IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

COURT No. 2

Service Tax Appeal No. 75495 of 2024

(Arising out of Order-in-Original No.45/ST/Ayukta/2023 dated 29.12.2023 passed by the Pr. Commissioner, CGST & Central Excise, Patna-I)

M/s Vimlesh Prasad Singh
(302, AwadhKunj Apartment, KachhiTalab, Saristabad, Gardanibagh, Patna-800001)

Appellant

VERSUS

Commissioner of CGST, CX, Patna
(Central Revenue Building (Annexe), Beer Chand Patel Path, Patna-800001)

Respondent

APPEARANCE :

Shri Amit Kumar & Ms. Nayna Naskar, both Advocate, for the Appellant
MS Suman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 75236/2026

Date of Hearing :12th February2026
Date of Decision: 12th February 2026

PER R. MURALIDHAR

The appellant was issued Show Cause Notice demanding Service Tax of Rs.8,52,02,651/-. The appellant appeared before the Adjudicating Authority and brought in the evidence about the activities taken up by them. After this, the Adjudicating Authority has dropped the demand to the extent of about Rs. 8.46 Crores and confirmed the demand of Rs. 5,91,883/- along with interest and penalty. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that the Show Cause Notice was issued on 22/10/2021 by invoking the extended period provisions. The entire confirmed demand of Rs. 5,91,883/- pertains to the period 2016-17, 2017-18 (upto June

2017). Therefore, the confirmed demand is time barred. He relies on the following case laws:-

a. Uniworth Textiles Ltd. Vs. commissioner of Central Excise, Raipur[2013 (288) ELT 161 (SC)]

b. Pushpam Pharmaceuticals Company V. Collector of Central Excise, Bombay-1995 Supp (3) SCC 462= 1995 (78) E.L.T. 401 (S.C.).

c. Cosmic Dye Chemical V. Collector of Central Excise, Bombay [(1995) 6 SCC 117]

d. Pushpam Pharmaceuticals Company V. CCE [1995 (78) E.L.T. 401 (S.C)].

e. Anand Nishikawa Co. Ltd. V. Commissioner of Central Excise, Meerut-[(2005) 7 SCC 749= 2005 (188) E.L.T. 149 (S.C.),

f. Collector of Central Excise v. H.M.M. Ltd.-1995 Supp (3) SCC 322=1995 (76) E.L.T. 497 (S.C.),

g. Associated Cement Companies Ltd. V. Commissioner of Customs reported in (2001) 4 SCC 593, at page 619= 2001 (128) E.L.T. 21 (S.C),

h. Tamil Nadu Housing Board Vs. Collector 1994 (74) ELT 9 (SC),

i. Commissioner of C. Ex., Mumbai-IV V. Damnet Chemicals Pvt. Ltd., 2007 (216) E.L.T. 3 (S.C.)

3. Accordingly, he prays that the appeal may be allowed.

4. The Learned AR appearing on behalf of the Revenue submits that it is clearly recorded in the Show Cause Notice that the appellant was

called in to submit the details of Balance Sheet, Profit and Loss Account, Form 26AS, copy of Agreement, Copy of Invoices, Bank Statement and Income Tax Returns. But the appellant failed to respond to the same. They also failed to respond to the summons issued to them on several occasions. She submits that inspite of such tactics adopted by the appellant, the Adjudicating Authority has followed the principles of natural justice. He has gone through the documentary evidence placed before him and has given a detailed findings at Para 15. After having gone through the agreements, he came to conclusion about dropping of the major portion of the demand. She draws my attention to Para 16 of the OIO wherein, it has been clearly held that in case of one client WAPCOS, they have treated the work as taxable under the Service Tax law and they have paid Service Tax on their portion under RCM. The service tax portion of the noticee has been collected by the noticee(present appellant). Only on account of this specific documentary evidence, the Adjudicating authority has confirmed the present demand of Rs. 5,91,883/- along with interest and penalty.

5. She submits that the above factual details shows that the appellant has indulged in suppression by not disclosing the facts. This amount of Service Tax is paid by the client has still not been remitted to the exchequer by the appellant. Therefore, she submits that proper case of suppression has been made out against the appellant. She prays that the appeal may be dismissed.

6. Heard both sides and perused the appeal papers.

7. I find that against the original demand of Rs. 8,52,02,651/-, the Adjudicating Authority after going through the agreements and other documentary evidence placed before him, has given the detailed findings at Para 15 of OIO after which he has dropped the demand of more than Rs. 8.41 Crores . From the records, it is also seen that no further appeal has been preferred by the Department. This shows that this decision of Adjudicating Authority has been accepted by the Revenue.

8. In respect of the balance confirmed demand of Rs. 5,91,883/-, the Adjudicating Authority has given the following findings:-

> *16. The noticee have not submitted the Agreement executed with WAPCOS, instead they have submitted the copy of 'Award letter No.WAP/PMD/ITBP-K/2015-16/713 dated 04.05.2016 issued by WAPCOS, on perusal of which it transpires that WAPCOS had awarded them the construction work of GO's Mess & Development works for 48th Battalion Headquarter of ITBP at Katihar, Bihar after 01.03.2015. The Noticee have also submitted the copies of C-ll certificates and payment certificates issued by WAPCOS on examination of which it becomes evident that they were paid Rs. 1,26,68,589/- and Rs. 70,60,830/- during the financial years 2016-17 and 2017-18 (upto June, 2017), respectively on which local Sales Tax was deducted at source evidencing transfer of property in goods in execution of said works contract. <u>It also transpires from the payment certificates issued by WAPCOS that they had treated their work as taxable under the Service Tax law and therefore had paid Service Tax to the noticee as well after abatement of 60% of gross value of works by applying reverse charge mechanism which was apparently collectedby the noticee but they have not deposited the same into the Government's account. The said amount of Service Tax on being computed comes to Rs. 5,91,883/- (Rs. 1,26,68,589/- + Rs. 70,60,830/-) x 40% x 15%x 50% which are liable to be recovered from the noticee</u>.*
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> *17. I further observe that the notice had obtained Service Tax registration voluntarily under various taxable categories as discussed above and <u>they were also assigned with the work of taxable service by WAPCO against which Service Tax was also paid to the noticee which was not deposited by them into the Government's coffer. It is thus manifest that the noticee was well aware about the taxability of his services and was also aware that the amount received by his firm was taxable under the Service Tax law on which Service Tax was collected by them from WAPCOS but they preferred not to file his periodical returns by assessing their taxable value and Service Tax payable thereon and thus, they suppressed the material facts from the Department apparently with intent to evade Service Tax and hence, the clause of extended time limitation has rightly been invoked in the instant case for the demand and recovery of evaded amount of Service Tax.</u> The intentional non-filing of returns amount to wilful withholding of information/suppression of facts from the Department with intent to evade Service Tax and therefore, in my considered opinion, the noticee are liable for mandatory penalty as stipulated under Section 78 of the Act.*

9. The Learned Advocate appearing on behalf of the appellant has vehemently argued that the entire Show Cause Notice was issued based on the Income Tax Return and Form 26 AS. He has relied on various case laws including the decision of this Bench holding that extended period provisions cannot be applied.

10. After going through the factual details and the considered decision taken by the Adjudicating Authority, I find that Para 16 & 17 of the Order in Original reproduced above, makes very clear that the present litigated amount of Rs. 5,91,883/- is very much part of the Service Tax amount paid by the client to the appellant. Therefore, when the appellant has received the amount as Service Tax but the same was not disclosed in the ST 3 Return and not paid to the exchequer, the benefit of extended period cannot be extended to the appellant. The cited case laws of the Learned Advocate, which are basically on account of non payment of Excise Duty / Service Tax on account of *bonafide* belief, interpretation, disclosure of details in the Returns etc., cannot be come to the rescue of the appellant, in view of the factual details discussed above.

11. In view of the above discussions, I dismiss the appeal filed by the appellant and uphold the impugned order.

(Dictated and pronounced in the open Court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja