

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50121 of 2017

[Arising out of Order-in-Original no. 44/Commr./DDN/2016 dated 29.09.2016 passed by the Commissioner, Customs, Central Excise and Service Tax, Dehradun]

M/s. Gurbani Constructions ... **Appellant**
11, Sailok, Engineers Enclave
GMS Road, Dehradun (U.K.)

VERSUS

Commissioner, Customs, ... **Respondent**
Central Excise & Service Tax,
Dehradun

APPEARANCE:

Shri Rajesh Chhibber Advocate for the Appellant
Shri Rajeev Kapoor, Authorised Representative for the Revenue

CORAM:

HON'BLE Dr. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 11.05.2026
DATE OF DECISION: 15.05.2026

FINAL ORDER NO. 50894/2026

P V SUBBA RAO

M/s. Gurbani Constructions¹ filed this appeal to assail the order dated 29.09.2016² passed by the Commissioner deciding the proposals made in the show cause notice dated 30.9.2015³ in which he confirmed demand of service tax of Rs. 33,88,924/- on the appellant under the proviso to section 73 of the Finance Act, 1994⁴ invoking extended period of limitation along with interest under section 75 of the Act and imposed an equal amount as penalty under section 78 of the Act and a penalty of

1. Appellant
2. Impugned order
3. SCN
4. Act

Rs. 5,000/- under section 77 of the Act. He dropped demand of Rs. 19,98,787/- proposed in the SCN. There is no appeal by the Revenue on the demand dropped by the Commissioner and hence the matter attained finality to that extent. The appellant assails in this appeal the confirmation of demand with interest and penalty.

2. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records. The undisputed facts of the are that the appellant is a service provider and was registered with the service tax department during the relevant period for providing taxable services of construction of complexes other than residential complexes including commercial/industrial construction service covered under section 65(105) (zzq) and section 65(105) (zzzza) of the Act and has been paying service tax and filing returns.

3. Based on intelligence that the appellant was not paying service tax on some taxable services which it had rendered, investigations were initiated which culminated in the SCN the proposals in which were decided by the impugned order.

4. After hearing learned counsel for the appellant and learned authorised representative for the Revenue, it is clear that the dispute is only on two counts:

- a) Construction of houses which, according to the appellant were for individuals but which the impugned order held as construction of residential complex services and demanded service tax on the consideration received.
- b) Construction of commercial complex for M/s. Hotel Amber Palace, Tyagi Road, Dehradun on which the appellant paid

service tax but in the impugned order it was held that the appellant received some additional payment on which it had not paid service tax. According to the appellant it had not received any additional payment and hence it was not required to pay any additional service tax.

5. As far as the first question of residences is concerned, the department asked the appellant to produce documents and the appellant only produced the maps of the houses which were built. The demand has been confirmed on the ground that the appellant had not provided any evidence to establish that the construction was not of residential complexes but were individual houses.

6. "He who asserts has to prove" and if an SCN is issued by the department to demand service tax alleging that the appellant had constructed residential complexes, it is for the department to prove this along with evidence in the SCN. It is not for the appellant to prove that it had not constructed residential complexes. It is undisputed that construction of individual houses was not taxable. Since the department failed to establish that the appellant had constructed residential complexes, the Commissioner committed an error in confirming the demand of service tax on this ground.

7. The second part of the demand is on the additional amounts said to have been received from Hotel Amber for commercial construction. This demand is solely on the basis of a legal notice issued to the appellant by the counsel for Hotel Amber asserting that additional payments were made. A counter notice was sent by the appellant's counsel to Hotel

Amber saying that it had rendered services in full but Hotel Amber had not made full payment. Learned counsel for the appellant submits that no further action was taken beyond the two notices and neither side had filed any suit in any civil court.

8. In our considered view, a mere legal notice issued by the advocate of the client to the appellant is not sufficient evidence to establish that any additional amount was received as consideration by the appellant from Hotel Amber for taxable services rendered to it. The demand on this count also cannot be sustained.

9. In view of the above, the confirmation of demand of service tax in the impugned order with interest and the consequential penalties cannot be sustained and need to be set aside.

10. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

(Order pronounced in open court on 15/05/2026.)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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