

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87476 OF 2023

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP(VNT)-17/2023-24 dated 28th April 2023 passed by the Commissioner of Central Tax (Appeals – I), Pune.]

Nitin Jaywantrao Jagtap

Plot No 386/2 Datta Prasa Bldg, Shaniwar Peth, Karad
Kolhapur – 415110

... Appellant

versus

Commissioner of Central GST

Pune – II

ICE House. 41-A. Sassoon Road, Pune-411001

...Respondent

APPEARANCE:

Shri Sarang Gudhate, Chartered Accountant for the appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86987/2025

DATE OF HEARING: 22/12/2025
DATE OF DECISION: 22/12/2025

This appeal challenges demand, now limited to ₹ 1,50,134 and pertaining to the period of 2014-15, on alleged turnover of ₹ 13,64,807 as obtained from returns filed before authorities under Income Tax Act,

1961. The appeal contends that the extended period had been invoked in show cause notice of November 2019 leading to order of original authority that was upheld to a large extent by order¹ of Commissioner of Central Tax (Appeals – I), Pune without any evidence of ingredients permitting recourse to proviso to section 73(1) of Finance Act, 1994. It is seen from the records that the appellant has, in addition to interest under section 75 of Finance Act, 1994, also had been fastened with penalty of like amount under section 73 of Finance Act, 1994.

2. We have heard Learned Chartered Accountant for the appellant and Learned Authorized Representative at length.

3. According to Learned Chartered Accountant the issue is squarely covered by final order² of the Tribunal, in *Sarosh Homi Forbes v. Commissioner of Central Goods and Service Tax, Mumbai South*, disposing off appeal³ challenging order⁴ of Commissioner of CGST and Central Excise (Appeals), Mumbai.

4. Tax liability under section 73 of Finance Act, 1994 has been determined from the turnover as declared for assessment to income-tax without examining scope for these to be compliant with section 66B of Finance Act, 1994. It has been admitted by the appellant that they were

¹ [order-in-appeal no. PUN-EXCUS-001-APP(VNT)-17/2023-24 dated 28th April 2023]

²[no. 85324/2025 dated 13th March 2025]

³ [service taxa appeal no. 85287 of 2024]

⁴ [order-in-appeal no.SK/CGST-A-I/MUM/267/23-24 dated 30th October 2023]

not registered and, consequently, had not filed service tax returns for the said period. The cited decision of the Tribunal was founded upon fastening tax liability solely on the difference between the value declared for income-tax purpose and the value of the service admitted in returns filed under Service Tax Rules, 1994. In the present proceedings, the service tax authorities have gone a step further by failing to identify the receipts as consideration for ‘taxable service’ within the meaning of section 65B(51) of Finance Act, 1994 thus squarely falling within the *ratio* of decision in *re Sarosh Homi Forbes* wherein invoking of the extended period had been held to be invalid once the taxability has been determined without such examination.

5. In accordance with the above, the impugned order is set aside and the appeal allowed.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)