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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76821 of 2016

(Arising out of Order-in-Original No. 04/COMMR/ST/BOL/16 dated 27.07.2016 passed by the Commissioner of Central Excise and Service Tax, Bolpur, Adjudication Cell, Sian, Bolpur, Birbhum, West Bengal – 731 204)

Messrs. Utility Powertech Limited **: Appellant**
Field Hostel Complex,
P.O.: Nabarun, District: Murshidabad,
West Bengal, PIN – 742 236

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Bolpur Commissionerate,
NanoorChandidas Road, Sian, Bolpur, District: Birbhum,
West Bengal – 731 204

APPEARANCE:

Shri R.S. Bajaj, Consultant, for the Appellant

Shri S. Dutta, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75151 / 2026

DATE OF HEARING: 27.01.2026

DATE OF DECISION: 30.01.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 04/COMMR/ST/BOL/16 dated 27.07.2016 [hereinafter referred to as the "impugned order"] passed by the Ld. Commissioner of Central Excise and Service Tax, Bolpur, Adjudication Cell, Sian, Bolpur, Birbhum, West Bengal – 731 204.

2. The facts of the case are that M/s. Utility Powertech Limited, Field Hostel Complex, P.O.: Nabarun, District: Murshidabad, West Bengal, PIN – 742 236 [hereinafter referred to as the "appellant"] is a joint venture Public Limited Company formed by

M/s. National Thermal & Power Corporation Limited (NTPC) a Govt. of India Enterprise and M/s. Reliance Infrastructure Limited for handling construction, erection, and commissioning of Independent Power Producer Stations and monitoring their subsequent operations and maintenance and having operational locations spread over the country. The issue under dispute pertains to its Farakka Location falling under Murshidabad District of West Bengal.

2.1. From time to time, the appellant was awarded assignments by M/s. NTPC for providing different services to its Farakka Thermal Power Plant. For successful execution of the said assignments, the appellant had engaged sub-contractors and offloaded them the assignments awarded to it on back-to-back basis, after retaining agreed upon percentage of mark-up as its margin. The appellant had provided various taxable, non-taxable / exempt services including services categorizable under 'Management, Maintenance or Repair Service', Cleaning Service, 'Manpower Recruitment & Supply Agency Service', 'Works contract service' and 'Consulting Engineer Service' to M/s. NTPC Ltd. Being a public limited company, the appellant's books of accounts were subjected to audit by internal audit as well as statutory audits undertaken in terms of Section 227/143 of the Companies Act, 1956/2013.

3. An audit of the appellant-unit was conducted for the period from 2009-10 to 2013-14 during 07.07.2014 to 10.07.2014 wherein, after examination of records/data collected, various irregularities were noticed. On the basis of the observations made by the audit, a Show Cause Notice was issued to the appellant on 16.10.2014 demanding Service Tax of Rs.2,03,43,450/- and Rs.49,87,421/-. A proposal to

disallow irregularly availed CENVAT Credit to the tune of Rs.17,940/- was also made in the impugned Notice. The Notice also demanded interest thereon and proposed imposition of penalties under the said Act / Rules.

4. On adjudication, the ld. adjudicating authority, vide the impugned order dated 27.07.2016, confirmed the demands of Service Tax to the extent of Rs.1,90,65,950/- and Rs.2,44,444/- and confirmed recovery of irregularly availed CENVAT Credit to the tune of Rs.7,940/-, along with interest and penalties thereon.

4.1. Aggrieved by the confirmation of the above demands, the appellant has filed the instant appeal.

5. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant submitted a table indicating the break-up of the demand(s) under dispute in the present appeal, which is reproduced below: -

Matter involved	**A.** Alleged suppression of value of services on the basis of entries appearing in Cost-wise break-up Ledger for NTPC instead of appellant's Books of Account	**Value of Services** (in Rs.)	**Service Tax** (in Rs.)
	Horticulture Services – Non Taxable - 2009-10 to 2011-12	2,01,60,446	20,76,526
	Processing of Fly Ash Bricks – Exempt- 2009-10 & 2011-12	64,95,052	6,68,990
	Processing of Fly Ash Bricks – Exempt- April'12-June'12	6,58,263	81,361
	Processing of Fly Ash Bricks – Exempt- Bal. 12-13 & 2013-14	76,39,311	9,44,219
	Other Entries : 2009-10 to 2011-12	5,14,29,162	52,97,204
	Other Entries : : April'12-June'12	4,76,123	58,849
	Other Entries : : Bal. 12-13 & 2013-14	40,13,926	4,96,121
	Sub-total – A	**9,08,72,283**	**96,23,270**

	B. Alleged difference in taxable value of services declared in ST – 3 Returns and the aggregate of taxable value declared in the Invoices raised during the years 2012-13 & 2013-14 as per Cost-wise break-up Ledger		
	2012-13 : April'12 to June'12		
	Processing of Fly Ash Bricks - Exempt	6,46,457	79,902
	Other Entries	3,54,65,965	43,83,593
	Sub-total - (i)	3,61,12,422	44,63,495
	2012-13 : July'12 to March'13		
	Processing of Fly Ash Bricks - Exempt	41,84,906	5,17,254
	Other Entries	58,45,162	7,22,462
	Sub-total - (ii)	1,00,30,068	12,39,716
	2013-14		
	Processing of Fly Ash Bricks - Exempt	39,38,389	4,86,785
	Other Entries	1,29,51,695	16,00,830
	Sub-total - (iii)	1,68,90,084	20,87,614
	Sub-total - B	**6,30,32,574**	**77,90,826**
	C. Differential tax of payment received during 2012-13 after change in tax rate {2.06% [12.36 – 10.30] } for the services provided during the past periods	1,11,32,069	**2,29,321**
	D. Tax on opening Balance in NTPC Ledger assuming the same has been realized whereas on the payment of Rs. 15,46,104 received in April, 2009, service tax was paid Rs. 3,18,497	41,37,003	**4,26,111**
	E. Alleged unpaid Service Tax [Rs. 47,69,550 - 45,25,106] which is reimbursement of taxes paid by the service providers		**2,44,444**
	F. Alleged short payment of tax due to clerical error in specifying the amount of cenvat credit availed and utilised in ST - 3 Return for August, 2012		**10,00,000**
	TOTAL TAX DEMAND [A+B+C+D+E+F]		**1,93,13,972**
	Interest for delayed payment of tax		38,251

Issues (A) & (B):

6. With regard to the demands corresponding to entries (A) and (B) of the above table, the Ld. Counsel for the appellant submits that apart from management, maintenance and repair services, they have also undertaken services of horticulture and processing of fly ash bricks.

6.1. The appellant submits that the horticultural activity undertaken by them has been specifically excluded from the scope the definition of 'cleaning activity' given under Clause (24b) of Section 65 of the Finance Act and hence the said activity falls out of the ambit of taxable service and not liable to service tax. In support of their claim, the appellant relied on CBEC Circular. B1 / 6 / 2005 – TRU dated 27-07-2005 wherein while clarifying the scope of cleaning services, it has been categorically stated that the activities in relation to agriculture, horticulture, animal husbandry or dairying were excluded.The appellant states that they have provided the services of maintenance of lawns and gardens comprised of growing of grass, plants, trees, regular mowing of lawns, pruning and trimming of shrubs and cleaning of garden and such activities do not fall within the ambit of either 'cleaning service' or 'maintenance of immovable property' service; that it is also well settled principle of law that what is specifically excluded from levy could not be brought to tax under another charging entry. Accordingly, the appellant contends that even if the said services of maintenance of lawns and gardens are classifiable elsewhere, the tax cannot be demanded as it would be contrary to legislative intentions and would frustrate the exclusion clause. In this context, the appellant relies on the decision of Hon'ble Kerala High Court in the case of

Kerala State Industrial Enterprises Ltd. vs CCE&ST [2011 (28) STR 574 (Ker HC)].

6.2. Regarding the services of processing of Fly Ash Bricks on job work basis, the appellant's stand is that the said services were exempted in terms of exemption Notification No. 8/2005 – ST dated 01-03-2005 (as amended). Further, the appellant submits that the recipient of the said services had cleared the goods so processed on payment of appropriate excise duty; that in the impugned order, the demand has been confirmed under the category of 'Business Auxiliary Service' as defined under sub-clause (zzb) of clause (105) of Section 65 of the Finance Act, 1994. To this extent, the appellant has submitted that any service provided in relation to production or processing which amounts to manufacture of excisable goods and excluded from the definition of 'Business Auxiliary Service' given under clause (19) of Section 65 of the said Act. They have also underlined the fact that w.e.f. 01.07.2012, the activity of "any process amounting to manufacture or production of goods" had fallen under clause (f) of the negative list given under Section 66D of the said Act. The appellant has produced particulars of Bills raised during the period from 01-04-2009 to 31-03-2014 for such services along with copies of a few Work Orders and Bills raised for the said services; further, that the service recipient viz. NTPC has categorically affirmed that the appropriate excise duty on Fly Ash Bricks clearances had been paid by NTPC.

6.3. Thus, it is the appellant's contention that the services of horticulture and processing of fly ash bricks provided by them are not liable to Service Tax under the category of Management, Maintenance and Repair service.

7. In respect of the remaining demand, pertaining to other services / entries appearing in the Cost-Wise Break-Up Ledger of M/s. NTPC Ltd., the Ld. Counsel for the appellant submits that the ld. adjudicating authority has grossly erred in relying on the Cost-wise Break-up Ledger of NTPC Ltd. without corroborating the entries therein with the books of account and the audited Trial Balances, since the said Ledger is nothing more than a Memorandum of transactions. It is contended that the Reconciliation drawn between the value of services as per audited Trial Balances and the value of services declared in ST – 3 reveals that the value of taxable services had been correctly declared by the appellant in its ST – 3 Returns. The appellant submitted the details of Service Tax paid by them under the category of 'Management, Maintenance and Repair Service ' during the period under dispute. The appellant submits that pursuant to second proviso inserted w.e.f. 01-04-2011 to Rule 6(1) of the said Rules, they had discharged tax liability by 31st March, 2012 on unbilled services of Rs.4,13,41,275/- as on 31.03.2012 while the invoices thereof were raised in succeeding year; that the value of unbilled services so considered in March, 2012 ought to have been reckoned while comparing the taxable value declared in ST – 3 Returns and the aggregate of taxable as per invoices raised during 2012-13. The appellant further submits that the burden to prove the provision of taxable service and receipt of payment thereof is entirely on the Department and the Department has to prove the same with valid, cogent, concrete and positive evidences; that in the present case, the Department has not furnished any evidence to substantiate the allegation that there was short payment of service tax under the category of 'Management, Maintenance and

Repair service'. Accordingly, the appellant contends that the demand confirmed in the impugned order on this count is not sustainable.

Issue (C)

8. As regards the demand of Rs. 2,29,321/- towards alleged short paid tax on account of rate change [demand corresponding to issue (C) in the above table] the appellant submits that apart from the payment received for the bills raised during the current period, the appellant,during April, 2012 to Sept., 2012 and Oct., 2012 to March, 2013, had received payments for the bills raised prior to 1stMarch, 2011, levying Service Tax @ 10% ad valorem i.e., at the rate applicable at the time of taxable event and accordingly reported the same in respective ST – 3 Return, as below:.

Month	Value of Service		
	Total	Attracting 10% Rate	Attracting 12% Rate
April, 2012	3,604,200	3,604,200	-
May, 2012	7,958,684	865,792	7,092,892
June, 2012	24,515,947	2,646,089	21,869,858
July, 2012	29,272,149	279,526	28,992,623
Aug., 2012	16,835,413	134,870	16,700,543
Sept., 2012	13,608,298	488,673	13,119,625
Oct., 2012	23,610,820	1,822,008	21,788,812

Nov., 2012	10,269,259	168,487	10,100,772
Dec., 2012	14,212,869	23,682	14,189,187
Jan., 2013	24,394,354	-	24,394,354
Feb., 2013	13,326,412	1,098,742	12,227,670
Mar., 2013	18,005,368	-	18,005,368
TOTAL	**199,613,773**	**11,132,069**	**188,481,704**

8.1. In this regard, the appellant's claim is that the ld. adjudicating authority has erroneously confirmed the demand of Rs. 2,29,321/- [1,65,195 + 64,126] being the differential tax calculated at differential rate of tax of 2.06% [12.36 – 10.30] on the value of service of Rs. 1,11,32,069 received during the period from April, 2012 to March, 2013 in respect of services rendered and the bills raised thereof in the past i.e. prior to 1st March, 2011; that the said demand is contrary to law and unsustainable in view of judicial pronouncement of Hon'ble Delhi High Court in the case of *Messrs. Vistar Construction (P) Ltd. vs UOI [2013 (31) STR 129 (Del. HC)]*. The appellant also relies on the decisions in the cases of *Messrs. Patel Construction & Messrs. K.C. Enterprises vs CCE, Bhubaneshwar – II [2018 (12) TMI 1850 (CESTAT – KOLKATA)]* and *Messrs. Smart Data Processing (P) Ltd. vs CCE [2024 (3) TMI 798 (CESTAT – New Delhi)].*

Issue (D):

9. It is submitted that the demand of Rs.4,26,111/- [pertaining to issue (D) in the Table *supra*] is attributable to opening balance of Rs. 41,37,003/- out of Rs.58,55,600/- as on 01-04-2009 in NTPC Ledger which had remained unrealized; that again, Service Tax of Rs.1,59,249 paid on receipt of payment of Rs.7,44,655 and Rs.8,01,449 in April, 2009 against the two transactions viz. MGR – Adhoc Staff for Rs.7,52,745 and 0871 – Electrical Maint. Township of Rs.7,90,699 has not been considered presumably merely on the ground that amount of the payment received did not exactly match with the amount of the transaction comprised in the opening balance whereas it ought to have been appreciated that the payment could vary due to deduction on account of deficient service or difference in volume of service performed. In this context, it has been stated that they were following the mercantile system of accounting and in terms of Section 209(3)(b) of the Companies Act, 1956, it is required to maintain books of accounts on accrual basis; that however, for the period prior to 01.04.2011,Service Tax was payable on the payment receipt basis. Thus, the appellant's defence in this regard is that unless payment is actually received by the appellant, there is no occasion for making payment of service tax in terms of Rule 6(1) of the said Rules. To this effect, the appellant places reliance on the following citations :

a) BPL Ltd. vs CST [2006 (4) STR 307 (T – DB)]

b) Euro RCSG Advertising Ltd. &Anr. Vs CST, Bangalore [2007 (79) RLT 745 (T – DB)]

c) Anchor Agencies (P) Ltd. vs CCE, Bhopal [2008 (10) STR 567 (T)] *d) Kanpur Security Services vs CCE {2008(10) STR 425 (T)]*

e) Tempast Advertising (P) Ltd. vs CCE [2006 (4) STR 463 (T)]

f) Vijaya Cables vs CCE [2010 (28) STT 422 (T)]

Issue (E):

10. In respect of the demand of Rs.2,44,444/- pertaining to issue (E) as enlisted in the table furnished by the appellant (reproduced under paragraph 5 of this Order), it is their contention that while the said demand is double which is considered under Paragraph 2.5 and 2.8 of relevant Show Cause Notice, the same has already been eliminated after considering the evidences under Paragraph 5.25, as below:

0871/Electrical Maint / M/s. Daffodil Construction	Service Tax	09-02-2009	1,48,362	Page No. 260 – Sept.'09
0871/Electrical Maint / M/s. Daffodil Construction	Service Tax	March'11	92,538	Page No. 264 – March'11
1562/PWI & PWM/ M/s. Mollika Enterprise	Service Tax	18-03-2011	3,544	Page No. 264 – March'11
TOTAL			**2,44,444**	

Issue (F):

11. As regards the demand of Rs.10,00,000/- pertaining to issue (F) supra, it has been submitted by the appellant that while the Service Tax incidence of Rs. 11,19,023/- is evident from respective bill for the input services, the availment of CENVAT Credit thereof and its utilization in discharge of Service Tax liability on output services during the month of Aug., 2012 is apparent from the entries effected thereof in the appellant's books of account. However, it is stated that the said CENVAT Credit was inadvertently stated as Rs. 1,19,023/- (instead of Rs.11,19,023/-) against Item No. 13.1.2.6 under broad head for '*Cenvat Credit Taken and utilised'* of its ST – 3 Return for July – Sept., 2012 resulting in lower reflection of availment and utilization of Rs. 10,00,000/- in ST – 3 Return. This, the appellant submits, is a clerical error and to this effect, states that they have submitted a Statement showing document-wise CENVAT Credit availed during the month of Aug., 2012 along with relevant invoices of input service providers reflecting service tax paid; the journal vouchers for effecting the entries for the input service invoices and availment of CENVAT Credit stands recorded in the appellant's books of account. In this regard, the appellant submits that the tax authorities can overlook small mistakes in procedure when loss of revenue does not exist therein. In support of this contention, the appellant refers to the decision of Hon'ble Bombay High Court in the case of *Messrs. Aberdare Technologies Pvt Ltd vs CBIC [2024 (89) GSTL 6 (Bom.)]* wherein it has been held that if there were certain error with no loss of revenue, the error should be allowed to be rectified.

12. On the issue of the excess CENVAT Credit of Rs. 7,940/-, as demanded in the impugned order, the Ld. Counsel for the appellant submits that the same had been paid, with interest of Rs. 5,040/-, along with other Service Tax payments vide e-Receipt bearing CIN No. 0005347 19122015 01363.Therefore, the Ld. Counsel for the appellant seeks waiver of the penalty imposed on them in this regard.

13. The appellant has also raised arguments on the ground of limitation. It is the case of the appellant that the extended period of limitation is not at all invocable in the present case because the relevant Show Cause Notice was issued pursuant to audit observation vide Audit Memo dated 01.08.2014; thus the allegation suppression of facts thereof stands disproved. Accordingly, it is their submission that the demand confirmed by invoking the extended period of limitation in this case is liable to be set aside.

14. The Ld. Authorized Representative of the Revenue has reiterated the findings of the ld. adjudicating authority as recorded in the impugned order. In particular, the Ld. Departmental Representative places reliance on the written submissions dated 17/20.03.2017 tendered by the Revenue in relation to the Grounds of Appeal urged by the appellant. Thus, the Revenue prays for upholding the impugned order and rejecting the instant appeal preferred by the assessee.

15. Heard both sides and perused the case records.

16. We find that demand of service tax of Rs.1,93,13,972/-, has been confirmed in the impugned order under the category of 'Management Maintenance or Repair Service'. The appellant has submitted that a portion the services rendered is attributable to 'horticulture services' and 'processing of fly ash bricks' which are exempt from the levy of Service Tax.

17.1. Regarding the activity of horticulture undertaken by the appellant, we find that the appellant has claimed the said exemption provided under the definition of 'cleaning activity' as provided under Clause (24b) of Section 65 of the Finance Act. In support of the claim, the appellant also places reliance on the CBEC Circular. B1 / 6 / 2005 – TRU dated 27-07-2005 wherein while clarifying the scope of cleaning services, it has been categorically stated that the activities in relation to agriculture, horticulture, animal husbandry or dairying were excluded. We have gone through the definition of 'Cleaning Activity' as provided under Clause (24b) of Section 65 of Finance Act, 1994. For ready reference, the said definition is reproduced below:

> *'cleaning activity' means cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilising of objects or premises of*
>
> *i. Commercial or industrial buildings or premises thereof; or*
>
> *ii. Factory, plant or machinery, tank or reservoir of such commercial or industrial buildings or premises thereof,*
>
> > *<u>but does not include</u> such services in relation to agriculture, <u>horticulture</u>, animal husbandry or dairying.*

[Emphasis supplied]

17.2. A perusal of the definition reproduced above reveal that 'cleaning services related to 'horticulture' activities are exempted from service tax. In this regard, we find that the appellant have provided the services of maintenance of lawns and gardens comprised of growing of grass, plants, trees, regular mowing of lawns, pruning and trimming of shrubs and cleaning of garden. In our view, such activities would fall within the ambit of 'Management, Maintenance or Repair service'. Further, we also take note of the fact that the appellant has been paying Service Tax for the said service for the period after 01.07.2012, during the Negative List regime. Thus, we do not find any merit in the claim of the appellant that the said services are exempted from payment of Service Tax. In this regard, we observe that the appellant could not submit copy of any agreement towards rendering of such service. Therefore, we are of the opinion that for the purpose of verifying the correctness of the claim of rendering the said services and quantifying the correct Service Tax payable, the issue needs to be remanded back to the adjudicating authority.

18. As regards the activity processing of fly ash bricks provided by the appellant, we find that the demand of service tax on the said service has been confirmed under the category of Management, Maintenance and Repair service. The Appellant has submitted that the said services provided by them were exempt vide Notification No. 8/2005–ST dated 01.03.2005 as amended vide Notification No. 19/2005–ST dated 25.04.2006 till 30.06.2012 and thereafter vide entry S. No. 30 (c) of Notification No. 25/2012-ST dated 20.06.2012. For ease of reference, the Notification No. 8/2005-ST dated 01.03.2005 is reproduced below: -

"Notification No. 8/2005-S.T., dated 1-3-2005

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act :

Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.

Explanation. - For the purposes of this notification, -

(i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt."

18.1. We observe that the primary contention of the appellant in this regard is that the activity of processing of fly ash bricks amounts to 'manufacture'. We find that the recipient of the said services had cleared the goods so processed on payment of appropriate excise duty. In the impugned order, we find that the demand has been confirmed under the category of 'Business Auxiliary Service' as defined under sub-clause (zzb) of clause (105) of Section 65 of the Finance Act, 1994. In this regard, we find that any service provided in relation to production or processing which amounts to manufacture of excisable goods has been excluded from the definition of 'Business Auxiliary Service' given under clause (19) of Section 65 of the said Act. It is also pertinent to note that w.e.f. 01.07.2012, the activity of "any process amounting to manufacture or production of goods" had fallen under clause (f) of the negative list given under Section 66D of the said Act. Thus, we are of the view that the benefit of the said exemption Notification No. 8/2005–ST dated 01.03.2005 as amended vide Notification No. 19/2005–ST dated 25.04.2006 is available in respect of the said activity of 'processing of fly ash bricks' rendered by the appellant, up to 30.06.2012. The activity has also been included in the Negative List and not liable to Service Tax for the period after 30.06.2012. For the period after 01.07.2012, such activities are covered by entry S. No. 30 (c) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, reading as "carrying out any intermediate production process as job-work in relation to any goods on which appropriate duty is payable by the principal manufacturer". However, in respect of the activity of 'processing of fly ash bricks', we find that the appellant has not produced any documentary evidence to substantiate their eligibility towards the above claim/(s) for exemption. Thus, we are of the opinion that for the purpose of verifying the correctness of the claim made by the appellant regarding rendering of the said service, the issue needs to be remanded back to the adjudicating authority.

19. As far as the rest of the demand pertaining to the issues mentioned in (A) and (B) of the said Table is concerned, it has been contended by the appellant that the Reconciliation drawn between the value of services as per audited Trial Balances and the value of services declared in ST – 3 indicates that the value of taxable services had been correctly declared by the appellant in its ST – 3 Returns; the appellant have also furnished the reconciliation statement/s in this regard. The claim of the appellant is that they have correctly discharged their Service Tax liability in respect of such other services rendered by them under the above head(s). However, we are of the view that the above claim of the appellant is required to be verified. Hence, for this purpose, the matter is remanded to the adjudicating authority. The appellant is directed to produce all documentary evidence available in respect of the services undertaken by them and the Service Tax paid thereon before the adjudicating authority. The adjudicating authority shall, after verification of the documents furnished by the appellant, examine the actual liability of the appellant towards Service Tax and the actual Service Tax paid by them. In these terms, this issue is remanded to the adjudicating authority for the purpose of verification of the correctness of the claims made by the appellant, in terms of our observations supra.

20. With regard to the issues (C) to (F) as indicated in the table at paragraph 5 of this order, we find that the issues are mainly related to reconciliation of the accounts of the appellant. The demand of Service Tax of Rs. 2,29,321/-[pertaining to issue (C) in the Table], has been confirmed on the basis of the differential tax of 2.06% [12.36 – 10.30] confirmed on the value of service of Rs. 1,11,32,069 received during the period

from April, 2012 to March, 2013 in respect of services rendered and the bills raised thereof in the past i.e. prior to 1st March, 2011. This claim of the appellant needs to be verified. If the claim of the appellant is found to be correct, then the differential service tax confirmed on this count would not survive.

20.1. The demand of Rs.4,26,111/- [pertaining to issue (D) in the Table] is also attributable to reconciliation of the accounts. We find that the appellant has been following the mercantile system of accounting. In terms of Section 209(3)(b) of the Companies Act, 1956, the appellant were required to maintain books of accounts on accrual basis. Thus, we agree with the submission of the appellant that for the period prior to 01.04.2011, Service Tax was payable on the payment receipt basis. This system of maintenance of accounts would mean that unless payment is actually received by the appellant, there is no occasion for making payment of service tax in terms of Rule 6(1) of the Service Tax Rules. However, the appellant needs to provide the evidence of issue of the invoice prior to 01.04.2011 and receipt of payment for the same after 01.04.2011, which aspect is required to be verified.

20.2. The demand of Service Tax confirmed in respect of the issue (E) of the Table has been claimed by the appellant as double demand. If it is established by the appellant as double demand, then the said demand confirmed in respect of the issue (E) (supra) would not survive.

20.3. Regarding the demand of Rs.10,00,000/- [pertaining to issue (F) supra], the appellant has claimed that it was due to clerical error. This claim of the appellant needs to be verified. If the same is due to a clerical error, as claimed by the appellant, then the said demand would not survive.

21. Thus, we are of the view that these issues [i.e., issues (C), (D), (E) and (F) supra] need to be remanded back to the adjudicating authority for the purpose of verification of the correctness of the claims made by the appellant.

22. We have also examined the contentions raised by the appellant on the ground of limitation. In this regard, we observe that audit of the appellant's unit had been conducted during 07.07.2014 to 10.07.2014 and the impugned Show Cause Notice has been issued to them on 16.10.2014, which is within a one-year period from the date of audit. We observe that the Department had no occasion to scrutinize the records of the appellant before the audit and therefore, we find that issuance of the instant Show Cause Notice, within the one-year period from the date of audit, by invoking the extended period of limitation is legally sustainable. Accordingly, we do not agree with the above submission made by the appellant as to the extended period of limitation being not invocable to demand Service Tax in the present case. Consequently, we hold that the extended period has been rightly invoked to demand Service Tax in this case.

23. Regarding the appellant's prayer for setting aside the penalty in respect of the demand for recovery of CENVAT Credit of Rs. 7,940/-, as imposed vide the impugned order, we take note of the fact that the said credit had been paid back by the appellant along with interest of Rs. 5,040/-, vide e-Receipt bearing CIN No. 0005347 19122015 01363. We observe that the above payment made by the

appellant stands appropriated in the impugned order. Therefore, taking a lenient view, we set aside the penalty of Rs.7,940/- imposed on the appellant under Rule 15(3) of the CENVAT Credit Rules, 2004.

24. In the result, we pass the following order:

(i) We set aside the demands of Service Tax of Rs.1,90,65,950/- and Rs.2,44,444/- confirmed in the impugned order. The issues are remanded back to the adjudicating authority for the purpose of verification of the correctness of the claims made by the appellant and quantifying the correct Service Tax payable by them, if any, in terms of the observations made by us in paragraphs 16 to 21 of this order (supra).

(ii) The penalty of Rs.7,940/- imposed on the appellant in terms of the proviso to Rule 15(3) of the CENVAT Credit Rules, 2004, is set aside.

25. The appeal stands disposed of by way of remand, on the above terms.

(Order pronounced in the open court on **30.01.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd