CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70436 of 2025

(Arising out of Order-in-Appeal No.35/ST/APPL/ALLD/2025 dated 07.02.2025 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Ganpati Transport Service, **.....Appellant**
(133/P-105, Transport Nagar,
Kanpur-208023)

VERSUS

Commissioner of Central Excise &
CGST, Kanpur **....Respondent**
(117/7, Sarvodaya Nagar, Kanpur-208005)

APPEARANCE:

Shri S. R. Agrawal, Advocate & Ms. Stuti Saggi, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70082/2026

DATE OF HEARING : 12.03.2026
DATE OF PRONOUNCEMENT : 24.03.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant challenging the impugned Order-in-Appeal No.35-ST-APPL-ALLD-2025 dated 07.02.2025 passed by the Ld. Commissioner (Appeals) Customs, GST & Central Excise, Allahabad.

2. Briefly stated, the facts of the case are that the Appellant M/s. Ganpati Transport Service is a partnership concern engaged in 'Transport of Goods by Road' by engaging their own trucks as Goods Transport Operator and also as a 'Goods Transport Agency[1]' as defined in the Finance Act, 1994 for which they are duly registered with the Service Tax Department under Registration No. AAGFG0619KSD001.

[1] GTA

3. The Appellant were under the *bona fide* belief that the service of 'Transport of Goods by Road' provided by them were exempted from levy of Service Tax as per Clause (p) of Section 66D of the Finance Act, 1994 i.e., Negative List as well as Service Tax on 'Goods Transport Agency' is payable under Reverse Charge Mechanism[2].

4. On the basis of third-party data received from the Income Tax Department, under the data sharing protocol, showing the receipts of Rs.6,08,06,849/- to the Appellant, it was alleged that the Appellant had rendered taxable services during the Financial Year 2015-16 and have not paid the applicable Service Tax on the said receipts.

5. On the aforesaid facts, Show Cause Notice[3] dated 23.12.2020 was issued invoking extended period, directing the Appellant to show cause as to why service tax of Rs.88,16,993/- along with interest may not be demanded and recovered from the Appellant and as to why penalty be not imposed on them. The Appellant submitted at all the forums that SCN was never received by them. The SCN was adjudicated *ex-parte* against the Appellant confirming demand of service tax of Rs.88,16,993/- along with interest and equal amount of penalty was also imposed.

6. In the first round of appeal before the Ld. Commissioner (Appeals), the appeal was dismissed on the ground that the Appellant had deposited the mandatory deposit of 7.5% of the Service Tax liability disputed in the instant case in different Service Tax registration which could not be treated as pre-deposit in the instant case. It was held that the Appeal filed by the Appellant is not maintainable.

7. Aggrieved by the aforesaid Order-in-Appeal, the Appellant preferred an Appeal before the Tribunal. The Tribunal remanded the matter to the Commissioner (Appeals) vide Final Order No.70518/2024 dated 08.08.2024 to decide the appeal on merits.

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[2] RCM
[3] SCN

8. In the second round of Appeal in remand proceedings, the Ld. Commissioner (Appeals) vide the impugned Order-in-Appeal No.35/ST/APPL/ALLD/2025 dated 07.02.2025 reduced the demand of Service Tax to Rs.26,26,720/- after observing that the Appellants is a GTA Service provider and that the Service Tax is payable on 30% of the Taxable value. He imposed equal penalty under Section 78 of the Finance Act, 1994. Hence, the present appeal before the Tribunal.

9. The Ld. Advocate appearing on behalf of the Appellant submitted that the impugned Order-in-Appeal has been passed without considering the submissions made by the Appellants. The order is contradictory in itself in as much as the Ld. Commissioner (Appeals) admitted that 31 vehicles are owned by the Appellants and that a Chartered Accountant has certified that the Appellants are not issuing consignment notes in such cases but he on the other hand has not allowed the benefit legally available to the Appellants under the guise of burden to prove. The Ld. Commissioner (Appeals) has not considered even the Affidavit filed by the partner of the Appellant firm.

10. It was further submitted that the entire case has been made out on the basis of third party information received from Income Tax Department. It was submitted that all the mandatory records were maintained by the Appellants during the course of normal business transactions. It has not been alleged that any transaction has been detected beyond the books of accounts and therefore no demand of the Service Tax can sustain on the basis of income tax records. Reliance has been placed on the following decisions: -

a. **KUSH CONSTRUCTIONS Vs. CGST NACIN, ZTI, KANPUR 2019 (24) G.S.T.L. 606 (Tri. All.);**
b. **Sharma Fabricators & Erectors Pvt. Ltd. Vs. CCE, Allahabad reported in 2017 (5) G.S.T.L. 96 (Tri. - All.);**
c. **Commissioner vs. Sharma Fabricators & Erectors Pvt. Ltd. - 2019 (22) G.S.T.L. J166 (All.);**

d. **SHRI RAJESHWAR PRASAD CHOUDHARI VERSUS COMMISSIONER OF CGST & CENTRAL EXCISE, RANCHI 2023 (12) TMI 46 CESTAT Kolkata;**
e. **COMMISSIONER OF CGST & CE, MUMBAI EAST VERSUS MODERN ROAD MAKERS PVT. LTD. 2023 (8) TMI 48 CESTAT- Mumbai.**

11. It has been further submitted that the alleged SCN was issued without pre-consultation as it involves Service Tax amount of Rs.88,16,993/- i.e., more than Rs.50 lakhs. As per provisions of Para 5.0 of the Master Circular No.1053/02/2017-CX dated 10.03.2017, it is a mandatory condition to call for pre-consultation wherein Service Tax is more than Rs.50 lakhs. Therefore, the said SCN is not sustainable *ab-initio*. Reliance has been placed on various case laws in this regard in their appeal.

12. The Ld. Advocate has submitted certificates issued by the Chartered Accountant, certifying the heads wherein no consignment notes were issued. In other case, the Service Tax is payable by the service recipient under reverse charge as per Notification No.30/2012-ST dated 20.06.2012.

13. The Ld. Advocate for the Appellants submitted that no GRs were issued in case of Delivery freight, KAT, Truck Freight Income, Transit Freight and Delivery Commission and as such no Service Tax is liable to be paid under these heads. In other cases, also, the Service Tax is payable by service recipients under reverse charge. He submitted that the Chartered Accountant has verified all these facts. The Appellant has also submitted an Affidavit in this regard.

14. The Ld. Advocate also submits that the CA Certificate is an admissible evidence. Reliance is placed in this regard on the following decisions: -

- M/S SRIRAM INSIGHT SHARE BROKERS LTD. Vs. COMMISSIONER OF SERVICE TAX I, KOLKATA 2022 (6) TMI 307- CESTAT Kolkata;

- M/s. Ultra Cement Ltd. vs. Commissioner of CGST & Central Excise, Kolkata 2025 (3) TMI 971- CESTAT Kolkata;
- Verifone India Sales Pvt. Ltd. vs. Commissioner of CGST, Audit-II, Delhi South 2025 (4) TMI 966- CESTAT New Delhi;

15. The learned Advocate also submitted that they owned 31 trucks, and in such cases, goods were transported using their own vehicles without issuing consignment notes, which falls under the negative list and is not taxable as GTA service.

16. In cases where consignment notes were issued, the liability to pay Service Tax lies with the consignor or consignee under the RCM as per Notification No.30/2012-ST. The Appellants also submitted sample copies of GRs during hearing on 09.03.2026 to substantiate that there is a clear note on each of the GRs "Service Tax Paid by Consignor/Consignee" to substantiate that service Tax was liability of either Consignor or Consignee.

17. They also claimed benefit of exemption under Notification No.25/2012-ST for small freight amounts, transit freight, delivery freight, hiring of vehicles, and threshold exemption.

18. They contend that there was no suppression or intent to evade tax since all the transactions were recorded in their books and duly declared in Income Tax returns, therefore, the extended period of limitation is not applicable. The Appellant seeks setting aside of the confirmed demand of Rs.26,26,720/- along with interest and penalties.

19. Shri A. K. Choudhary Ld. Departmental Authorized Representative appearing on behalf of the revenue justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

20. Heard both the sides and perused the appeal records.

21. We observe that impugned SCN was issued on 23.12.2020 demanding the Service Tax for the F.Y. 2015-16. The Appellants have contended that the period upto 31.10.2015 is beyond the

period of 5 years and therefore, the demand up to 31.10.2015 in any case is beyond the period of limitation. For the remaining period also, there is no positive evidence indicating fraud or suppression of facts, with intent to evade payment of Service Tax and as such, the demand is not sustainable being barred by limitation. The Appellant has relied upon the decision of the Tribunal in the case of M/s. MSP Sponge Iron Ltd. vs. Commissioner of CGST & C.X, Rourkela Commissionerate reported in 2022 (6) TMI 911-CESTAT Kolkata.

22. We have gone through the facts of the case and the case law relied upon by the Appellant. We find force in the contention of the Appellants that the period up to 31.10.2015 is beyond the period of 5 years. In our view, the SCN dated 23.12.2020 cannot demand Service Tax liability for the period prior to October, 2015. As far as for the remaining period i.e., from October, 2015 to March, 2016 is concerned, we find that apart from general aversions, there is no evidence to show that the tax has not been paid by way of fraud or suppression of facts with an intent to evade payment of tax.

23. There are catena of decisions that in absence of such positive evidence, extended period cannot be invoked. We take support in this regard from the judgement of Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay- 1995 (78) E.L.T. 401 (SC).

24. We also find from the Order-in-Original passed by the Adjudicating Authority below that the SCN was issued only on the basis of information obtained from Income Tax Department (3rd party sources) for the period 2015-16. For the sake of ready reference, para 2, 3, and 4 of the said order are reproduced below: -

> *"02. Online third-party information/CBDT data for the financial year 2015-16 has been forwarded to this office, containing the details of income of the party under the heading "Sale of Services (value from ITR)", "Total value for TDS under Section 194C, 194 H, 194 J, 194 I" vis-a-vis "Gross amount shown in ST-3 Return".*

03. The online third-party information for the financial Year 2015-16, provided the, following details in respect of M/s Ganpati Transport Service, 133/P-105/Transport Nagar, Kanpur-208023 (STC No. AAGFG0619KSD001).

Value Sale of Services as per ITR	***Value for TDS in 194C***	***Gross Value provided as per STR***	***Value of Difference in ITR & STR***	***Value of Difference in TDS & STR***	***Higher Value difference***
1	***2***	***3***	***4***	***5***	***6***
6,08,06,849/-	***27,46,935/-***	***0***	***6,08,06,849/-***	***27,46,935/-***	***6,08,06,849/-***

04. As detailed above, during the financial year 2015-16, the party has declared an amount of Rs. 6,08,06,849/-in their ITR on account of "Sales of Services". Further as per 26 AS, during this period, an amount of Rs. 27,46,935/- has been credited in party's account, wherein tax has been deducted under Section 194C of the Income Tax Act, 1961."

25. We also note that no other record of the Appellant was taken into consideration for entertaining a prima-face view that the Appellant was required to pay Service Tax amounting to Rs.88,16,993/- for the said period. A similar issue had come up for consideration in the case of M/s Sharma Fabricators & Erectors Pvt. Ltd. Vs. C.C.E., Allahabad reported as 2017 (5) G.S.T.L. 96 (Tri.-All.) wherein it was held as under:-

"3. Heard the ld. Counsel for M/s. Sharma he has basically argued that the said Show Cause Notices were not issued by examining the books of account maintained by M/s. Sharma. The Show Cause Notices were based on the presumptions and third party information. He has argued that even when the payments were not made by the clients but the clients booked the expenditure in their

books of account they were required to pay the related tax deducted at source to the exchequer and issue a certificate of TDS and incorporate the same in the return called 26AS filed with the Income Tax Authorities and such information cannot be the basis for arrival of the consideration received by the service provider. He has submitted that both the Show Cause Notices were issued without examining the books of account maintained by M/s. Sharma and were issued on the basis of presumptions about the consideration received by M/s. Sharma. The considerations taken into account for issue of Show Cause Notices was in no way near to the actual consideration received by M/s. Sharma during the relevant period which should be the basis for arriving at the assessable value. He has stated that they had elaborated before the Original Authority various reasons for discrepancies in the figures arrived at presuming the considerations received by M/s. Sharma on the basis of such TDS Certificates and the figures in the returns. He has further relied upon this Tribunal's Final Order in the case of Alpa Management Consultants P. Ltd. v. Commissioner of Service Tax, Bangalore reported in 2007 (6) S.T.R. 181 (Tri. - Bangalore). He submitted that this Tribunal in the said case has held that demands, solely based on the income-tax returns for liability of Service Tax under Finance Act, 1994 is not sustainable. In respect of appeal filed by Revenue ld. counsel for M/s. Sharma has contended that the grounds of appeal are travelling beyond the Show Cause Notice and therefore that is not sustainable. He has further elaborated that cargo handling was brought in as ground by Revenue in the appeal filed by Revenue whereas that issue was not at all dealt with in the Show Cause Notices dated 20-4-2009 & 13-10-2009.

4.Heard the ld. DR, who has presented the grounds of appeal in appeal filed by Revenue.

5.Having considered the rival contentions and on perusal of record, we find that in the cases of both the Show Cause Notices dated 20-4-2009 & 13-10-2009 there is no whisper of examination of books of account maintained by M/s. Sharma to arrive at the value of consideration received by them. 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 Cause 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 also stand disposed of. Cross Objection also disposed of."

We find that the decision of the Tribunal in the case of Sharma Fabricators & Erectors Pvt. Ltd. (Supra) has been upheld by the Hon'ble High Court of Allahabad reported as 2019 (22) G.S.T.L. J166 (All.).

26. We find that the Appellant had submitted before the learned Commissioner (Appeals) as well as before us, the entire breakup of the amount shown as received in the ITR return alongwith detailed explanations. They also produced certificates

issued by the Chartered Accountant and Affidavit sworn by them that in case of 'Transportation of goods by road' the amount received by them falls under the category of Negative List and as "Goods Transport Agency' service recipient was liable to discharge the service tax liability in terms of Notification No.30/2012-ST dated 20.06.2012. Ld. Commissioner (Appeals) has brushed aside the Affidavit of the Appellant as well as Certificates of the Chartered Accountant under the guise of onus to prove.

27. We find that similar matter had come up before the coordinate bench of this Tribunal in the case of M/s. Sriram Insight Share Brokers Ltd. vs. Commissioner of Service Tax-I, Kolkata reported in 2022 (6) TMI 307-CESTAT Kolkata wherein in para 7.2 of the said order reads as under: -

> *"7.2 I further find that the Ld. Commissioner has confirmed the demand on the ground that the Appellant has neither submitted the ledger of Stock broking services for Financial Year 2012-13 nor the documents of receiving the impugned amount (i.e., the brokerage income) in 2012-13. However, I find that he has not disputed the content of the Chartered Accountant's certificate submitted by the Appellant. It is a settled position that the authorities cannot reject the C A certificate without stating the reasons as to why the CA certificate submitted by the Appellant is not acceptable to such authorities. Therefore, the stand taken by the Ld. Commissioner to confirm the impugned demand of service tax is legally not tenable."*

28. On the issue of validity of the SCN, the Tribunal notes that the demand exceeded Rs.50 lakhs and that no pre-show cause notice consultation was conducted as mandated by the applicable circulars. The circulars issued by the Board are binding on Departmental Officers. The absence of such consultation, particularly in a case involving substantial demand and factual complexity, vitiates the proceedings. Though this procedural lapse alone may not always nullify proceedings, in the

facts of this case where the demand is also substantively weak. We are of the opinion that the lapse further strengthens the Appellant's case.

29. The principal issue concerns taxability of transportation carried out by Appellant's own trucks. It is an admitted and recorded finding by the Commissioner (Appeals) that the Appellant owns 31 trucks and that in such circumstances, no consignment notes were issued. The issuance of a consignment note is a statutory sine qua non for classification as "Goods Transport Agency" under Section 65(50b) of the Finance Act, 1994. Mere transportation of goods by a truck owner without issuance of a consignment note does not amount to GTA service. We find that where transportation was carried out through own vehicles without issuance of GR/consignment note, such activity falls outside the ambit of taxable GTA service and is covered under clause (p) of Section 66D (Negative List). Accordingly, receipts attributable to such transportation are not liable to Service Tax.

30. We observe that in a similar matter in the case of Shri Dharmraj Singh vs. Commissioner of Customs, Central Excise & Service Tax, Allahabad 2024 (2) TMI 501- CESTAT Allahabad, in Para 4.4 of the said order the Tribunal observed as under: -

> "4.4 In case of The Ramco Cements Limited [Final Order No.40853 / 2023 dated 27.09.2023] Chennai Bench has held as follows:-
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> *"11.1 In the case of M/s. K.M.B. Granites Pvt. Ltd. v. Commissioner of C.Ex., Salem [2010 (19) S.T.R. 437 (Tri. – Chennai)] this Bench had an occasion to consider an almost similar issue of liability to Service Tax on services of GTA vis-à-vis Rule 2(1)(d)(v) ibid. After hearing both sides, this Bench has held as under: -*
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> *"3. Heard both sides. It has been consistently contested by the assessees that services were not being provided to them by the Goods Transport Agency but by individual*

truck owners/lorry owners. Before the lower appellate authority they have also provided written submissions in support of their above submission. It has been held by the Tribunal in the case of Lakshminarayana Mining Co. v. CST, Bangalore - 2009 (16) S.T.R. 691 (Tri.-Bang.) and in the case of CCE, Guntur v. Kanaka Durga Agro Oil Products Pvt. Ltd. - 2009 (15) S.T.R. 399 (Tri.-Bang.) that transport undertaken by individuals owning and operating lorry and trucks is not subject to service tax as in these cases services has not been provided by Goods Transport Agency Service. Following the ratio of the above decisions, I hold that the appellants are not liable to Service tax and imposition of penalty. I, therefore, set aside the impugned orders and allow these appeals."

11.2 It appears that the Revenue filed an appeal before the Hon'ble jurisdictional High Court of Madras against the above order and the Hon'ble High Court vide its Order reported in 2013 (32) S.T.R. J205 (Mad.) has dismissed the appeal, thereby upholding the order of this Bench.

11.3 Further, we find that the other orders relied upon by the Ld. Consultant clearly confirm the view that the essential requirement is the issuance of consignment note in order to be covered under the definition of GTA and in the absence of the same, the transporters/contractors rendering transport services in mines cannot be said to be GTA and therefore, their service cannot be made amenable to the levy of Service Tax under the category of "transportation of goods by road" service.

12. The above consistent view expressed by various co-ordinate benches of the CESTAT, judicial discipline demands to follow the said view of the co-ordinate Benches. This is also for the reason that in one of the cases, even the Hon'ble jurisdictional High Court has upheld the order of this Bench. Following therefore the

same view, we hold that the demand of Service Tax confirmed in the impugned order cannot sustain."

31. We further note that in other cases where GRs have been issued by the Appellants, we have gone through the sample copies of GRs submitted before us during the course of hearing that there is clear and unambiguous note that- "Service Tax paid by Consignor/ Consignee". We further note that the Revenue has not produced any evidence to show that the recipients of service did not fall within the specified categories or that the tax was not payable under reverse charge.

32. In view of above we hold that the demand cannot sustain on limitation as well as on merits.

33. Consequently, since the primary demand itself is not sustainable either on merits or on limitation, interest under Section 75 of the Act cannot survive. Similarly, penalty under Section 78 of the said Act is not sustainable.

34. In view of the above findings, the impugned order is set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on **24.03.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS