CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

Service Tax Appeal No. 54731 OF 2023

(Arising out of Order-in-Appeal No. RPR-EXCUS-000-APP-091-22-23 dated 21.12.2022 passed by the Commissioner (Appeals), Central GST & Central Excise, GST Bhavan, Tikarapara, Raipur (CG)

Sridhar V Naidu **.....Appellant**
120, Sector -3, Gokul Vihar Road,
Near Radha Krishna Mandir, Shivanandnagar,
Raipur

VERSUS

Commissioner of Customs, Central Excise & Service Tax, **.....Respondent**
CR Bldg., Tikrapara,
Raipur

APPEARANCE:

Shri Abhas Mishra, Advocate for the appellant
Shri Mahboob Ur Rehman, Authorised Representative for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI P V SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No: 50990/2026

DATE OF HEARING : 13.04.2026
DATE OF DECISION : 25.05.2026

Per: AJAY SHARMA

This appeal has been preferred by the appellant, assailing the Order-in-Appeal dated 21.12.2022 passed by the Commissioner (Appeals), CGST & Central Excise, Raipur, Chhattisgarh whereby the learned Commissioner upheld the demand of service tax amounting to Rs.2,28,763/- along with

applicable interest and penalty as confirmed by the adjudicating authority, while granting partial relief by setting aside the late fee that had been imposed for non-filing of returns.

2. The appellant is engaged in providing intermediary services for the *'selling of space for advertisement in print media'*. The appellant contended that such services are squarely covered under the negative list of services as defined under Section 66D of the Finance Act, 1994, and hence are not liable to service tax. Acting on this understanding, the appellant neither obtained service tax registration nor discharged any service tax liability. Periodical returns were likewise not filed.

3. The proceedings against the appellant originated from third-party information received from the Income Tax Department, which disclosed receipts of Rs.18,50,833/- in the appellant's hands for the financial years 2013-14 and 2014-15. The Revenue formed the impression that these receipts were earned by the appellant against the provision of taxable services, without registration and without discharging service tax liability. Accordingly, a Show-cause Notice dated 15.10.2018 was issued, demanding service tax of Rs.2,28,763/- u/s. 73 of Finance Act, 1994 along with interest, penalty, and late fee. The said show-cause notice culminated in the Order-in-Original dated 27.08.2021, whereby the adjudicating authority confirmed the entire demand with interest, penalty and late fee. The appellant's appeal before the Commissioner (Appeals) succeeded only to the limited extent of setting aside the late fee. The

demand of service tax, interest and penalty was otherwise upheld by the impugned order.

4. We have heard the rival submissions and have perused the case records including the synopsis/written submissions and case laws placed on record.

5. The learned counsel for the appellant raised a threshold preliminary objection that the Show Cause Notice dated 15.10.2018 was never served upon the appellant at his current address where he is residing since the year 2015 through any of the modes of service prescribed under the statute. It was submitted that the said notice was belatedly communicated to the appellant through WhatsApp on 19.10.2019, more than a year after its issuance, and that such communication does not constitute valid service within the meaning of Section 37C of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994 by virtue of Section 83 thereof. It was further submitted that although this argument was specifically raised before the learned Commissioner (Appeals), the said authority failed to address or adjudicate upon the same, rendering the impugned order deficient in reasoning.

6. Section 37C of the Central Excise Act, 1944, applicable here by virtue of Section 83 of the Finance Act, 1994, prescribes the modes of service of notices and orders in the following terms:

> *"Section 37C - Service of decisions, orders, summons etc.*

> *(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served —*
>
> > *(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs, to the person for whom it is intended or his authorised agent, if any;*
> >
> > *(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom it is intended;*
> >
> > *(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.*
>
> *(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1)."*

7. A plain reading of the aforesaid provision makes it abundantly clear that the modes of service prescribed thereunder are exhaustive, not illustrative. The statute

mandates service by registered post with acknowledgement due, speed post with proof of delivery, or courier approved by the Central Board. Where service by these primary means is not feasible, the statute provides for affixation at the place of business or residence of the assessee, and failing that, at the notice board of the issuing authority. WhatsApp, a private messaging application on a mobile phone, finds no mention whatsoever in the statutory framework. It is neither contemplated by the legislature nor has it been brought within the fold of permissible modes of service by any delegated legislation or executive instruction having the force of law. Service through WhatsApp, therefore, cannot be held to constitute valid service of a show cause notice within the meaning of Section 37C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

8. Significantly, the department has placed nothing on record to demonstrate that any attempt was made to serve the show cause notice at the present residential address of the appellant since the year 2015 through the prescribed modes before resorting to WhatsApp. There is no evidence of dispatch by registered post, speed post, or approved courier. There is no evidence of affixation at the premises of the appellant. The record is conspicuously silent on this aspect. The show cause notice dated 15.10.2018 was simply forwarded via WhatsApp on 19.10.2019, without any prior or contemporaneous effort at service through the channels mandated by law. This constitutes

a fundamental infirmity that strikes at the root of the entire adjudication proceedings.

9. Even if, for the sake of argument, service of the show cause notice through WhatsApp on 19.10.2019 were to be treated as valid, the demand would still be substantially time-barred. Section 73 of the Finance Act, 1994 prescribes an extended period of five years from the date of service of the notice, within which the demand must have accrued. The total demand of Rs.2,28,763/- comprises Rs. 2,26,934/- attributable to the financial year 2013-14 and Rs.1,829/- attributable to the financial year 2014-15. Even computing the extended limitation period backwards from the date of WhatsApp communication i.e. 19.10.2019, the entire demand for the year 2013-14 would fall beyond the five-year window. Consequently, the demand of Rs.2,26,934/- is patently beyond the extended period of limitation and is liable to be set aside on this ground as well.

10. That leaves only the residual demand of Rs.1,829/- pertaining to the financial year 2014-15 for consideration. We note that the entire case of the Revenue rests upon third-party data received from the Income Tax Department. No independent evidence of evasion, concealment, or wilful suppression has been produced. The invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 requires the department to establish, by positive and cogent material, that the non-payment of service tax was attributable to fraud, collusion, wilful mis-statement, suppression of facts, or

contravention of any provision with intent to evade payment of service tax. The mere insertion of the formulaic phrase *'fraud'* or *'suppression'* in the show cause notice is not a substitute for evidence. The department must place on record some positive act on the part of the appellant that would indicate concealment or misrepresentation.

11. In the present case, the appellant's consistent stand, both before the departmental authorities and before us, has been that the services rendered by it are covered under the negative list of services under Section 66D of the Finance Act, 1994 and are, therefore, exempt from service tax. Acting on this bona fide belief, the appellant neither registered under the service tax legislation nor collected any service tax from the recipients of its services. A bona fide legal belief in one's exemption from tax, however erroneous it may ultimately prove to be, does not, without more, constitute fraud or wilful suppression. Ignorance of law, or even a mistaken understanding of a fiscal provision, cannot be elevated to the level of deliberate evasion. In the peculiar facts of this case, after going through the case records, we are satisfied that the department has failed to make out a case for invocation of the extended period in the facts of this case and on this ground even for the year 2014-15, the demand of Rs.1,829/- deserves to be set aside.

12. We would ordinarily have been inclined to remand the matter for fresh adjudication in view of the procedural infirmity in service of show cause notice. However, given the peculiar

facts and circumstances of this case, in particular, the fact that the overwhelming bulk of the demand (Rs.2,26,934/-) is beyond the extended period of limitation even on the most charitable construction of the facts and the remaining demand (Rs.1,829/-) has failed for want of evidence of fraud or wilful suppression, we are of the considered view that remand would serve no useful purpose. It would only prolong litigation and cause hardship to the appellant without any prospect of resulting in a viable demand. We therefore refrain from remanding the matter.

13. In view of the foregoing reasons, the impugned Order-in-Appeal dated 21.12.2022 is hereby set aside. The appeal filed by the appellant is allowed with consequential relief, if any, as permissible in accordance with law.

(Pronounced in open Court on 25.05.2026)

(Ajay Sharma)
Member (Judicial)

(P V Subba Rao)
Member (Technical)

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