CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87167 of 2022

(Arising out of Order-in-Appeal No. DL/GST/CO/A-III/MUM/71/2022-23 dated 20.07.2022 passed by the Commissioner (Appeals-III), CGST & CX, Mumbai)

ESS Infraprojects Pvt. Ltd. **.... Appellant**
65, Shop No.1, Ganga CHS Ltd,
Mith Chowki, Malad West,
Mumbai – 400 064.

Versus

Commissioner of CGST & Central Excise, Mumbai West **.... Respondent**
Mahavir Jain Vidyalaya, C.D. Burfiwala,
Juhu Galli, Andheri (West),
Mumbai – 400 058.

APPEARANCE:

Shri Mahesh Raicandani, Advocate for the Appellant

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85946/2026

Date of Hearing: 02.04.2026
Date of Decision: 31.07.2026

Per: M.M. Parthiban

This appeal has been filed by M/s ESS Infraprojects Pvt. Ltd. (herein after referred to, for short, as "the appellant") assailing the Order-in-Appeal No. DL/GST/CO/A-III/MUM/71/2022-23 dated 20.07.2022 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner (Appeals-III), CGST & CX, Mumbai.

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

2.2. The appellant is engaged in the business of hiring construction machinery and is registered with the jurisdictional service tax authorities for payment of service tax on taxable output service of 'Supply of Tangible Goods

for Use' (STGU) service and for compliance with the provisions of Finance Act, 1994, by holding Service Tax Registration No. AAGCS7146CST002. During audit of their records for the period 2014-15 to 2016-17, it was observed by the department that the appellant had received 'legal services' from advocates. The department had noticed that as per Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-S.T. dated 20.06.2012, the liability to pay service tax in respect of legal services is on the service recipient i.e., the appellant company. However, despite this clear legal position, the appellant had failed to discharge the service tax liability on such services. Accordingly, a show cause notice dated 13.11.2009 was issued and the original authority had confirmed the service tax demand along with interest and also imposed penalty on the appellant vide Order-in-Original dated 28.02.2023. In an appeal filed by the appellant, the learned Commissioner of Customs (Appeals) vide Order-in-Appeal dated 20.07.2022, which is impugned herein, had upheld the confirmation of adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant had filed this appeal before the Tribunal.

3.1 Learned Counsel appearing for the appellant prima facie assailed the impugned order on the ground that the show cause notice has been issued by invoking extended period of time, only on the basis of audit objection of the records maintained by them without any substantiation of any evidence to claim the ingredients of fraud, suppression of facts, omission etc., with an intention to evade payment of tax and therefore the same is not sustainable.

3.2 The appellant has also argued that the audit should have been conducted by a Chartered Accountant, and not by departmental officers. Further, it was also submitted by him that the situation is revenue neutral, as even if service tax is paid on reverse charge mechanism (RCM) basis, the entire service tax is available as CENVAT credit to the appellant and hence the exercise of service tax demand is revenue neutral.

3.3 Learned Counsel for the appellant also stated that the extended period of limitation has been incorrectly invoked in this case. In this regard, he had relied upon the orders of the Tribunal in the following cases:

(i) *Graphite India Limited Vs. Commissioner of Central Excise and Service Tax* – 2019-TIOL-1028-CESTAT-MUM

(ii) *Indus Valley Partners (India) Private Limited* Vs. *Commissioner of Central Goods & Services Tax, Noida* – 2024 (1) TMI 886 -CESTAT-Allahabad.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner (Appeals) in the impugned order.

5. I have heard both the learned Counsel appearing for the appellant and the learned Authorized Representative of the Department and perused the case records.

6. The following issues arise for determination before the Tribunal:

(i) whether upholding of duty demands confirmed by the original authority under Section 73(2) of the Finance Act, 1994 by invoking extended period of limitation is sustainable;

(ii) Whether imposition of penalty on appellant under Section 78 ibid is legally sustainable;

7. The dispute between the appellant-assessee and the department lies in determination of service tax liability in respect of 'legal services' received from advocates in terms of the various provisions of Finance Act, 1962 and the Notification No. 30/2012-S.T. dated 20.06.2012, issued thereunder.

8.1 In order to address the issue, I would like to refer to the relevant provisions of the Finance Act, 1994 and the relevant notification dated 20.06.2012 which are extracted and given below:

Notification No.30/2012-S.T. dated 20.06.2012

"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—

(A)(i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory;

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	***Description of a service***	***Percentage of service tax payable by the person providing service***	***Percentage of service tax payable by the person receiving the service***
1.	*in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business*	*Nil*	*100%*
xx	*xxx*	*xxx*	*xxx*
5.	*in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services*	*Nil*	*100%*
xx	*xxx*	*xxx*	*xxx*

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012."

8.2 From plain reading of the above legal provisions, it transpires that in respect of the services provided by an individual advocate or by a firm of advocates by way of legal services is a taxable service in terms of Sections 65B(44) and 66B of the Finance Act, 1994. In order to administer the payment of service tax in a hassle-free manner and in the interest of administrative expediency, the payment of service tax was shifted from the person providing the service to the recipient of the service, in terms of entry at Sl. No.5 of Notification No. 30/2012-S.T. dated 20.06.2012. Therefore, it clearly transpires from the legal provisions that the service tax is liable to be paid on the disputed services.

9.4 On perusal of the records of the case, it also transpires that the appellant is also eligible to take CENVAT credit of input services availed in respect of providing taxable output services. Thus, the argument made by the learned Counsel for the appellant that taking into account the overall impact of payment of service tax on the disputed service and availment of the same as input service, would result into a revenue neutral situation has merits to be considered.

9.5 In this regard, I find that the Co-ordinate Bench of the Tribunal in the case of *Graphite India Limited* (supra) dealing with identical facts of the present case, for demand of service tax arising from audit objection has held that extended period of limitation cannot be invoked. The relevant paragraph of the said order is extracted and given below:

"6. Now coming to the statutory audit procedure, the purpose of audit, as available in the Manual published by the Institute of Chartered Accountants of India in respect of EA audit and CERA audit under Chapter 17 is that the idea behind such conduct of verification is to reasonably ensure that no amount, which under the central excise law is chargeable as duty, escapes taxation and the process of verification is always carried out in the presence of assessee and in the process, the auditor is required to discuss the matter with the assessee and advice him to follow correct procedure in future. It is also referred in the said manual that after such

submission of audit report, in cases where the disputed amount have not already been paid by the assessee at the spot, demand notices are issued by the department for their recoveries. EA 2000 audit was therefore held to be participative audit. Likewise CERA audit is conducted by the Comptroller and Auditor General of India in respect of receipt and expenditure of the Government of India. It also discharges revenue audit which covers central excise, service tax and customs laws during which time the assesses were examined by CERA audit party to point out the deficiencies, leakage of revenue and non recoveries of dues by the Central Excise Department. Therefore, it cannot be said that only because audit party had found some credit availed as inadmissible, suppression of fact is made out. It cannot also be established that appellant had any malafide intention to suppress its duty liability from the department…"

9.6 Further, I also find that the Co-ordinate Bench of the Tribunal in the case of *Indus Valley Partners (India) Limited* (supra), dealing with issue revenue neutrality in respect of payment of service tax on reverse charge mechanism on the basis of notification dated 20.06.2012, has held that no service tax demand is sustainable. The relevant paragraph of the said order is extracted and given below:

9. We find that the main contention of the Appellant in the present case is regarding revenue neutrality. Service tax on all four services, namely "legal services", "rent-a-cab service", „clouding service" and „purchasing licence use of Geneva brand product", relevant to this case was payable under reverse charge mechanism. Legal services and rent-a-cab services were specified services under Notification No.30/12-ST dated 20.06.12 on which service tax was payable by the service recipient under reverse charge mechanism. Clouding services and Authorisation for use of Geneva product were provided by entities located abroad, i.e., non-taxable area. So, service tax on said services was payable by service recipient under reverse charge mechanism. We further find that the Appellant was a registered person under service tax and was eligible for taking Cenvat credit paid on input services. It is a fact that all said services were input services for the Appellant. Whatever tax was paid on said services, the Appellant would have taken back as Cenvat credit. Thus there was no gain to the government exchequer in that case. It is a case of revenue neutrality. We find that the issue of the applicability of revenue neutrality in the circumstances of charging service tax under reverse charge mechanism has been settled in catena of judgments.

In the case of Jet Airways India Ltd [2016-TIOL-2072-CESTATMUM], this Tribunal has considered the issue of revenue neutrality where service tax was required to pay under reverse charge mechanism as service provider was foreign based firm. The Tribunal held that as the appellant could have availed CENVAT credit of the service tax paid on reverse charge mechanism, hence a revenue neutral situation arises wherein appellant pays the tax and takes the credit and accordingly set aside the tax demand interest thereon and penalties.

In the case of Jain Irrigation System Ltd. [2015 (40) S.T.R. 572 (T)] the Tribunal holds that revenue neutral situation comes about when credit is available to assessee himself. In the case of Coca-Cola India Pvt. Ltd. [2007 (213) E.L.T. 490 (S.C.)] the Apex Court accepted the stand that the duty payable in respect of beverage basis/concentrates is modvatable. Since the duty payable is modvatable, there is no revenue implication. By applying ratio of above decisions, we find that the present case is a revenue neutrality case and as such no demand is sustainable.

10. As regards interest and penalty we find that the issue is no more res integra. Once demand is not sustainable, interest and penalty under Section 78 of the Finance Act, 1994 would not be imposable. In support of above, reference is made to the following decisions :- (1) CCE, Pune Vs. Coca-Cola India Pvt. Ltd., 2007 (213) E.L.T. 490 (S.C.); (2) CCE & C. Vadodara-II Vs. Indeos Abs Ltd. 2010 (254) E.L.T. 628 (Guj.), affirmed by the Hon"ble Supreme Court in [2011 (267) E.L.T. A155 (S.C) (3) Hindalco Industries Ltd. v. Commissioner of Central Excise, Bhubaneswar-II – 2023-TIOL-403-CESTAT-KOL. (4) M/S. Jai Balaji Industries Ltd. v. Commissioner of Central Excise, Bolpur – 2023 (6) TMI 1102 – CESTAT KOLKATA. In the case of CCL Products (India) Ltd. [2012 (927) S.T.R. 342 (T), the Tribunal has held that in the case of revenue neutrality, no penalty is imposable under Section 78 of the Finance Act, 1994.

11. When demand is not sustainable on the ground of revenue neutrality, we do not find it essential to consider other issues raised by the Ld Counsel of the Appellant in relation to classification and invoking extended period.

12. Accordingly, appeal is allowed and the impugned order is set aside . The appellant is entitled to consequential bene fits, in accordance with law.".

10. In view of the above discussions and on the basis of the orders passed by the Co-ordinate Benches of the Tribunal, I am of the considered view that different interpretations cannot be taken in respect of the adjudged demands confirmed on the appellant. Accordingly, I find that the impugned order to the extent it had upheld the confirmation of adjudged demands on the appellant does not stand the scrutiny of law.

11. In the result, the impugned order dated 26.04.2022, is set aside and the appeal is allowed in favour of the appellant.

(Order pronounced in open court on 31.07.2026)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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