

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75741 of 2018

(Arising out of Order-in-Original No. 30/COMMR/ST-II/KOL/2017-18 dated 14.12.2017 passed by the Commissioner of C.G.S.T. and C.X., Kolkata South, G.S.T. Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 007)

M/s. Saha Civil Construction Private Limited : Appellant

Saha Mondal Villa, Ground Floor,
Garia Station Road, Vill.: Dhalia,
P.S.: Sonarpur, Panchpota,
Kolkata – 700 152

VERSUS

Commissioner of C.G.S.T. and Central Excise : Respondent

Kolkata South Commissionerate,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Ms. Mitally Borpuzari, Tax Consultant,
Shri Aditya Dutta, Advocate
For the Appellant

Shri S.K. Dikshit, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 75677 / 2026

DATE OF HEARING: 26.05.2026

DATE OF DECISION: 11.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed challenging the Order-in-Original No. 30/COMMR/ST-II/KOL/2017-18 dated 14.12.2017 passed by the Commissioner of C.G.S.T. and C.X., Kolkata South, G.S.T. Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107.

2. The facts of the case are that on the basis of intelligence gathered, the Service Tax Kolkata-II Commissionerate visited the office premises of the appellant herein and scrutinized various records such as audited Balance Sheet, Form 26AS, P&L Account, ST-3 Returns, Ledger, Contracts, etc. During such visit, at the insistence of the Departmental officers, the appellant deposited an amount of Rs.4,34,786/-.

3. A Show Cause Notice was issued to the appellant on 19.04.2017 for the period from 31.03.2012 to 2014-15 demanding Service Tax totally amounting to Rs.2,49,84,491/-, along with interest and penalties. The Show Cause Notice made the following allegations: -

- a. Short payment of Service Tax on 'site formation and clearance, excavation and earth moving and demolition service', 'works contract service' and 'manpower recruitment and supply agency service' to the tune of Rs. 2,17,28,062/- for the period from 31.03.2012 to 2014-15.
- b. Short payment of Service Tax payable under reverse charge mechanism (RCM) against manpower supply service of Rs.32,56,429/- from 2012-13 (July 2012) to 2014-15.

3.1. The Show Cause Notice also proposed appropriation of the amount of Rs.4,34,786/- already paid by the appellant.

4. The instant Show Cause Notice was adjudicated vide the impugned order dated 14.12.2017 wherein the Ld. Commissioner has upheld the entire tax demand proposed in the above Notice, along with interest and penalties.

5. Regarding the demand of Service Tax of Rs.2,15,03,809/- under the category of 'site formation and clearance, excavation and earth moving and demolition service', the Ld. Counsel appearing on behalf of the appellant have submitted that the entire work pertaining to the above activity is related to evacuation of settled ash from ash pond. They have undertaken the said work as a sub-contractor for M/s. Saha & Mondal Construction, who were awarded the contract by WBPDCCL. It is the appellant's submission that the issue of payment of Service Tax on evacuation of settled ash from ash pond is no more res integra as the said issue has already been decided by this Tribunal in the case of *M/s. Novel Engineering & Technical Works Ltd. v. Commissioner of C.G.S.T. & C.Ex. & anr. [Final Order Nos. 75901-75902 of 2024 dated 10.05.2024 in Service Tax Appeal Nos. 78645 and 79226 of 2018 – CESTAT, Kolkata]* wherein it has been held that the activity of removal of ash from ash pond is not leviable to Service Tax.

5.1. Regarding the demand of Service Tax of Rs.12,85,833/- under the category of 'works contract service', the Ld. Counsel for the appellant stated that the appellant has already deposited an amount of Rs.15,47,372/- as service tax under the category of 'Works Contract Service' for the period under dispute; thus, they have made an excess payment of Rs.2,61,539/- (Rs.15,47,372/- - Rs.12,85,833/-) and accordingly, there is no short payment of Service Tax by the appellant in this regard.

5.2. As regards the demand of Service Tax of Rs.40,46,439/- under the category of 'manpower recruitment and supply agency service', it has been

contended by the Ld. Counsel for the appellant that they are liable to pay Service Tax only on 25% of the value of the said service, the Service Tax liability for which has already been discharged by them. In support of the above, the appellant has placed on record a work-sheet showing the details of Service Tax paid by them in respect of 25% of the service value, for the above said service. Thus, it is submitted that they have made an excess payment of Service Tax under this head and thus no Service Tax liability remains payable by them on this score.

5.3. On the issue of demand of Service Tax under reverse charge amounting to Rs.32,56,429/-, it is the appellant's submission that the said demand relates to 'manpower supply service' received by them from unregistered buyers. In this regard, it has been pointed out that the entire issue is revenue neutral as they were eligible to avail CENVAT Credit immediately upon payment of Service Tax; that said demand has been made by invocation of the extended period of limitation. It is argued by the Ld. Counsel for the appellant that the extended period of limitation cannot be invoked in cases of revenue neutrality as has been consistently held by the Tribunal in several decisions. It is further submitted in this regard that the said demand pertains to the period from 01.07.2012 to 31.03.2015 whereas the Show Cause Notice raising the above demand was issued on 19.04.2017, which is after a lapse of more than two years after filing of the ST-3 Return for the period 2014-15. Accordingly, it is their case that the entire demand in this regard is barred by limitation. In support of their contentions, the appellants relied upon the decision of the CESTAT in the case of *M/s. Samsung Electronics India Pvt. Ltd. v. Commissioner of Central Taxes and Central Excise,*

Gautam Buddha Nagar [Final Order Nos. 70168-70169 of 2026 dated 19.05.2026 in Service Tax Appeal Nos. 70080 and 70202 of 2020 – CESTAT, Allahabad].

5.4. In view of the above submissions, the Ld. Counsel for the appellant contended that the demands confirmed against them vide the impugned order are not sustainable and therefore, prayed for setting aside the same.

6. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

7. Heard both the sides and perused the documents presented before us.

8. Regarding the demand of Service Tax of Rs.2,15,03,809/- under the category of 'site formation and clearance, excavation and earth moving and demolition service', it is on record that the appellant, as a sub-contractor, undertook the work of evacuation of settled ash from ash pond. We find that the said issue has already been settled by this Tribunal in a catena of decisions. It is pertinent to refer to the decision of this Tribunal in the case of *M/s. Novel Engineering & Technical Works Ltd. v. Commissioner of C.G.S.T. & C.Ex. & anr.* [Final Order Nos. 75901-75902 of 2024 dated 10.05.2024 in Service Tax Appeal Nos. 78645 and 79226 of 2018 – CESTAT, Kolkata], wherein it has been categorically held that the said activity cannot be subjected to levy of Service Tax. The relevant paragraph of the aforesaid order is reproduced below, for ease of reference: -

"9. Regarding the demand of Service Tax of Rs. 3,27,841/-, confirmed in the impugned order, we observe that this demand is related to Work Order No. HEL:WO:1219 dated 16th May, 2015. The said work order is for 'Transportation and Dumping of Ash Silo to Specified Areas Inside the Plant'. The said activity is an essential part of the production process and the same is not a 'service activity' as held by this Tribunal in the case of Marshall Corporation Ltd. v Commissioner of C.G.S.T. and C.Ex., Kolkata [Final Order No.75650/2023 dated 02.06.2023 in Service Tax Appeal No. 176 of 2010 – CESTAT, Kolkata]. Thus, the demand on this count is not sustainable."

8.1. Thus, by relying upon the ratio of the decision cited supra, we hold that the demand of Service Tax confirmed in the impugned order on this count cannot be legally sustained.

9. Regarding the demand of Service Tax of Rs.12,85,833/-under the category of 'works contract service', we find that the appellant has already deposited Service Tax amounting to Rs.12,50,691/- [Rs.6,86,112/-for the F.Y.2012-13 + Rs.4,44,718/-for the F.Y.2013-14 + Rs.1,19,861/-for the F.Y. 2014-15] under the category of 'works contract service' for the period under dispute. The appellant has also furnished before us the details of Service Tax payments made by them for the corresponding Financial Years, which are reproduced below for the sake of ready reference:-

▪ **Financial Year 2012-2013:**

SL No.	Date	CIN	BSR	Challa n No	Service Tax	E Cess	H E Cess	Total
1	14.09.2012	00053471409201200000	0005347	00029	1,27,268.00	2,546.00	1,273.00	1,31,087.00
2	03.10.2012	00053470310201204591	0005347	04591	90,849.00	1,817.00	909.00	93,575.00
3	05.01.2013	00053470501201301061	0005347	01061	1,20,000.00	2,400.00	1,200.00	1,23,600.00
4	23.04.2013	00053472304201300128	0005347	00128	1,80,000.00	3,600.00	1,800.00	1,85,400.00
5	28.08.2013	00053472808201300659	0005347	00659	1,48,010.00	2,960.00	1,480.00	1,52,450.00
TOTAL					6,66,127.00	13,323.00	6,662.00	6,86,112.00

▪ **Financial Year 2013-2014:**

SL No.	Date	CIN	BSR	Challan No	Service Tax	E Cess	H E Cess	Total Tax
1	22.05.2014	00053472205201400593	0005347	00593	3,25,767.00	6,515.00	3,259.00	3,35,541.00
2	22.09.2014	00053472209201400220	0005347	00220	37,970.00	759.00	380.00	39,109.00
3	22.08.2015	00053472208201501061	0005347	01061	68,028.00	1,360.00	680.00	70,068.00
TOTAL					4,31,765.00	8,634.00	4,319.00	4,44,718.00

▪ **Financial Year 2014-2015:**

SL No.	Date	CIN	BSR	Challan No	Service Tax	E Cess	H E Cess	Total Tax
1	15.07.2014	00053471507201400614	0005347	00614	20,748.00	415.00	207.00	21,370.00
2	23.08.2014	00053472308201400323	0005347	00323	50,326.00	1,007.00	503.00	51,836.00
3	15.07.2014	00053471507201401029	0005347	01029	9,282.00	186.00	93.00	9,561.00
4	23.08.2014	00053472308201400335	0005347	00335	13,973.00	279.00	140.00	14,392.00
5	25.08.2015	00053472508201500805	0005347	00805	22,041.00	441.00	220.00	22,702.00
TOTAL					1,16,370.00	2,328.00	1,163.00	1,19,861.00

9.1. Upon a careful examination of the challan-wise details placed on record, we find that the appellant has discharged Service Tax liability under the category of 'works contract service' to the extent of Rs.12,50,691/- during the period under dispute. The said payments pertain to the very Financial Years forming the subject matter of the present proceedings. The Revenue has not brought on record any material to dispute either the factum of such payments or the authenticity of the challans evidencing the discharge thereof. Having regard to the records available before us evidencing the aforesaid tax payments, we are of the view that the said amounts merit consideration for adjustment against any actual liabilities arising on the part of the appellant.

9.2. We further find that the total demand confirmed under the impugned order under the category of 'works contract service' is Rs.12,85,833/-. Thus, the differential amount of Service Tax payable works out to Rs.35,142/-, which is liable to be paid, along with interest. Significantly, paragraph 6.6 of the impugned order records and appropriates an amount of Rs.4,34,786/- deposited by the appellant during the course of investigation. The existence and deposit of the said amount, therefore, are no longer matters of dispute, having been duly acknowledged by the adjudicating authority itself.

9.3. Once the aforesaid deposit of Rs.4,34,786/- stands admitted on record and appropriated in the adjudication proceedings, the differential amount of Rs.35,142/- is liable to be adjusted therefrom. Consequently, we find that the entire demand of Service Tax along under the category of 'works contract service' stands paid by the appellant. Accordingly, we hold that no further demand over and above the amount of service tax paid by the appellant (including the amount adjusted hereinabove), is sustainable.

10. Regarding the demand of Service Tax of Rs.40,46,439/- under the category of 'manpower recruitment or supply agency service', the contention of the appellant is that the liability to Service Tax on their part, if any, for the said service, would only be on 25% of the service value, which has already been discharged by the appellant. The Service Tax payable on 25% of the value of such services has been

computed by the appellant, which has been tabulated below: -

Service	Amount	(25%) of service value	Service Tax actually payable	ST actually paid	Excess ST Paid
Man Power Recruitment & supply service	18215246+14522933 = 32738179	8184544	1011609	3989210	2977601

10.1. We have considered the aforesaid contention of the appellant. However, we do not find any merit in the submission that the appellant was liable to discharge Service Tax only to the extent of 25% of the taxable value under the category of 'manpower recruitment or supply agency service'. In terms of Notification No. 30/2012-ST dated 20.06.2012 issued under Section 68(2) of the Finance Act, 1994, the partial reverse charge mechanism in respect of manpower supply service was applicable only where such service was provided by an individual, Hindu Undivided Family, proprietary concern, partnership firm or association of persons, located in the taxable territory, to a business entity registered as a body corporate located in the taxable territory. It is only on such specified circumstances that the liability to discharge Service Tax stood apportioned between the service provider and the service recipient in the prescribed ratio. In the present case, no material has been placed on record to establish fulfilment of the essential statutory conditions prescribed under the aforesaid notification so as to entitle the appellant to the benefit of partial reverse charge. In the absence of evidence demonstrating such eligibility, the contention of the appellant that its Service Tax liability stood confined to 25% of the taxable value cannot be accepted and is accordingly rejected.

10.2. Nevertheless, upon examination of the records, it is noticed that the demand under the category of 'manpower recruitment or supply agency service' has been raised in respect of services rendered to M/s. Larsen & Toubro Limited during the relevant period. It is further seen from the challan-wise details furnished by the appellant that Service Tax amounting to Rs.21,94,174/- for the Financial Year 2012-13 and Rs.17,95,036/- for the Financial Year 2014-15, totally amounting to Rs.39,89,210/-, has already been deposited by the appellant under the said taxable category. The details of such payments, as furnished by the appellant, are reproduced below for the sake of ready reference: -

▪ **Financial Year 2013-2014:**

Sl. No	Date	CIN	BSR	Challan No	Service Tax	Educational Cess	Higher Educational Cess	Total Service Tax
1	10.06.2014	000534710062 01400191	0005347	00191	13,85,307.00	27,706.00	13,853.00	21,94,174
2	15.07.2014	000534715072 01400604	0005347	00604	7,44,959.00	14,899.00	7,450.00	
TOTAL					21,30,266.00	42,605.00	21,303.00	

▪ **Financial Year 2014-2015:**

Sl. No.	Date	CIN	BSR	Challan No	Service Tax	Educational Cess	Higher Educational Cess	Total Service Tax
1	23.08.2014	0005347230820 1400528	0005347	00528	5,49,944.00	10,999.00	5,499.00	17,95,036
2	23.08.2014	0005347230820 1400333	0005347	00333	4,93,971.00	9,879.00	4,940.00	
3	23.08.2014	0005347230820 1400339	0005347	00339	1,27,164.00	2,543.00	1,272.00	
4	23.08.2014	0005347230820 1400340	0005347	00340	74,182.00	1,484.00	742.00	
5	31.01.2015	0005347310120 1502644	0005347	02644	3,43,710.00	6,874.00	3,437.00	
6	30.03.2015	0005347300320 1516047	0005347	16047	1,53,782.00	3,076.00	1,538.00	
TOTAL					17,42,753.00	34,855.00	17,428.00	

10.3. We have gone through the challan-wise statement placed on record by the appellant showing the payment of Service Tax amounting to Rs.39,89,210/- [Rs.21,94,174/- + Rs.17,95,036/-] under the category of 'manpower recruitment or supply agency service'. No material discrepancy has been brought on record by the Revenue so as to dislodge the evidentiary value thereof. Accordingly, we are of the view that the amount of Rs.39,89,210/- can be adjusted against the demand of Rs.40,46,439/- confirmed under the category of 'manpower recruitment or supply agency service'.

10.4. Consequently, the differential amount remaining after such adjustment is liable to be paid by the appellant, along with interest. In this regard, we find that the appellant has deposited an amount of Rs.4,34,786/-, during investigation. It can be seen from paragraph 9.3 (supra) that the amount of Rs.35,142/- payable in respect of 'works contract service' has already been ordered for adjustment therefrom. Since there is balance money available for appropriation from the deposited amount of Rs.4,34,786/-, we also order appropriation of balance amount of Service Tax payable by the appellant under the category of 'manpower recruitment or supply agency service' from the said deposit. We find that once such adjustment is extended, no recoverable Service Tax liability survives against the appellant under the aforesaid taxable category. Accordingly, we hold that no further demand over and above the amount of service tax paid by the appellant (including the amount adjusted hereinabove), is sustainable.

10.5. It is, however, clarified that insofar as the Service Tax liability under the categories of 'works

contract service' and 'manpower recruitment or supply agency service' is concerned, the appellant shall be liable to discharge applicable interest, in accordance with law, on any delayed payment of Service Tax, if not already paid. Such interest liability shall be computed with reference to the Service Tax amounts found payable under the aforesaid taxable categories, including the portions thereof adjusted from the deposit of Rs.4,34,786/- in terms of the discussions contained in the preceding paragraphs. The jurisdictional authority shall quantify and recover the interest, if any, remaining payable by the appellant in accordance with the provisions of the Finance Act, 1994. The interest payable may be adjusted from the balance amount, if any, available from the amount of Rs.4,34,786/- deposited by the appellant.

11. Regarding the Service Tax of Rs.32,56,429/- demanded under reverse charge mechanism in respect of manpower recruitment or supply agency services received by the appellant from unregistered parties, it is seen that the said demand has been raised by invocation of the extended period of limitation. Admittedly, we note that once the Service Tax liability on the said services is discharged by the appellant, the same would be available as CENVAT Credit to the appellant. Thus, it is observed that the issue involved creates a revenue neutral situation. It is a settled position of law that in revenue neutral situations, no demand of Service Tax can be sustained, in view of various judicial pronouncements on the issue. In this connection, we find it pertinent to refer to the decision of the CESTAT at Allahabad in the case of *M/s. Indus Valley Partners (India) Pvt. Ltd. v. Commissioner of C.G.S.T., Noida* [Final Order No.

70026 of 2024 dated 17.01.2024 in Service Tax Appeal No. 70010 of 2021 – CESTAT, Allahabad], wherein it has been observed as under: -

"9. We find that the main contention of the Appellant in the present case is regarding revenue neutrality. Service tax on all four services, namely 'legal services', 'rent-a-cab service', 'clouding service' and 'purchasing licence use of Geneva brand product', relevant to this case was payable under reverse charge mechanism. Legal services and rent-a-cab services were specified services under Notification No.30/12-ST dated 20.06.12 on which service tax was payable by the service recipient under reverse charge mechanism. Clouding services and Authorisation for use of Geneva product were provided by entities located abroad, i.e., non-taxable area. So, service tax on said services was payable by service recipient under reverse charge mechanism. We further find that the Appellant was a registered person under service tax and was eligible for taking Cenvat credit paid on input services. It is a fact that all said services were input services for the Appellant. Whatever tax was paid on said services, the Appellant would have taken back as Cenvat credit. Thus there was no gain to the government exchequer in that case. It is a case of revenue neutrality. We find that the issue of the applicability of revenue neutrality in the circumstances of charging service tax under reverse charge mechanism has been settled in catena of judgments. In the case of Jet Airways India Ltd [2016-TIOL-2072-CESTAT-MUM], this Tribunal

has considered the issue of revenue neutrality where service tax was required to pay under reverse charge mechanism as service provider was foreign based firm. The Tribunal held that as the appellant could have availed CENVAT credit of the service tax paid on reverse charge mechanism, hence a revenue neutral situation arises wherein appellant pays the tax and takes the credit and accordingly set aside the tax demand interest thereon and penalties. In the case of Jain Irrigation System Ltd. [2015 (40) S.T.R. 572 (T)] the Tribunal holds that revenue neutral situation comes about when credit is available to assessee himself. In the case of Coca-Cola India Pvt. Ltd. [2007 (213) E.L.T. 490 (S.C.)] the Apex Court accepted the stand that the duty payable in respect of beverage basis/concentrates is modvatable. Since the duty payable is modvatable, there is no revenue implication. By applying ratio of above decisions, we find that the present case is a revenue neutrality case and as such no demand is sustainable.”

Thus applying the ratio of the decision cited supra, the demand confirmed under the said category is liable to be set aside on the ground of revenue neutrality.

11.1. Furthermore, the above demand raised pertains to the period from 01.07.2012 to 31.03.2015 whereas the Show Cause Notice for the same was issued on 19.04.2017. We find that no evidence has been adduced by the Revenue to substantiate the allegation of suppression of fact or wilful mis-statement on the part of the appellant with the intent to evade payment of Service Tax in this case so as to justify the

invocation of extended period of limitation for raising the present demand. In fact, being a revenue neutral situation as observed hereinabove, there was no case for the Revenue to invoke the extended period provisions in the present case. Considering the above, we are of the view that the extended period of limitation cannot be invoked in the facts and circumstances of the case and consequently, the demand confirmed under this category by invoking the extended period of limitation does not survive. Therefore, the demand confirmed by invoking the extended period of limitation on this issue is set aside.

12. On the aspect of imposition of penalty on the appellant under Section 78 of the Finance Act, 1994, as already observed hereinabove, the element of suppression of facts or wilful mis-statement of facts has not been established in this case by the Revenue by way of tangible, corroborative or cogent evidence. Accordingly, we do not find any justification for imposition of penalty under Section 78 of the Act on the appellant in the facts and circumstances of the present case. Thus, the order of imposition of penalty under Section 78 *ibid.* stands set aside.

12.1. As far as the penalty of Rs.10,000/- imposed under Section 77 of the Act on the grounds of delay in obtaining registration, delay in submission of return for October, 2012 to March, 2014 and non-declaration of 'site formation and clearance, excavation and earth moving and demolition service' and 'manpower recruitment or supply agency service' before the Department, we find that the appellant has not disputed the above grounds. Therefore, the penalty imposed under Section 77 of the Act *vide* the

impugned order does not call for any interference. Hence, the same is upheld.

13. In view of the discussions in the foregoing paragraphs, we pass the following order: -

- (i) The demand of Service Tax under the category of 'site formation and clearance, excavation and earth moving and demolition service', along with interest, as confirmed vide the impugned order, is set aside.
- (ii) The payments made by the appellant, as mentioned under paragraphs 9 and 10.2 of this Order, are appropriated against the demands of Service Tax under the categories of 'works contract service' and 'manpower recruitment or supply agency service' respectively, as confirmed against them vide the impugned order. The differential amounts of Service Tax payable under the above said categories, are ordered to be appropriated from the deposit of Rs.4,34,786/- made by the appellant during the course of investigation. Accordingly, no further demand of Service Tax can be sustained against the appellant under the categories of 'works contract service' and 'manpower recruitment or supply agency service'.
- (iii) The appellant shall be liable to pay applicable interest, if any, on the delayed payment of Service Tax under the categories of 'works contract service' and 'manpower recruitment or supply agency service', including the

amounts adjusted from the deposit of Rs.4,34,786/-, if not already paid by them.

- (iv) The demand of Service Tax under reverse charge mechanism under the category of 'manpower recruitment or supply agency service' as recipient of service, along with interest, is set aside.
- (v) The order of imposition of penalty under Section 78 of the Finance Act, 1994 is set aside.
- (vi) The order of imposition of penalty under Section 77 of the Finance Act, 1994 is upheld.

14. In these terms, the appeal stands disposed of.

(Order pronounced in the open court on **11.06.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd