

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

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.75584 of 2026
(Diary No.77775 of 2025)**

(Arising out of Order-in-Appeal No.125/SLG-ST/2025-26 dated 07.08.2025 passed by Commissioner(Appeals), CGST & CX, Siliguri Appeal Commissionerate,Siliguri.)

M/s. Rokia Bibi (Suhana Construction)

(Vill. Majum Mamunsitola, Protappur, P.O. Motibari, Kaliachak, Dist.Malda, West Bengal, Pin-732207.)

...Appellant

VERSUS

Commr., CGST & CX, Siliguri Commissionerate

.....Respondent

(C.R. Building, Haren Mukherjee Road, Hakimpura, Siliguri, West Bengal.)

APPEARANCE

NONE for the Appellant (s)

Shri S.K.Jha, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75803/2026

DATE OF HEARING : 30.06.2026

DATE OF DECISION : 30.06.2026

R. MURALIDHAR :

None has appeared on behalf of the Appellant in spite of Notice. The Registry has raised Defect Memo on the ground that the Appellant has not fulfilled the pre-deposit condition. In the interest of justice, the appeal papers were perused with the help of the Ld.Authorized Representative for the Revenue.

2. I find that the Appellant has enclosed GAR-7 Challan dated 19.08.2015 towards payment of Rs.2,21,919/-, Challan dated

25.08.2015 for Rs.2,01,901/- and Challan dated 12.06.2016 for Rs.2,54,442/-. If these three challans are considered, the pre-deposit required towards the litigated amount of Rs.21,90,117/- stands clearly fulfilled. I find that the Commissioner(Appeals) has refused to consider these challans towards pre-deposit. I also find that these amounts pertain to the year 2015-16, the period for which the Show Cause Notice was issued. I also observe that the Appellant has not appeared before the Adjudicating authority and the Order-in-Original was passed *ex parte*. Had these Challans been produced before him, he would have appropriated these amounts which could have been used towards the pre-deposit condition.

3. Considering these factual details I hold that the Appellant has fulfilled the pre-deposit condition. Accordingly, I hold that the Defect stands cured and the Registry has been directed to allot the Appeal number.

4. After observing that the issue lies in a short compass, I take up the Appeal itself for disposal with the help of the Ld.Authorized Representative for the Revenue.

5. Admittedly, a Show Cause Notice has been issued for the period 2015-16 on 30.09.2020 based on the Form 26AS of the Income Tax Department. On going through the Form 26AS, it is seen that the amounts have been paid to the Appellant by M/s. Larsen And Toubro Limited and M/s. Gannon Dunkerley & Company Limited. The Appellant has enclosed all the invoices raised on these parties, which show that the Appellant has provided only Manpower Services to these companies. In respect of Manpower Services, the Service Tax is required to be paid on RCM basis by the recipient company since the Appellant happens to be a proprietary firm.

6. Sample copies of the invoices are reproduced below :

Suhana Construction

Civil Contractor & Labour Supplier

PAN - ACRFS7109P
e-mail:- abedali1981@gmail.com
Mobile :- 09733062306 /

Partner- Md. Abed Ali
Vill.-Chakprotappur,P.O.-Mothabari
P.S.-Kaliachak, Dist.-Malda
W.B. Pin- 732207

Invoice No.

To: The Project Manager
LARSEN & TOUBRO LIMITED
REO RISE AT MOHALI, SECTOR 99
FARIDABAD
HARYANA

For the month of DEC'-2015

INVOICE NO-010
Date : 02-12-2015
SERVICE TAX NO :- ACRFS7109PSD001
PAN. ACRFS7109P

	Discription of service	UOM	Quantity	RATE	Total value of Service
	Dept Mason Supply skill Labour	NOS	1161	550	638550
	Dept Mason Supply unskill Labour	NOS	2128.315	450	957742
	BILL AMOUNT				15,96,292
	LESS: RETENTION				0
	TOTAL				31,926
	Payable Amount				15,64,366
Remarks :- Service Tax @14.5% - 231462 to be paid under reverse charge mechanism as per notification no 30/2012 ST					

SUHANA CONSTRUCTION
Md. Abed Ali
PARTNER

SUHANA CONSTRUCTION
Md. Abed Ali
PARTNER

Suhana Construction

Civil Contractor & Labour Supplier

REG - ACRFS7109P

abedali1981@gmail.com

9733062306 /

Partner- Md. Abed Ali

Vill.-Chakprotappur,P.O.-Mothabari

P.S.-Kaliachak, Dist.-Malda

W.B. Pin- 732207

Date

Contract Manager

SHANKAR DUNKERLEY & CO LTD

361001

SC/GDC/11/2015-16

Date : 31-03-2016

SERVICE TAX NO :- ACRFS7109PSD001

PAN. ACRFS7109P

Month of MARCH'-2016

Discription of service	UOM	Quantity	RATE	Total value of Service
Dept Mason Supply skill Labour	NOS	293	550	161150
Dept Mason Supply unskill Labour	NOS	486.7032	455	221450
GRAND TOTAL				3,82,600
RETENTION				0
				7,652
Payable Amount				3,74,948
Remarks :- Service Tax @14.5% - 55477 to be paid under reverse charge mechanism as per notification no 30/2012 ST				

in Words (Three lakh seventy four thousand nine hundred fourty eight only)

Chartered Accountant

059736

PALLY, MALDA

SUHANA CONSTRUCTION

mdabedah

PARTNER

SUHANA CONSTRUCTION

mdabedah

PARTNER

7. Therefore, I find that the Appellant is not required to pay any Service Tax on such services. The confirmed demand is set aside on account of merits.

8. I also find that the High Courts and Tribunals have been time and again holding that issue of Show Cause Notice merely based on Form 26AS of Income Tax Returns will not allow the demand to be legally sustained. For reference the following case law **Tabassum Enterprises vs. C, CGST & CX vide Final Order No.75452/2025 dated 19.09.2025 (Service Tax Appeal No.75037 of 2025)** has held as under :-

"5. I find that the present demand has been raised and confirmed on the basis of data provided by the Central Board of Direct Taxes (CBDT). It is observed that the said demand has been confirmed without the support of any independent or corroborative evidence from the Service Tax records. Such mechanical reliance on Income Tax data, without verification of the nature of receipts or proof of taxable services rendered, is impermissible in law. It is a settled legal position that mere entries in income tax returns or Form 26AS cannot, by themselves, establish liability under the Finance Act, 1994, unless corroborated by evidence demonstrating rendition of taxable service.

5.1. In support of this view, I rely upon the decision in the case of M/s. Rishu Enterprise vs Commissioner of C.G.S.T. & Excise, Dibrugarh, in Final Order No. 75177 of 2024 dated 08.02.2024 in Service Tax Appeal No. 75509 of 2022 [CESTAT, Kolkata], wherein this Tribunal has observed as under: -

"8. In view of the judicial pronouncement of this Tribunal, we hold that merely on the basis of Form 26-AS issued by the Income Tax Department, the demand of Service Tax is not sustainable against the appellant.

.....

11. In view of this, we hold that the impugned demand is not sustainable against the appellant on the basis of the details provided by the Income Tax Department in Form 26AS and the extended period of limitation is not invokable."

5.2. The same view has been held by the Tribunal at Allahabad in the case of *M/s.Quest Engineers & Consultant Pvt. Ltd. v. Commissioner of C.G.S.T. &C.Ex., Allahabad* [2022 (58) G.S.T.L. 345 (Tri. – All.)] observing as follows: -

"12. We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived."

5.6. Following the ratio of the decisions cited supra, I hold that the demand of service tax confirmed in the impugned order, solely relying the data received from CBDT, without adducing corroborative evidence in support, cannot be sustained. Thus, I observe that the demand confirmed in the impugned order is liable to be set aside on this ground itself."

9. It would also be relevant to go into the decision of other co-ordinate Bench on this issue :

Homeopathic Medical Publishers
Vs Commissioner of CGST & Central Excise
FINAL ORDER NO: _86910/2025 dated
25/11/2025

"3. Learned Chartered Accountant also placed reliance on the decision of Hon'ble High Court of Gujarat in ***NimeshbhaiGunvantbhai Patel v. Union of India [(2024) 25 Centax 122 (Guj)]*** and several decisions of the Tribunal invalidating proceedings commenced with no allegation other than discrepancy between returns filed under the Finance Act, 1994 and under Income Tax Act, 1961 respectively. Relying upon the decision of the

Hon'ble High Court of Madras, in Commissioner of Customs (Imports), Chennai v. Fleming (DFS) Pvt Ltd [2010 (251) ELT 348 (Mad)], and of the Tribunal, in Shubham Electricals v. Commissioner of Central Excise & Service Tax, Rohtak [2015 (40) STR 1034 (Tri.-Del.)], it was submitted that proceedings initiated by show cause notice which did not lay out specific identification of chargeability to levy on identified taxable activity was invalid in law.

6. *It would appear that the initiation of recovery proceedings under section 73 of Finance Act, 1994 solely on the basis of information received from third parties was so rampant and undesirable that the Central Board of Indirect Taxes & Customs (CBIC), vide **circular dated 26th October 2021**, instructed that :*

'2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F.No.137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. *It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause*

notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.'

7. The Hon'ble High Court of Gujarat, in re Nimeshbhai Gunvantbhai Patel, has held, in like circumstances and after narration of reconciliation offered by assessee, that

'16. ...Therefore, considering the facts on record it is evident that the petitioner was not at all liable for service tax and the respondent authorities could not have assume the jurisdiction to issue the show cause notice on the basis of the data provided by the Income Tax Department in Form-26AS and thereafter failed to consider the details provided by the petitioner in reply to the show cause notice.

17. It is also pertinent to note that no justification is given in the impugned show cause notice as well as the order-in-original for assumption of jurisdiction by invoking extended period of 5 years under the proviso to subsection-1 of section 73 of the Finance Act, 1994.

18. In view of the foregoing reasons, the impugned show cause notice is not tenable as the same is issued without jurisdiction and consequently the order-in-original also would not survive....'

8. In view of our findings supra and the decisions aforesaid, the lack of allegation in the show cause notice, that any, or even part, of the impugned income was not attributable to any of the claimed activities, places the invoking of section 73 of Finance Act, 1994 in jeopardy at the threshold itself. It would appear that the adjudicating authority was influenced almost entirely by the additional income reported in returns prescribed in another jurisdiction.

9. In view of the above, we set aside the impugned order and allow the appeal."

10. Relying on the above case laws, I hold that even on account of time bar, the confirmed demand does not sustain.

11. The Appeal stands allowed both on merits and on account of time bar. The Appellant would be eligible for consequential relief, if any, as per law, after proper verification of the CAR Challans in question. In case after verification, the Challans in question are found to have been deposited for any other transactions pertaining to the earlier period, no refund of pre-deposit should be granted by the Revenue.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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