IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 41459 of 2016

(Arising out of Order-in-Appeal No. 231/2016 (STA – I) dated 23.3.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

Precision Equipments Chennai Pvt. Ltd. **Appellant**
No. 25 & 26, Mount Poonamallee Road
Nandambakkam, Chennai – 600 089.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri J. Shankarraman, Advocate for the Appellant
Ms. Rajini Menon, Authorised Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40706/2026

Date of Hearing: 27.05.2026
Date of Decision: 09.06.2026

Per M. Ajit Kumar,

This appeal is directed against Order-in-Appeal passed by the Commissioner of Service Tax (Appeals-I), Chennai, (impugned order).

Factual Matrix

2. The appellant is engaged in the manufacture of heat exchangers and also undertook job work for others. The department viewed that certain job work activities, not amounting to manufacture, were taxable under Business Auxiliary Service under Section 65(19) of the Finance Act, 1994. Alleging non-payment of service tax of Rs.4,54,786/- for the period from 10.09.2004 to 31.03.2006, a show

cause notice dated 21.05.2007 was issued proposing recovery of tax with interest and penalties. The adjudicating authority confirmed the demand with interest and imposed penalties under Sections 77 and 78. The appeal filed against the Order was rejected by the Commissioner (Appeals). Hence the present appeal.

3. The Ld. Advocate Shri J. Shankarraman appeared for the appellant and Ld. Authorized Representative Ms. Rajni Menon appeared for the respondent.

Submissions made by the Appellant

3.1 Shri J. Shankarraman, Ld. Advocate for the appellant submitted as follows:

A. Extended period not invocable

Since the demand arose from a CERA audit objection and the issue was within the department's knowledge and kept in the call book, suppression cannot be alleged and the extended period of limitation is not invocable**.** It is seen from paragraph 21 of the order-in-original that the show cause notice was issued consequent to CERA audit objection and the same was disputed by the Department itself. Once the Department and the appellant are contending that the audit objection is not correct it shows that on merits both were sailing in the same boat. In other words, the Department was supporting the appellant and assailing the audit objection. While so, there is no justification on the part of the Deputy Commissioner to invoke larger period to confirm the demand and therefore the impugned order fails on this ground.

B. Scope of BAS during the disputed period.

For the period 10.09.2004 to 28.02.2005, Business Auxiliary Service covered only production of goods on behalf of the client and not mere processing of goods for the client. The definition of Business Auxiliary Services as per section 65(19) of the Finance Act, 1994 was amended with effect from 10.09.2004, so as to include only production of goods service. From a bare reading of the definition it is clear that any service rendered in relation to production of goods on behalf of the client will attract service tax. It is an admitted fact that they had not acted on behalf of their clients. This being the case the job work i.e. processing of goods done by them will not attract service tax under the category of Business Auxiliary service.

C. Amendment effective from 16.06.2005

The expressions "processing of goods" and "for the client" were specifically brought into the definition of BAS only from 16.06.2005 and not during the period of dispute i.e. from 10.09.2004 to 28.02.2005. Hence, the appellant argues that the activity was not taxable prior to that date.

D. Excise duty already discharged

In respect of certain transactions, central excise duty was already paid either by the appellant or by the supplier/principal manufacturer. Where the activity undertaken amounts to manufacture under Section 2(f) of the Central Excise Act, the same falls outside the ambit of service tax under BAS. Once duty payment on manufacture is accepted, service tax cannot be demanded on the same activity.

E. Activity amounts to manufacture

Machining, drilling and tapping allegedly resulted in emergence of a distinct product, namely Nacelle Frame**,** which is amounts to manufacture, hence Service Tax liability would not arise**.**

F. Reliance on principal manufacturer's duty payment

Certificates from M/s L&T show that the processed goods were used in manufacture of excisable final products and were cleared on payment of duty. Even after getting such a certificate which is not under dispute, the lower authority has confirmed the demand even with regard to the above party. Hence confirmation of demand to the tune of Rs.3,57,894/- is not proper.

G. Penalty not sustainable

The dispute is interpretational, and the appellant claims bona fide belief regarding non-liability. Therefore, penalty under Section 78 is not imposable**.**

H. Case law support

He placed reliance on the following judgments in support of his submissions:

- **Ferro Scrap Nigam Ltd. v. CCE** – 2014 (36) S.T.R. 955 (Tri. Del.)
- **Samrajyaa & Co. v. CCE** – 2019 (24) G.S.T.L. 221

The Ld. Counsel prayed that the appeal may be allowed.

Submissions made by the Respondent-Revenue

3.2 Ms. Rajni Menon Ld. Authorized Representative appeared for the respondent. She submitted as under:

A. Regarding job work for manufacturers involving taxable value of Rs. 5,23,250/-, the appellant claimed payment of central excise duty

but produced no supporting evidence before either authority. As to the balance value of Rs. 5,06,700/-, it is admitted that the activity did not amount to manufacture; hence, in the absence of any exemption prior to 01.03.2005, the service was rightly taxable under Business Auxiliary Service.

B. As regards services rendered to NEPC, the appellant furnished no particulars of the process to substantiate the plea of manufacture. On the contrary, they admitted service tax liability on part of the activity and belatedly paid Rs. 4,080/-.

C. Regarding services to manufacturers who did not furnish certificates, the appellant stated that the job work was undertaken for M/s. L&T, Chennai and that excise duty had been paid on the resultant goods; however, no documentary proof was produced before either authority.

D. A plain reading of the provisions shows that "production" and "manufacture" are substantially synonymous and used interchangeably. The Explanation to Section 65(19), which excludes processes amounting to manufacture, makes it clear that the expression "production" in the definition of BAS necessarily includes process.

E. As regards invocation of the extended time, reliance was placed on Aircell Digilink India Ltd. v. CCE [2006 (3) STR 386], wherein the Hon'ble Tribunal held that, without proof showing that the assessee had approached the service tax authorities to ascertain liability, a plea founded on Central Excise decisions was unavailable, particularly

where suppression of facts was not disproved. The said ratio squarely supports invocation of the extended period.

She prayed that the appeal may be set aside.

4. We have carefully considered the appeal and heard both sides. At the outset, the appellant has raised a preliminary objection on jurisdiction, contending that the Show Cause Notice is barred by limitation. The period under dispute is from 10.09.2004 to 31.03.2006 and the Show Cause Notice is dated 21.05.2007 i.e. after the normal period of one year. It is their case that there was no suppression of facts and that the objection raised by the Central Excise Revenue Audit (CERA), which culminated in issuance of the Show Cause Notice, pertains to certain job-work activities alleged not amounting to manufacture and, therefore, sought to be taxed under the category of *Business Auxiliary Service*. According to the appellant, the issue is purely interpretational in nature and the notice, having been issued beyond the normal period of one year then applicable, is not sustainable. We find that the normal period for a demand was one year upto 27.05.2012 after which it was enhanced to eighteen months.

4.1 The plea of limitation, when raised before any judicial or quasi-judicial forum, assumes considerable significance and stands on a distinct footing. It is incumbent upon the adjudicating authority to examine the issue whenever it arises from the record; is brought to its notice or is independently perceived by it, even where limitation has not been expressly pleaded as a defence. In **Noharlal Verma Vs District Cooperative Central Bank Ltd.** [(2008) 14 SCC 445 / AIR

2009 SC 664], the Hon'ble Supreme Court, while dealing with the question of limitation, observed as under:

> "27. **Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an Adjudicating Authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.**
> 28. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under;
>
> > (3) Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.
>
> 29. Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, **appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up.** In other words, even in absence of such plea by the defendant, respondent or opponent, the Court or Authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation."
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> (emphasis added)

4.2 It is a true that in a series of decisions, including **Town Municipal Council, Athani Vs Presiding Officer, Labour Court, Hubli**[(1970) 1 SCR 51 / AIR 1969 SC 1335], **Nityananda M. Joshi Vs Life Insurance Corporation of India** [(1970) 1 SCR 396 / AIR 1970 SC 209], and **Sushila Devi Vs Ramanandan Prasad** [(1976) 2 SCR 845 / AIR 1976 SC 177], the Hon'ble Supreme Court has held that the provisions of the Limitation Act, 1963, do not apply to quasi-judicial authorities such as Tribunals or executive authorities which are not "courts". Nevertheless, where a special enactment, such as the Finance Act, 1994, is silent on a particular facet—for example, the effect of

limitation on jurisdiction or its impact at the stage of adjudication on merits—and such facet is specifically addressed by the general law, the principles embodied in the general law would apply. This principle stands recognised by the Hon'ble Supreme Court in **Mirza Iqbal Hussain Vs State of U.P.** [AIR 1983 SC 60 / 1983 SCC (Cri) 111].

4.3 The settled legal position is that limitation is a jurisdictional issue and can be raised at any stage of the proceedings. Jurisdiction denotes the authority of a forum to entertain and decide a dispute. Such authority cannot be conferred by consent or acquiescence of the parties and must be examined at the threshold. Any decision rendered without jurisdiction is *coram non judice*, void, and a nullity in the eye of law. Reference in this regard may be made to **Kiran Singh Vs Chaman Paswan** [AIR 1954 SC 340], **Chief Justice of Andhra Pradesh Vs L.V.A. Dikshitulu** [AIR 1979 SC 193], **Sushil Kumar Mehta Vs Govind Ram Bohra** [(1990) 1 SCC 193], and **M.D., Army Welfare Housing Organisation Vs Sumangal Services (P) Ltd.** [(2004) 8 SCC 619].

4.4 The principle relating to time-bar and its bearing on jurisdiction has also found application in indirect tax matters, as noticed in **Commissioner of Customs, Central Excise & Service Tax Vs Monsanto Manufacturer Pvt. Ltd.** [2014 (35) STR 177 (All.)], among other decisions. Useful reference may also be made to **State Bank of India Vs B.S. Agricultural Industries** [AIR 2009 SC 2210], **Commissioner of Customs, Mumbai Vs B.V. Jewels & Others** [AIR 2005 SC 1231], and **E.T.A. General Pvt. Ltd. Vs Additional Commissioner of Central Excise, Chennai** [2016 (44)

STR 409 (Mad.)]. In view of the above legal position, we proceed first to examine the preliminary jurisdictional objection of limitation raised in the present appeal.

5. We find that at para 21 of the impugned order the Ld. Original Authority has admitted that the issue arose from a CERA objection and was disputed by the department itself. The relevant para is reproduced below.

> **"<u>It is seen from the records that the show cause notice in the instant case was issued consequent to CERA audit objections and as the issue was disputed by the Department, the same was kept in Call Book</u>.** Consequent to the Board Circular F.No.206/02/2010-CX.6 dated 03.02.2010 wherein it was clarified that wherever CERA Audit objections not admitted by the Department and the same is not converted in to SOF/DAP by CERA, the SCN issued on account of LAR can be adjudicated after a period of one year from the date of sending the reply to LAR. Accordingly this case has been taken up for adjudication after getting the necessary concurrence."
>
> (emphasis added)

6. The above para makes it crystal clear that the Department harboured views that were similar to that of the appellant and the objection raised by CERA was an interpretational dispute, between the said organisation and the department itself. In such a situation the charge of supressing of information by the appellant rings hollow.

7. We also find that the entire analysis on the question of the appellant supressing information is opaque and reduced to one line as seen in the un-numbered para below 'Category d)' at page 9 of the OIO.

> "I am of the considered opinion that M/s PEC supressed the information and but for the issue of the Show Cause Notice, this short / non-payment of service tax would have gone unnoticed."

8. The impugned Order also does not venture into a discussion on how a charge of suppression of information could be alleged when the issue was raised by CERA and was initially not agreed with, by the department itself, by stating;

> "The fact remains that but for audit by CERA these issues would not have come to light"

The above finds are unmindful of the legal position that the concept of suppression or non-disclosure of facts transcends mere concealment. It necessitates the deliberate withholding of material facts. Moreover, as stated in **Sai Raj Enterprises Vs The Additional Director of Foreign Trade & Anr**, [(2019) 365 ELT 283: (2018) 10 TMI 977 (Bombay)], an authority is obliged to give reasons for its decision. An order must indicate application of mind to submissions made by parties and reason why submission not accepted or accepted. Giving of reasons while dealing with the submissions alone injects objectivity in deciding the appeal/dispute. Moreover, this alone would let the parties know as to why its submissions are not accepted so as to effectively challenge it before the superior forum. Moreover, the superior forum would have the advantage of knowing the reasons, which weighed with the authority in accepting or not accepting a particular submission. Thus reasons are the lifeblood of any adjudicating/appellate order. As held by Justice Krishna Iyer in **Organo Chemical Industries & Anr Vs UOI** [1979 AIR 1803 / 1980 SCR (1) 61];

> 'The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.'

Conclusion

We find that the impugned order is defective in as much as it does not discuss as to how a case of suppression of fact is made out. Further when the department itself was not convinced of the CERA objection and contested the same, surely the issue is one of interpretation and not of suppression of fact. In the circumstances the extended period of limitation cannot be invoked and the SCN is time barred and cannot be examined on merit. It needs to be set aside and is so ordered. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 09.06.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Sd/-
(**P. DINESHA**)
Member (Judicial)

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