CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.42364 of 2015

(Arising out of Order-in-Appeal No.249/2015 (STA-II) dated 27.08.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai)

Space Associates **.... Appellant**
B-3, Shakti Apartments,
New No 20, Cenotaph Road,
Chennai.

VERSUS

Commissioner of GST & Central Excise ... Respondent
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

APPEARANCE :

Shri P.R. Balachandar, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40713/2026

DATE OF HEARING: 18.02.2026
DATE OF DECISION: 10.06.2026

Per: Shri Ajayan T.V.

M/s. Space Associates, the appellant herein, is challenging the Order-in-Appeal No.249/2015 (STA-II) dated 27.08.2015 (the impugned order), whereby the Appellate Authority has, while setting aside a part of the demand, held that the appellant is liable to pay differential service tax with appropriate interest on the completion and finishing services provided during the period from April 2006 to June 2007 and has also upheld the penalty imposed under Section 78 of the Finance Act, 1994.

2. Briefly stated, the facts of the case are that the appellant is a proprietary concern registered with the Service Tax Commissionerate, Chennai under Service Tax Registration No.AATPN2547AST001 from 24.10.2008 for providing services of Commercial or Industrial Construction Service, Works Contract Service and Interior Decorators Service. It is stated that before 24.10.2008 a partnership firm with Registration No.ABFFS2205RST001 dated 17.05.2006 operated from the said premises with effect from 25.06.2007, that is stated to have been engaged in the activities of wood work, carpentry, water proofing, plaster of paris work, polishing, ceramic tile flooring, electric cabling, other interior work etc. for commercial or industrial buildings and civil structures.

3. During audit of the accounts, it was noticed that the erstwhile partnership firm provided services namely fixing of main door, cable door, wooden partition work, wooden paneling, making tables, sofas, conference tables, painting, water proofing, false ceiling with Plaster of Paris, polishing, ceramic tile/wooden flooring, electric cabling, pest control, other interior and carpentry work. They treated the above activities as construction service, availed 67% abatement and paid service tax on 33% of gross amount in terms of Notification No.01/2006-ST dated 01.03.2006. The Department being of the view that the above activities are falling under Completion and Finishing services for which the exemption is not available under the said notification issued an SCN dated 29-3-2011 alleging that since the said activities were completion and finishing services, there was no entitlement to the notification No.01/2006-ST ibid and thus there has been a short payment of service tax of Rs.21,69,192/- for the period from April 2006 to June 2007. It was also noticed that the appellant provided completion and finishing services to M/s. Kone Elevators India, Chennai on the basis of purchase orders placed prior to 01.06.2007 on which service tax was paid at 2.06% which is applicable to taxable services provided under under Works Contract service. The Department was of the view that a service provider, who entered into contracts prior to 01.06.2007 for providing Erection, Commissioning or Installation

Service and Commercial or Residential Construction Service is not entitled to the composition scheme under Works Contract Rules, 2007, and that the assessee was liable to pay normal rate of service tax on the gross amount received for the services provided and therefore, also demanded a differential service tax of Rs.7,72,021/-. After due process of law, the Adjudicating Authority vide the Order-in-Original No 119/2012 dated 27.04.2012 confirmed the above demand of Service tax of Rs.29,41,214/- under Section 73(1) along with interest under Section 75 and imposed equal penalty under Sections 78 of the Act. Aggrieved, the appellant preferred an appeal before the Commissioner of Service Tax (Appeals-II), and the appellate authority vide the impugned order while holding that the appellant is liable to pay differential service tax with appropriate interest on the completion and finishing services provided during the period from April 2006 to June 2007 and also upholding the penalty imposed under Section 78 of the Finance Act, 1994, dropped the service tax demand holding that the appellant had correctly paid the service tax @ 2.06% under works contract service. Aggrieved to the extant the demand and penalty has been so upheld, the present appeal has been preferred.

4. Shri P.R. Balachandar, Ld. Advocate appearing for the appellant contended that the Additional Commissioner has illegally confirmed service tax demand on the Proprietary Concern for services allegedly rendered by the erstwhile Partnership Firm. It was argued that the appellant is a proprietary concern engaged in works contract services and interior decoration for which it was registered under Service Tax Registration No.AATPN2547AST001 dated 24.10.2008. The impugned demand pertains to the period prior to September 2007 and relates to activities carried out by an erstwhile Partnership Firm which was separately registered under Service Tax Registration No.ABFFS2205RST001 dated 17.05.2006 as admitted in the show cause notice. Ld. Counsel contended that the said Partnership Firm had surrendered its Service Tax Registration on 26.10.2009 and since a Proprietary Concern and a Partnership Firm are distinct legal entities, service tax liability of one cannot be fastened upon the other. It was

contended that the appellant had not submitted any undertaking/bond that the appellant was responsible for payment of service tax/demand relating to the partnership firm.

5. The Ld. Counsel, without prejudice to the above contentions, further argued that the main activity of the erstwhile partnership firm was works contract service, involving transfer of property in goods and VAT was charged and paid on sale of goods, as evidenced by invoices. Applying the predominance test, the services are to be considered as works contract service and not completion and finishing services. The works contract services, became taxable only from 01.06.2007 and the registration was amended on 25.06.2007 and thereafter the requirements of the Works Contract (Composition Scheme) Rules, 2007 was complied. It was also argued that the demand was time barred as the nature of activities of the partnership firm was duly informed to the department vide letter dated 04.05.2006. Departmental audit was conducted in September 2009 and no adverse findings were reported. Therefore, the Show Cause Notice dated 29.03.2011 was issued well beyond the normal period and is clearly time barred. Reliance is placed on ***P.V. Narayana Reddy-2009 (14) STR 701 (Tri-Bang)***, holding that extended period cannot be invoked after surrender of registration. It was also contended that there was no willful suppression, fraud, or misstatement on the part of the appellant who had acted under a bonafide belief regarding availability of abatement and hence penalty ought to be waived under Section 80 of the Finance Act, 1994.

6. Ld. Counsel placed reliance on the citations of Hon'ble Gujarat High Court in ***Special Board MFG. Co.-2014 (301) ELT 180 (Guj), Carpenters -2014 (33) STR 573 (Tri.-Mumbai), Saini & Compnay-2014 (35) STR 639 (Tri.-Delhi), Harsh Construction Pvt. Ltd.-2014 (35) STR 617(Tri.-Mumbai)*** and placed reliance on ***Notification No.1/2006, Notification No.12/2003-ST, CBEC Circular No.59/8/2003-ST dated 20.06.2003, Almech Enterprises-2014 (36) STR 330 (Tri.-Mumbai), Almech Enterprises-2013 (29) STR (Bom), Shilpa Color Lab-2007(5) STR***

423 (Tri.-Bang) affirmed by SC, Wipro GE Medical systems-2009 (14) STR 43, PLA Tyre Works -2009 (14) STR, Xerox India Ltd..-2012 (27) STR 467, and ***Agrim Associates Pvt. Ltd.-2012 (25) STR 30, Bagai Construction-2011 (23) STR 163***.

7. Shri M. Selvakumar, Ld. AR appearing for the respondent reiterated the findings in the impugned order.

8. We have heard the rival submissions and perused the material available on record.

9. We find that the preliminary objections raised by the appellant is not without merit. The SCN indicates that the appellant, a proprietary concern and the erstwhile partnership firm, had different service tax registration numbers and which are based on separate PAN numbers. The fact that the registration of the partnership firm was surrendered on 26.10.2009, prior to the issuance of the present SCN, remains uncontroverted. While undoubtedly, the liability of the erstwhile firm does not automatically vanish and if the dues remain unpaid, the Department may probably be able to take recourse to Section 87 of the Finance Act, 1994 read with the Indian Partnership Act, 1932, however, even if the present proprietary firm is that of a person who was an erstwhile partner of the partnership firm, it was incumbent upon the Department to bring on record whether the present proprietary firm had acquired the partnership's ongoing business in a manner that the proprietor may be held personally liable for the erstwhile firm's tax arrears and duly reflecting the proprietor as the successor, not the non-existent partnership firm. Since, the demand pertains to a period April 2006 to June 2007, we find that the impugned SCN itself is not even addressed to the partner who is the proprietor and the erstwhile partner of the firm, but has been addressed to the proprietary concern who has a fresh registration. Therefore, without evidencing in any manner as to how the appellant firm is held liable for the tax arrears of the erstwhile partnership firm, particularly in the absence of any evidence of a formal transfer or amalgamation of the business entity, when the proprietorship has a fresh registration, transferee liability continues to

remains unestablished and thus the show cause notice is ab initio void. It is settled law that the SCN is the foundation for demand of any duty, interest or penalty as per the decision of the Apex Court in ***CCE, Bangalore v. Brindavan Beverages P Ltd, 2007 (213) ELT 487 (SC)***. The demand is liable to be set aside on this count alone.

10. Be that as it may, even on merits, we find that the appellant has produced its VAT returns filed under VAT Act 2006 under works contract for the Assessment year 2006—07 along with application for registration as a dealer indicating the appellant's business as works contract. Pertinently, the appellant's contention that there has been sale of goods in the execution of the appellant's service remains uncontroverted.

11. It is apposite to notice at this juncture that the Apex Court has in the decision in ***Commissioner of C.Ex &Cus, Kerala v. Larsen & Toubro Ltd, 2015 (39) STR 913 (SC),*** while examining the question whether service tax can be levied on indivisible works contracts prior to the introduction, on 1st June, 2007, of the Finance Act, 2007 which expressly makes such works contracts liable to service tax, held as under:

> "**24.** A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "*any service provided*". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. **Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases.** It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the

gross value of the works contract the value of property in goods transferred in the execution of a works contract.

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43. **We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.**

44. We have been informed by counsel for the revenue that several exemption notifications have been granted *qua* service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. **Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise**. With these observations, these appeals are disposed of." **(emphasis supplied)**

12. As we have noticed supra, in the instant case, undisputedly the services rendered by the appellant involve deemed sale of material used in the execution of the works contract and on which VAT in terms of the VAT provisions has been duly discharged. The impugned order, while accepting the appellant's contention in so far as the services rendered to Kone Elevators, which concededly as per the SCN was alleged to be completion and finishing services, as works contract service, has however upheld the order in original which seeks to classify the said services provided by the appellant as completion and finishing services under "commercial or industrial construction service" to sustain the demand of service tax. Therefore, in light of the said decision of the Hon'ble Apex Court, which has held that the very demand of service tax for the period before 01.06.2007 on services involving composite works contract and which are not service contracts simpliciter, is non-existent; we are of the considered view that the very basis of the demand having been demolished, the impugned order cannot be sustained and is liable to be set aside.
13. Given our aforesaid findings in favour of the appellant on merits, even though *ex facie*, the contentions on limitation urged in the alternate,

particularly the fact that the SCN does not evidence any positive act on the part of the appellant that would qualify as the necessary ingredient to attract invoking the extended period of limitation, too appear to be in favour of the appellant, addressing the same has now become inconsequential. We are fortified by our own view taken in similar circumstances in the decision in ***M/s. Girlak v. Commissioner of GST & Central Excise, vide Final Order No.40032/2026 dated 08.01.2026***. Resultantly, we set aside the impugned order.

The appeal is allowed with consequential relief(s), in law, if any.

(Order pronounced in the open court on 10.06.2026)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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