IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76228 of 2024

(Arising out of Order-in-Appeal No.163/HWH/ST/2024-25 dated 25.06.2024 passed by Commissioner, CGST & CX, Appeal-II Commissionerate, Kolkata.)

Mustafa Ali
(78, Cowies Ghat Road, 2nd Floor, Shibpur, Howrah-711102.)

...Appellant

VERSUS

Commissioner, CGST & CX, Howrah Commissionerate

.....Respondent
(15/1, Strand Road, Custom House, MS Building, Kolkata-700001.)

APPEARANCE

Shri Tarun Chatterjee, Shri Jayanta Roy & Ms. Sneha Das, all Advocates for the Appellant (s)
Shri P.Das, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 75576/2026

DATE OF HEARING : 28.04.2026
DATE OF DECISION : 11.05.2026

R. MURALIDHAR :

The Appellant has been carrying on multi-level marketing work in respect of the products manufactured by K-Link Healthcare India Pvt. Ltd. Based on the Income Tax Returns and the details submitted by the Appellant, a Show-Cause Notice came to be issued on 20-10-2021 on the allegation that the Appellant has provided 'Business Auxiliary Service' during the period 2015-16 to 2017-18.

2. After due process, the Adjudicating authority confirmed the demand. Being aggrieved, the Appellant filed the Appeal before the Commissioner(Appeals), who has dismissed the same. Being aggrieved, the Appellant is before the Tribunal.

3. The learned Counsel appearing on behalf of the Appellant produces a copy of the Rules of Conduct issued by K-Link Healthcare India Pvt. Ltd. He submits that as per the Rules given therein, the Appellant is initially required to buy the goods on payment of a certain amount from them and then later on introduce four persons to the company, by selling the same to them. Based on the same, the Appellant would be paid a certain amount by the company. The learned Counsel submits that it is basically the buying of the goods from K-Link Healthcare India Pvt. Ltd. and selling the same to four other persons who pay the full amount, who are actually introduced to the K-Link by the Appellant.

4. He further submits that this activity does not amount to any provision of service under the 'Business Auxiliary Service'. He submits that the quantification of the demand in the Show Cause Notice is also arbitrary and based on assumptions and not based on actual facts.

5. He takes me through to Annexure A of the Show Cause Notice. He points out that during year 2015-16, the value of service has been taken as amounting to Rs.20,10,211/- on which Service Tax has been calculated as Rs.2,91,482/-. However, for the period 2016-17, arbitrarily the value has been taken as Rs.40,20,442/- without having any basis to arrive at this total taxable value. Similarly, for the small portion of three months during the period 2017-18, the value has been taken as Rs.10,05,110/-. He takes me through the actual 26 AS for this period. It is seen that at 2016-17, the value under 26 AS is Rs.16,77,356/- and in respect of 2017-18, the value is Rs.3,44,644/-. Therefore, he submits that the total tax demand is highly inflated.

6. He further submits that the issue is no more *res integra*. Similar issue had come up before the Delhi Bench in the case of **Tulip Global Pvt Ltd vs CCE Jaipur**. The Tribunal has held that in case of multi-level marketing scheme, the issue is that of sale of units and purchase of units and the profit is given to the person engaged in such activities. Therefore, the same will not call for any Service Tax payment.

7. He also submits that similar issue had also come up before this Bench in the case of **Emam Hussain Dewan vs CC GST and CE Bolpur**. This Bench by Final Order No. 75241/2026 has relied on various case laws and has held that such activities will not call for any

service tax payment. Based on these submissions, he prays that the Appeal may be allowed on merit.

8. Taking the issue of time bar, he submits that the Show-Cause Notice on 20-10-2021 for the period 2015-16 to 2017-18 is time-barred. It is canvassed that all the data has been provided to the Income Tax Department from wherein the data has been gathered by the Revenue to issue the present Show Cause Notice. Therefore, it cannot be said that the Appellant has concealed any factual details before the statutory authorities. Further, in view of the case laws favouring him, the Appellant was under *bona fide* belief that since he was engaged in buying and selling of the product, the activity will not call for any Service Tax payment. He relies on the case law of **Emam Hussain Dewan** wherein the Bench has allowed the Appeal on account of limitation also. In view of these submissions, he prays that the Appeal may be allowed on account of limitation.

9. The Learned AR appearing on behalf of the Respondent Revenue submits that the Appellant was introducing various persons to K-Link. On account of the profits earned from these persons, K-Link was giving the part of the consideration as commission to the Appellant. Such commissions are reflected in the 26 AS of Income Tax Returns, which show that the activity undertaken by the Appellant is that of a Commission Agent only and not that of a trader of buying and selling

of goods. The Learned AR relies on the detailed findings of the lower authorities to confirm the demand. Accordingly, he prays that the Appeal may be dismissed.

10. Heard both sides, perused the appeal papers and the documentary evidence placed before me.

11. I have gone through the quantification dispute raised by the Appellant. I find that the Revenue has arbitrarily taken the taxable value for the period 2016-17 by simply doubling the total value available for the period 2015-16. This kind of arbitrary enhancement of the value is not provided for any statutory provisions. On the other hand, it is clearly seen that Income Tax form 26 AS shows the turnover as Rs.1,677,356/- and as Rs.1,50,767/- for the period 2017-18. The demand, if any, would be as per the following table.

Annexure-A							
Annexure in respect of M/s. MUSTAFA ALI 78, COWIES GHAT ROAD (2ND FLOOR), SHIBPUR, HOWRAH-711102							
Year	Total Gross Value provided as per STR	Sale of service as per CBDT DATA	Value for Best Judgement	Taxable value	Total Service Tax (including Cess) not Paid	Commission As per 26AS	Service Tax
2015-16		20,10,221.00		20,10,221.00	2,91,482.00	20,10,221.00	2,91,482.00

2016-17	Not registered		20,10,221.00	40,20,442.00	6,03,066.00	16,77,356.00	2,51,603.00
2017-18 (upto June-17)			20,10,221.00 *2/4	10,05,110.50	1,50,767.00	1,50,767.00	22,615.00
TOTAL				70,35,773.50	10,45,315.00		5,65,700.00

12. From the above table, it is seen that instead of demanding Rs. 5,65,700/-, the department has demanded Rs.10,45,315/- and confirmed the same, which is legally not sustainable.

13. Coming to the case law cited by the Appellant, I find that a similar issue had come up before the principal Bench at Delhi. The Tribunal in the case of **Tulip Global Pvt. Ltd. v. CCE Jaipur [2019 (28) GSTL 270 (Tri-Del.)]** has held in Para 12 of the order as under:

> *"12. It is a matter of record that the appellant has been purchasing these suit lengths of various brand and same were placed in a carry bag along with a CD containing appellants' business plan, two sets of blank distributor application forms. This combination has been called a business kit. Since the appellant has been selling the suit length in the form of a usiness kit on which applicable VAT was paid, it is a pure sale of goods rather than providing any service to the distributors of the appellant. It is also a matter of record that business kits which are suit lengths were not being traded in the retail sale, but were being sold through a multi-level marketing business model developed by the appellant. Thus, the activity undertaken by the appellant is primarily a sale of goods and there is no element of Business Support Services for Business or Commerce. The order-in-original, therefore, deserves to be set aside and is set aside. The appeal is allowed."*

14. I also find that the issue as to whether the Show Cause Notice can be issued after a delay of more than four years by alleging suppression when the data has been gathered from 26 AS of Income Tax was before this Bench in the case of **Tabassum Enterprises v. CC GST & CX v. Final Order No. 75452/2025 dated 19-09-2025 (Service Tax Appeal No.75037 of 2025),** wherein the Bench has held as under.

> *8. Further, I note that the Show Cause Notice dated 08.10.2015 has been issued for the period 2010–11 to 2011–12. It is also evident that the notice was issued primarily on the basis of Income Tax Returns and Form 26AS, wherein the amount was reflected as service income. In respect of demands made based on the Form 26AS and IT Returns, this Tribunal in the case of Tabassum Enterprises vs. C, CGST & CX vide Final Order No.75452/2025 dated 19.09.2025 (Service Tax Appeal No.75037 of 2025) has held as under :-*
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> > *"5. I find that the present demand has been raised and confirmed on the basis of data provided by the Central Board of Direct Taxes (CBDT). It is observed that the said demand has been confirmed without the support of any independent or corroborative evidence from the Service Tax records. Such mechanical reliance on Income Tax data, without verification of the nature of receipts or proof of taxable services rendered, is impermissible in law. It is a settled legal position that mere entries in income tax returns or Form 26AS cannot, by themselves, establish liability under the Finance Act, 1994, unless corroborated by evidence demonstrating rendition of taxable service. 5.1. In support of this view, I rely upon the decision in the case of M/s. Rishu Enterprise vs Commissioner of C.G.S.T. & Excise, Dibrugarh, in Final Order No. 75177 of 2024 dated 08.02.2024 in Service Tax Appeal No. 75509 of 2022 [CESTAT, Kolkata], wherein this Tribunalhas observed as under: -*

"8. In view of the judicial pronouncement of this Tribunal, we hold that merely on the basis of Form 26-AS issued by the Income Tax Department, the demand of Service Tax is not sustainable against the appellant. ……..

11. In view of this, we hold that the impugned demand is not sustainable against the appellant on the basis of the details provided by the Income Tax Department in Form 26AS and the extended period of limitation is not invokable."

5.2. The same view has been held by the Tribunal at Allahabad in the case of M/s.Quest Engineers & Consultant Pvt. Ltd. v. Commissioner of C.G.S.T. & C.Ex., Allahabad [2022 (58) G.S.T.L. 345 (Tri. – All.)]observing as follows: -

"12. ….We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived." "7. On going through the records of the case, it is clear that the cases are made on the basis of third party data i.e., amounts reflected in Income Tax Returns and in Form 26AS. Revenue takes the stand that in the Negative List regime, Department is not obliged to prove the provision of a particular service to demand service tax and further, the Appellants could not explain that the difference satisfactorily. I find that this is not the correct approach; exigibility to service tax depends on the service provider, service rendered, service recipient and the consideration thereof. Unless these four elements have been connected

logically, demand of service tax cannot be confirmed merely on the basis of figures reflected in other statutory records."

5.4. Further, in the case of M/s. Indian Machine Tools Manufacturers Association v. The Commissioner of C.Ex., Panchkula [Final Order No. 60403 of 2023 dated 18.09.2023 in Service Tax Appeal No. 4174 of 2012 – CESTAT, Chandigarh], the Tribunal, Chandigarh has held as under:

"11. Coming to third and final issue as to whether any demand can be sustained on the basis of difference between the figures of ST-3 Returns and the balance sheets, we find that it is a settled principle of law that service tax can be levied only when there is a clear identification of service provider, service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, we are of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns like Income Tax Returns or balance sheets without proving that such service has been rendered by the assessee and consideration thereof has been received. Similarly, no service tax demand can be raised and confirmed on the basis of notional income."

(Emphasis supplied)

5.5. I also refer to the decision of the Tribunal, Ahmedabad in the case of M/s. Forward Resources Pvt. Ltd. v. Commissioner of C.Ex. & S.T., Surat-I [2023 (69) G.S.T.L. 76 (Tri. – Ahmd.)], wherein a similar issue has been examined by the Tribunal. The relevant observations of the Tribunal in the aforesaid case are reproduced below: -

"5.6 We also find that in the present matter for confirmation of service tax demand Ld. Commissioner also relies upon the TDS/26AS Statement. The said

statement under provisions of Income-tax Act, 1961 is an Annual Consolidated tax statement. Incometax and service tax are two different/separate and independent Acts and their provisions operating in two different fields. Therefore by relying the 26AS/TDS Statement under the Service Tax Act, demand of service tax cannot be made. We also find the support from the decision of Ved Security v. CCE, Ranchi-III - 2019 (6) TMI 383 CESTAT, Kolkata wherein it was held that the value of taxable services cannot be arrived at merely on the basis of the TDS statements filed by the clients inasmuch as even if the payments are not made by the client, the expenditure are booked based on which the Form 26AS is filed, which cannot be considered as value of taxable services for the purpose of demand of Service tax."

5.6. Following the ratio of the decisions cited supra, I hold that the demand of service tax confirmed in the impugned order, solely relying the data received from CBDT, without adducing corroborative evidence in support, cannot be sustained. Thus, I observe that the demand confirmed in the impugned order is liable to be set aside on this ground itself."

9. The Tribunal has clearly held that extended period of limitation is not invocable where the Show Cause Notice is issued solely on the basis of third-party data without proper verification and without establishing suppression or willful misstatement. In the present case, there is no cogent evidence brought on record to establish suppression of facts or intent to evade payment of tax so as to justify invocation of the extended period. Therefore, the demand is also hit by limitation.

10. In view of the above discussions and by following the ratio laid down in the cases of ***Tulip Global Private Limited*** *and* ***Tabassum Enterprises vs. C, CGST & CX****, the impugned order is set aside both on merits as well as on account of limitation."*

15. I also find that this Bench in the case of **Imam Hussain Devan v. Commissioner, CGST & Central Excise, Bolpur vide Final Order No.75241/2026 dated 13.02.2026 (Service Tax Appeal No.75010 of 2023)** has gone through the factual details and has held as under in Para 10 of the appeal.

> *"10. In view of the above discussions and by following the ratio laid down in the cases of **Tulip Global Private Limited** and **Tabassum Enterprises vs. C, CGST & CX**, the impugned order is set aside both on merits as well as on account of limitation."*

16. Considering the factual data as discussed above as well as the statutory provisions and the cited case law, I find that the impugned order does not sustain both on merits as well as on account of limitation.

17. Accordingly, I set aside the impugned order and allow the present Appeal filed by the Appellant. The Appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on 11.05.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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