

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH

SERVICE TAX APPEAL NO. 86439 OF 2021

[Arising out of Order-in-Appeal No. AJV/32/RGD APP/21-22 dated 29.04.2021 passed by the Commissioner of Central Tax, (Appeals), Raigad].

M/s. OWENS CORNING (INDIA) PVT LTD Appellant
Plot No. T 28, MIDC, Phase 2 Taloja
Raigad, Maharashtra-410 208.

VERSUS

COMMISSIONER OF CGST & CENTRAL EXCISE- Respondent
RAIGAD
4th Floor, Kendriya Utpad Shulk Bhawan,
Plot-01, Sector 17, Khandeshwar,
Raigad, Maharashtra-410 206.

APPEARANCE:

Shri Aditya Jain, C.A. for the Appellant

Shri Arun Bhaskar, Superintendent Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85631/2026

Date of Hearing: 08.04.2026
Date of Decision: 05.05.2026

Confirmation by the Commissioner (Appeals) of the order passed by the Adjudicating Authority confirming Service Tax demand of Rs. 29,72,284/- made against the appellant for availing Rent-a-Cab Services payable under Reverse Charge Mechanism alongwith applicable interest and equal penalty under various sections of Finance Act, 1994, is assailed before this forum.

2. In a nut shell, fact of the case would go to show that appellant is a manufacturer of Fiber Glass in India who was subjected to CERA Audit for the period from 2013-14 to 2016-17 and during course of such Audit, it was observed that appellant had availed Rent-a-Cab Services from M/s. Shalimar Transport Services and had not paid Service Tax to the tune of 40% of Taxable amount on unabated value of services received in terms of Notification No. 30/2012-ST dated 20.06.2012.

3. Discrepancies being highlighted by the Audit, appellant immediately paid the service tax of Rs. 29,72,287/- alongwith its upto date interest of Rs. 13,34,012/- and intimated/communicated to the Department the fact of such payment vide their letter dated 26.04.2018, much before issue of Show-Cause Notice but was served with Show-Cause Notice on dated 07.08.2018 asking it to pay the said service Tax alongwith interest and penalty of equal amount under Section 78 of the Finance Act, 1994. Appellant's unsuccessful attempt before the Adjudicating Authority and before the Commissioner (Appeals) before whom it filed appeal against the adverse Adjudication Order, has brought the dispute to the present forum.

4. During course of hearing of the appeal Ld. Counsel for the Appellant Mr. Aditya Jain has submitted that appellant was entitled to relief available under Section 73(3) of the Finance Act as it had paid Service Tax and interest upon being pointed out by the Department much before issue of Show Cause Notice for which the said Show-Cause Notice sent, is not unsustainable in law. He further contended that such payment of duty and interest has been acknowledged in the Show-cause Notice itself and in the order passed by the Adjudicating Authority who appropriated the same against duty demand and when all those transactions were already forming part of the record of the appellant, from which the Respondent Department gathered data during Audit, invocation of the extended period on the

ground that appellant had suppressed the same so as to avoid payment of duty is also not in conformity to the position of law that would attract extended period.

4.1 In citing several decisions of this Tribunal passed in the case of - Larsen & Toubro Limited Vs. CGST 2018(11) TMI 829-CESTAT MUMBAI ; M/s. Raghavar (India) Ltd. Vs. CCE 2023 (1) TMI- CESTAT NEW DELHI ;Kalyan Construction Private Limited Vs. CCE-2023(12) TMI 1211 CESTAT NEW DELHI; Rohan Builders India Pvt Ltd Vs. CCE 2018 (12) TMI-343- CESTAT MUMBAI, he further submitted that this Tribunal in those cases has specifically examined the purview of CERA Audit and given its observation that only because Audit partly had found non- observance of partial Reverse Charge Mechanism procedure, in respect of certain services availed by appellant, it cannot be charged with suppression of fact so as to evade payment of tax since the basic purpose of audit is to find out irregularities which might not have gone to the notice of the assessee and to advise the assessee for prompt discharge of tax liability in a participatory process without any authority, for which the order passed by the Commissioner (Appeals) is unsustainable in both law and fact.

4.2 He also emphasized the fact that Hon'ble Supreme Court in the case of Uniworth Textiles Ltd Vs. Commissioner of Central Excise, 2013(1) TMI 616-SUPREME COURT, had clearly distinguished the fact that mere nonpayment of duty is not same as collusion or willful misstatement or suppression of facts etc. and expressed its apprehension about placing of all non-payment of Tax under such willful suppression etc. instead of ordinary default, which happened in the case of Appellant who rectified the same instantly upon knowledge.

5. Ld. Authorised Representative Mr. Arun Bhaskar on the other hand argued in favour of reasoning and rationality available in the

order passed by the Commissioner (Appeals) and pointed out that fact of availment of service from M/s. Shalimar Transport Services was never brought to the knowledge of the Department nor it was reflected in the ST-3 Return filed by the Appellant that would justify deliberate suppression of material facts from the Department with intend to evade payment of Service Tax and hence extended period was rightly invoked to impose penalties that needs no interference in the order passed by the Commissioner (Appeals).

6. I have gone through the Appeal Paper Book, written submissions as well as relied upon case laws submitted by the parties. Going by the text of Section 73(3) of the Finance Act, it would be crystal clear that if such tax dues, as ascertained by the Central Excise Officer, has been paid by the assessee on the basis of his ascertainment or being pointed by the Department and it has been intimated in writing to the Central Excise Officer, the assessee shall not be served with any notice under Sub-section (1) which would also include its proviso that covers extended period. It would be relevant at this point to reproduce the text of Section 73(3) of the Finance Act for a better clarity. It reads:

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

(Underlined to emphasise)

6.1 This being the provision of law no Show-cause Notice should have been issued by the Respondent when tax dues alongwith interest has been paid by the Appellant, who has informed the same to the Department and such information was well within the knowledge of Respondent Department since it has formed the part of Show-cause Notice. The Show-Cause Notice itself is, therefore, unsustainable in law and any proceedings initiated on the basis of the said Show-cause is a nullify, apart from the fact that there is force in the submission of appellant concerning unnecessary invocation of extended period which is in-permissible in view of judicial decisions cited above. Hence the order.

The order

7. The appeal is allowed and order passed by the Commissioner of Central Tax, (Appeals) Raigad, Order-in-Appeal No. AJV/32/RGD APP/21-22 dated 29.04.2021, is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 05.05.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)