

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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75120 of 2024

(Arising out of Order-in-Original No. 02/Commr/CGST & CX/HWH/ADJN/2021-22 dated 31.05.2022 passed by the Principal Commissioner of C.G.S.T. and C.X., Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Oscorp Industries Private Limited : **Appellant**
Baltikuri, Surkimill, Howrah,
West Bengal – 711 113

VERSUS

Commissioner of C.G.S.T. and Central Excise : **Respondent**
Howrah Commissionerate,
15/1, Strand Road, Kolkata – 700 001

APPEARANCE:

Shri H.K. Pandey, Advocate, for the Appellant

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

CORAM:

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

FINAL ORDER NO. 77646 / 2025

DATE OF HEARING: 15.10.2025

DATE OF DECISION: 06.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. Oscorp Industries Private Limited [hereinafter referred to as the "appellant"] challenging the Order-in-Original No. 02/Commr/CGST & CX/HWH/ADJN/2021-22 dated 31.05.2022 passed by the Principal Commissioner of C.G.S.T. and C.X., Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001 wherein Service Tax demand of Rs.2,09,91,709/- has been confirmed against the appellant, along with applicable interest and penalties thereon, for the period from October 2013 to June 2017.

2. The facts of the case are that the appellant is engaged in the business of manufacturing and providing services as and when required, mainly by Railway authorities, both in the field of manufacturing and providing services. The services are provided on works contract basis relating to both 'original works' and 'maintenance works'. The appellant submitted periodical returns, as required under the Service Tax Rules.

3. On the basis of intelligence received from the Bilaspur Customs, Central Excise & Tax-II Commissionerate. Kolkata against the appellant herein, summons were issued on 22.01.2016 in response to which the appellant submitted some documents like copy of PAN, ST-2 registration certificate, copy of Trade License, copy of memorandum of association, etc. Shri Santu Karar, Director of the appellant, appeared on 15.03.2016 and submitted some more documents like store orders, statement of works contract done, VAT returns etc., and claimed that "The work so performed were well covered under the 'Original works' and are exempted from payment of Service Tax as provided under notification no. 25/2012 ST dated 20-06-2012.

3.1. In his statement dated 15.03.2016. Shri Santu Karar stated that they were engaged in work in relation to New Railway Wagons at factories of the railway, rebuilding/restoration of damaged structures on old Railway wagons, repair of Old/used wagons, supply of materials against stores orders of Railways including both manufacturing and trading activities, rebuilding work carried out by them for Railways falling under the classification of 'Original Works'.

3.2. On the basis of the letter bearing Reference no Mech/BSP/005/Misc/938 dated 03.11.2015 along with enclosures for the contract Agreement issued by the Sr. DME/C&W/BSP of South East Central Railway, the Revenue took the view that the contract awarded to the appellant was repair and maintenance work for rebuilding of Railway wagons/sheds, etc. In support of their allegation, the Revenue referred to the agreement of the contract vide Mech/BSP/2015/005/001/Complete renewal/BCN/1 dated 23.09.2015 mentioning the work as "complete renewal of roof and body repair with supply of materials for 50 nos. of BCN wagon at BCN depot, Bilaspur on open tender basis" as well as the appellant's Tax invoice no. 262 dated 22.02.2016 raised to South East Central Railway vide PO. No. WRS/R/09/13-14/03/OT/Boxn/07/374 dated 29.01.2015 mentioning the name of the work as "complete renewal of End Wall, side wall and flooring of BOXN wagon".

4. In connection with different queries, the appellant informed that they used to render the services to Railways. It was further clarified that the appellant had rendered services to Indian Railways and as per contract, it was Railways who used to pay Service Tax.

5. On 23.11.2017, the appellant submitted copies of the following Contracts entered into with the Railways: -

- SER No. Dy CME(W)/90/BOXN/616 dated 16.02.17 for "upgradation and rehabilitation of BOXN wagon to BOXNR wagons at WRS/SER/Adra on works contract basis".

- SECR No. WRS/R/09/15-16/03/OTRSPBOXN/03/3387 dated 22.09.2016 for "complete renewal of end wall, sidewall and flooring of BOXN wagons (Qty 1000 wagons) at West Raipur".
- SECR No. M/BSP/DE/RSP/250 BOXN dated 03.06.2016 for "complete renewal of end wall, sidewall and flooring of 250 nos, of BOXN wagons at MSL/Bilaspur"
- SECR No. M/R/Tender/BOXN/Rehabilitation/14-15/RTN/LOA/A/3357 dated 16.10.2015 for "complete renewal of end wall, sidewall and flooring of BOXN wagons (Qty 600 wagons) at WRC/BMY"
- SECR No. Mech/BSP/2015/005/RSP/Renewal/500BCN dated 06.10.2015 for "complete renewal of roof and body repair with supply of material for 500 nos. of BCN wagons at BCN depot, Bilaspur.

6. On examination of the above contracts, it appeared to the Departmental Officers that the work performed by the appellant did not come under the purview of 'Original Works', as they had performed only upgradation, rehabilitation and renewal works and accordingly, were ineligible for the exemption available under Serial No. 14 (a) of Notification No. 25/2012-ST dated 20.06.2012 as had been claimed by the appellant.

7. On the basis of the above, a Show Cause Cum Demand Notice dated 12.04.2019 was issued, proposing demand and recovery of Service Tax amounting to Rs.2,09,91,709/- for the period from October 2013 to June 2017, along with interest and penalty thereon.

8. Upon adjudication, the Id. adjudicating authority passed the impugned order dated 31.05.2022, wherein he has concluded that the nature of services provided to the Railways under contracts in relation to railway wagons comprised of upgradation and rehabilitation of wagons, complete renewal of end-walls, side-walls and flooring of wagons and complete renewal of roof and body repair. The said works cannot be considered as 'original works' under clause (ii) of Explanation 1(a) of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 which covers all types of additions, alternations to abandoned or damaged structures on land that are required to make them workable. As such, it was held that the said services are not covered by the exemption benefit under Entry Sl. no. 14(a) of Notification No. 25/2012-ST dated 20.06.2012. The Id. adjudicating authority has thus confirmed the demand of Rs.2,09,91,709/-, as proposed in the said Notice, along with interest, and imposed a penalty of Rs.2,09,91,709/- under Section 78 of the Finance Act, 1994, along with Late Fee under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

8.1. Aggrieved by the said order, the appellant has filed the instant appeal.

9. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant has made various submissions in support of his contentions, which are briefly summarized as under: -

- (i) The appellant is engaged in the business of manufacturing of various parts of wagon, which they assemble/erect at railway site in installation and commissioning of old structures of wagons. The appellant further pleads that the services so rendered in installation and commissioning of wagons amount to 'original work' and are exempted from levy of Service Tax. They have submitted periodical returns in Form ST-3 regularly declaring details regarding services provided and claiming exemption under Notification No. 25/2012-ST dated 20.06.2012 for 'WCS (Original Work)', service tax paid as leviable and payment thereof.
- (ii) It may be mentioned that the Commissioner of Central Excise, Raipur had initiated an inquiry against the appellant in two different show cause-cum-demand notices, considering the same activity undertaken by them as amounting to 'manufacture' and demanded central excise duty on them. However, pending finalization of the dispute, the appellant had opted for settlement of disputes under the SVLDRS Scheme, 2019, which was accepted by the Department. It, therefore, implies that assembly/commissioning of railway wagon at site was considered by the Department as a 'manufacturing process' resulting into manufacture of wagon as an excisable goods. As such, the appellant was awarded contract for

assembly/erection/commission of railway wagons by assembly of fabricated/pre-fabricated parts and the process had been considered as a manufacturing process of excisable goods and hence, levy of service tax is not permissible under the law. It is pertinent to mention that the appellant is having both Central Excise and Service Tax registrations for carrying out their business activities. The activity of manufacturing undertaken by the appellant was governed under the Central Excise Act and Rules, for which appropriate duty of excise has always been paid by the appellant in course of manufacture/clearance. In terms of Entry sl. no. 30 of Notification No. 25/2012-ST dated 20.06.2012, carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is fully exempt from payment of Service Tax. By the same analogy, the appellant pleads that even holding the Department's view to be true, further demand of service tax is not sustainable and legally maintainable.

- (iii) Further, the impugned SCN was issued on 12.04.2019 for the period from October, 2013 of FY 2013-14 to June, 2017 of FY 2017-18 invoking proviso to Section 73(1) of the Finance Act, 1994 seeking extended period of limitation. In this context, on perusal of chronological date of events, the appellant pleads that the instant demand is barred by limitation as there was no element of suppression, misstatement, etc., inviting extended period of limitation in consideration of the fact that the demand was

raised on the basis of periodical return submitted by the appellant together with the fact that the departmental audit was conducted regularly in frequent intervals. With regard to the availment of exemption under Notification No. 25/2012-ST dated 20.06.2012, it is submitted that items sl. no. (14) of the said notification exempts services provided to railway related construction, erection, commissioning or installation of original work and the said services provided by the appellant falls under the category of such original work as defined in Service Tax (Determination of Value) Rules, 2006. The appellant referred the decision of the Hon'ble High Court of Karnataka at Bangalore in the case of *Commissioner of Service Tax, Bangalore-I versus Karnataka Udyog Mitra [2020 (35) G.S.T.L. 382 (Kar.)]* wherein the Hon'ble High Court held that in cases involving interpretation of statute, invocation of larger period of limitation is not applicable.

9.1. In support of their contentions, the appellant has also placed reliance on the decision of the Tribunal in the case of *Ashok Kumar Madhyani v. Commissioner of C.G.S.T. & C.Ex., Siliguri [Final Order No. 77450 of 2025 dated 19.09.2025 in Service Tax Appeal No. 75677 of 2024 (CESTAT, Kolkata)]*.

9.2. Accordingly, the Ld. Counsel appearing on behalf of the appellant has prayed for setting aside the impugned order and allowing the appeal, granting consequential reliefs to the appellant.

10. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order and reject the instant appeal.

11. Heard both sides and perused the case records.

12. From the records, we find that the appellants are engaged in the business of manufacturing of various parts of wagon, which they assemble/erect at railway site in installation and commissioning of old structures of wagons. It is the case of the appellant that the services so rendered in installation and commissioning of wagons amount to 'original work' and hence the said services would be exempt from levy of Service Tax as provided under Serial No. 14 (a) of Notification No. 25/2012-ST dated 20.06.2012. In this regard, we agree with the submission of the appellant that if a contract/work order is covered under the definition of "original work" as provided under the Service Tax law, then such work is eligible for the exemption under Serial No. 14 (a) of Notification No. 25/2012-ST dated 20.06.2012. Accordingly, we examined the eligibility for the said exemption in respect of the works undertaken by the appellant.

12.1. In the present case, the appellant has claimed the benefit of exemption as provided under Sl. No. 14 of the Mega exemption Notification No. 25/2012-ST dated 20.06.2012, which reads as under: -

"14. Services by way of construction, erection, commissioning, or installation of original works pertaining to, -

- ***railways, including monorail or metro;***
- *a single residential unit otherwise than as a part of a residential complex;*

- *low- cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;*
- *post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or ..."*

(Emphasis supplied)

12.2. The definition of "original works" as per Notification No. 25/2012-ST dated 20.06.2012, as amended, reads as under: -

"For the purpose of this notification, unless the context otherwise requires:

(y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;"

12.3. Explanation (1)(a) to Rule 2A of the Service tax (Determination of Value) Rules, 2006, dated 20.6.2012, defines "Original Works" as:

"(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise"

12.4. From the above definition of "Original Works", we find that all types of additions and alterations to abandoned or damaged structures on land that are

required to make them workable, fall within the ambit of 'original work'. On the basis of the above definition of "Original Works", we have examined the work orders executed by the appellant and find that the activities undertaken by the appellant on the Railway wagons, to make them workable, come within the purview of 'original works' as defined under Notification No. 25/2012-ST dated 20.06.2012. Thus, we find that the activity undertaken by the appellant are exempted from payment of service tax.

12.4.1. In view of the above, we hold that the services rendered by the appellant being 'Original Works' to Railways, are specifically exempted vide Service Tax Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012.

12.4.2. We note that a similar view has already been expressed by this Tribunal, under identical facts and circumstances, in the decision rendered in the case of *Ashok Kumar Madhyani v. Commissioner of C.G.S.T. & C.Ex., Siliguri* [Final Order No. 77450 of 2025 dated 19.09.2025 in Service Tax Appeal No. 75677 of 2024 (CESTAT, Kolkata)].

12.5. Consequently, we hold that the demand of Service Tax along with interest confirmed in the impugned order is not sustainable and hence, we set aside the same.

13. We also note that the Commissioner of Central Excise, Raipur had initiated an inquiry against the appellant and issued two different show cause-cum-demand notices, considering the same activity undertaken by them as amounting to 'manufacture' and demanded central excise duty on them. However, pending finalization of the dispute, the appellant had

opted for settlement of disputes under the SVLDRS Scheme, 2019, which was accepted by the Department. Thus, it is evident that assembly/commissioning of railway wagon at site has been considered by the Department itself as a 'manufacturing process' resulting into manufacture of wagon as an excisable goods. Thus, in view of the fact that the contract for assembly/erection/commission of railway wagons by assembly of fabricated/pre-fabricated parts, had been considered as a 'manufacturing process' of excisable goods by the Department, we are of the opinion that levy of Service Tax on the same activity is not permissible under the law.

14. Regarding invocation of extended period of limitation to demand Service Tax, it is the appellant's plea that the entire proceedings had been initiated on the basis of an investigation initiated by the Central Excise Commissionerate, Raipur and in the said investigation, the same activity undertaken by the appellant was considered as a process amounting to manufacture, thus central excise duty has been demanded. We find that as the goods involved in the said case had been seized, the appellant wanted to settle the issue amicably and thus opted for the Sabka Vishwas (Legacy Dispute Resolution) Scheme [SVLDRS]. Since it is a fact borne on record that the same activity as in the present case has been considered by the Department as a 'process amounting to manufacture', we agree with the submission advanced by the appellant in this regard that the same cannot be construed as a service activity for demanding Service Tax on the same. Thus, it is clear that the entire activity undertaken by the appellant was known to the department and they have

not suppressed any information from the Department. Consequently, we do not find any justification for invocation of the extended period of limitation for raising the demand of Service Tax against the appellant.

14.1. We further take note of the fact that the appellant had been filing Returns regularly. The appellant had undertaken all these activities for the Department of Indian Railways, which is a Government of India Organisation. Thus, it is clear that the appellant has no intention to evade any payment of tax. Accordingly, we hold that the allegation of suppression of facts with intent to evade payment of Service Tax has not been established in the present case and therefore, we hold that the extended period provisions cannot be invoked against them. Considering the fact that the entire demand has been raised by invocation of the extended period of limitation, we hold that whole of the demand as confirmed in the impugned order is not sustainable on the ground of limitation also.

15. As the demand of Service Tax against the appellant itself is not sustainable, the question of demanding interest or imposing penalty under section 78 of the Finance Act, 1994 does not arise.

15.1. However, we find that even though the appellant has filed returns, there has been delay on their part in filing the said returns. Accordingly, we uphold the levy of Late Fee under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

16. In view of the above findings, we pass the following order: -

- (i) We set aside the demand of Service Tax, along with interest, confirmed against the appellant in the impugned order.
- (ii) The penalty imposed on the appellant under Section 78 of the Finance Act, 1994 is set aside.
- (iii) We uphold the levy of Late Fee under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

17. The appeal filed by the appellant is disposed of on the above terms.

(Order pronounced in the open court on **06.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd