

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 89820 of 2018

[Arising out of Order-in-Appeal No. MMK/213/RGD/APP/2018-19 dated 07.09.2018 passed by the Commissioner of Central Tax (Appeals), Raigarh]

Intertek Testing Services India Ltd.

.... Appellant

Akruti Corporate Park, G-3 Ground Floor,
LBS Marg, Kanjurmarg (W), Mumbai 400 079.

Versus

Commissioner of CGST, Navi Mumbai

.... Respondent

16th Floor, Satra Plaza, Palm Beach Road,
Sector 19D, Vashi, Navi Mumbai 400 705.

APPEARANCE:

Shri Nikhil Gupta, Advocate for the Appellant

Shri S.B.P. Sinha, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 85821/2026

Date of Hearing: 30.06.2026

Date of Decision: 30.06.2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellant is engaged *inter alia*, in providing service of Social Compliance Audit to their clients. Such service involved the activities, concerning audit of the factory, premises of vendors or clients, from which they would procure the goods for rendering the services. Considering the services provided by the appellant, the department had interpreted that such service should be categorized as a service under the taxable category of "Business Auxiliary Service", defined under Section 65(19) of the Finance Act, 1944. The show cause notice issued by the department, proposing for recovery of the service tax demand

was adjudicated by the Additional Commissioner of Service Tax-VII, Mumbai vide order dated 09.05.2017 in confirming the proposals made in the show cause notice dated 20.04.2011. On appeal against the said adjudication order dated 09.05.2017, the learned Commissioner (Appeals) vide the impugned order dated 07.09.2018 has rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order dated 07.09.2018, the appellant has preferred this appeal before the Tribunal.

3. The appellant's contention in this appeal is that the learned Commissioner (Appeals) though has held that the services provided by the appellant should not be categorized as a taxable service under the head 'Business Auxiliary Service', but confirmed the service tax demand under altogether a new taxable entry of "Business Support Service". Thus, the appellant has pleaded that since the show cause notice had not proposed to classify the service under the "Business Support Service", confirmation of the adjudged demands is not proper and as such, the impugned order is liable to be set aside on that ground alone.

4. On perusal of the case records, more particularly paragraph 5.2 of the impugned order, we find that the learned Commissioner (Appeals) has set aside the adjudication order, to the extent it has confirmed the service tax demand under Business Auxiliary Service. The relevant paragraph recorded in the impugned order is quoted herein below:-

"..... Therefore, observation of the adjudicating authority that their services fall under Section 65(19) under sub-clause (vii) is not acceptable and not sustainable. Similar view was taken by Hon'ble Tribunal in case of Credentials vs. CCE reported in 2015 (37) STR 235 (Tri.) wherein Para 8.2 it was held that when activity undertaken by the appellant is not covered in clauses (i) to (vi) of Section 65(19) of the Finance Act, 1994, then they are not required to pay service tax on their activity."

4.1 On reading of the above quoted paragraph from the impugned order, it is evident that the learned Commissioner (Appeals), upon analysis of the fact, has confirmed that the services provided by the appellant should not fall under the taxable entry of 'Business Auxiliary Service'. Thus, under such circumstances, the scope on the part of the learned Commissioner (Appeals) is confined only to allow the appeal filed by the appellant, instead of going

through the other taxable entry for confirmation of the service tax demand. Since the learned Commissioner (Appeals) has held that the activities undertaken by the appellant shall not be categorized under the taxable entry of 'Business Auxiliary Service', the impugned order confirming the adjudged demands on altogether a new taxable service head i.e., "Business Support Service" should not stand for the judicial scrutiny.

5. We find that this particular issue, whether can the appellate authority go beyond the scope of the show cause notice or the adjudication order, for deciding the classification of goods/service differently, has been dealt with by the Hon'ble Supreme Court in the cases of:-

- (i) *Precision Rubber Industries Pvt. Ltd. vs. CCE [2016 (334) ELT 577 (SC)]*
- (ii) *CCE vs. Ballarpur Industries Ltd. [2007 (215) ELT 489 (SC)]*
- (iii) *Warner Hindustan Ltd. vs. CCE [1999 (113) ELT 24 (SC)]*
- (iv) *CC vs. Toyo Engineering India Ltd. [2006 (201) ELT 513 (SC)].*

6. The Hon'ble Supreme Court in the case of *Precision Rubber Industries* (supra) has held as under:-

"11. In so far as the present appeal is concerned, it is the case of the Revenue in the show cause notices that the goods are classifiable under Chapter Heading 4016.99. Therefore, no new case could have been set up or decided contrary to the show cause notices that the goods fall under Chapter Heading 8448.00 without issuing a fresh show cause notice to the assessee in this regard.

12. In these circumstances, and following the decisions of this Court, we would have ordinarily permitted the Revenue to issue a fresh show cause notice to the assessee seeking to classify the goods under Chapter Heading 8448.00. However, due to the passage of time, we are of the opinion that it would not be advisable (or permissible under the provisions of the Central Excise Tariff Act) to permit the Revenue to reopen the entire proceedings and classify the goods under Chapter Heading 8448.00."

7. In view of the foregoing discussions, especially the ratio laid down by the Hon'ble Supreme Court in the aforementioned cases, we are of the view that the adjudged demands confirmed by the learned Commissioner

(Appeals) against the appellant cannot be sustained. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

tvu