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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76819 of 2016

(Arising out of Order-in-Original No. 147/COMMR/DGP/15-16 dated 31.03.2016 passed by the Commissioner of Customs, Central Excise and Service Tax Commissionerate, Durgapur, Satyajit Ray Sarani, City Centre, Durgapur – 713 216)

M/s. Singh Construction Corporation : Appellant
Nachan Road, Bhiringi, Benachity,
Durgapur – 713 213

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Durgapur Commissionerate,
Satyajit Ray Sarani, City Centre,
Durgapur – 713 216

APPEARANCE:

Shri Aditya Dutta, Advocate, for the Appellant

Ms. Suman, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75634 / 2026

DATE OF HEARING: 20.05.2026

DATE OF DECISION: 22.05.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Singh Construction Corporation (hereinafter referred to as the "appellant") are engaged in providing services under the category of "Construction Service other than residential complex including commercial/industrial building or civil structure" and "Works Contract Service".

1.1. When the Voluntary Compliance Encouragement Scheme, 2013 (VCES, 2013) was introduced on 31.12.2013, the appellant availed the said Scheme and disclosed a tax liability of Rs. 59,03,166/- against our tax liability. The appellant also paid an amount of

Rs. 59,03,166/- against their tax liability disclosed under the Scheme.

1.2. The Competent Authority did not accept the VCES Declaration made by the appellant on the allegation that the appellant had not made true disclosure of their Service Tax liability.

1.3. Consequent to rejection of their VCES Application, a Show Cause Notice dated 18.12.2014 was issued to the appellant in terms of Section 111(1) of the Finance Act, 2013 (17 of 2013) alleging inter-alia that *on scrutiny of the documents submitted by the appellant it was noticed that while providing the services of* ***"construction service other than residential complex including commercial/industrial buildings or civil structure" & "Work Contract Services"*** *the appellant have received gross taxable amount of Rs. 317221753/- towards the taxable services rendered during the period* ***2009-10 to 2012-13*****.** Accordingly, the Show Cause Notice proposed the following: -

(i) rejection of the VCES application filed by the appellant on 31.12.2013 because the same was found to be substantially false.

(ii) Demand for recovery of Service Tax amounting to Rs.3,44,25,123/- (including cess) pertaining to the Financial Years 2009-10 to 2012-13 along with interest and also proposed appropriation of the amount already deposited by the appellant under VCES.

(iii) Proposition for imposition of penalty under Section 78(1) and under Section 77(2) of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994.

1.3. The above Show Cause Notice was adjudicated by the Ld. Commissioner of Central Excise, Service Tax & Customs, Durgapur Commissionerate, vide his Order-in-Original No. 147/COMMR/DGP/15-16 dated 31.03.2016. In terms of the said order, the VCES Declaration made by the appellant was rejected. The Service Tax demand made in the Notice was restricted to the extent of Rs.1,88,33,055/- along with applicable interest and the balance demand was dropped; a penalty of Rs. 1,88,33,055/- was also imposed on the appellant under Section 78 of the Act. The amount of Rs.59,03,166/- which had been deposited in pursuance of VCES Declaration was appropriated. Interest to the tune of Rs.7,03,070/- paid by the appellant was also appropriated. Further, a penalty of Rs. 20,000/-, for not filing ST-3 Return for the period 2011-12 and 2012-13 was also imposed, under Section 77(2) of the Act read with Rule 7C of the Rules.

1.4. The appellant has filed this appeal against the confirmation of the demand of Service Tax, along with interest and penalties, and appropriation of the amount of Service Tax of Rs.59,03,166/- and interest of Rs. 7,03,070/- paid by them in pursuance of VCES Declaration, against the liabilities confirmed in the impugned order.

2. The Ld. Counsel for the appellant submits that during the period 2009-10 to 2012-13, they have rendered "Construction Service other than residential complex including commercial/industrial building or civil structure" and "Works Contract Service", including materials. Thus, it is his contention that for the construction services rendered with material, they are eligible for the abatement of 67% on the Gross Contract Value in terms of the Notification No. 1/2006

ST dated 01.03.2006 as amended. The appellant also pointed out that out of ignorance, they have not claimed the abatement and paid Service Tax without availing the abatement; that since, supply of material on payment of VAT, wherever applicable, is not in dispute, the 67% abatement otherwise eligible to them cannot be denied. The Ld. Counsel for the appellant draws attention to the fact that in the impugned order, the Ld. adjudicating authority has accepted the utilization of the material while rendering the service, which is recorded in paragraph 5.4(a) of the impugned order, but he has not extended the benefit of the abatement only on the ground that the appellant has not claimed the same in the ST-3 returns filed by the appellant. In this regard, it is the appellant's submission that the abatement eligible to them cannot be denied on the ground that they have not claimed it; it is the responsibility of the proper officer to determine the duty liability payable by the appellant after examining the abatement eligible to them; that the substantial benefit of abatement cannot be denied due to minor procedural lapses. In support of this claim, the Ld. Counsel for the appellant has inter alia relied upon the following decisions: -

(i) *Jay Iron & Steel Industries Ltd. v Commissioner of C.Ex, Raigad [2016 (335) E.L.T. 49 (Tri-Mumbai)]*

(ii) *Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 (CESTAT, Kolkata)]*

2.1. The appellant submitted a work sheet showing the taxable value received by them during the period under dispute and the Service Tax liability after extending the abatement for these periods. According to the appellant, if Service Tax is calculated on the abated value, the Service Tax paid by them during the period under dispute is more than the Service Tax actually payable by them on the abated value. Thus, the appellant submits that there is no further Service Tax liability payable by them as they have already paid excess Service Tax. Accordingly, the appellant prayed for setting aside the demands of Service Tax confirmed along with interest and penalty, in the impugned order.

3. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. It is her submission that the appellant has not made true disclosure in the VCES Scheme and hence the declaration made by them under the said scheme was rightly rejected by the Competent Authority; that since the appellant has not submitted any document evidencing utilization of material in the services rendered, the abatement claimed by the appellant was rightly rejected in the impugned order. Accordingly, she supported the confirmation of the demand of Service Tax along with interest and penalty in the impugned order.

4. Heard both sides and perused the appeal records.

5. We find that the appellant has made a Declaration under the Voluntary Compliance Encouragement Scheme (VCES), 2013. The appellant disclosed a tax liability of Rs. 59,03,166/-under the Scheme and paid the said amount against the Service Tax liability disclosed by them under the Scheme. It is observed that the competent Authority has not accepted the VCES Declaration made by the appellant on the allegation that the appellant had not made true disclosure of their Service Tax liability. The appellant has accepted the rejection and not filed any appeal against the rejection. Hence, we do not go into the merits of the rejection of the application made by the appellant under the VCES Scheme.

6. It is an admitted fact that during the period 2009-10 to 2012-13, the appellant have rendered "Construction Service other than residential complex including commercial/industrial building or civil structure" and "Works Contract Service". It is also an admitted fact that the appellant has supplied/used materials for rendering the construction services. We find that the Ld. adjudicating authority has recorded the fact of utilization of materials by the appellant while rendering the said services, as can be seen from paragraph 5.4(a) of the impugned order. For ready reference, the relevant extract of the said paragraph in the impugned order is reproduced below:

> *"I have thoroughly examined the relevant Challans/Bills raised by the said Noticee against M/s Birla Corporation, M/s UltraTech Cement Ltd., M/s Reshmi Metaliks Ltd., M/s Ganapati Advisory Ltd., M/s Gannon Dunkerley & Company Ltd. etc., against the supply of mainly, Stone Chips, Stone Boulder, Sand, Bamboos, MS Pipes, Clamps, Bricks, Marbles-Tiles etc…"*

6.1. After recording the utilization of materials in the rendering of Construction Service and Works Contract Service by the appellant, however, the Ld. adjudicating authority has not extended the benefit of 67% abatement on the Gross Contract Value in terms of the Notification No. 1/2006-ST dated 01.03.2006, as amended, on the ground that the appellant has not claimed the same in the ST-3 returns filed. In this regard, we are of the view that the abatement eligible to the appellant cannot be denied on the ground that they have not claimed it. It is the responsibility of the proper officer to determine the duty liability payable by the appellant after examining the abatement eligible to them.

6.2. In the case of ***M/s. Jay Iron & Steel Industries Ltd. v. Commissioner of C.Ex, Raigad [2016 (335) E.L.T. 49 (Tri-Mumbai)]*** it has been held that the substantive benefit of abatement cannot denied on account of minor procedural lapses. The relevant observations made by the Tribunal in the aforesaid case are as under: -

> *"6. We find that the only procedure lapse on which the abatement was rejected are as under :*
>
> *(a) The appellant failed to declare closing balance of stock.*
>
> *(b) Intimation for resumption of production was filed belatedly on 17-1-2000 whereas the production was resumed on 15-1-2000.*
>
> *(c) Failure to declaration continuous closer period.*
>
> *We find that all the above lapse are the minor procedure lapse, on that basis abatement could not have been rejected. As regard the lapse of non-declaring the closing stock, we agree with the appellant that the closing stock is otherwise recorded and available in the stock account i.e. RG-1 register. It is also declared in monthly returns and both these records are statutory records. Therefore though the appellant did not declare the closing stock specifically, the same stands complied with as*

the same was declared in the RG-1 and monthly returns. Appellant's production was resumed on 15-1-2000, however the intimation was filed on 17-1-2000, it is observed that 15th and 16th being Saturday and Sunday were holidays. Therefore, filing of intimation on 17-1-2000 cannot be treated as belated in terms of provision of General Clauses Act, accordingly to which any act to be done on a particular date and if any holiday falls on that date, the next working day shall be treated as date within the period prescribed. Therefore, there is no delay on the part of the appellant in filing the intimation on 17-1-2000. Regarding non-declaration of continuous closing period, it is a minor lapse, as from the intimation date of the closure and date of resumption of production, the period of closure can be easily ascertained. Therefore, it cannot be said, the period of closure is not in the knowledge of the department."

6.3. In the case of ***M/s. Makkar Construction Co. v. Commissioner of C.Ex., Ludhiana [Final Order No. 60115 of 2023 dated 03.05.2023 in Service Tax Appeal No. 266 of 2012 – CESTAT, Chandigarh],*** the Tribunal at Chandigarh, under similar circumstances, allowed abatement at the rate of 67% of the value, observing as follows: -

"6. Having heard both the sides and having perused the records of the case, we find that the contract is clearly for the construction on the basis of rate fixed for per sq. ft.; the contract indicates quality of the material in some clauses; moreover, the copies of the VAT returns and the invoices clearly indicate the purchase of steel, cement and other material required for the construction; the fact that the invoices raised by the supplier of the appellants contain reference to the address of M/s Kangaroo Industries who have awarded the contract to the appellants; Certificates issued by the Chartered Accountant and Chartered Engineer, go on to establish the fact of use of material in the work executed by the appellants. Therefore, we are of the considered opinion that the contract was not simplicitior but was a composite contract. Therefore, we find that the appellants are entitled for the abatement of 67% of the value as claimed by them. As such, the impugned order cannot be sustained and needs to be set aside and we do so."

6.4. A similar issue came up for consideration before this Tribunal in the case of *Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 (CESTAT, Kolkata)]* wherein the abatement under N.F. No. 1/2006-ST dated 01.03.2006 had not been claimed in their ST-3 Return, but the Tribunal has held that the abatement cannot be denied.

7. The appellant submitted a table containing the re-quantified Service Tax liability, computed after extension of abatement of 67% as provided under Notification No. 1/2006-ST. For ready reference, the said Table is extracted below:

Year	**Gross/Value as per SCN/26AS**	**Exempted job**	**Exempted Value**	**Net Taxable Value**	**Taxable value after 67% abatement**	**ST payable (Rs.)**
1	2	3	4	5(2-3)	6	7
2009-10	69888367	NIL	NIL	67888367	2,24,03,161	23,07,525
2010-11	97675965	Railways	17394798	80281167	2,64,92,785	27,28,757
2011-12	64643694	Railways	5652779	58990915	1,94,67,001	20,05,101
2012-13	85013727	Railways	7799489	77214238	2,54,80,598	31,49,414
TOTAL SERVICE TAX PAYABLE						**1,01,90,797**

Rate of Service tax for 2009-10 to 2011-12 = 10.30%

Rate of Service tax for 2012-13 = 12.36%

7.1. From a perusal of the calculation of Service Tax liability of the appellant, it is observed that the Service Tax liable to be paid by the appellant after extending 67% abatement of the Gross taxable value comes to **Rs. 1,01,90,797/-** for the entire period of 2009-10 to 2012-13. However, the Service Tax already paid by the appellant during 2009-10 to 2010-11, as recorded in paragraph 5.5 of the impugned order, is **Rs. 1,22,54,151/- [Rs. 63,44,812/- + Rs. 59,09,339/-]**. We find that this payment has already been recorded in the impugned order by the Ld. adjudicating authority. Thus, we agree with the submission of the appellant that they have paid excess Service Tax than what is payable after allowing the abatement.

8. In view of the above findings, we hold that the demand of Service Tax, along with interest, confirmed in the impugned order, is legally unsustainable and hence, we set aside the same. As the demand of Service Tax is not sustained, the question of imposing penalty under Section 78 of the Finance Act, does not arise and hence, the same stands set aside. However, we uphold the penalty of Rs. 20,000/- imposed on the appellant for not filing ST-3 Returns for the period 2011-12 and 2012-13.

9. In the result, we pass the following order: -

(i) We set aside the demand of Service Tax, along with interest, as confirmed in the impugned order.

(ii) The penalty imposed on the appellant under Section 78 of the Finance Act, 1994, vide the impugned order, stands set aside.

(iii) We uphold the penalty of Rs. 20,000/- imposed under Section 77(2) of the Finance Act, 1994, read with Rule 7C of the Service Tax Rules, 1994 for not filing ST-3 Return for the period 2011-12 and 2012-13.

10. In these terms, the appeal is disposed of, with consequential benefits, if any, as per law.

(Order pronounced in the open court on **22.05.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd