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

Service Tax Appeal No. 51720 OF 2025

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APPELLANT-037-25-26 dated 24.07.2025 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal)

M/s Vikash Security Services **.....Appellant**
Mailya Mill, Near Muski Baba,
Maganj, Ward no.4, Damoh, MP

VERSUS

Commissioner of CGST & Central Excise, **.....Respondent**
1st Floor, Arera Telephone Exchange
(ATX-Admin Block)
Near Vindhyachal Bhawan, Arera Hills, Bhopal (MP)

APPEARANCE:

Dr. Arvind Singh Chawla, Advocate for the appellant
Shri Ram Parvesh Prasad, Authorised Representative for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 50988/2026

DATE OF HEARING : 14.05.2026
DATE OF DECISION : 25.05.2026

Per: AJAY SHARMA

This appeal has been filed by the Appellant challenging the Order-in-Appeal dated 24.07.2025 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.). By the impugned order, the learned Commissioner (Appeals) modified the Order-in-Original by confirming the service tax demand to

the extent of Rs.7,67,514/- along with interest and equal penalty, while setting aside the demand of Rs.1,32,133/- along with interest and equal penalty.

2. The facts, briefly stated, are as follows. The Appellant is a registered service tax assessee engaged in the provision of taxable services namely the service relating to security and manpower service and had been discharging its service tax liability under the self-assessment scheme. On verification of third-party data, namely ITR/TDS data for the Financial Year 2016-17, the Revenue initiated an enquiry and formed the view that the Appellant had received a sum of Rs.98,97,671/- towards provision of taxable services, without declaring such consideration in the ST-3 Returns or paying service tax thereon. A Show Cause Notice dated 19.08.2021 was accordingly issued under Section 73 of the Finance Act, 1994, demanding service tax of Rs.14,84,651/- along with interest and penalties. The Adjudicating Authority, vide Order-in-Original dated 28.11.2022, confirmed the said demand.

3. Upon appeal by the Appellant, the Commissioner (Appeals), vide Order-in-Appeal dated 18.01.2024, set aside the Order-in-Original and remanded the matter to the adjudicating authority for fresh adjudication. Pursuant to the remand, the adjudicating authority passed a fresh Order-in-Original dated 10.06.2024, confirming a reduced service tax demand of Rs.8,99,647/- along with interest and penalties under different provisions of statute. The Appellant appealed once again, and

the Commissioner (Appeals) passed the impugned order dated 24.07.2025, confirming the demand to the extent of Rs.7,67,514/- and setting aside the remainder.

4. The learned Counsel for the Appellant raised several grounds challenging the confirmation of the demand. The primary contention advanced is that the Revenue invoked the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994, solely on the basis of third-party data, namely ITR/TDS statements, without conducting any independent inquiry and without any material on record to establish fraud, wilful suppression, or any positive act of concealment on the part of the Appellant. The learned Authorised Representative for the Revenue supported the findings in the impugned order and prayed for dismissal of the appeal.

5. Having heard the rival submissions and having perused the case records, including the written submissions and case laws placed on record, the following issue arises for determination:

> *"Whether a demand under Section 73 of the Finance Act, 1994 can be validly raised by invoking the extended period of limitation solely on the basis of third-party TDS/ITR data, in the absence of any independent inquiry or material establishing non-payment of service tax, fraud, or wilful suppression on the part of the Appellant?"*

6. Identical issue came up for consideration before a co-ordinate bench of the Tribunal in *Homeopathic Medical Publishers vs. Commr. CGST & Central Excise, Mumbai; 2025 (12) TMI 1248- CESTAT Mumbai* wherein the issue was decided in favour

of the assessee therein. The relevant paragraphs of the said decision are as under:-

"xxx xxx xxx

5. …..While it could be posited that exclusion and exception could be allowed only upon evidence of eligibility furnished by assessee, it is not in doubt that invoking of section 73 of Finance Act, 1994 is legal and proper only upon income being established as consideration for
'….any activity carried out by a person for another…'
to constitute 'service' as set out in section 65B (44) of Finance Act, 1994. Impliedly, every receipt is not deemed to be 'consideration for service' to be remitted by assessee as excluded or exempted from tax and income for the purpose of levy under another statute is not consideration either. The authority invoking section 73 of Finance Act, 1994 must, by investigation including response from assessee, must arrive at reasonable certainty of liability on grounds set out in the notice before determination of recoverable tax even if by failure on the part of the noticee to furnish evidence in support of claim proposed to be disallowed. Mere iteration of higher income reported under Income Tax Act, 1961 – with its own unique stipulations on inclusions – does not answer to that obligation resting on service tax authority without even the least cursory attempt at investigation of the assessee.

6. It would appear that the initiation of recovery proceedings under section 73 of Finance Act, 1994 solely on the basis of information received from third parties was so rampant and undesirable that the Central Board of Indirect Taxes & Customs (CBIC), vide circular dated 26th October 2021, instructed that

> *'2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F.No.137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*
> *3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns*

> *only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.'*

and the impugned proceedings is clearly in breach.

7. The Hon'ble High Court of Gujarat, in re Nimeshbhai Gunvantbhai Patel, has held, in like circumstances and after narration of reconciliation offered by assessee, that

> *'16. …Therefore, considering the facts on record it is evident that the petitioner was not at all liable for service tax and the respondent authorities could not have assume the jurisdiction to issue the show cause notice on the basis of the data provided by the Income Tax Department in Form-26AS and thereafter failed to consider the details provided by the petitioner in reply to the show cause notice.*
> *17. It is also pertinent to note that no justification is given in the impugned show cause notice as well as the order-in-original for assumption of jurisdiction by invoking extended period of 5 years under the proviso to subsection-1 of section 73 of the Finance Act, 1994.*
> *18. In view of the foregoing reasons, the impugned show cause notice is not tenable as the same is issued without jurisdiction and consequently the order-in-original also would not survive….'*

while the Tribunal, in Commissioner of CGST and Central Excise, Mumbai East v. Modern Road Makers Pvt Ltd [(2025) 26 Centax 193 (Tri.-Bom)], held that

> *'5. We have carefully gone through the record of the case and submissions made. Right at the outset we have examined the show cause notice. The show cause notice dated 16.04.2019 states that the same is enclosed with two annexures. AnnexureI is work sheet. The work sheet states the turnover of the respondent for the year 2013-14 as reflected in income tax return and turnover reflected in ST-3 return as nil and the difference between the two turnovers and service tax @ 12.36% on the said difference. Annexure-II is a letter dated 25.10.2018 issued by Superintendent (Data Cell) presuming that the respondent has shorted reported turnover in their ST3 return to the extent of difference stated in Annexure-I. The entire show cause notice nowhere examines as to on what account the turnover has taken place. The said show cause notice was issued without examining the activity of the respondent and without examining the reason for difference in*

turnover reported in income tax return and ST-3 return. It was presumed in the show cause notice that the entire turnover reported in income tax return was on account of provision of taxable service and by calculating 12.36% of that turnover, service tax demand was raised. The fundamentals of prosecution such as framing charges on the basis of admissible evidence is absent in issue of show cause notice. The basic of any proceeding is to frame charges on the basis of assessee's record and establish that the assesse has short paid calculated and pre-determined amount of service tax and then issue them a show cause notice calling for their explanation as to why the stated amount of service tax should not be recovered from them. The burden of proof is on Revenue to establish that the alleged service tax was short paid by the assesse. Unless such burden of proof is discharged by Revenue, such show cause notice cannot sustain. The preset show cause notice is totally presumptive. Further, the difference in turnover in ST-3 return and income tax return could be on account of non-taxable businesses. So, unless Revenue examines the reasons for the difference, it cannot demand service tax blindly on the basis of difference in the turnover reflected in the two statutory returns. This Tribunal has time and again held as follows:-

(a) In the case of Lord Krishna Real Infra Pvt. Ltd. [2019 (2) TMI 1563 - CESTAT ALLAHABAD], it was held as follows:-

> *"Further, we find that on the basis of form 26AS return filed under Income Tax Act without examining any other records of the appellant, charges of short payment of service tax to the tune of 8 crores were made against the appellant. It was possible for Revenue to know the transactions between other parties & appellant from form 26AS. Revenue could have investigated into the nature of such transactions & should have established that the said transactions were in respect of provision of said service. Then alone the charges of short payment of Service Tax would have sustained. We find that Final Order of this Tribunal in the case of Sharma Fabricators Pvt. Ltd. (supra) is squarely applicable in the present case. We, therefore, hold that Revenue did not discharge its burden to prove short payment of service tax. We also hold that the said show cause notice dated 05.10.2016 is not sustainable."*

(b) In the case of, Sharma Fabricators & Erectors Pvt. Ltd. [2017 (7) TMI 168 - CESTAT ALLAHABAD], it was held as follows:-

> *"Surprisingly the draft audit report was the relied upon document. It may be worth mentioning here that the purpose of audit report is to point out any discrepancy to the notice for examination by the executive and it is the duty of executive to examine the records and examine the objection raised with reference to the*

records and facts of the case and take a view whether there is a sustainable case for issue of Show Cause Notice. Such vital aspects of framing of charges have been missing in the present case. The charges in the Show Cause Notice have to be on the basis of books of account and records maintained by the assessee and other admissible evidence. The books of account maintained by M/s Sharma were not looked into for issue of above stated two Show Cause Notices. Therefore, the transactions recorded in the books of account cannot be held to be contrary to the facts. Therefore, we hold that the said Show Cause Notices are not sustainable. Since the said Show Couse Notices are not sustainable, appeal bearing No.ST/890/2010 filed by M/s Sharma is allowed and appeal bearing No. ST/949/2010 filed by Revenue is dismissed. Miscellaneous Applications are also stand disposed of. Cross Objection also disposed of."

(c) In the case of Kush Constructions [2019 (5) TMI 1248 - CESTAT ALLAHABAD], it was held as follows:-

"After hearing both the sides duly represented by Shri A.K. Singh authorized representative of the appellant on behalf of the appellant and Shri Shiv Pratap Singh learned A.R. on behalf of the Revenue, we note that through impugned order service tax of Rs.93,000/- was confirmed alongwith equal penalty. On perusal of record, we note that the appellants were registered with the Service Tax Department and also they were filing ST-3 returns. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income Tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal. "'

8. In view of our findings supra and the decisions aforesaid, the lack of allegation in the show cause notice, that any, or even part, of the impugned income was not attributable to any of the claimed activities, places the invoking of section 73 of Finance Act, 1994 in jeopardy at the threshold itself. It would appear that the adjudicating authority was influenced almost entirely by the additional income reported in returns prescribed in another jurisdiction.

9. In view of the above, we set aside the impugned order and allow the appeal."

7. Invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 is not a matter of course. It is a penal exception to the normal period, and must be founded upon clear evidence of fraud, collusion, wilful mis-statement, or suppression of facts with intent to evade payment of tax. The onus of establishing the presence of such ingredients rests squarely on the Revenue, and this onus must be discharged through cogent evidence brought out in the Show Cause Notice itself.

8. An examination of the record reveals that nothing has come on record to demonstrate that any independent investigation was conducted by the Revenue prior to issuance of the Show Cause Notice. The entire edifice of the demand rests upon TDS/Form 26AS data obtained from third-party sources. While a TDS certificate or Form 26AS is an official document reflecting tax deducted at source-containing the name, address, PAN of the deductor and deductee, and the nature of the payment. It is, at best, a starting point for inquiry. It is not, by itself, conclusive proof of taxable service rendered or of service tax liability incurred. Once the department had access to such TDS data, including the PAN and TAN of the paying parties, it was well within its power and, indeed, its duty, to conduct independent verification from those very parties to ascertain

whether taxable services had in fact been provided. That exercise was conspicuously absent here.

9. Furthermore, service tax and income tax operate under separate and independent statutory regimes. Consistent with the settled position of this Tribunal, a demand of service tax is not sustainable merely on the strength of TDS/Form 26AS statements. Income reflected in income tax returns does not, without more, constitute evidence of provision of taxable services under the Finance Act, 1994.

10. The requirement for invoking the extended period is that there must be a positive act attributable to the assessee, some deliberate act of commission or omission manifesting an intent to evade tax liability. Mere non-payment, standing alone, does not suffice. In the present case, the Appellant's case is that it entertained a bona fide belief that certain services, such as security services rendered to animal husbandry/veterinary centres, educational institutions, and to the district election office, were either exempt under Section 66D of the Finance Act, 1994, or under Notification No.25/2012-ST (Sl.No.9), or constituted sovereign functions, and therefore not liable to service tax. A bona fide belief, reasonably held, negates the element of wilfulness or intent to evade. Equally significant is the undisputed fact that the entire amounts in question were duly reflected in the Appellant's income tax returns and in its books of account, and the corresponding income tax liability was discharged. Where amounts are openly disclosed in

financial records, no allegation of wilful suppression is tenable. A bona fide belief can't be said to be wilful suppression with intention to evade tax, by any stretch of imagination.

11. This conclusion finds further support from the fact that the quasi-judicial authorities below itself dropped a substantial portion of the original demand, first at the remand stage and then before the Commissioner (Appeals). The progressive reduction of the demand across successive proceedings is inconsistent with any case of deliberate fraud or systematic concealment. It is also undisputed that this is not a case where the Appellant collected service tax from its clients but failed to deposit the same with the government, such a case would have attracted a different consideration altogether.

12. For all the foregoing reasons, the ingredients necessary to justify invocation of the extended period of limitation were neither present nor established on the facts of this case. The Show Cause Notice was time-barred to the extent it invoked the extended period, and the authorities below erred in confirming the demand on that basis.

13. In view of the above, the impugned Order-in-Appeal dated 24.07.2025 is set aside. The appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 25.05.2026)

(Ajay Sharma)
Member (Judicial)

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