CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 85641 of 2018

(Arising out of Order-in-Original No. 14-15/ST/2017/C/NGP-I dated 21.11.2017 passed by the Commissioner of GST, STax & CEx, Nagpur I)

M/s. Ideal Construction **.....Appellant**
Suryakiran Bldg. Block no. 305/6,
3rd Floor, Bajaj Nagar,
Nagpur

VERSUS

Commissioner of Service Tax, **.....Respondent**
PO Box no.81, GST Bhavan,
Nagpur

APPEARANCE:

Shri Durgesh Nadkarni, Advocate for the appellant
Shri Arun Bhaskar, (AR) for the respondent

CORAM:
HON'BLE MR.AJAY SHARMA, MEMBER(JUDICIAL)
HON'BLE MR.PULLELA NAGESWARA RAO, MEMBER(TECHNICAL)

FINAL ORDER No: 86088/2026

DATE OF HEARING : 08-06-2026
DATE OF DECISION : 01.09.2026

Per: AJAY SHARMA

This appeal has been filed by Appellant challenging the impugned Order-in-Original dated 21.11.2017 passed by the Commissioner, Nagpur whereby in respect of show cause notice dated 20.10.2011 issued for the period 2006-07 to 2010-11 the service tax demand amounting to Rs.5,80,475/- was confirmed regarding construction carried out by the appellant for M/s. Suryalaxmi Cotton Mills and the demand of service tax of Rs.3,92,599/- was also confirmed for construction by the appellant as sub-contractor alongwith interest and the penalties under various provisions. The demands of service tax of Rs.1,52,52,834/- & Rs.2,85,501/- respectively were dropped by the learned commissioner and are not in issue before us.

2. This appeal challenges the confirmation of demand of service tax for construction of staff quarters by the appellant for M/s. Suryalaxmi Cotton Mills and also for challenging the demand of service tax on the appellant as sub-contractor when, according to appellant, the main contractor has already paid the service tax.

3. The appellant is registered under service tax for 'Commercial or Industrial Construction Service' and 'Works Contract Service'. According to the department, during the period from 2006-07 to 2010-11 the appellant failed to discharge service tax liability on construction services rendered by them by wrongly construing them as exempted services and also failed to pay service tax on works executed as a sub-contractor. The department alleged suppression of facts with an intention to evade tax hence extended period has been invoked. A show cause notice dated 20.10.2011 was issued proposing recovery of service tax of Rs.1,65,11,409/- alongwith interest and penalties,

culminating in an Order-in-Original dated 31.8.2012 confirming the demand as proposed.

4. Aggrieved, the appellant carried the matter to this Tribunal wherein vide order No. A/646/13/CSTB/C-I, dated 04.02.2013 the appeal was allowed by way of remand to the adjudicating authority for a fresh consideration. During the pendency of remand proceedings, a further statement-cum-notice dated 17.4.2013 was issued to the appellant for the subsequent period April, 2011 to March, 2012. The learned Commissioner disposed of both the notices by the impugned order, giving rise to the present appeal.

5. Learned counsel for the appellant submits that construction of residential staff quarters does not fall within 'Commercial or Industrial Construction Service' since the buildings are not put to commercial or industrial use but constitute a welfare activity unrelated to any business activity. In support of his submissions, learned counsel relied upon the decision of Hon'ble Bombay High Court in *Commissioner of Central Excise, Nagpur vs. Manikgarh Cement; 2010(20) STR 456 (Bom.)* and of the decision of a co-ordinate Bench of this Tribunal in *Bhayana Builders Pvt. Ltd vs. Commissioner of C.Ex., New Delhi; 2015(37) STR 525 (Tri.-Del.)*. So far as the liability to pay service tax as sub-contractor is concerned, learned counsel submits that since the principal contractors, M/s. Mall Enterprises and M/s. Mall Constructions had already discharged

service tax liability on the entire gross receipts, the appellants were under the bonafide belief that a further payment of tax would amounts to double taxation. He further submits that the legal position on a sub-contractor's liability was, at the relevant time, subject to divergent views of the Tribunal, which was settled only by the Larger Bench of the Tribunal in *Commissioner of Service Tax, New Delhi vs. Melange Developers Pvt. Ltd. 2020(33) GSTL 116 (Tri.-LB)* wherein it has been held that a sub-contractor remains liable to pay service tax notwithstanding discharge of service tax by the main contractor on the very activity. Given the divergence of judicial decisions at the relevant time, learned counsel submits that no suppression with intent to evade tax can be attributed to the appellant and the invocation of extended period of limitation on this demand is accordingly unsustainable.

6. Per contra learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of appeal. He submits that the staff quarters constructed for the workforce of an industrial establishment are integral to industrial activity, hence the service provided by the appellant squarely falls within 'Commercial or Industrial Construction Service'. For the service tax liability on the appellant as sub-contractor, it is submitted that the Finance Act, 1994 contains no provision exempting a sub-contractor from service tax merely because the main contractor has discharged tax on the same activity, which has

further been expressly clarified by the CBEC Master Circular No. 96/7/2007-ST dated 23.8.2007 and hence fortified by the Larger Bench in *Melange Developers Pvt. Ltd. (supra)*. On the issue about invocation of extended period, learned Authorised Representative submits that the plea of a bona fide belief founded on 'conflicting views' was raised for the first time in these proceedings which is a new factual assertion, and does not detract from the correctness of invoking the extended period.

7. We have heard learned counsel for the appellant and learned Authorised Representative on behalf of Revenue and perused the case records including the written submissions/ synopsis and the decisions cited at the Bar. Two issues arise for determination: (i) whether construction of staff quarters undertaken by the appellant for M/s. Suryalaxmi Cotton Mills Ltd. falls under 'Commercial or Industrial Construction Service'; and (ii) whether the extended period was rightly invoked for demanding service tax on appellant's work as sub-contractor in the light of the fact that divergent views were available on this issue at the relevant time.

8. So far as the first issue about construction activity of staff quarters undertaken for M/s. Suryalaxmi Cotton Mills Ltd. is concerned, the Hon'ble Bombay High Court in *Manikgarh Cement (supra)* has clearly held that establishing a residential colony for the factory's workforce is a welfare activity and does not, for that reason alone, acquire a commercial or industrial character

merely because the workforce is engaged in the employer's commercial or industrial activity. We are unable to accept the submission in the learned Authorised Representative's written submissions that the aforesaid decision is merely persuasive and not binding. A decision of a jurisdiction High Court is a binding precedent on the Tribunal and on the authorities functioning within that jurisdiction and it is not open to the department to character it otherwise. We refrain from making any observations against the department in this regard. We would only add that the department or the adjudicating/quasi-judicial authorities must exercise greater care in the language employed while describing the binding effect of judgments/orders of superior courts or the appellate authorities. Applying the aforesaid decision of the Hon'ble Bombay High Court in *Manikgarh Cement* (supra), the demand of Rs.5,80,475/- on construction of staff quarters for M/s. Surya laxmi Cotton Mills Ltd. cannot sustain and is hereby set aside.

9. On the second issue regarding liability of the sub-contractor to pay service tax, we find force in the appellant's submission on limitation, though not on merits of liability itself. It is now well settled as decided by the Larger Bench of the Tribunal in *Melange Developers (supra)* that a sub-contractor would be liable to pay the service tax irrespective of whether the main contractor has discharged service tax on the same activity. Though on merits the demand is correctly raised on this issue by the department but the question of limitation, however, stands

on a different footing. It is well established that invocation of the extended period under the proviso to Section 73(1) of the Finance Act, 1994 requires a positive act of suppression or willful mis-statement with intent to evade tax, and cannot rest merely on non-payment simpliciter. Where the taxability of an activity is genuinely debatable and has been the subject of conflicting decisions during the relevant period, an assessee’s failure to pay tax on the strength of one of such view favoring him, does not, without more, amount to suppression. The legal position on a sub-contractor’s liability, remained unsettled until it was resolved by the Larger Bench of the Tribunal in *Melange Developers (supra)* in 2019. In these circumstances, we are satisfied that the appellant’s belief that discharge of tax by the main contractors obviated a separate liability, while ultimately incorrect in law, was not so unreasonable as to import a fraudulent or contumacious intent to evade tax. No mala fide can therefore be attributed to the appellant for the period in question, and the extended period of limitation was not available for raising this demand.

10. We are unable to accept the Revenue’s submission that the plea of divergent judicial opinion is a new factual assertion impermissible at this stage. The existence and resolution of conflicting Tribunal decisions on the taxability of sub-contractors is a matter of record and judicial notice, going to a question of law bearing directly on limitation. It does not require independent proof of fact and was open to the appellant to raise

at any stage of the proceedings, including before us. Since the demand of Rs.3,92,599/- was raised solely by invoking the extended period, and that invocation is found to be unsustainable, the demand is barred by limitation and is liable to be set aside on that ground alone.

11. In view of the aforesaid, both the issues are decided in favour of appellant by setting aside the demands. Since the demands themselves do not survive, the consequential interest and penalty imposed in relation thereto also cannot sustain. Resultantly, the appeal is allowed and the impugned order is set aside.

(Pronounced in Court on 01.09.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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