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

REGIONAL BENCH – COURT NO.1

<u>Service Tax Appeal No.75170 of 2023</u>

(Arising out of Order-in-Original No.09/Pr.Commr./Adj/ST/Commr./DIB/2022-23 dated 28.12.2022 passed by Principal Commissioner of CGST & Central Excise, Dibrugarh)

M/s Nirmal Kumar Agarwalla
(Bokakhat Town, AT Road,Golaghat District, Assam-785612)

Appellant

VERSUS

Principal Commissioner of CGST & Central Excise, Dibrugarh
(Milan Nagar, Lane 'F' PO-C.R.Building, Dibrugarh-786003)

Respondent

<u>APPERANCE :</u>

Shri Ankit Kanodia, Advocate for the Appellant
Shri D.Sue, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75814/2026

<u>DATE OF HEARING : 30 JUNE 2026</u>
<u>DATE OF DECISION : 30 JUNE 2026</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order wherein a demand of Service Tax of Rs.3,29,23,146/-, along with interest has been confirmed and an equal amount of penalty under Section 78 of the Finance Act, 1994, has been imposed on the appellant and also a penalty of Rs.20,000/- has been imposed on the appellant for violation of Section 70 of the Act.

2. The facts of the case are that the Appellant is a proprietorship concern engaged in the execution of composite works contracts — principally construction, repair and maintenance of roads and bridges —

for the State Government, PWD divisions and allied governmental authorities in Assam, besides incidental trading (supply of goods). Solely on the basis of a mismatch between the receipts reflected in the Income Tax Return/Form 26AS and the value declared in the ST-3 returns for FY 2016-17 and FY 2017-18 (up to June 2017), the Department assumed taxable services of Rs.21,94,87,644/- and issued a Demand-cum-Show Cause Notice dated 22.10.2021 demanding service tax of Rs.3,29,23,146/- with interest and penalties. By the impugned Order-in-Original dated 28.12.2022, the entire demand was confirmed along with penalty of an equal amount under Section 78 and Rs.20,000/- under Section 70(1) of the Finance Act, 1994.

2.1 Aggrieved from the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the appellant has discharged the mandatory pre-deposit of Rs.24,69,236/- (7.5%) under Section 35F of the Central Excise Act, 1944 as applicable vide Section 83 of the Finance Act, 1994.

3.1 It is further submitted that the demand is wholly time-barred — extended period wrongly invoked. He submits that the show-cause notice dated 22.10.2021 seeks tax for FY 2016-17 and part of FY 2017-18 by invoking the extended period under the proviso to Section 73(1). Further, he submits that the extended period can be invoked only where non-payment is by reason of fraud, collusion, willful mis-statement or suppression of facts *with intent to evade* tax. The appellant filed all ST-3 and income-tax returns within time; the figures relied upon emanate from Form 26AS/ITR which are part of Government records and, service tax registration being PAN-based, were at all times accessible to the

Department. He submits that there is neither any positive act of suppression nor any finding of intent to evade. In support of his contention, he relies on the following decisions :

(i) Uniworth Textiles Ltd. v. CCE, Raipur, 2013 (288) ELT 161 (SC) — mere non-payment of duty is not equivalent to collusion / wilful mis-statement/suppression; the burden lies on Revenue and these ingredients postulate a *positive act*.

(ii) Cosmic Dye Chemical v. Collector of Central Excise, Bombay, 1995 (75) ELT 721 (SC) — mis-statement or suppression must be willful, i.e. with intent to evade duty.

(iii) Pushpam Pharmaceuticals Co. v. CCE, Bombay, 1995 (78) ELT 401 (SC) — extended period is not attracted by every omission; where facts are known to both parties, omission does not constitute suppression.

(iv) Anand Nishikawa Co. Ltd. v. CCE, Meerut, 2005 (188) ELT 149 (SC) — "suppression of facts" means correct information not disclosed deliberately to escape payment of duty.

He, therefore, submits that it is settled that income reflected in the ITR / Form 26AS is not a proper basis to fasten service tax liability without first establishing the nature of the service, the identity of the recipient and that the receipt is consideration for a *taxable* service. The Department neither examined the reasons for the difference nor identified any specific taxable service; the demand rests entirely on presumption.

3.2 On merits, he submits that the composite works contracts of Rs.20,88,41,277/- were provided to the Government / governmental authorities by way of construction, repair and maintenance of roads and bridges for use by the general public, squarely covered by Entry 13(a) (and, as applicable, Entries 12A and 29(h)) of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012. The receipt of Rs. 66,95,000/- from the Executive Engineer, Morigaon E&D Division represents supply of goods (trading), on which no service tax is leviable (Section 66D(e) / negative list). The adjudicating authority confirmed the demand without examining the work orders, RA bills and contract details placed on record.

3.3 He further submits that even assuming taxability, the demand is computed on the gross receipts without extending the abatement / valuation mechanism for works contracts under Rule 2A of the Service Tax (Determination of Value) Rules, 2006 read with Section 67(2) of the Finance Act, 1994 (service tax being treated as included in the gross consideration where no tax was separately collected). The figure of Rs.21,94,87,644/- itself is arithmetically erroneous, being a wrong aggregation of the FY 2017-18 Form 26AS. He, therefore, prays for setting aside the impugned order by allowing their appeal.

4. The ld.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in this case, the demand has been raised against the appellant on the basis of differential figures as reflected in Form 26AS obtained from Income Tax Department and the value of the taxable services provided by the appellant in their ST-3 Returns in the

impugned period. No investigation was conducted by the Revenue to find out what service has been provided by the appellant. Moreover, in the reply to the show-cause notice, the appellant provided the details of services provided by them which were towards construction, repair and maintenance of roads and bridges for use by the general public on behalf of Governmental authorities, which were exempted as per Entry 13(a) of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

7. Therefore, we hold that the demand against the appellant is not sustainable and the same has been confirmed without any basis.

8. We also find that an amount of Rs.66,95,000/- was received for supply of goods from the Executive Engineer, Morigaon E&D Division. On the supply of goods, the appellant is not required to pay any service tax.

9. In view of the above observations, we do not find any reason to confirm the demand of service tax against the appellant. Therefore, whole of the demand of service tax is set aside. Consequently, no penalty is imposable on the appellant.

10. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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