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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75950 of 2017

(Arising out of Order-in-Original No. 153/PR. Commr/ST-I/KOL/2016-17 dated 22.02.2017 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. B. G. M. Consoritum Ltd. **: Appellant**
224, A. J. C. Bose Road, Krishna Building,
10th Floor, Kolkata-700017

VERSUS

Principal Commissioner of Service Tax-I, Commissionerate, **: Respondent**
Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107

APPEARANCE:

Shri Sudhir Mehta, Sr. Advocate
MS. Riya Debnath, 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.77815/2025

DATE OF HEARING / DECISION: 10.11.2025

Order: [PER SHRI R. MURALIDHAR]

The Appellant is engaged in the business of construction, infrastructure, and development works, mainly undertaken for the Government of India, State Governments, or their instrumentalities. They have executed various infrastructure and development projects for several State departments, including the Governments of Mizoram and Tripura, and also for NCC under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) scheme, floated by the respective State Governments under directives of the Central Government. A Show Cause Notice was issued for the period 2005–2010, demanding service tax of Rs. 16,55,24,476. The Appellant contested the same, contending that projects under JNNURM and those involving construction of public utility buildings in Mizoram and Tripura were exempt amongst others that there can be no levy on works contract. The Adjudicating Authority partially confirmed the demand, against which the Appellant preferred an appeal before this Hon'ble Tribunal. The Tribunal, by order dated 22 July 2014, remanded the matter back to the Adjudicating Authority. Upon remand, in light of various Tribunal decisions clarifying the law, the Department itself abandoned the proceedings, recognizing that the earlier show cause notice dated 21-04-2011 was untenable in fact and in law.

2. However, during a subsequent audit, the Department reopened the same issues, relying solely on documents already submitted by the Appellant (ST-3 returns, balance sheets, VAT records, etc.), and issued a fresh Show Cause Notice involving the extended period of limitation without any allegation of suppression or fraud for the period 2010-2015. The appellants contested the same on merits by submitting documentary evidence towards the exemption available to them. They also contested the issue on limitation on the ground that for the earlier period in respect of similar set of facts the Revenue had issued the SCN by invoking the extended period. The Adjudicating authority after due process, confirmed the demand along with interest and penalty. Being dissatisfied with the impugned order, the appellant is before the Tribunal.

3. The Ld. Senior Counsel, representing the appellant makes the following submissions :

3.1. Most of the works executed by the Appellant were exempt from Service Tax in view of the applicable exemptions and notifications—particularly those relating to construction for railways, agricultural development, and public utility structures such as auditoriums and complexes in Mizoram and Tripura for housing of government own offices.

3.2. The works (SL no. 1-7 , partly 8 , 10, 19-21) were covered under 'Works Contract Service', which was first brought under the ambit of the Finance Act, 1994 by the amendment of 2007 introducing Section 65(54) and Section 65(105)(zzzza). There was, however, a dispute regarding the levy of service tax on works contracts, as no mechanism existed under the Finance Act, 1994 for determining the value of the service portion in a composite contract till 2012 when Rule 2A of Service Tax (Determination of Value) Rules 2006 as amended was substituted in place of Rule 2A brought under original notification no.12/2006 by which the said Rule was brought. The Service Tax (Determination of Value) Rules, 2006, brought in via Notification No. 12/2006, included Rule 2A. However, Rule 2A at that time did not provide an adequate mechanism to segregate the service component from the works contract.

3.3. Only through Notification No. 24/2012, a proper mechanism was prescribed—providing that the gross value of the works contract shall be determined by deducting the sale value of goods from the total contract value, and where not possible, service tax would be payable on 40% of the total amount charged in case of original works.

3.4. The Hon'ble Supreme Court in Larsen & Toubro Ltd. held that the after insertion of Rule 2A (as amended in 2012) , a proper mechanism for segregation of the service component from the works contract has been created. So prior thereto there was no proper mechanism of division of service portion from the indivisible works contract and hence levy prior thereto would be unconstitutional.

3.5. Prior to 2012, the Appellant had deposited service tax amount of Rs. 1,73,88,566/- under protest during investigations, as they were of the view that Service Tax was not leviable on indivisible works contracts. This issue was at all time contested by the Department since the year 2005. In the case the earlier proceedings taken up for the period 2005 to 2010, the Adjudicating Authority partially confirmed the demand, against which the Appellant preferred an appeal before this Hon'ble Tribunal. The adjudicating authority upheld few projects covered with the present show cause notice also such as (Sl. 19-21) as exempted. The Tribunal, by order dated 22 July 2014, remanded the matter back to the Adjudicating Authority. Upon remand, in light of various Tribunal decisions clarifying the law, the Department itself abandoned the proceedings, recognizing that the earlier show cause notice dated 21-04-2011 was untenable in fact and in law.

3.6. In the present proceedings before the Adjudicating authority, the Appellant filed a detailed reply and participated in adjudication proceedings, submitting that:

- Rule 2A (as amended in 2012) applies prospectively, and therefore, service tax on works contracts can only be levied from 2012 onwards.
- The Appellant provided detailed project-wise data bifurcating contracts executed before and after the introduction of Rule 2A.
- It was also submitted that, if the claim of exemption was not accepted, valuation must mandatorily be done under Rule 2A, excluding the value of goods.
- The Appellant relied upon earlier orders and circulars exempting JNNURM projects from service tax.
- That the demand is barred by limitation as issues were all taken in the first show cause notice for the period 2005-2010 and there is no case of suppression of facts. Hence extended period would not apply.

3.7. The Hon'ble Supreme Court, in ***Interarch Building Products Pvt. Ltd. v. Commissioner (2023) 73 GSTL 433 (SC),*** held that valuation under Rule 2A must be applied, and where not done, the matter must be remanded for fresh adjudication.

3.8. The Tribunal, in Thirumalai Saukat Rai Construction Pvt. Ltd. v. CCE (2018) 319 GSTL 319 (Tri.), also held that JNNURM projects are exempt from service tax.

3.9. Similarly, in Shriram Ajit Pvt. Ltd. v. Commissioner (2023) — GSTL (Tri.), the Tribunal held that extended limitation cannot be invoked in absence of a positive finding of willful suppression, a view upheld by the Hon'ble Supreme Court.

3.10. The Department made no independent inquiry to ascertain whether the projects in question were covered under the JNNURM scheme or otherwise exempted.

3.11. The adjudication proceedings were conducted in undue haste, without examination of documents or due consideration of law and facts and proper hearing when the appellant was not allowed to give full hearing by observing that its submission qua Rule 2A of valuation Rules hold water.

3.12. There being no element of "transportation service" in the Appellant's contracts, such demand too is untenable.

4. In view of the foregoing, the Sr Counsel, prays that the impugned order may be set aside and the appeal may be allowed both on merits and on account of time bar.

5. The Ld. AR appearing on behalf of the Respondent Revenue, submits that the appellant has not provided proper documentary evidence towards their claim of exemption. In order to grant the exemption, the contract copy, invoices etc have to be verified before coming to a conclusion as to whether the service provided is exempted or not. As per the detailed findings given in the impugned the appellant has not provided these details to the Adjudicating authority. Hence, the confirmation of demand is justified as per the Ld. Authorized Representative.

6. The Ld. Sr. Consel, has made the following further submissions :

6.1. A long-standing dispute existed between the trade, including the appellant, and the Service Tax Department regarding levy of service tax on works contracts, which are composite and indivisible contracts involving both supply of goods and provision of services.

6.2. In view of this dispute, service providers executing works contracts—particularly construction contracts where supply of goods is an integral component—were of the consistent view that such contracts do not fall within the purview of service tax, being a State subject, as VAT was leviable on the goods component of the works contract.

6.3. The Department was fully aware of this dispute. The appellant had consistently claimed the constructions contracts as exempt under the Finance Act, 1994 and did not pay service tax on any indivisible portion. All such positions were duly disclosed in ST-3 returns as well as in the balance sheet at all material time.

6.4. This dispute had been continuing since the year 2005. In 2007, works contracts were brought under the Finance Act, 1994, but without any statutory mechanism for segregation of the value of goods from the gross value of the contract—an essential requirement for levy of service tax. Rule 2A of the Service Tax (Determination of Value) Rules, 2006, prior to its substitution in 2012, was incomplete. The Hon'ble Supreme Court in Larsen & Toubro held that only after the substitution of Rule 2A by Notification

No. 24/2012-ST dated 06.06.2012 (effective from 01.07.2012) was a proper and complete mechanism provided.

6.5. Therefore, levy of service tax on works contracts could arise only after 01.07.2012, when Rule 2A was substituted and a lawful mechanism for valuation became available. This dispute continued till the judgment in the case of Larsen and Toubro.

6.6. The appellant executed long-term government works, including construction of Secretariat buildings of State Government, Town Halls for state offices, and similar public utility structures.

6.7. A search was conducted by the Service Tax Department at the appellant’s premises on 11 November 2010, followed by a show cause notice dated 21 April 2011, covering the period 2005–2010. This **First SCN** demanded tax on several works contracts on the following projects:

<u>Construction of Commercial services</u>

1. Sonamura (Shopping complex) Tripura
2. Kailashnagar Shopping Complex
3. Goa Municipal market
4. Shopping complex Tripura
5. BRPL- DHOT Project
6. Dwelling Units for poors
7. Dwelling units for poors at Udaipur
8. Dwelling Units at Faridabad

9. Super Market at Tripura

10. Dwelling Unit at Bapunagar

11. Dwelling Units at Faridabad

12. IDC Building Sewree

13. Mella TPS Bankura

14. Kodarma TPS Bankura

15. Panchha TPS Jhansi

16. Farakka Super TPS

17. Durgapur TPS

18. Construction of Chimney at Jharkhand , Jhansi , Farakka

    Durgapur

19. Construction of City Centre at Aizwal Mizoram

20. Panaji Municipal market

21. Goa Yatra Niwas

22. Refinery at Bonogalaon

23. Dwelling Unit at Agartala

Site Formation, clearance and excavation service

Site preparation at Buraipur

Transport of Goods by Road Service as service recipient

6.8. The adjudication order dated 8 May 2012 held certain construction activities for Government buildings under such as School Building Town Hall etc to be non-taxable, while confirming demand for others.

6.9. The appellant preferred an appeal. The Tribunal remanded the matter for de novo adjudication because the appellant's contention that taxable value must first be determined by excluding the value of goods had not been considered.

6.10. The appellant also submitted that the constructions were executed for State Governments purely for public purposes, with no commercial intent, and hence were not taxable and this aspect was not considered.

6.11. After the remand order dated 22 July 2014, Circular No. 80/2004 dated 17.09.2004 and the Rule 2A as substituted in the year 2012 required segregation of the goods component value from the gross contract value.

6.12. The Department allowed the proceedings under the **First Show Cause Notice** to remain pending which got abated under Section 73(4B) of the Finance Act, 1994.

6.13. The Department had full knowledge of all activities, returns, contracts and disclosures made by the appellant. There was no suppression of facts to justify invocation of the extended period.

6.14. The present SCN dated 15 October 2015 (**Second Show cause Notice)** was issued despite all facts being known during earlier proceedings of the **First Show Cause Notice** . The present Second Show Cause Notice covers following projects;

Sl no. 1-6. Constructions of Chimney

It is same/ similar as sl no. 13, 14 ,15, and 16 consolidated in sl no. 18 mentioned above in the **First Show Cause Notice**

7. Construction of commercial Building at Mangoe lane Kolkata

It is similar as Sl no . 1

8. Boundary Wall Repair

It was a works contract hence Rule 2A applied which was not applied.

9. BAS (Business Auxiliary Service)

It was actually a Site Formation Service

Sl No. 10-18 held by the adjudicating authority as non- taxable service

Sl no 19-21

These are similar as Sl. no . 19 of **first show cause notice**

Demand of Service Tax on GTA services

The issue was expenses incurred on own vehicles used for carriage would not come within GTA Service as there was no engagement of a career. the same issue was involved in the First Show Cause Notice.

6.15. The SCN is based entirely on scrutiny of ST-3 returns and financial documents regularly filed by the appellant. No new fact has been alleged.

6.16. All projects were already within the knowledge of the Department.

6.17. Neither the SCN nor the adjudication order cites a single instance of suppression of any fact by the appellant.

6.18. The extended period cannot be invoked when all material facts were already known to the Department.

6.19. The Supreme Court in **Nizam Sugar Factory v. CCE (197) ELT 465(S.C.)** held that when facts were known during earlier SCN proceedings, subsequent SCNs on similar facts cannot invoke the extended period.

6.20. Therefore, invocation of the extended period in the present SCN is untenable and the demand is liable to be set aside.

7. Heard both the sides in detail. We have perused the appeal papers and other documents placed before us.

8. Admittedly, from the documents made available to us, it is seen that in respect of several of the Works Contract service, Construction Services, the same have been provided to Government entities. As to whether the same would be eligible for Service Tax exemption, as is being claimed by the appellant and as to whether abatement would be available in case of services which are not exempted, all these would require proper verification of the documentary evidence. Such an exercise cannot be taken up at the Tribunal level at this juncture, since there are multiple contracts and agreements and documents to be perused. Therefore, we deem it be case fit to be remanded to the Adjudicating authority.

9. At this juncture we are also required to take into consideration the points raised by the by the appellant

about their objection towards invocation of extended period provisions in the present proceedings. We have gone through the two SCNs issued to the appellant.

10. We find that the first SCN was issued to the appellant on 21 April 2011 for the period 2005–2010, by invoking the extended period provisions. The second SCN was issued on SCN dated 15 October 2015 for the period 2010 -2015, by once again invoking the extended period. We note that the following services are common to both the SCNs:

Works Contract

Construction Service

Site Formation Service

Transportation Service

11. These four headings form the major portion of the demand in the second SCN. In case of the first SCN, even upto March 2011, the investigation, recording of statements, calling for documents etc. was going on, which culminated in the SCN being issued in April 2011. Thus, the Dept. was fully aware of the activities being undertaken by the appellant including about various projects being executed by them and the services involved therein. Apart from this, the appellants were claiming exemption showing the details in the ST 3 Returns during the earlier period and the period covered under the present SCN. The data towards the turnover has been obtained from the P & L and Balance Sheet of the appellant. The Hon'ble Supreme Court, in the case of ***Nizam Sugar Factory Vs CCE Andhra Pradesh – 2006 (197) ELT 465 (SC),*** has held as under :

> ***9.*** *Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.*
>
> ***10.*** *For the reasons stated above, Civil Appeal Nos. 2747 of 2001 and Civil Appeal No. 6261 of 2003 filed by the assessees are accepted and the impugned orders are set aside on the question of limitation only. The demands raised against them as well as the penalty, if any, are dropped*

12. The Hon'ble Supreme Court in the case of ***Commissioner Of Central Excise, Cus. And Service Tax-III Vs Shriram Chits Pvt. Ltd. (2023) 3 Centax 12 (S.C.),*** with reference to the invocation of the extended period, has held as under:

> ***17.2*** *Clearly, the Show Cause Notice is issued alleging wilful and intentional suppression of facts by the appellant. It is trite in law that the suppression (intentional and deliberate) can never be said to exist when material and relevant facts forming the basis of the demand were already within the knowledge of the Revenue. Accordingly, the pre-conditions for applicability of the proviso to Section 73 (1) ibid. cannot be said to be met. In such eventuality, the extended*

period of limitation cannot be invoked and the demand to be confined to the normal period of one year.

13. We find that as per the facts discussed above, the issues raised in the first SCN and the second SCN are practically the same and the investigation even for the first SCN was going on when the second period set in. Therefore, applying the ratio of the case law of **Nizam Sugar and Shriram Chits Pvt** cases decided by the Apex Court, we hold that the Revenue has no case to issue the second SCN by invoking the extended period provisions. We hold that in case of the second SCN [pertaining to the present proceedings], the demand, if any, is required to be confined only for the normal period transactions.

14. The appellant has submitted that in some cases they have rendered the services which are fully exempt from payment of Service Tax. In some cases, they have rendered Works Contract service, for which either they should be allowed to pay the Service Tax on composition scheme, or the Value of the service is to be determined as per Rule 2A of the Valuation Rules, 2006.

15. We have gone through the case law of ***CCE Noida Vs Interarch Buildings Pvt Ltd – 2023 (6) Centax 40 (SC),*** wherein the Apex Court has held as under :

> **8.6** Rule 2A applicable prior to 1-7-2012 is reproduced hereinabove. <u>It is to be noted that Rule 2A is the specific provision for determination of value of taxable service in relation to services involved in the execution of a works contact shall be determined by the service provider in the manner provided under Rule 2A(1)(*i*) *i.e.* value of</u>

works contract service determined shall be equivalent to the gross amount charged for the works contract. As per explanation to Rule 2A gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the works contract. The position is made more clear post 1-7-2012. Post 1-7-2012 as per Rule 2A value of service portion in the execution of a works contract shall be determined taking into consideration the value of service portion in the execution of a works contract equivalent to the gross amount charged for the works contract less the value of property of goods transferred in the execution of the said works contract. Therefore, as such the things which were already there as per the decision of this Court in the case of *Gannon Dunkerly and Co.* (*supra*) and Rule 2A earlier has been made explicitly clear.

8.7 However, as per the Composition Scheme *vide* notification 32/2007 - ST dated 22-4-2007 by which works contract (Composition Scheme for payment of Service Tax) Rules, 2007 came to be introduced, as per Rule 3(1) and notwithstanding anything contained in Section 67 of the Act and Rule 2A of the Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge the service tax at the rate specified in Section 67 of the Act, by paying an amount equivalent to 2% of the gross amount charged for the works contract. *Explanation* specifically provides that gross amount charged for the works contract shall not include the VAT or sales tax, as the case may be paid on transfer of property in goods involved in the execution of the said works contract. At this stage, it is required to be noted that post 1-7-2012 Rule 2A specifically provides that the taxable service shall not take CENVAT Credit of duty or cess paid on inputs used in or in relation to said works contract, under the provisions of CENVAT Credit Rules, 2004.

8.9 With respect to the 'works contract service' and/or the Composition Works Contract the valuation has to be made as per Rule 2A of the Valuation Rules, 2006. Even as per the Composition Scheme *vide* Notification 32/2007 dated 22-4-2007 an assessee has an option to discharge the service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in Section 66 of the Act by paying equivalent to 2% of the gross amount charged for the works contract. It is to be noted that Rule 3(1) provides notwithstanding anything contained in Section 67 of the Act and Rule 2A of the Service (Determination of Value) Rules, 2006. Therefore, as per the Scheme of the Act the determination of value of service portion in the execution of the works contract is to be made as per Rule 2A, however with an option to the assessee to avail the benefit of Composition Scheme. Therefore, either the assessee has to go for Composition Scheme or go for Determination of Value as per Rule 2A and the assessee has to pay service tax on the service element and can claim CENVAT Credit on the said amount only.

16. We hold that as has been held by the Apex Court in the above case, the Service Tax demand for the normal period, is required to be quantified based on the following parameters:

(a) Work out the details of the Works Contract executed, which are exempted from Service Tax

(b) Verify the Works Contracts, wherein both the elements of supply of goods and supply of Service are present. In such cases, the Service Tax is required to be quantified only on the Service Portion.

(c) In respect of the (b) above, the appellant would be eligible for taxation under composition scheme, if they opt for the same.

(d) In case of (b) above, they would be eligible for abatement for the value of the goods used, if they do not want to opt for the composition scheme.

17. After applying the above parameters, the Service Tax payable for the normal period is required to be determined. After adjusting the Service Tax paid, if any, against the re-determined amount, the balance Service Tax, if any, is required to be paid along with interest thereon. Since, the issue is that of interpretation, and we have found there to be no case of suppression, the penalty imposed is being set aside.

18. In respect of the Transportation Charges, on which the Service Tax demand has been confirmed, the issue as to whether the appellants had used the GTA services, wherein the Consignment Notes have been issued, or only vehicles have been hired [as is

being canvassed by the appellant], has to be determined. In case of vehicle hire payments, no Service Tax is payable, since the same is out of the purview of GTA services. In case of the amount arrived at specifically for GTA services, the abatement of 70/75% [as was applicable at that point of time] and basic exemption of Rs.750 per CN etc. has to be allowed and the Service Tax is required to be quantified accordingly. The Service Tax if any payable, is required to be paid along with interest. Since no clarity is there in the proceedings while demanding this portion of Service Tax, we set aside the penalty imposed, on transportation charges.

19. The Appeal stands remanded on the above terms.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp