CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87726 OF 2025

[Arising out of Order-in-Appeal No: RL/CGST/COMMR/A-III/MUM/42/2025-26 dated 8th July 2025 passed by the Commissioner of CGST and Central Excise (Appeals-III), Mumbai.]

Homeopathic Medical Publishers
201, 2nd Floor, Dinar Station Road, Santacruz West
Mumbai – 400 054 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Administrative Building, BSNL Complex,
Juhu Tara Road, Santacruz (W), Mumbai - 400054 ***…Respondent***

APPEARANCE:

Ms Puloma Dalal, Chartered Accountant for the appellant

Shri Priyesh Bheda, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86910/2025

DATE OF HEARING: 25/11/2025
DATE OF DECISION: 25/11/2025

PER: C J MATHEW

Aggrieved by order[1] of Commissioner of CGST and Central Excise (Appeals-III), Mumbai for having rejected their challenge to

[1] [order-in-appeal no. RL/CGST/COMMR/A-III/MUM/42/2025-26 dated 8th July 2025]

fastening of tax liability of ₹ 27,94,086 under section 73 of Finance Act, 1994, along with applicable interest and imposition of penalties under section 77 and section 78 of Finance Act, 1994, by the original authority, M/s Homeopathic Medical Publishers, a proprietary concern of Dr Govindrajan Sankaran, a homeopathic medical practitioner, canvasses that the proceedings were initiated without reasonable basis for doing so and, principally, as 'fishing endeavour' disregarding the onus resting with tax authorities to stipulate the activity which, in conformity with section 65B(44) of Finance Act, 1994, rendered noticee liable to be taxed under section 66B of Customs Act, 1962.

2. It would appear from the records that the appellant, in addition to medical practice and authoring of works in homeopathy, had offered training programmes owing to which registration as 'person liable to tax' had been taken under Service Tax Rules, 1994 and returns regularly filed thereupon including, for 2014-15, declaring provision of services valued at ₹ 21,10,013 below the taxable threshold. On the premise that income of ₹ 2,47,15,889 reported for the same year in returns filed under Income-tax Act, 1961 represented untaxed consideration of ₹ 2,26,05,876 for services rendered, appellant herein was issued with show cause notice dated 18th October 2019 seeking to fasten liability of ₹ 27,94,086 and other detriments. According to Learned Chartered Accountant appearing for the appellant they had responded with details of income and statement of reconciliation, in

which the difference, attributable to medical consultation fee of ₹ 1,46,23,605, conventions, reimbursement of ₹ 55,76,636 towards conference participation outside India and author royalty of ₹ 23,31,977, was tabulated, the original authority found these to be taxable as evidence of these exempted services having been rendered was not made available. According to Learned Chartered Accountant the sole ground for non-acceptance of their submission was the purported absence of documentation in support of their claim which was never in the contemplation of service tax authorities, who had no evidence of any taxable service having been undertaken, let alone called for in the show cause notice or at any time thereafter.

3. Learned Chartered Accountant also placed reliance on the decision of Hon'ble High Court of Gujarat in *Nimeshbhai Gunvantbhai 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.

4. According to Learned Authorized Representative, in the absence of any evidence that the untaxed income was attributable to consultation, reimbursement and royalty, the original authority had no option but to confirm the demand and relied on the decision of the Hon'ble High Court of Punjab and Haryana in *Vishwakarma Industries v. Commissioner of Income-tax [(1982) 1351 ITR 652 (P&H)]* and of the Hon'ble Supreme Court in *Chuharmal S/o Takarmal Mohnani v. Commissioner of Income-tax, Madhya Pradesh [1988 AIR 1384]*. Learned Authorized Representative contended that the burden of establishing that the services were not liable to tax lay on the noticee and, in the absence of evidence to the contrary, the orders of the lower authorities had to be upheld.

5. The levy of tax, on ‘taxable service’ at the rate prescribed in section 66B of Finance Act, 1994 applied to the value determined in accordance with section 67 of Finance Act, 1994, is subject to exception for not being service in section 65B(44) of Finance Act, 1994, exclusion by enumeration in section 66D of Finance Act, 1994 and exemption in notifications under section 83 of Finance Act, 1994. While it could be posited that exclusion and exception could be allowed only upon evidence of eligibility furnished by assessee, it is not in doubt that

invoking of section 73 of Finance Act, 1994 is legal and proper only upon income being established as consideration for

'....any activity carried out by a person for another…'

to constitute 'service' as set out in section 65B (44) of Finance Act, 1994. Impliedly, every receipt is not deemed to be 'consideration for service' to be remitted by assessee as excluded or exempted from tax and income for the purpose of levy under another statute is not consideration either. The authority invoking section 73 of Finance Act, 1994 must, by investigation including response from assessee, must arrive at reasonable certainty of liability on grounds set out in the notice before determination of recoverable tax even if by failure on the part of the noticee to furnish evidence in support of claim proposed to be disallowed. Mere iteration of higher income reported under Income Tax Act, 1961 – with its own unique stipulations on inclusions – does not answer to that obligation resting on service tax authority without even the least cursory attempt at investigation of the assessee.

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.'*

and the impugned proceedings is clearly in breach.

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 priviso 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….'

while the Tribunal, in *Commissioner of CGST and Central Excise, Mumbai East v. Modern Road Makers Pvt Ltd [(2025) 26 Centax 193 (Tri.-Bom)]*, held that

'5. We have carefully gone through the record of the case and submissions made. Right at the outset we have examined the show cause notice. The show cause notice dated 16.04.2019 states that the same is enclosed with two annexures. Annexure-I is work sheet. The work sheet states the turnover of the respondent for the year 2013-14 as reflected in income tax return and turnover reflected in ST-3 return as nil and the difference between the two turnovers and service tax @ 12.36% on the said difference. Annexure-II is a letter dated 25.10.2018 issued by Superintendent (Data Cell) presuming that the respondent has shorted reported turnover in their ST-3 return to the extent of difference stated in Annexure-I. The entire show cause notice nowhere examines as to on what

account the turnover has taken place. The said show cause notice was issued without examining the activity of the respondent and without examining the reason for difference in turnover reported in income tax return and ST-3 return. It was presumed in the show cause notice that the entire turnover reported in income tax return was on account of provision of taxable service and by calculating 12.36% of that turnover, service tax demand was raised. The fundamentals of prosecution such as framing charges on the basis of admissible evidence is absent in issue of show cause notice. The basic of any proceeding is to frame charges on the basis of assessee's record and establish that the assesse has short paid calculated and pre-determined amount of service tax and then issue them a show cause notice calling for their explanation as to why the stated amount of service tax should not be recovered from them. The burden of proof is on Revenue to establish that the alleged service tax was short paid by the assesse. Unless such burden of proof is discharged by Revenue, such show cause notice cannot sustain. The preset show cause notice is totally presumptive. Further, the difference in turnover in ST-3 return and income tax return could be on account of non-taxable businesses. So, unless Revenue examines the reasons for the difference, it cannot demand service tax blindly on the basis of difference in the turnover reflected in the two statutory returns. This Tribunal has time and again held as follows:-

(a) In the case of Lord Krishna Real Infra Pvt. Ltd. [2019 (2) TMI 1563 - CESTAT ALLAHABAD], it was held as follows:-

> *"Further, we find that on the basis of form 26AS return filed under Income Tax Act without examining any other records of the appellant, charges of short payment of service tax to the tune of 8 crores were made against the appellant. It was possible for Revenue to know the transactions between other parties & appellant from form 26AS. Revenue could have investigated into the nature of such transactions & should have established that the said transactions were in respect of*

provision of said service. Then alone the charges of short payment of Service Tax would have sustained. We find that Final Order of this Tribunal in the case of Sharma Fabricators Pvt. Ltd. (supra) is squarely applicable in the present case. We, therefore, hold that Revenue did not discharge its burden to prove short payment of service tax. We also hold that the said show cause notice dated 05.10.2016 is not sustainable."

(b) In the case of, Sharma Fabricators & Erectors Pvt. Ltd. [2017 (7) TMI 168 - CESTAT ALLAHABAD], it was held as follows:-

"Surprisingly the draft audit report was the relied upon document. It may be worth mentioning here that the purpose of audit report is to point out any discrepancy to the notice for examination by the executive and it is the duty of executive to examine the records and examine the objection raised with reference to the records and facts of the case and take a view whether there is a sustainable case for issue of Show Cause Notice. Such vital aspects of framing of charges have been missing in the present case. The charges in the Show Cause Notice have to be on the basis of books of account and records maintained by the assessee and other admissible evidence. The books of account maintained by M/s Sharma were not looked into for issue of above stated two Show Cause Notices. Therefore, the transactions recorded in the books of account cannot be held to be contrary to the facts. Therefore, we hold that the said Show Cause Notices are not sustainable. Since the said Show Couse Notices are not sustainable, appeal bearing No.ST/890/2010 filed by M/s Sharma is allowed and appeal bearing No. ST/949/2010 filed by Revenue is dismissed. Miscellaneous Applications are also stand disposed of. Cross Objection also disposed of."

(C) In the case of Kush Constructions [2019 (5) TMI 1248 - CESTAT ALLAHABAD], it was held as follows:-

"After hearing both the sides duly represented by Shri A.K. Singh authorized representative of the appellant on behalf of the appellant and Shri Shiv Pratap Singh learned A.R. on behalf of the Revenue, we note that through impugned order service tax of Rs.93,000/- was confirmed alongwith equal penalty. On perusal of record, we note that the appellants were registered with the Service Tax Department and also they were filing ST-3 returns. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income Tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the

> *two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal. "'*

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.

(Operative part of the order pronounced in open court on 25th November 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*