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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75648 of 2024

(Arising out of Order-in-Original No. 13/Commr/CGST & CX/HWH/ADJN/2022-23 dated 24.02.2023 passed by the Commissioner of CGST & CX Howrah M.S. Building, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Khagaul Labour Co.-Operative Society Ltd. **: Appellant**
10, Gopal Gosh Lane, PO. Salkia,
P.S. Malipachgora, Howrah,711196

VERSUS

The Commissioner of CGST & CX Commissionerate, Howrah **: Respondent**
M.S. Building, Custom House, 15/1, Strand Road, Kolkata-700001

APPEARANCE:

Shri Aditya Dutta, Advocate
Smt. Priyamvada Singh, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76192/ 2026

DATE OF HEARING: 17.09.2026
DATE OF PRONOUNCEMENT: 21.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Khagaul Labour Co-Operative Society Ltd. [ST Reg. Certificate No. AAAAK4524ASD001], 10, Gopal Ghosh Lane, PO-Salkia, PS- Malipanchghora, Dist- Howrah, Pin- 700106 (herein after referred as the Appellant) have filed this appeal assailing the Order-in-Original No. 13/Commr/CGST & CX/HWH/ADJN/2022-23 dated 24.02.2023 passed by the Commissioner of CGST & CX Howrah M.S.

Building, Custom House, 15/1, Strand Road, Kolkata-700001.

2. The facts of the case are that the Appellant are engaged in providing services of the nature of Cleaning Service to Indian Railways viz. Eastern Railways, East Central Railways, Western Railways. Services rendered by the Appellant were in the nature of 'Watering of coaches of trains', 'Onboard Housekeeping', 'Manual Removal of Garbage' etc. (Copy of Contract Ref. MC/116/0/OBHS/TKPR/1/14 dated 28.04.2015 made with Eastern Railway enclosed at Page 53 of Paper Book). The Appellant have been registered with the service tax department and have been collecting and depositing service tax, in respect of the cases where the Railways had paid the service tax as per the contracts. In respect of the other cases, the Appellant has not collected and paid the service tax, as they were of the view that the services rendered to Railways are not exigible to service tax.

2.1. On the basis of intelligence gathered by DGGI, an investigation was initiated against the Appellant. A search was conducted by the officers of DGGI at the premises of the Appellant in Patna on 02/03.07.2018 and on 03.07.2018. During the course of search, the Appellant was asked to deposit an amount of Rs. 60 lakhs against their purported service tax liability.

2.2. On completion of the investigation, the Additional Director General, DGGI, issued a **Demand cum Notice to Show Cause** dated **11.04.2019** under **F No. 20/DGGI/PaZU/Khagaul Labour/2019/1094,** demanding service tax amounting to **Rs. 5,24,60,260/-** for the period from **April, 2013 to March, 2017,** along with interest and proposed equal amount of tax as penalty under Section 78 of the Finance Act, 1994. The SCN also proposed for appropriation of the amount of Rs. 60,00,000/- already deposited against the aforesaid liability. The SCN also proposed for imposition of late fee of Rs. 1,21,700/- for late submission of ST-3 Returns. Penalty was also proposed under Section 77(1)(b), 77(1)(c)(i), 77(1)(c)(ii), 77(1)(c)(iii) and 77(2) of the FA, 1994

2.3. Subsequently another SCN under **C No. V(12)31/CGST/HWH/AE/Misc/Gr.D/2020/Pt./ 19714A dated 29.12.2020** was issued by the Commissioner, CGST & CX, Howrah Commissionerate covering the period 2015-16 for short payment of service tax of Rs. 1,22,30,548/- along with interest and equal penalty purportedly on the differential value of service as revealed from the ITR viz-a-viz ST3.

2.4. Both the SCNs were adjudicated by the Commissioner of Central Tax, Howrah CGST &CX Commissionerate in terms of the impugned **O/O No. 13/Commr/CGST&CX/HWH/ADJN/2022-23 dated 24.02.2023**. In respect of the second SCN dated 29.12.2020, The Ld. Commissioner stated that since the demand made in the SCN dated 29.12.2020 has already been covered in the first SCN dated 11.04.2019, he dropped the demands raised in the second SCN. But in respect of the first SCN dated 11.04.2019, he confirmed the entire service tax demand of **Rs. 5,24,60,260/-** along with interest and imposed equal amount of tax as penalty for the period **April, 2013 to March, 2017**. In the said Order he also appropriated the sum of

Rs. 60 lakhs already deposited by the appellant. The Ld. Adjudicating authority has further imposed penalty of **Rs. 30,000/-** in terms of Section 77(1)(b), 77(1)(c) &77(2) and imposed late fees of **Rs. 1,21,700/-** under Rule 7C of ST Rules, 1994 read with Section 70 of Finance Act,1994.

3. The Appellant submits that the SCN in this case has been issued on the following grounds:

(a) The Appellant has rendered the services of cleaning of i) railway station premises— involving disinfection of platforms, office, toilets, tracks, etc and ii) mechanised coach cleaning – involving exterior and interior cleaning/disinfection of stationary trains at its termination point. These services confirm to the definition of 'service' under Section 65B(44) read with Section 65B(51) of the Finance Act, 1994 and hence liable to service tax.

(b) The activities done by the Appellant are not covered under the negative list in terms of N.F. No. 25/2012-ST dated 20.06.2012. Further, Divisional Finance Manager, Eastern Railway Malda has paid service tax to the Appellant towards providing cleaning services to the. Hence, the Appellant are liable to pay service tax.

3.1. In this regard, the Appellant submits that they are eligible for the benefit of exemption as provided under the N.F. No. 25/2012-ST dated 20.06.2012 (effective from 01.07.2012). As per clause (a) of Sl. No. 25 of the said Notification, the following services have been exempted from payment of service tax. The said entry states as under:-

> *"Services provided to Government, a local authority or a governmental authority by way of*
>
> > *(a) Carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management*
> >
> > *(b) ….."*

3.2. The Appellant submits that the Ld. Adjudicating authority has denied the exemption under Sl. No. 25 of Notification No. 25/2012-ST dated 20.06.2012, on the basis of the following findings:

(a) Appellant's contention that Indian Railways is not a 'person' and hence service tax is not leviable on Indian Railways is not acceptable since Indian Railways is a 'person' in terms of Section 65B(37)(h) of the FA, 1994 and is liable to service tax.

(b) As per judgment of CESTAT, New Delhi in the case of Mukesh Kalway v CCE [2017(3) G.S.T.L. 183(Tri-Del)] Indian Railways are not considered to be public utility organisation and as such not eligible for exemption under N.F. No. 25/2012-ST dated 20.06.2012.

(c) Under the new regime of service tax w.e.f. 01.07.2012 services provided by the Noticee to different division of the Indian Railways are neither mentioned in the negative list under Section 66D of Finance Act, 1994 nor covered under N.F. No. 25/2012-ST dated 20.06.2012.

3.3. However, the ld. adjudicating authority failed to appreciate the fact that for availing benefit of the exemption under N.F. No. 25/2012-ST dated 20.06.2012 the notification only states that the activity is required to be performed in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management and to provide it to an entity which is classifiable under the category of Government, a local authority or a Governmental authority. In the present case the appellants have rendered the services, which are in the nature of 'upkeep/maintenance of platforms', 'dry sweeping of empty rakes and mechanized yard cleaning', 'Railway platform cleaning', 'disposal of accumulated garbage to designated places', 'On-board housekeeping service in reserved coaches and 'cleaning of Railway Station platform and its surrounding area'. Thus the first part of the Notification stands fulfilled. The services in question were rendered to the Indian Railways which is under the 100% ownership of Ministry of Railways, Government of India. Thus, it is clear that the Indian Railways belongs to the category of 'Government'.

3.4. Thus, the Appellant submits that they have fulfilled both the conditions of the Notification No. 25/2012-S.T. dated 20.06.2012 i.e., (i) the category of service and (ii) to whom such services were rendered, have been fulfilled by them. No service tax is charged when a municipality renders such services. In this particular case, the same kind of services has been rendered by the appellant and that too to the Indian Railways and therein comes the usefulness or applicability of the Notification No. 25/2012-ST dated 20.06.2012 which has exempted such kind of services which are functions ordinarily entrusted to a municipality. If a municipality would have rendered such services, such Notification would automatically become otiose. Such kind of notification was not in existence prior to 01.07.2012 and has taken effect only from 01.07.2012 for the purpose of exempting such services from service tax when rendered to Government, a local authority or a governmental authority. Accordingly, the Appellant submits that the impugned services having been rendered by the appellant to Government, there is no liability to Service Tax as per Sl. No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012.

3.5. The Appellant submits that this issue is no more res integra, as an identical issue has already been decided/settled in favour of the assessee/appellant therein by this Tribunal in the case of *M/s. Bindhya Bashini Traders v Commissioner of C.G.S.T. and Central Excise* vide *Final Order No. 75320/2025 dated 12.02.2025* wherein at Paragraph 8.3 it has been held that similar/identical services provided to Indian Railways after 01.07.2012 is exempted from service tax as per Entry No. 25 of N.F. No. 25/2012-ST dated 20.06.2012 and the demand for the said period has been set aside. The same view has also been taken by this Tribunal in the case of M/s. Khagaul Loco Labour Co-Operative Society Ltd Vs Commissioner of Central GST & Central Excise, Patna-I, vide Final Order No.75883/2026 dated 16.07.2026. Thus, the Appellant submits that the demands of service tax along with interest and penalties confirmed in the impugned order are not sustainable.

3.6. The Appellant has also contested the demands confirmed in the impugned order on the ground of limitation. The Appellant submits that the demand of service tax in this case has been made, on the basis of data available in the B/S, P/L account, 26AS and ST-3 Returns which were always open to the department for any query/scrutiny/verification, therefore, there has been no suppression in respect of the facts and figures based on which the SCN was issued. As such invocation of extended period is not warranted in the instant case as per judgments in the following cases :-

(i) M/s. Munna Construction v CCE&ST [Final Order No. 77625/2024 dated 22.11.2024]

(ii) Arya Logistics v CCE &ST Rajkot [ST Appeal No. 12389 of 2014 DOD 17.08.2023]

(iii) Balajee Machinery v Comm of CGST &Excise, Patna-II [2022(66) GSTL 440 (T-Kol)]

The Appellant submits that the instant SCN was issued on **11.04.2019** for the April, 2013 to March, 2017. Thus, majority of the period of **April, 2013 to March, 2016** i.e. **FY 2013-14 to 2015-16** is barred by limitation of time.

3.7. The Appellant also submits that during the course of investigation, they have deposited an amount of Rs. 60 lakhs against their purported service tax liability. As the demands of service tax confirmed against the Appellant is legally not sustainable, the Appellant prayed for refund of the deposit made during the course of investigation. The Appellant submits that this payment cannot be considered as payment of service tax and the provisions of section 11B, made applicable to service tax matters by section 83 of the Finance Act, are not applicable to this payment. Accordingly, the Appellant submits that they are eligible for the refund of the amount deposited during the course of investigation along with applicable interest.

3.8. On the issue of collection of service tax and not depositing the same to the government exchequer the appellant argued that whatever service tax they collected by them they had paid the same to the Government Exchequer and reflected the same in their ST-3 Returns and furthermore the department has not been able to bring on record and any conclusive documentary proof to show that the appellant had retained any portion of the service tax amount collected.

4. The Ld. Authorized Representative of the Revenue submits that the appellant is not eligible for the benefit of exemption as provided under Sl. No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012 in as much as the said Notification exempts services which are ordinarily entrusted to a municipality, but in this case, the services rendered by the appellant were not entrusted to a municipality. He also submits that the services rendered by the appellant were not in a 'public area' and thus the exemption provided under Sl. No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012 is not available to them. The Ld. Authorised Representative also argued that the appellant had collected the entire service tax form the Railway departments but not deposited the entire amount as collected to the government exchequer. Accordingly, the Ld. Authorized Representative of the Revenue prayed for rejecting the appeal filed by the appellant.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant has rendered services in the nature of 'upkeep/maintenance of platforms', 'dry sweeping of empty rakes and mechanized yard cleaning', 'railway platform cleaning', 'disposal of accumulated garbage to designated placed', 'on-board housekeeping service

in reserved coaches of Railways and 'cleaning of Railway Station platform and its surrounding area'. We find that the Appellant are eligible for the exemption as provided under Sl. No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012.

6.1. We find that this issue is no more res integra, as an identical issue has already been decided/settled in favour of the assessee/appellant by this Tribunal in the case of *M/s. Bindhya Bashini Traders v Commissioner of C.G.S.T. and Central Excise* vide *Final Order No. 75320/2025 dated 12.02.2025* wherein at Paragraphs 8.2 and 8.3 it has been held that similar/identical services provided to Indian Railways after 01.07.2012 is exempted from service tax as per Entry No. 25 of N.F. No. 25/2012-ST dated 20.06.2012 and the demand for the said period has been set aside. The relevant part of the said decision is reproduced below for ready reference:

> *8.2. Regarding the eligibility of the exemption as provided under Entry No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012, it is required to examine the relevant provisions of the said Notification, which is extracted below: -*
>
> > *"25. Services provided to Government, a local authority or a governmental authority by way of -*
> >
> > > *(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or*

> *(b) repair or maintenance of a vessel or an aircraft;"*

8.3. We observe that initially the appellant has taken registration on 01.10.2013 as advised by Indian Railways. Later, they stopped payment of service tax filed 'Nil' returns during the period October 2014 to March 2015. We find that the Department had not raised any objection when the appellant filed the 'nil' Return and claimed eligibility of the exemption provided under Entry No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012. From the extract reproduced in para 8.2. supra, we find that the services provided to the Government which are in the nature of services ordinarily rendered by a municipality such as water supply, public health, sanitation conservancy and solid waste management are, inter alia, are exempted from Service Tax by virtue of the above said Notification. In this case, there is no dispute that the appellant has rendered the services namely, 'upkeep/maintenance of platforms', 'dry sweeping of empty rakes and mechanized yard cleaning', 'railway platform cleaning', 'disposal of accumulated garbage to designated placed', 'on-board housekeeping service in reserved coaches of Poorva Express' and 'cleaning of Sonpur Railway Station platform and its surrounding area' to a Government body viz. the Indian Railways. We find that the services rendered by the appellant are in the nature of "public health, sanitation conservancy and solid waste management". Entry No.25 of the Notification 25/2012-ST exempts all such services which are rendered to Government, as the same are otherwise exempted from service tax when rendered by a Municipality. Accordingly, we find that the services rendered by the appellant

> *are squarely covered within the ambit of Sl. No. 25 of Notification No. 25/2012-S.T. dated 20.06.2012. We therefore hold that the appellant has rightly claimed exempted under the above Notification for the services rendered to the Indian Railways.*

6.2. We find that the same view has also been taken by this Tribunal in the case of M/s. Khagaul Loco Labour Co-Operative Society Ltd Vs Commissioner of Central GST & Central Excise, Patna-I, vide Final Order No.75883/2026 dated 16.07.2026.

6.3. Thus, by relying on the decisions cited supra, we hold that the demands of service tax confirmed in the impugned order is not sustainable. As the demand itself is not sustained, the demand of interest and the penalty imposed under section 78 of the Finance Act, 1994 is also not sustainable and hence we set aside the same.

6.4. We find that the Appellant has also contested the demands confirmed in the impugned order on the ground of limitation. We find that the demand of service tax in this case has been made, on the basis of data available in the B/S, P/L account, 26AS and ST-3 Returns which were open to the department for scrutiny and verification. Further, we find that there is no suppression of facts with intention to evade the tax has been established in this case. As such invocation of extended period is not warranted in the instant case as per judgments in the following cases:
(i) M/s. Munna Construction v CCE&ST [Final Order No. 77625/2024 dated 22.11.2024]
(ii) Arya Logistics v CCE &ST Rajkot [ST Appeal No. 12389 of 2014 DOD 17.08.2023]

(iii) Balajee Machinery v Comm of CGST &Excise, Patna-II [2022(66) GSTL 440 (T-Kol)]

6.5. We find that the instant SCN was issued on **11.04.2019** for the April, 2013 to March, 2017. Thus, majority of the period of **April, 2013 to March, 2016** i.e. **FY 2013-14 to 2015-16** is barred by limitation of time. Accordingly, we hold that the demands confirmed by invoking the extended period of limitation is not sustainable.

7. Regarding the other penalties imposed in the impugned order, we find that the Ld. Adjudicating authority has imposed penalty of **Rs. 30,000/-** in terms of Section 77(1)(b), 77(1)(c) &77(2) and imposed late fees of **Rs. 1,21,700/-** under Rule 7C of ST Rules, 1994 read with Section 70 of Finance Act,1994. These penalties have been imposed on account of non-filing of returns and delay in filing of returns. As the delay in filing of the returns and non filing of returns for some period are not in dispute, we uphold the above penalties confirmed in the impugned order.

8. We find that during the course of investigation, the Appellant was asked to deposit an amount of Rs. 60 lakhs against their purported service tax liability. In view of the findings supra, the demands of service tax confirmed against the Appellant is not sustained. As the Appellant has made this deposit during the course of investigation, this payment cannot be considered as payment of service tax and the provisions of section 11B, made applicable to service tax matters by section 83 of the Finance Act, are not applicable to this payment. Accordingly, we hold that the Appellant is eligible for the refund of the amount deposited during the course of investigation along with applicable interest.

9. On the issue of collection of service tax by the appellant and not depositing the same to the government exchequer we find that the department has not been able to provide any conclusive proof in support of their argument. Hence, we find no force in the argument put forth by the Department.

10. In view of the above findings, we pass the following order:

(i) We set aside the demands of service tax confirmed in the impugned order. The demand of interest and the penalty imposed under section 78 of the Finance Act, 1994 are also set aside.

(ii) We uphold the penalty of **Rs. 30,000/-** imposed in terms of Section 77(1)(b), 77(1)(c) &77(2) and the late fees of **Rs. 1,21,700/-** imposed under Rule 7C of ST Rules, 1994 read with Section 70 of Finance Act,1994.

(iii) We hold that the Appellant is eligible for the refund of the amount of Rs.60 lakhs deposited during the course of investigation, along with applicable interest.

(iv)The appeal filed by the Appellant is disposed of on the above terms.

(Order Pronounced in Open court on 21.09.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP