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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75044 of 2023

(Arising out of Order-in-Appeal No.195/JSR/2022 dated 17.11.2022 passed by Commissioner(Appeals), CGST & CX, Ranchi.)

M/s. A. Engineering Company
(4-Jiwanpur, Narayanpur, Seraikela, Kharswan, Jharkhand-833220.)

...Appellant

VERSUS

Commissioner, CGST & CX, Jamshedpur

.....Respondent
(GST Bhawan, Outer Circle Road, Bistupur, Jamshedpur-831001.)

APPEARANCE

Written Submission for the Appellant (s)

Shri A.Mukherjee, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75849/2026

DATE OF HEARING : 03.07.2026
DATE OF DECISION : 03.07.2026

R. MURALIDHAR :

The Appellant has sent Written Submission and has requested that the Appeal may be taken up for hearing based on such submissions.

2. On going through the Written Submission made and the Appeal papers, I find that the Department has issued a Show Cause Notice demanding Rs.6,32,102/- for the service rendered during the period

2012-13. The Show Cause Notice was issued on 20.11.2017 by invoking the extended period provisions. The Appellant submits that after going through the documentary evidence placed by the Appellant before the Commissioner(Appeals), he has dropped about Rs.3.50 Lakhs of the demand and has confirmed only the balance amount of Rs.52,335/-. The Appellant claims that the Commissioner(Appeals) has failed to consider the fact that RCM benefit is required to be given for the period October 2012 to March 2013. They have also contested that in case of 'Business Auxiliary Service' when job-work has been undertaken by them, the same would be eligible for Service Tax exemption under Notification No.08/2015-ST dated 01.03.2015.

3. They have also contested the issue of time bar. As per them as all the facts are on record, no case of suppression can be alleged by the Revenue.

4. The Ld.AR reiterates the findings of the Commissioner(Appeals) and submits that wherever the Appellant was in a position to provide the documentary evidence, the demand has been dropped. Only in case where the Appellant was not able to bring in proper documentary evidence, the Service Tax demand has been confirmed.

5. I find that the Show Cause Notice has been issued demanding Rs.6,32,102/- based on Form 26AS of Income Tax Department. The very fact that almost about Rs.3.50 Lakhs of demand was set aside by the Commissioner(Appeals) based on the documentary evidence provided by the Appellant shows that the Show Cause Notice was issued without any proper verification and investigation. It was only based on Form-26AS details.

6. The Tribunal has been consistently holding that issue of Show Cause Noticed based on 26AS without proper investigation will not help the Department in confirming the demand. 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.*
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> *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 Tribunalhas observed as under: -*
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> > *"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."*
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> *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."

7. 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. Flemingo (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.*
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> *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.*
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> *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.*
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> *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."

8. Following the ratio laid down in the above case laws, I set aside the impugned order and allow the Appeal on account of time bar. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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