# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

## SERVICE TAX APPEAL No. 87623 of 2024

(Arising out of Order-in-Appeal No. SK/140/Appeals-II/MC/2024-25 dated 27.06.2024 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

**Alkem Laboratories Limited** **.... Appellants**
Alkem House, Devashish,
Senapati Bapat Marg, Lower Parel (West),
Mumbai – 400 013.

VERSUS

**Commissioner of CGST & Central Excise** **.... Respondent**
**Mumbai Central Commissionerate**
4th Floor, GST Bhavan,
115, M.K. Road, Church Gate
Mumbai – 400 020.

APPEARANCE:

Shri Mandar Telang, Chartered Accountant for the Appellants

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85011/2026**

Date of Hearing: 01.10.2025
Date of Decision: 12.01.2026

**PER: M.M. PARTHIBAN**

This appeal has been filed by M/s Alkem Laboratories Limited, Mumbai (herein after, for short, referred to as 'the appellants') against the Order-in-Appeal No. SK/140/Appeals-II/MC/2024-25 dated 27.06.2024 (referred to, as 'the impugned order') passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, *inter alia*, are engaged in the business of manufacturing excisable goods viz., drugs and pharmaceuticals falling under the First Schedule to the Central Excise Tariff Act, 1985. Besides this, the appellants have also rented out certain premises owned by them and for the purpose of payment of service tax on the taxable service of 'renting of immovable property' have duly registered under jurisdictional Service Tax authorities holding centralized Registration No. AABCA9521EST009.

2.3 During the course of Central Receipt Audit (CERA) conducted on the records of the appellants for the Financial Years (FY) 2014-2015 to 2016-2017, the audit officers had observed that there is a difference in the figures of rental income indicated in the Profit & Loss Account and the ST-3 returns filed for the period. On the basis of CERA Audit report, the department had issued Show Cause Notice (SCN) dated 31.12.2020 to the appellants for recovery of short paid service tax of Rs.6,68,666/- by invoking extended period on the ground of suppression of details of taxable service, along with interest and for imposition of penalty on the appellants. The said SCN was adjudicated by the original authority i.e., Assistant Commissioner, Division-III, Mumbai Central CGST & Central Excise Commissionerate in confirmation of the demand of service tax amounting to Rs.91,605/- under Section 73(1) of the Finance Act, 1994 along with interest and for imposition of penalty under Sections 77, 78 ibid vide Order-in-Original dated 31.01.2024. Being aggrieved with the aforesaid order dated 31.01.2024, the appellants have filed an appeal before the Commissioner (Appeals), who in deciding the issue vide impugned order dated 27.06.2024 upheld the order of the original authority by dismissing the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused carefully.

4.1 In examination of the disputed issues in adjudication, the Original Authority had taken into account the detailed written submissions given by the appellants in explaining the difference in the value of taxable service, and decided the liability of service tax to be paid by the appellants, by reducing the demand from Rs.6,68,666/- to Rs.91,605/- vide Order-in-Original dated 31.01.2024. The relevant findings and conclusions arrived in passing such an order are extracted and given below:

*"29. The tax payer contended that the renting of immovable property for residential dwelling is covered under the negative list under section 66(D). I also find that the tax payer has submitted some information in tabulated annexures showing the deducted from salaries for 2014-15 amount to Rs.6,45,582/- whereas the difference in the audit para for 2014-15 was shown as Rs.5,46,274/-. The tax payer had submitted the details of rental income received from their employees in Sikkim project for the period 2014-15 to 2017-18 (upto June, 2017) as below:*

| *Financial Year* | *Income* |
|---|---|
| *2014-15* | *Rs. 4,36,869/-* |
| *2015-16* | *Rs. 4,55,897/-* |
| *2016-17* | *Rs. 11,35,310/-* |
| *2017-18 (up to June, 2017)* | *--* |

*30. I find that regarding the demand for the year 2017-18 the noticee contended that the Liability of Rs.77,940/- pertaining to FY 2017-18 the different of Rs.5,19,599 is computed taking a notional figure of Rs.50,00,000 without any basis. Hence service tax demand cannot be confirmed based on such notional figures. However he had not provided any details for the rents received from their employees. Hence regarding the demand for 2017-18 stands as it is.*
*After duly considering the reply of the noticee, I find there exists the need to re-evaluate the demand as below:….*

*xxx xxx xxx xxx*

*31. I observe that there is no dispute that rental income is not taxable in view of notification No.12/2017-Central Tax (Rate)….. specifies that "services by way of renting of residential dwelling for use as residence" attract 'NIL' rate of tax. However, I find that the rental income shown by the tax payer under residential accommodation provided to their employees at Sikkim plant is less than the income as claimed in the show cause notice. Therefore the differential income of shown at above table is taxable under the service tax regime.*

*xxx xxx xxx xxx*

*38. In the present case I find that income of Rs.19,00,000/- pertains to liquidated damages against the breach of contractual agreement by their tenant which is other than the compensation amount per month against the lease/ rental charges of commercial property. In view of the above the proportionate tax demand is required to be dropped as the same is not taxable.*

*39. In view of the foregoing paras, I find that the tax demand is required to revalued to Rs. 91,605/- from Rs.6,68,666/-."*

*xxx xxx xxx xxx*

***ORDER***

*44. In view of the above discussion and findings, I pass the following order:*

*(i) I reduce the tax demand from Rs. 6,68,666/- to Rs.91,605/- (Rupees Ninety One Thousand Six hundred and Five Only) not paid*

*by the noticee during the period from 2014-15 to 2017-18 (upto June, 2017) under the proviso clause to sub-section (1) of Section 73 of the Chapter V of the Finance Act.*

*(ii) I impose interest under the provisions of Section 75 of Finance Act, 1994 of Chapter V of the Finance Act, 1994 should not be recovered from them, on the said Service Tax not paid by them until the same is paid;*

*(iii) I impose the penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994 for failing to pay the Service Tax on the correct amount of Service Tax and for suppressing value of taxable service with intent to evade payment of service tax, read with Section 174 of CGST Act, 2017.*

*(iv) I impose an equal penalty of Rs.91,605/- (Rupees Ninety One Thousand Six hundred and Five Only) under Section 78 of the Finance Act, 1994 for suppressing value of taxable service with intent to evade payment of service tax, read with Section 174 of CGST Act, 2017."*

4.2 In the appeal preferred by the appellants against the above Order-in-Original dated 31.01.2024, the learned Commissioner (Appeals) vide impugned order dated 27.06.2024, had rejected such appeal by upholding the order of the original authority as follows:

*"I find that the Adjudicating Authority in the impugned Order has discussed elaborately all of the issues raised in the SCN. I find that the Adjudicating Authority has provided cogent and plausible reasoning in respect of all the conclusions drawn after giving due attention to the issues at hand. The Adjudicating Authority has discussed felicitously the issues and the contentions put forth by the Appellant countering the allegations raised against them. Overall, the impugned Order is a proper and speaking Order issued after taking into account the facts and circumstances of the case and the submission made by the Appellants.*

*Order*

*I find that the Appellant in their grounds of appeal have not properly defended their case and have plainly mentioned that the Adjudicating Authority has erred in considering the submissions of the Appellant, erred in confirming demand/levying penalty, invoking extended period etc. I find that such shallow defense weakens the case of the Appellant and makes the Appellate Authority to give leverage to the Adjudicating Authority. Therewithal, the Appellant chose to not attend any of the personal haring opportunities granted to them and have also not submitted any concrete stand against the allegations confirmed in the impugned Order. I find that I also have no material record at hand to discuss considering that the case demands to proceed and issue an ex-parte Order. As a result, I am inclined to consider that the Order issued by the Adjudicating Authority is a legal and proper speaking order and given the aptitude incorporated in it, the same is adjudged to be upheld. Hence, apropos to the aforesaid discussions, the Appeal filed by the Appellant is liable to be rejected.*

*The Appeal is, accordingly, disposed of in the above manner."*

5. The short issue for determination before the Tribunal is whether the appellants are liable to pay service tax, in respect of the value of taxable service of renting of immovable property alleged to have been not shown in the ST-3 Returns by suppression, as opposed to the figures shown in their Profit & Loss account for the Financial Years 2014-2015 to 2017-2018 (upto June, 2017) in terms of Chapter V of the Finance Act, 1994?

6. On perusal of the records of the case, I find that the show cause proceedings were initiated and the impugned order confirming the original order in demanding service tax on the appellants was issued on the presumption that the entire value of 'renting of immovable property' totaling to Rs. 45,69,150/- are liable to service tax for an amount of Rs.6,68,666/- and such tax has not been paid by the appellants. However, as upheld by the learned Commissioner (Appeals) in the impugned order, the Original Authority while adjudicating the SCN had taken into account the submissions made by the appellants and had reduced the service tax demands to Rs. 91,605/-. This is apparent from the findings given by the authorities below in adjudication of the case, as given in paragraphs 4.1 and 4.2 above.

7. Learned Chartered Accountant appearing for the appellants stated that the details submitted before the Original Authority in its entirety and their reply letter dated 15.05.2024 with enclosures before the learned Commissioner (Appeals) have not been duly considered, in determining whether there is any service tax liability, on the part of the appellants. He further submitted that the details of actual figures in respect of 'rental income' as per the Financial Records for the years 2014-2015, 2015-2016 and 2017-2018 as well as the details of rent recoveries made from their employees of the Sikkim project, which are exempted from payment of service tax, have not been taken by the authorities below and therefore the determination of service tax demand and the imposition of penalty is improper. Furthermore, he stated that as the entire details of rental income have been duly accounted for by them in their financial records, there is no ground for invoking suppression for recovery of demand and for imposing penalty on the appellants.

8.1 I find that the details of differential income considered by the authorities below in confirmation of the adjudged service tax demands are as below:

| Financial Year | Differential income as per SCN | Differential income as per reply given by Appellants | Difference in income as determined by authorities below | Service Tax Liability |
|---|---|---|---|---|
| | (in Rs.) | | | |
| 2014-2015 | 5,46,274 | 4,36,869 | 1,09,405 | 13,522 |
| 2015-2016 | 4,56,883 | 4,55,897 | 986 | 143 |
| 2016-2017 | 30,46,394 | 30,95,310 | (-48,916) | 0 |
| 2017-2018 (upto June,2017) | 5,19,599 | - | *5,19,599 | 77,940 |
| Total | **45,69,150** | | **6,29,990** | **91,605** |

*Entire amount taken on the ground that the appellant did not give the details.

8.2 In order to appreciate the basis for arrival of difference of income which was demanded in the SCN, and subsequently confirmed in the adjudication proceedings as given in the table at paragraph 8.1 above, I would like to refer to the values taken as the basis for imposition of service tax levy as provided in the SCN dated 31.12.2020 and the details of value of the amounts shown in the Financial Records of the appellants for the relevant financial years. These are captured and given below:

| Financial Year | Income received from rent, taken from P&L account as per SCN | Rental income as per Financial Statements & detailed leger of Appellants | Rental income as ST-3 Returns filed by the Appellants | Actual Difference in ST-3 & P/L Account figures |
|---|---|---|---|---|
| | (in Rs.) | | | |
| 2014-2015 | 3,43,00,000 | 3,42,00,000 & 3,41,90,593 | 3,37,53,724 | *4,36,869 |
| 2015-2016 | 2,74,00,000 | 2,74,00,000 & 2,73,99,014 | 2,69,43,117 | *4,55,897 |
| 2016-2017 | 'Nil' tax determined by Original Authority | | | 0 |

* Rental income on account of employees of Sikkim Project

8.3 In this regard, I also find that the detailed ledger documents submitted by the appellants, duly supported the various individual entries made in their Financial Records for the Financial Years 2014-2015 and 2015-2016, indicate that difference in actual figures indicated in the last column of the table above, to the extent of an amount of Rs. 4,36,869/- for FY 2014-2015 and Rs. 4,55,897/- for FY 2015-2016 have been accounted for rental income of residential quarters, recovered from their staff posted in Sikkim project. It has been held by the authorities below that there is no requirement for payment of service tax on such rental income for residential dwelling in terms of 'Negative List' entry "*services by way of renting of residential dwelling for use as residence*" provided at clause (m) of Section 66D of the Finance Act, 1994.

8.4 As regards, the differential amount of Rs. 5,19,599/- for the Financial Year 2017-2018 it has been arrived at, by taking notional rental income of Rs.50,00,000/- deducted by the value of rental income declared in the ST-3 Return for the first quarter at Rs.44,80,401/-. However, from the Financial Records submitted by the appellants, it has also been demonstrated that the various individual entries made in their Financial Records for the first quarter of Financial Year 2017-2018, indicating the amount of Rs. 4,53,213/- has been accounted for rental income of residential quarters, recovered from their staff posted in Sikkim project and the rest of the amount of Rs.44,80,448/- has been accounted for non-residential income. Therefore, the total amount of rental income for the first quarter of the Financial Year 2016-2017 at Rs.49,33,661/- has been duly accounted for by the appellants.

8.5 I also do not find any substantiation made by the authorities below for invoking deliberate suppression of facts, as the entire details of rental income had been duly accounted for in the books of accounts and the CERA audit have able see such records and raise the audit objection, which is the cause of the show cause proceedings. Therefore, I do not find any merit in such stand of the department.

9. In view of the foregoing discussions and analysis, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals) to the extent it had upheld the confirmation of adjudged demands, without any substantiation and thus, it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 27.06.2024, the appeal is allowed in favour of the appellants.

10. In the result, the impugned order dated 27.06.2024 is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in the open court on 12.01.2026)

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

Sinha