CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41727 of 2016

(Arising out of Order-in-Original No. MDU-ST-000-COM-04/2016 dated 13.05.2016 passed by Commissioner of Central Excise, Central Revenue Buildings, No. 4, Lal Bahadur Shastri Road, Bibikulam, Madurai – 625 002)

Commissioner of GST and Central Excise **... Appellant**
Madurai Commissionerate,
Central Revenue Buildings,
Bibikulam,
Madurai – 625 002.

Versus

M/s. i-Grandee Software Technologies (P) Ltd. **... Respondent**
No. 12, Veerapadra Pillai Compound,
Villapuram,
Madurai – 625 012.

APPEARANCE:

For the Appellant : Ms. G. Krupa, Authorised Representative
For the Respondent : None

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40829 / 2026

DATE OF HEARING : 03.03.2026
DATE OF DECISION : 25.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by the Department against the Order-in-Original No.MDU-ST-000-COM-04-2016 dated 13.05.2016, whereby the adjudicating authority confirmed demand of service tax amounting to Rs.76,51,054/- under Information Technology Software

Services and Rs.36,858/- under Commercial Coaching and Training Services, along with applicable interest. The adjudicating authority also imposed penalty under Section 78 to the extent of Rs.7,63,623/- and penalty under Section 77, while refraining from imposing penalty equivalent to 100% of the service tax confirmed. The case arises from investigations conducted by DGCEI, which revealed that the respondent was engaged in multiple activities including software development, installation, maintenance, IT training, and biometric data services for UIDAI projects, and had collected service tax from clients but failed to discharge the full tax liability.

1.2 It was further found that the respondent had initially classified its services under Management, Maintenance or Repair Services and subsequently under Information Technology Software Services, but had not paid appropriate service tax during the period from 2009-10 to 2013-14. The respondent had also failed to comply with the provisions of the Point of Taxation Rules, 2011, resulting in short declaration of taxable value. The adjudicating authority held that the extended period under the proviso to Section 73(1) was invokable on account of suppression of facts; however, penalty under Section 78 was imposed only to the

extent of short-declared tax and not equal to the entire service tax confirmed.

2. Aggrieved by such partial imposition of penalty, the Department has filed the present appeal seeking imposition of mandatory penalty equal to the service tax confirmed.

3. The Ld. Authorized Representative Ms. G. Krupa appeared for the Revenue. Despite notice, none appeared on behalf of the Respondent.

4. The Ld. Authorized Representative reiterated the findings in the impugned order and submitted that once the adjudicating authority invoked the proviso to Section 73(1) of the Finance Act, 1994 on the ground of suppression of facts with intent to evade payment of tax, penalty under Section 78 automatically became attracted and was mandatorily required to be imposed equal to the service tax determined. It was argued that Section 78 does not confer any discretion upon the adjudicating authority to impose a lesser penalty once ingredients such as suppression, wilful misstatement or intent to evade stand established. In support, reliance was placed on the decisions of the Hon'ble Supreme Court in Union of India v Rajasthan Spinning &

Weaving Mills and the Hon'ble Madras High Court in Commissioner vs. Joe Transport to contend that where suppression is established, penalty under Section 78 is mandatory and therefore the impugned order requires modification by imposing penalty equal to the entire service tax confirmed.

5. Since none appeared on behalf of the respondent and the Order-in-Original is partly in favour of the respondent, the submissions and contentions recorded in the impugned Order-in-Original are deemed to represent the arguments of the respondent for the purpose of deciding the present appeal.

6. Upon consideration of the submissions advanced by the Revenue and on perusal of the records including the findings contained in the impugned Order-in-Original, the short issue that arises for our determination in the present appeal is whether, the Department's appeal seeking enhancement of penalty under Section 78 of the Finance Act, 1994 is legally sustainable?

7. At the outset, we find that the present appeal proceeds on a purely technical interpretation of Section 78 of the Finance Act, 1994 while overlooking the peculiar factual

details obtaining in this case and the findings recorded by the adjudicating authority in the impugned order.

7.1 The undisputed facts reveal that during the relevant period the respondent had rendered taxable services under multiple categories including Information Technology Software Services and Management, Maintenance and Repair Services. The record shows that while there was short payment under Information Technology Software Services, there was simultaneous excess payment under Management, Maintenance and Repair Services. The dispute thus substantially arose out of classification and adjustment of tax paid under different taxable heads rather than non-payment of tax.

7.2 We note that before issuance of Show Cause Notice dated 14.10.2014, the respondent had already discharged the entire differential tax liability of Rs.29,18,126/- together with interest of Rs.1,80,316/- and penalty of Rs.1,31,186/- in terms of Section 73 of Finance Act, 1994. Thus, on the date of issuance of notice, no tax liability remained outstanding. Such conduct does not support an allegation of deliberate tax evasion.

7.3 The adjudicating authority has rightly recorded that payment under an incorrect taxable category had not caused any revenue loss to the Government since excess tax already paid under Management, Maintenance and Repair Services substantially neutralized the short payment under Information Technology Software Services. Once tax had already reached the exchequer, the allegation of deliberate suppression loses considerable force.

7.4 We further note that the adjudicating authority has correctly relied upon CBEC Circular No. 58/07/2003-ST dated 20.05.2003 clarifying that adjustment of excess service tax paid under one taxable category against liability arising under another taxable category is permissible. The adjudicating authority has also rightly relied upon the decision in *Arcadia Share & Stock Brokers Pvt. Ltd. v. Commissioner of Service Tax, 2014 (34) S.T.R. 231 (Tri.-Mumbai),* wherein it was held that Service tax discharged under an incorrect accounting code is not required to be paid again under the proper code when the liability was otherwise satisfied for the relevant period. The Board's circular states that such cases should be corrected through the PAO process rather than by demanding a fresh payment from the assessee. The operative effect is that a mere coding error in payment does not create a second service tax liability if the

tax was already remitted. The ratio laid down therein squarely supports the respondent's case and fully justifies the approach adopted in the impugned order.

7.5 We however note that the adjudicating authority independently found violation of Point of Taxation Rules, 2011 resulting in short declaration of taxable value and therefore restricted penalty only to that limited extent. We find no infirmity in this approach since the adjudicating authority has correctly distinguished between classification/payment adjustment issues on one hand and independent statutory non-compliance on the other.

7.6 The Department has filed the present appeal on the assumption that once extended period under Section 73 is invoked, penalty equal to the entire demand under Section 78 must automatically follow. We are unable to accept such a proposition. The reliance placed on *Union of India v. Rajasthan Spinning & Weaving Mills, 2009 (238) E.L.T. 3 (S.C.)* and *Commissioner v. Joe Transport, 2015 (39) S.T.R. 366 (Mad.)* is misplaced since the factual foundation in the present case is entirely different. When the appellant has settled the short-paid tax along with applicable interest and also penalty at prescribed percentage before the issuance of the Show Cause Notice, the issue should have been treated

as settled in terms of provisions of Section 73 of Finance Act, 1994. We therefore find complete agreement with the reasoning adopted by the adjudicating authority and find no legal infirmity warranting any interference.

8. In view of the foregoing findings, we hold that the adjudicating authority has correctly appreciated the factual and legal position in holding that the dispute substantially arose on account of adjustment of excess tax already paid under a different taxable category and that no revenue loss had occurred. Since the entire differential tax liability together with applicable interest and penalty stood discharged even prior to issuance of Show Cause Notice, we find no justification to interfere with the impugned order.

9. Accordingly, finding no merit in the appeal filed by the Department, the same is rejected and the impugned Order-in-Original is upheld.

(Order pronounced in open court on 25.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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