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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76087 of 2025

(Arising out of Order-in-Original No. 03/ST/Pr. Commr./2025 dated 27.06.2025 passed by the Commissioner of Central Goods & Service Tax & Central Excise Central Revenue Building, 5A, Main Road, Ranchi-834001)

M/s. Amit Realty Private Limited **: Appellant**
Bokaro Mall, Sector III/C,
Bokaro Steel City, Jharkhand-827003

VERSUS

Commissioner of CGST & Central Excise, **: Respondent**
Ranchi Commissionerate
C.R. Building, 5A Main Road,
Ranchi-834001

APPEARANCE:

Shri Ankit Kanodia, Advocate
MS. Megha Agarwal, Advocate
for the Appellant

Shri D. Sue, Authorized Representative
for the Respondent

CORAM:

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

FINAL ORDER NO. 77581/2025

DATE OF HEARING: 17.10.2025
DATE OF PRONOUNCEMENT: 28.10.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

In this Appeal, M/s. Amit Realty Private Limited (herein after referred as the Appellant), is challenging the Order-in-Original No. 03/Pr.Commr./2025 dated 27.06.2025 passed by the Ld. Pr. Commissioner of CGST & C. Ex., Ranchi Commissionerate.

2. The facts of the case are that the Appellant is a registered private limited company having its registered office at Bokaro Mall, Sector III/C, Bokaro Steel City, Jharkhand 827003. The Appellant is registered with the appropriate Service Tax Authority having the Registration No. AAGCA3858BSD001, for construction of commercial space services, maintenance and repair services and renting of immovable property services. The appellant has been regular in filing its service tax returns with the appropriate service tax authority.

2.1. An audit of the books of accounts of the Appellant was conducted by the service tax audit team of the department. The audit team made certain observations vide Audit Memo dated 08.06.2016 regarding non-payment / short-payment of service tax in respect of certain services rendered by the appellant. The appellant had replied to the said audit memo vide replies dated 09.07.2016 and 09.08.2016.

2.2. The audit team did not accept the reply given by the appellant. Consequently, a Show Cause cum Demand Notice was issued to the appellant vide C. No. III (03)563/SCN-BRK/AR/Tech/Audit/2016/6147 dated 07.10.2016, demanding service tax of Rs.1,81,69,980/- along with interest and penalty.

2.3. The said Notice was adjudicated vide Order-in-Original No. 03/Pr.Commr./2025 dated 27.06.2025, wherein the Ld. Principal Commissioner has confirmed the demand of service tax made in the notice along with interest. He also imposed equal amount of tax as penalty.

2.4. Aggrieved against the confirmation of service tax along with interest and penalty, the appellant has filed this appeal.

3. As regards confirmation of demand of service tax of Rs.1,48,99,067/- on lease premium amountt, the Appellant states that the Ld. Adjudicating authority has confirmed the demand of service tax by construing the services provided by them as 'renting of immovable property services' and not under construction services and thereby denied the benefit of abatement as provided under the notification No. 26/2012-ST dated 20.06.2012.

3.1. The Appellant states that they were allotted under a lease agreement dated 05th September 2009, a plot of land on lease by SAIL, Bokaro on long-term lease basis for 33 years with the option of further renewal. The Lease has been granted solely and wholly for the purpose of commercial construction. The Lease Agreement was executed on 05th September, 2009 by the SAIL for the development of the mall known as "Bokaro Mall", comprising of Shopping Mall, Multiplex, Food Courts, Hotels, Restaurants, Retail Showrooms, Offices and other commercial spaces and the basement for parking on the said premise. In terms of the aforesaid lease agreement, the Appellant had entered in to further agreements with prospective buyers of units in the said shopping complex for setting up of their units along with provision of certain fixed infrastructure to be provided by the Appellants to the said unit holders. The Appellant states that the consideration which was received by them from the prospective buyers was for the constriction services provided by the Appellant to them and accordingly the Appellant had paid service tax on construction of commercial complex services after availing abatement benefit under Notification No. 26/2012-ST dated 20.06.2012.

3.2. The Appellant states that it is the case of the department that such abatement cannot be availed by them as the Appellant have not provided construction services, but provided renting of immovable property services as the lease premium being collected was for a fixed term, though extendable on mutual basis. The Appellant states that the Ld. Adjudicating authority while confirming the above view as per the show cause notice, has grossly misunderstood the scheme of classification of services for construction which is a declared service under section 66E of the Finance Act, 1994 as amended from time to time.

3.3. The Appellant states that in its case, under a Lease agreement they had erected a mall i.e., "Bokaro Mall", comprising of Shopping Mall, Multiplex, Food Courts, Hotels, Restaurants, Retail Showrooms, Offices and other commercial spaces and the basement for parking on the said premise. The Appellant had also made various electrical installations, first-aid and firefighting installations in the mall for ease in functioning of the mall. The Appellant also follows and carries out the directions of SAIL issued with regard to sanitation and proper maintenance of the demised land along with erected mall therein to keep the mall in a proper condition.

3.4. The Appellant states that the issue of service tax liability on the lease premium charged by them from the prospective buyers under construction services is no longer res integra and the CESTAT, Kolkata in the case of *SAFARI RETREATS PVT. LTD. Vs PRINCIPAL COMMISSIONER OF G.S.T. AND C.EX. BHUBANESWAR (2025) 26 Centax 53 (Tri.-Cal),* has held that the activities carried by the Appellant are squarely covered under the definition and scope of construction services and not under 'Renting of Immovable Property Services'.

3.5. The Appellant states that Vide Notification No.26/2012-ST dated 20th June,2012 as amended by Notification No.2/2013-ST dated 1st March,2013 & Notification No.9/2013-ST dated 8th May,2013, it has been notified that the service tax on the amount received for construction of a complex, building, civil structure or a part thereof (including additions, alterations, replacement or remodelling of an existing civil structure) intended for sale to a buyer wholly or partly except where the entire consideration is received after issuance of completion certificate by the competent authority, enjoys abatement of 70% i.e., only 30% is taxable. The Appellant submits that in the present case they have entered into the sub-lease deed during the construction stage of the mall itself with the prospective buyers and not after the completion stage. Consequently, they had paid service tax on amount of advance received against the construction services rendered after claiming abatement of 70% as per the aforesaid notification. The Appellant also states that proper stamp duty was paid by the buyers of the units at the time of registration of their units with the state government, which clearly shows the nature of transfer. Accordingly, the appellant submits that the demand of service tax confirmed in the impugned order under 'Renting of Immovable

Property Service' by denying the abatement which is entitled to them, is legally not sustainable.

3.6. In support of their contentions, the Appellant also relies on the decision of CESTAT Kolkata, in the case of M/s. Bengal Silver Spring Projects Limited vs Principal Commissioner of Service Tax-I Commissionerate Kolkata, vide Final Order 77501/2024 in ST/76203/2016. In this case under similar facts and circumstances, the Tribunal has considered the amount of lease premium received as part of construction service and not renting of immovable property services. Accordingly, the appellant submits that demand of service tax of Rs. 1,48,99,067/- confirmed on the lease premium amount, by denying the benefit of abatement as provided under the notification No. 26/2012-ST dated 20.06.2012, is not sustainable.

4. As regards demand of service tax of Rs. 880,183/-, the Appellant states that the Ld. Adjudicating authority has confirmed the demand of service tax of Rs. 880,183/- on account of discrepancies between ST 3 and books of accounts under renting of immovable property services for the FY 2014-15. The appellant submits that the said shortfall in service tax liability amounting to Rs.8,80,183/- under the category of "Renting of Immovable Property Service" was paid by them in the return period April'16 to September'16. The Appellant submits that they had produced the reconciliation statement before the Ld. Adjudicating authority to prove its bonafide, which has been summarily rejected by the Ld. Adjudicating authority on the ground that no evidence has been produced by the Appellant. In support of this claim, the

appellant also produced a Chartered Accountant Certificate reconciling the figures. Thus, the appellant submits that there is no short payment of service tax for 2014-15 by the Appellant. Accordingly, the appellant submits that the demand confirmed in the impugned order on this count is not sustainable.

5. As regards demand of service tax of Rs. 46,06,353/- the Appellant states that the Ld. Adjudicating authority has confirmed the demand of service tax of Rs. 46,06,353/- on extra development charges for the period 2014-15. The Appellant states that on one hand the Ld. Adjudicating authority has held that the said charges are in the nature of construction services and on the other hand he has held that such charges are to be taxed under full rate of service tax without any abatement. The Appellant states that the basic argument of the Ld. Adjudicating authority is flawed as the said authority has already held that the activity of the Appellant is of renting services and thus now classifying the activity for EDC as construction services is self-discriminatory in nature.The Appellant states that they have already paid service tax of Rs. 1,874,298/- for the amount of EDC collected for the period in dispute under maintenance or repair services. The Appellant in its reply to the SCN had pointed that the department has erred in the calculation of liability on account of duplicity of taxable values being adopted to raise the demand of service tax.

5.1. The Appellant states that they have paid 14%/14.5% service tax during the impugned period on such EDC charges collected. The department has not disputed the said fact. The department has only alleged non-payment of service tax under the correct head of construction service instead of payment made by the Appellant under maintenance and repair service head. The Appellant states that w.e.f 01.07.2012, the negative list service tax regime had set in and the classification of services was done away with. The payment of service tax could have been done in any other taxable service code also and the same would have been sufficient discharge of obligation of the Appellant. Thus, the Appellant states the entire demand on EDC charges is liable to be quashed.

6. As regards demand of service tax of Rs. 524,136/- the Appellant states that the Ld. Adjudicating authority has also confirmed the demand of Rs. 524,136/- for non-payment of service tax under reverse charge mechanism on director services, GTA services and security services.

6.1. Regarding service tax liability on the Director's remuneration, the Appellant states that the said remuneration has been considered as salary for income tax purposes and the Director has paid income tax on the same. The appellant submits that Board has categorically clarified vide CIRCULAR NO. 140/10/2020 - GST [CBEC-20/10/05/2020 - GST], DATED 10-6-2020, if the income is considered as salary for income tax purposes, then service tax cannot be demanded on the same. The appellant submits that the Ld. Adjudicating authority has held that income tax returns of the director are not sufficient to establish employer-employee relationships, which is legally not correct. Accordingly, the appellant submits that no service tax is payable by them on RCM basis on the Director's remuneration.

6.2. Regarding the demand of service tax on GTA services on RCM basis, the Appellant states that they had availed transportation services from local truck owners for carrying materials required for construction from local vendors/sellers. The Appellant states that the demand of Rs. 35,569/- is based on presumptions that the Appellant has availed services of GTA. In this regard, the Appellant states that they had provided ledger copies and other voucher copies to show that such expenses were of local transport charges for supplies and no GTA issuing consignment note was involved in such work. The Appellant states that there is no consignment note brought on record by the department to prove involvement of GTA and thus no service tax under RCM can be charged.

6.3. As regards demand of service tax on security services under RCM basis, the Appellant states that the Ld. Adjudicating authority has confirmed demand of service tax on security services even though the same was charged on tax invoice issued by the suppliers and service tax was paid by the appellant to the said providers. The Appellant states that it had provided detailed breakup of expenses incurred for security services with ledger back up to show that the values being adopted by the department is also incorrect, however the Ld. Adjudicating authority has brushed aside all such contentions and has confirmed the demand without any discussion.

6.4. In view of the above submissions, the appellant submits that the demand of service tax Rs.

524,136/- confirmed on RCM basis is not sustainable.

7. The appellant submits that eextended period of limitation cannot be invoked in this case since there was no fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of tax. Accordingly, the appellant submits that the demand confirmed by invoking extended period of limitation is not sustainable.

8. The Ld. A.R. reiterated the findings in the impugned order.

9. Heard both sides and perused the appeal documents.

10. Regarding the demand of service tax of Rs. 1,48,99,067/- on lease premium amount, we observe that the Ld. Adjudicating authority has confirmed the demand of service tax by construing the services provided by them as 'renting of immovable property services' whereas the appellant has considered the said service under construction services and availed the benefit of abatement as provided under the notification No. 26/2012-ST dated 20.06.2012.

10.1. In the present case, we observe that the appellant has entered into sub-lease deed during the construction stage of the mall with the prospective buyers. Consequently, the appellant has paid service tax on amount of advance received against the construction services rendered after claiming abatement of 70% as per the Notification No. 26/2012-ST dated 20.06.2012. We also find that the buyers of the units have paid proper stamp duty at the time of registration of their units with the state government, which clearly shows the nature of transfer. Accordingly, we hold that the demand of service tax confirmed in the impugned order under 'Renting of Immovable Property Service' by denying the abatement is legally not sustainable.

10.2. We observe that the issue is no longer *res integra, as this Tribunal, in the case of* SAFARI RETREATS PVT. LTD. Vs PRINCIPAL COMMISSIONER OF G.S.T. AND C.EX. BHUBANESWAR (2025) 26 Centax 53 (Tri.-Cal), *has taken the view that the premium paid by the prospective buyers are not liable to service tax under the category go 'Renting of Immovable Property Services'.* The relevant part of the said decision is reproduced below:-

> *"10. Section 54 of the Transfer of Property of Act,1882, reads as under :*
>
> *" 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised".*
>
> *It is an admitted fact on record that the appellant has transferred the leasehold rights of the immovable property for one time consideration termed as SubLease Premium".*
>
> *10.1. The State Govt of Odisha requires stamp duty to be paid on such transactions, treating the same as deemed sale. Accordingly, the appellants have paid the requisite stamp duty on the total consideration received from the buyers.*
>
> *10.2. It is also observed that the appellant has received the lumpsum amount as*

consideration from the buyers on a one-time basis. There is no evidence that the appellant has been collecting the amounts regularly on account of Lease. Thus, it gets clarified that the appellant has not received any amount as rent but the amount received is in the nature of amount towards purchase of constructed space for commercial use

10.2.1. In the cited judgement of the Madras Hon'ble High Court in the case of A.R. Krishnamurthy and A.R. Rajagopalan v. Commissioner of Income Tax, Madras, [1981] 6 Taxman 289/133 ITR 922 (Madras), the activity of lease, consideration thereof have been discussed in detail. The relevant portion of the decision is reproduced below : -

"Section 105 of the Transfer of Property Act defines a lease of immovable property as "a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent". A lease thus consists of a right to the possession and use of the property owned by some other person. It is an outcome of the separation of ownership and possession. The

lessor of the land is the who owned and possessed it, but has transferred the possession of it to another. The price paid for the transfer of possession or the right to enjoy the property is called the premium under section 105 of the Transfer of Property Act. The periodical payments made for the continuous enjoyment of the benefits under the lease are called rents or royalties."

10.2.2. As per this judgment, in case of Renting or Leasing, the Lessee makes periodical payments for the continuous enjoyment of the benefits under the lease. When such payments are not made on periodical basis, the amount paid cannot be equated to 'Rent'.

10.3. The Hon'ble Apex court in the case of Commissioner of Income Tax v. The Panbari Tea Co. Ltd. [[1965] 57 ITR 422 (SC)], had the occasion to differentiate between the 'Premium' and 'Rent'. The relevant portion of this decision is extracted below: -

"Under section 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy the property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the

premium, and the money, share, service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt. There may be circumstances where the parties may camouflage the real nature of the transaction by using clever phraseology. In some cases, the so-called premium is a fact advance rent and in others rent is deferred price. It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the court, having regard to the other circumstances, to ascertain the intention of the parties.

Bearing the said principles in mind let us scrutinize the lease deed dated March 31, 1950. Under that document interest in two large tea estates comprising 320 acres and 305 acres respectively under tea, along with the bungalows, factory buildings, houses, godowns, cooly lines and other erections and structures, was parted by the lessor to the lessee for a period of 10 years; and during that period the lessee could enjoy the said tea estates in the manner prescribed in the document. Under the document, therefore, there was a transfer of substantive interest of *the lessor in the estates to the lessee and a conferment of a right on the lessee to use the said estates by exploiting the same. Under clause 4 of the lease deed for the transfer of the right a premium of Rs. 2,25,000/- had to be paid to the lessor and for using the estates the lessee had to pay an annual rent of Rs.54,000/-. Both the premium and the rent were payable in instalments in the manner provided in the document. The parties were businessmen presumably well-versed in the working of tea estates. They must be assumed to have known the difference between the two expressions "premium" and "rent"; and they had designedly used those two expressions to connote two different payments. The annual rent fixed was a considerable sum of Rs. 54,000 and the premium, when spread over 10 years, would work out to Rs. 22,500 a year. There is no reason, therefore, to assume that the parties camouflaged their real intention and fixed a part of the rent in the shape of premium. The mere fact that the premium was made payable in instalments cannot obviously be decisive of the question, for that might have been to accommodate the lessee."*

10.3.1. This judgement clarifies that while the Premium or Salami is a one-time payment, the 'rent' is payable at regular intervals. It also recognizes that in trade and commerce practice of payments on account of premium and rent exists.

10.4. The issue as to whether the Service Tax is payable on 'One time premium' *in case of long term leasing, was before the Tribunal in the case of Greater Noida Industrial Development Authority v. Commissioner of Central Excise and Service Tax, Noida [(2015 (38) S.T.R. 1062 (Tri.-Del)]. The relevant extracts are reproduced below : -*

"10. Whether the Service Tax is chargeable only on the lease rent or also on one time premium amount charged in respect of long term leases?

10.1 A lease is a transaction, which has to be supported by consideration. The consideration may be either premium or rent or both. The consideration which is paid periodically is called rent. As regards premium, the Apex Court in the case of Commissioner of Income Tax, Assam and Manipur v. Panbari Tea Co. Ltd. reported in (1965) 3 SCR 811 has made a distinction between premium and rent observing that when the interest of the lessor is parted with for a price, the price paid is premium or salami, but the periodical payments for continuous enjoyment are in the nature of rent, the former is a Capital Income and the latter is the revenue receipt. Thus, the premium is the price paid for obtaining the lease of an immovable property. While rent, on the other hand, is the payment made for use and occupation of the immovable property leased. Since taxing event under Section 65(105)(zzzz) read with Section 65(90)(a) is renting of immovable property, Service Tax would be leviable only on the element of rent i.e. the payments made for continuous *enjoyment under lease which are in the nature of the rent irrespective of whether this rent is collected periodically or in advance in lump sum. Service Tax under section 65(105)(zzzz) read with Section 65(90a) cannot be charged on the "premium" or 'salami' paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee as this amount is not for continued enjoyment of the property leased. Since the levy of Service Tax is on renting of immovable property, not on transfer of interest in property from lessor to lessee, Service Tax would be chargeable only on the rent whether it is charged periodically or at a time in advance."*

10.4.1. In the above case, the Tribunal has relied upon the decision of the Hon'ble Supreme Court in the case of Panbari Tea Co., cited supra, while examining as to whether Service Tax is payable when an amount is being paid on lumpsum basis for long term basis. It has been concluded that only when the amounts are paid at regular intervals, the same can be viewed as 'Rent'. Since only the rent received is exigible to Service Tax under the classification of 'Renting of Immovable property', the Tribunal has held that amount received in lumpsum on one time basis on account of long term lease would not require any Service Tax payment.

10.5. We also observe that the appellant has placed reliance on the decision of the CESTAT at Kolkata in the case of Bengal Silver Spring Projects Ltd. v. Principal Commissioner *of Service Tax - I vide Final Order No. 77501 of 2024 dated 14.11.2024 in Service Tax Appeal No. 76203 of 2016, wherein it has been held as under : -*

"2. Brief facts of the case are that the appellant had entered into an agreement with Kolkata Municipal Corporation (KMC in short) to develop and maintain 8-acres of land. As per the lease agreement with KMC, appellant is entitled to all the construction / erection / structure of any nature whatsoever as the absolute owner thereof and to enter into agreement for transfer of its leasehold rights together with the constructed areas belonging to it. Accordingly, the appellant sub-leased the properties to various parties. In respect of the land to be mutated by the sub-lessee in their name, the sub-lessee is deemed to be the lessee of the said plot and has to apply to KMC for renewal of lease after expiry of the 99 years lease period. After mutation, the full rights and title goes in favour of the sub-lessee, subject to renewal of the original deed after its expiry. Therefore, the appellant treated the said transaction as 'sale of leasehold rights' and not paid service tax on the outright transfer of lease hold rights. However, the department considered the transaction of long term lease undertaken by the appellant as a taxable service liable for service tax under the category of 'Renting of immovable property service'. The department considered the one time Premium/ Salami received by the appellant from the sublessee as consideration towards the taxable service

namely, 'Renting of Immovable Property Service'.

....

6.3. We observe that the Appellant does not have any reversionary right of the property after the permanent transfer of their leasehold rights to the respective sub-lessee. It is only the assignees who have the right to get the lease renewed in their favour after completing the formalities directly with the KMC and the Appellant does not have any role in this regard. We observe that once they received the one-time salami/premium from the said sub lessees, the appellant cannot be said to be a 'lessor' of the said leasehold property for the purpose of levy of service tax. Since the leasehold right along with obligations are permanently assigned in favour of the assignees herein and the property would not come back to the Appellant, we hold that the transaction cannot be considered as sub-lease of property thereby attracting service tax liability under "Renting of immovable property".

6.4. We observe that a similar view has been taken by this bench in the case of Luxmi Township Ltd. v. Commissioner CGST & C. Ex., Siliguri [2023 (79) G.S.T.L. 232/(2023) 11 Centax 238 (Tri.-Cal)].,wherein on similar facts and circumstances this Tribunal has held as under:

33. In view of the decisions mentioned above, it is clear that consideration, i.e. one *time payment, in the form of Premium or Salami and consideration in the form of 'rent' connotes two different types of consideration. In the instant case, we observe that the Appellant has not received any 'rent' from the assignees and the rent is payable by the assignees to the state of West Bengal through DLLRO. Accordingly, we hold that the premium or salami paid to the Appellant for transfer of interest in the property, is not exigible to the service tax as held by the Tribunal in the case of Greater Noida Industrial Development Authority v. Commissioner of Central Excise and Service Tax, Noida.*

6.4. In this case, we observe that the appellant has only received the one time premium as the consideration. There was no periodical rent payment. Accordingly, we hold that the permanent transfer of lease hold right by appellant to various parties would not be liable to Service Tax."

11. When the factual matrix of the present Appeal is applied to the cited decisions, particularly that of this Tribunal in the cases of Bengal Silver Spring Projects Ltd. (cited supra) and Greater Noida Industrial Development Authority (cited supra), we find that these case laws are squarely applicable to the facts of the present case.

11.1. Accordingly, we hold that the appellant has not rendered any service under the category of 'Renting of Immovable property'. Therefore, the confirmed demand of Rs.11,58,32,907/-, is legally not sustainable

> *and we set aside the same and allow the Appeal filed by the appellant on merits to this extent."*

10.3. Thus, by relying on the decisions cited supra, we hold that the demand of service tax of Rs. 1,48,99,067/- confirmed on lease premium amount, under the category of 'Renting of Immovable Property Services' is not sustainable and accordingly, we set aside the same.

11. Regarding the demand of service tax of Rs. 880,183/-, we observe that the Ld. Adjudicating authority has confirmed the demand of service tax of Rs. 880,183/- on account of discrepancies between ST 3 and books of accounts under renting of immovable property services for the FY 2014-15. The appellant submitted that they have already paid the shortfall in service tax liability amounting to Rs.8,80,183/- under the category of "Renting of Immovable Property Service" in the return period April'16 to September'16. In support of this claim the appellant submitted a reconciliation statement and a Chartered Accountant Certificate. For ready reference, the reconciliation statement submitted by the appellant is reproduced below:

Actual Extra developmental charges (EDC) income as per Books of Accounts	
Particulars	Gross Value
A. Total Extra Development Charges received as per ledger Other Current Liabilities:	2,21,04,006
B. Less: Amount already recognised as income on receipt basis under EDC Income and cannot be taxed again	
Electrical Installation Charges	9,50,707
Electrical Meter Charges	9,22,334
Generator Charges	44,39,913
Legal Expenses	7,09,000
C. Less: Deposits on which Service tax is not applicable	
Maintenance Corpus Deposit	24,66,944
Maintenance Deposit	12,20,225
D. Less : Cheques returned to sub-lessess	6,85,760
E. Income Recognised with retrospective effect in the ledger because of above charges (A-B-C-D)	1,07,09,123

Total Extra Development Charges as per P & L A/c (EDC Income)	Gross Value
Electrical Installation Charges	9,50,707
Electrical Meter Charges	9,22,334
Generator Charges	44,39,913
Legal Expenses	7,09,000
Maintenance Corpus Deposit	24,66,944
Maintenance Deposit	12,20,225
Income recognised in F.Y. 14-15 on which service tax discharged in F.Y. 15-16 in receipt basis.	44,55,097
II. Total EDC Income as per Books (Recognised)	1,51,64,220
Less: EDC Income on which Service Tax discharged in F.Y. 14-15 under head "Repairs and maintenance" of ST-3.	71,01,695
Less: EDC Income on which Service Tax discharged in F.Y. 15-16 under head "Repairs and maintenance" of ST-3.	43,75,356
Less: Maintenance Corpus Deposits on which Service tax is not applicable	24,66,944
Less: Maintenance Deposit on which Service tax is not applicable	12,20,225
Short Discharge of service tax	-

11.1. The CA Certificate submitted by the appellant in support of the reconciliation statement is reproduced below:

PANKAJ BAID & ASSOCIATES

Chartered Accountants **Room No 812A, South Block, 32 Ezra Street, Kolkata – 700001**

(CA, CMA, CS, LLB, IBBI REGD.VALUER)

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TO

The Amit Realty Private Limited
20/1 Ashutosh Chowdhury Avenue
1st Floor Kolkata – 700019

we have examined the books of account and other relevant records of **Amit Realty Private Limited** a private limited company having its registered office at **20/1, Ashutosh Chowdhury Avenue, 1st Floor, Kolkata-700019, site at The Bokaro Mall, Sector 3C, Bokaro Steel City Bokaro. Jharkhnad-827003** (hereinafter referred to as "the Entity").

Subject of Reconciliation:
We have performed a reconciliation of the Entity's records for the period **2014-15 & 2015-16** for the following purpose:

- [Reconciliation of Service Tax Liability]

Documents Verified:
We have verified the following documents and records provided by the management:

- [Service tax Return for the period FY 2014-2015 & 2015-2016]
- [Audited Financial Statement of for the FY 2014-2015 & 2015-2016]
- [**Basis of Certification:**
Based on our examination of the records and information and explanations provided by the Entity's management, we certify the following:

Reconciliation of Rental Income disclosed in Books of accounts and ST-3			
Particulars	Gross Value	Service Tax	Challan No./ Payment mode
Lease Rental Income as per Books of Accounts of F.Y. 2014-15.	9,589,949	1,185,317	
Lease Rental Income as disclosed in ST-3 under head "Renting of Immovable property" in F.Y. 2014-15.	2,468,727	305,134	
Difference	**7,121,222**	**880,183**	
Lease Rental Income declared under head "Maintenance or repair services" in ST-3 of F.Y. 2014-15.	1,138,148	140,675	

PANKAJ BAID & ASSOCIATES
Chartered Accountants Room No 812A, South Block, 32 Ezra Street, Kolkata – 700001
(CA, CMA, CS, LLB, IBBI REGD.VALUER)

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Lease Rental Income declared under head "Arrears, Interest, Penalty, any other amount etc., paid" in ST-3 of the period April'15-September'15.	391,796	48,426	0005347 28052015 01804
Lease Rental Income declared under head "Arrears, Interest, Penalty, any other amount etc., paid" in ST-3 of the period April'15-September'15.	486,214	60,096	0005347 28052015 01814
Lease Rental Income declared under head "Arrears, Interest, Penalty, any other amount etc., paid" in ST-3 of the period October'15-March'16.	5,105,064	630,985	Paid by utilizing CENVAT credit
Net Difference	-	-	

- Reconciliation with Service tax Returns: The turnover and ITC as recorded in the books of accounts have been reconciled with the Service tax returns filed. All identified differences, if any, have been justified.
- Accuracy of Records: To the best of our knowledge and belief, and based on our verification, the reconciliation statement reflects a true and correct position of the reconciled items as on [19/09/2025].

Limitation of Liability:
This certificate is issued based on the books and records produced before us and is true to the best of our knowledge and belief. We do not express an opinion on the accuracy of the underlying transactions. We fully understand that if any statement made in this certificate is proven incorrect or false, it will render us liable for penal action.

For Pankaj Baid & Associates
Chartered Accountants
FRN No. 329176E

CA Pankaj Baid
Proprietor
Membership No. 307424
UDIN : 25307424BMILQE6869
Date : 13.10.2025
Place : Kolkata

11.2. A perusal of the reconciliation statement, supported by the Chartered Accountant Certificate shows that there is no short payment of service tax for 2014-15 by the Appellant. Accordingly, we hold that the demand of service tax confirmed in the impugned order on this count is not sustainable.

12. Regarding the demand of service tax of Rs. 46,06,353/-, we observe that this demand has been confirmed on extra development charges for the period 2014-15. We observe that on one hand the Ld. Adjudicating authority has held that the said charges are in the nature of construction services and on the other hand he has held that such charges

are to be taxed under full rate of service tax without any abatement. Thus, we observe that the basic argument of the Ld. Adjudicating authority is flawed as the said authority has already held that the activity of the Appellant is of renting services and thus now classifying the activity for EDC as construction services is self-discriminatory in nature. We observe that the appellant has already paid service tax of Rs. 1,874,298/- for the amount of EDC collected for the period in dispute under maintenance or repair services. We observe that the department has not disputed the said fact. The department has only alleged non-payment of service tax under the correct head of construction service instead of payment made by the Appellant under maintenance and repair service head. In this regard, we observe that w.e.f 01.07.2012, the negative list service tax regime had set in and the classification of services was done away with. The payment of service tax could have been done in any other taxable service code also and the same would be sufficient to discharge service tax liability of the Appellant. Thus, we hold that the entire demand on EDC charges confirmed in the impugned order is not sustainable and hence we set aside the same.

13. Regarding the demand of service tax of Rs. 524,136/- we observe that the Ld. Adjudicating authority has confirmed the demand of Rs. 524,136/- for non-payment of service tax under reverse charge mechanism on director services, GTA services and security services.

13.1. Regarding service tax liability on the Director's remuneration, we observe that the said remuneration has been considered as salary for income tax purposes and the Director has paid income tax on the same. In this regard, we observe that Board has categorically clarified vide CIRCULAR NO. 140/10/2020 - GST [CBEC-20/10/05/2020 - GST], DATED 10-6-2020, if the income is considered as salary for income tax purposes, then service tax cannot be demanded on the same. Accordingly, we hold that no service tax is payable by the appellant on RCM basis on the Director's remuneration.

13.2. Regarding the demand of service tax on GTA services on RCM basis, we observe that the appellant had availed transportation services from local truck owners for carrying materials required for construction from local vendors/sellers. In this regard, we observe that the appellant had provided ledger copies and other voucher copies to show that such expenses were of local transport charges for supplies and no GTA issuing consignment note was involved in such work. We observe that there is no consignment note brought on record by the department to prove rendering of GTA service. Accordingly, we hold that no service tax is payable under RCM for the GTA services.

13.3. Regarding the demand of service tax on security services under RCM basis, we observe that the Ld. Adjudicating authority has confirmed demand of service tax on security services even though the same was charged on tax invoice issued by the suppliers and service tax was paid by the appellant to the said providers. We observe that the Appellant had provided detailed breakup of expenses incurred for security services with ledger back up to show that the values being adopted by the department is also incorrect. However, we find that the Ld.

Adjudicating authority has brushed aside all such contentions and has confirmed the demand without any discussion. In view of the above, we hold that the demand confirmed under RCM for security service is not sustainable.

13.4. In view of the above findings, we hold that the demand of service tax Rs. 524,136/- confirmed on RCM basis is not sustainable.

14. As the demand of service tax confirmed in the impugned order is not sustainable, we hold that the question of demanding interest or imposing penalty does not arise. Accordingly, we set aside the same.

15. The appellant has also contested the demand on the ground of limitation and contended that extended period of limitation cannot be invoked in this case. We observe that there was no fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of tax, has been established in this case. Accordingly, we hold that the demand confirmed by invoking extended period of limitation is not sustainable.

16. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 28.10.2025)

Sd./-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd./-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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