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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75317 of 2017

(Arising out of Order-in-Original No. 115/Pr. Commr/ST-I/Kol/2016-17 dated 28.11.2016 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk BhawaN,180,Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. WPIL Limited, **: Appellant**
22, Ferry Fund Road,
Sodepur Station Road(West)
P. O.- Panihati, Kolkata-700114

VERSUS

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

APPEARANCE:

Shri N. K. Chowdhury, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75769/ 2026

DATE OF HEARING: 22.06.2026
DATE OF PRONOUNCEMENT: 25.06.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order.

2. The facts of the case are as under: -

> *"The facts of the case in brief are that the appellants were the manufacturers of pumps and were supplying the pumps on payment of duty. On occasions they were supplying various motors of the pumps procuring from the market (Crompton Grives & Ors) and*

directly supplying from the manufacturers place to consignee's place on payment of excises duty Sales etc as charged by the manufacturer. The appellant did not take any credit of such duty paid on the Motors. The appellant was also providing taxable services viz. Consulting Engineering Services, Erection, Commissioning & Installation Services and was pay Service Tax availing the abatement in terms of Notification No. 1/2006-ST dated 1/3/2006. Everything was reflected in the Books of Accounts and in the Returns submitted from time to time.

The Officers of the Department during the course of Audit, for the period from 2010-11 to 2011-12 on examining the Trial Balance for the said period it was found by the officials that there was direct sale which was amounting to trading (exempted service) but did not maintain any separate account in respect of credit taken on various services such as Telephone Service, Security Service, Maintenance of Computers etc, therefore, the appellant was liable for payment of Service Tax for such trading activity @ 5% and/or6% on the value of the trading sale. The Officers of the Department also found on verification of ST-3 Returns related for the period from September 2010 to July 2012 that the appellant had taken abatement of 33% but they had taken input tax credit on the aforesaid input services though they did not take credit on inputs. Therefore, the appellants were liable for payment of Service Tax on the abated amounts.

The appellant were issued with a show cause notice on 15/10/2015 (P/11) on the aforesaid reasons invoking extended period *of limitation proposing for Service Tax along with interest and penalty.*

The appellant submitted the reply denying the disputing the allegations and also contesting the invocation of extended period of limitation. (P/31). Regarding the demand on the direct sale/trading the appellant's contention was that the trading was brought into the Service Tax net w.e.f. 1.4.2011 by adding an explanation to Rule 2(e) of the CENVAT Rules. This was substituted with effect from 1.7.2012 by omitting the same but introducing into the negative list under section 66D of the Finance Act, 1994 but ultimately the trading was brought into the exempted service w.e.f. 13/4/2016 and therefore, appellant was not liable for making payment of any Service Tax on trading for not maintaining separate account.

Regarding the abatement the appellant submitted that they were not taking any credit on inputs but had taken credit on some input services, the accounts for which was impossible to maintain. The input services like Telephone Service, Security Service, Maintenance of Computers etc could not be segregated and as such the abatement cannot be denied.

The demand was also barred by limitation. The case was emanated from scrutiny of Trial Balance and the Returns by the Audit for the period 2010-11 & 2011-12. The show cause notice was issued on 15/10/2015. The demand was therefore barred by limitation since the suppression of fact with intent to evade tax cannot be alleged in this case. The appellant relied upon number of decisions in support of their contentions.

> *The Adjudication Authority did not consider those submissions on merit as well as on point of limitation (P/45).”*

3. Therefore, the appellant is in appeal.

4. The Ld. Counsel appearing on behalf of the appellant submits that the Revenue's allegation is that the appellant has not maintained separate accounts for taxable as well as exempted services and therefore, the appellant shall be liable to pay 5% / 6% of the value of exempted services and thus, ineligible for the benefit available in terms of Notification No. 01/2006-ST dated 01.03.2006. It is his submission that for the period 2010-11, the activity of 'trading' was not an exempted service and therefore, for the said period, the appellant is not liable to reverse any CENVAT Credit or pay an amount equal to 5% or 6% of the value of exempted services. For the period 2011-12, it is submitted that initially, they had agreed to reverse the proportionate CENVAT Credit attributable to exempted services as well as the CENVAT Credit availed on input services which were subject to providing construction services

5. However, it is contended by the Ld. Counsel for the appellant that they are having a good case on limitation; that the Show Cause Notice was issued on 15.10.2015 whereas the appellant were filing their ST-3 Returns along with ER-1 Returns regularly claiming the benefit of abatement in terms of Notification 01/2006-ST dated 01.03.2006 and also showing their trading activities; therefore, it is submitted that the Show Cause Notice is barred by limitation.

6. On the other hand, the Ld. Authorised Representative of the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. We find that admittedly, the appellant was filing their ST-3 Returns as well as ER-1 Returns regularly, showing the trading activities undertaken by them as well as the abatement claimed under Notification No. 01/2006-ST dated 01.03.2006, paying Service Tax on the services tendered and Excise Duty on their manufactured goods. In these circumstances, the allegation of fraud, collusion, wilful suppression or mis-statement of facts against the appellant does not sustain.

9. Therefore, the Show Cause Notice issued on 15.10.2015 is barred by limitation. Hence, without going into the aspect of merits, we set aside the impugned demands on the ground of limitation only.

With these terms, the impugned order is set aside and the appeal is allowed, with consequential relief, if any.

(Order Pronounced in Open court on 25.06.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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