

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2**

Service Tax Appeal No.76441 of 2024

(Arising out of Order-in-Original No.16/COMM/ST/SLG/23-24 dated 31.05.2023 passed by Commissioner of CGST & CX, Siliguri Commissionerate, Siliguri.)

M/s. Dilip Kumar Das & Sons

(Belakoba, Prasanna Nagar, Jalpaiguri, West Bengal-735102.)

...Appellant

VERSUS

Commissioner, CGST & CX, Siliguri

.....Respondent

(Central Revenue Building, Hakimpara, Haren Mukherjee Road, Siliguri-734001, West Bengal.)

APPEARANCE

Ms. Stuti Bansal, Advocate for the Appellant (s)
Shri D.Sue, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77935/2025

DATE OF HEARING : 12.12.2025

DATE OF DECISION : 12.12.2025

RAJEEV TANDON :

The appellant, a partnership firm is aggrieved by the Order-in-Original No.16/COMM/ST/SLG/23-24 dated 31.05.2023 passed by Commissioner of CGST & CX, Siliguri and is a works contractor carrying out Works Contract Service and Maintenance and Repair Service, undertaking such work for road construction, widening, maintenance etc. The appellant takes such work in respect of government agencies, Public Works Department and other local government bodies.

2. The appellant was served with a show cause notice dated 29.12.2020 raising disputes about non-payment of Service Tax provided during the financial year 2014-15 (October to March 2015),

2015-16, 2016-17 and 2017-18 (April to June 2017). The show cause notices alleges that based on third party data, sourced from the Income Tax department through the Income Tax Returns and TDS Returns generated as well as the audited balance sheet for the aforesaid periods, the appellant received a total sum of Rs.70,36,12,857/- from various clients, but the amount reflected in Form 26AS statement was Rs.70,04,52,502/-. The notice therefore alleged that the appellant had not filed returns in Form ST-3 and thereby suppressed and evaded Service tax liability to the tune of Rs.9,90,89,262/-. The same was therefore sought to be recovered along with interest and imposition of various penalties.

3. It is the case of the appellant that they had submitted before the lower authorities that during the relevant periods all the services were provided by them only to government authorities which were exempted in terms of Sl.No.12(a) and Sl.No.13(a) of Notification No.25/2012-ST dated 20.06.2012. It is however noted from the Order-in-Original that the Ld. Commissioner has confirmed an amount of Rs.4,73,126/- by way of Service Tax payable by the appellant. The Commissioner has further observed that the amount taken into consideration in the notice for the year 2015-16 was based on ITR data and was higher than what was indicated in Form 26AS leading to a shortfall in levy of Rs.1,85,633/- Likewise for the year 2017-18 the said difference was recorded to the tune of Rs.29,74,722/-. The Revenue's case therefore is that the appellant suppressed the requisite information and therefore apart from confirmation of tax as due along with interest have also

subjected the appellant to penalty under section 78(1) of the Finance Act, besides imposition of a late fee of Rs.1,20,000/- in accordance with the provisions of the Finance Act and the Service Tax Rules.

4. Heard both sides and perused the records. For greater clarity it is imperative to place herein the impugned two clauses of the notification, benefit of which the appellant seeks to avail.

Notification : 25/2012-S.T. dated 20-Jun-2012

Exemptions from Service tax – Mega Notifications – Notification No.12/2012-S.T. superseded

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12. Services provided to the Government, a local authority or a government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b)

.....

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b)

.....

5. The essential reason for confirmation of the demand is two fold :

(i) Undeclared/suppressed taxable receipts,

(ii) Non-payment of Service Tax arising because of alleged non-disclosure of taxable value in the statutory returns with intent to evade payment of tax.

6. On account of non-filing of ST-3 Returns for the relevant financial years, the appellant have also been subjected to late fees.

7. During the course of hearing it is presented before me that two demands for different periods were attributable to human errors as was evident from the audit report. They have further submitted that for the tax period impugned, an amount of work required to be undertaken as contained in the work orders assigned got increased subsequently. Thus, for instance in 2015-16 works awarded by Siliguri Jalpaiguri Development Authority, Siliguri got increased by Rs.1,86,627/- because of the expansion in the scope of work and hence additional payment made to the appellant. Likewise in the financial year 2017-18 on a similar expansion of work awarded by PWD Darjeeling Division there was an upward revision of work equivalent to Rs.2,00,000/-. Similar expansion of work and additional payments have been reported and presented during the course of the hearing by the appellant in case of North Bengal Construction Division as well. A prima facie glance of the papers presented replicate the aforesaid stand of the applicant. The appellant has presented data tabulated in three tables in this regard at the time of hearing to show the increase in the work awarded and the additional payments received in respect of each of the aforesaid three government bodies. There is no denying the fact that in terms of the Notification No.25/2012-ST dated 20.06.2012 as referred supra the appellant was entitled for exemption from payment of Service Tax as they were rendering services of repair, maintenance, restoration, construction, erection etc. of roads, bridge and other civil work as awarded by the state bodies and covered in terms of the aforesaid clause 12(a) and 13(a) of the Notification (supra).

8. The appellant has tried to demonstrate before me that there was no short payment of Service Tax and therefore demand has been wrongfully confirmed. This reconciliation for the appropriateness of tax paid is however required to be reconciled with reference to the work orders, audit report and other papers now enclosed with the appeal. There also appear to be certain instances of the amount as indicated in the work order to be relooked, while arriving at the arithmetical calculations in the matter. The appellant has very categorically submitted that the receipts recorded in Form 26AS represent only the TDS deducted amounts up to the date of filing of TDS Returns by the service recipient whereas their audited book reflect the complete and correct receipts, i.e. actual receipts for the works executed. There can be no denying of this submission of the appellant. They have also pointed that the figures in their Income Tax Return also match with that contained in the audited books. Under the circumstances it appears that a comprehensive look has not been assigned to the matter by the adjudicating authority. It is evident that the appellant have all documentary evidence to prove their point. However, a reconciliation thereof would be necessary.

9. The nature of services rendered by the appellant squarely falls within the ambit of the exemption. In the event of no requirement to make payment of tax, interest liability would not accrue. Also for discussions herein, I find no merit in the order of the Ld. Commissioner for invocation of penalty under section 78 on the appellant. It would thus be in the fitness of things to remand the matter to the

adjudicating authority to carry out a comprehensive reconciliation of the factual figures with that reported in the books of account and the Income Tax Returns vis-à-vis other documents as produced by the appellant, including the work orders and their subsequent amendments, enlarging the scope of work. No penalty is imposable on the appellant under the circumstances. Any deficit of Service Tax as may arise as a result of this reconciliation and ascertained as not to be covered by the aforesaid clauses of Mega Exemption Notification supra, if any, would be liable to be paid along with interest. There shall also be no liability for late filing of the return under the circumstances. The adjudicating authority shall extend full opportunity of natural justice to the appellant, who would be at liberty to produce before the adjudicating authority necessary documentary evidence in support of their contention. Considering the fact that period involved in the demand is nearly ten years old the adjudicating authority should make an earnest endeavour to dispose off the matter within four months hereof.

10. The appeal is disposed of by way of remand to the adjudicating authority as aforesaid.

(Operative part of the order was pronounced in the open Court.)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)