Pvt Ltd v. Principal Commissioner - 2019-TIOL-1027-HC-DEL-ST

12. It will be immediately noticed that there are two exceptions carved out for the Respondent to engage in a pre SCN consultation. The first is that the SCN is preventive and the second is that it is related to an offence in terms of the Finance Act, 1994.

13. In the present case, as is evident from the impugned SCN, the alleged non-payment of service tax pertains to period between 2012- 2013 to 2016-2017. Consequently, there is no 'preventive' aspect involved in the SCN and this is not even disputed by learned counsel for the Respondent. However, what is urged before the Court by the Respondent is that *since the SCN was preceded by a search that was conducted in the business premises of the Petitioner, and the Petitioner also rendered itself liable for penal action 'for suppression of facts and contravention of various statutory provisions with intent to evade payment of due service tax' and other incidental levies, the SCN partakes of the character of an 'offence related' SCN and therefore falls within the exceptions carved out under para 5.0 of the Master Circular.*

14. The above submission runs contrary to the very object of para 5.0 C/SCA/11308/2019 JUDGMENT DATED: 03/02/2022 which is to narrow down the scope of the dispute by engaging the Assessee on specific areas where the Respondent may require information/clarification from the Assessee regarding alleged evasion of service tax. In the context of the present case, in relation to documents recovered during the search and statements recorded of representatives to the Petitioner in that process, several questions may have arisen for consideration by the Respondent which may require a clarification from the Petitioner as to its conduct. It is to facilitate this very exercise that para 5.0 finds place in the Master Circular. The mere possibility that at the end of the adjudication process, the Petitioner may have to face consequences for having committed an 'offence' under Finance Act, 1994 need not per se render the SCN itself as an 'offence related' SCN. If that were to be the logic, then in every case para 5.0 can be dispensed with on the ground that the adjudication of the SCN is likely to be lead to the noticee facing proceedings for having committed an offence. The exception would then become the rule and not vice versa, and the need for any pre-notice consultation being rendered redundant. Further, without the conclusion of the adjudication on the SCN, the Respondent would not *be in a position to decide whether an offence is made out.*

13. In all the petitions, except Special Civil Application No.1770 of 2022, the show cause notice is issued based on the difference in value of income as per Form 26AS issued under the Income Tax Act, 1961 and Form ST3-return filed by the petitioners. In Special Civil Application No. 1770 of 2022, the show cause notice refers to the liability of service tax upon interpretation of the provisions of the Finance Act, 1994 read with various Notifications in relation to the issues as to whether the petitioner of the said petition constructed the roads for the general public or the private road and labour charges, TTA Charges, taxation which does not contain any of the ingredients of the fraud, wilful mis-statement for separation of facts for collusion which would categorize such show cause notice in the exception curved out in para 5 of the Circular No 1079 of 2021.
14.

15. Taking into consideration the above facts and in view of the decision of this Court in case of L AND T Hydrocarbon Engineering Ltd. (supra), we are of the opinion that none of the show cause notice except Special Civil Application No. 5685 of 2022 can be sustained in absence of pre-consultation notice."

11.1. We find that even as per the Board Circulars, the Revenue was required to follow the pre-consultation procedure, which was not done in this case. The cited case law is squarely applicable to the facts of the present case.

12. In view of the foregoing, we set aside the confirmed demand of Rs.34,63,730/- along with the interest and penalty thereon. The appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on **15.10.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd