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

Service Tax Appeal No. 42539 of 2015

(Arising out of Order in Appeal No. 202/2015 (STA – I) dated 23.9.2015 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

SPI Technologies India Pvt. Ltd. **Appellant**
No. 117/1, Arihant e-Park
Lal Bahadur Shastri Road
Adayar, Chennai – 600 020.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Smt. Radhika Chandrasekar, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40866/2026

Date of Hearing: 17.02.2026
Date of Decision: 13.07.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 202/2015 (STA – I) dated 23.9.2015 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

Factual Matrix

2. The appellant, a 100% EOU registered under the Software Technology Park of India, was engaged in providing Business Auxiliary Service. During audit, it was noticed that, during the period 2004–05 to 2006–07, the appellant had subcontracted part of its activities,

namely data capturing and data processing of books and journals, to M/s Apex Abstracting & Editing Services (P) Ltd. ("**M/s Apex**"), its wholly owned subsidiary. M/s Apex received data processing charges from the appellant for the said work. As the activities undertaken by M/s Apex appeared classifiable under Business Auxiliary Service, and in view of the Scheme of Amalgamation approved by the Hon'ble High Court of Madras vide C.P. Nos. 58 & 59 of 2007 dated 20.04.2007, the appellant was considered liable to discharge service tax on behalf of M/s Apex. After observing due process, the Original Authority confirmed a demand of Rs. 37,54,982/- under the proviso to Section 73(1) of the Finance Act, 1994, along with interest, and imposed penalties under Sections 76, 77 and 78. The appeal preferred against the Order was rejected by the Commissioner (Appeals) vide the impugned order. Hence, the present appeal.

3. The Ld. Advocate Smt. Radhika Chandrasekar appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

Submissions made on behalf of the Appellant

3.1 The Ld. Counsel for the appellant submitted as follows:

A. Limitation

The extended period is not invocable. The demand pertains to 2004–05 to 2006–07, while the show cause notice was issued on 24.07.2009. As the demand is based entirely on the appellant's books of account, there is no suppression, fraud, wilful misstatement, or intent to evade tax. The issue is interpretational and based on a bona fide belief;

hence, invocation of the extended period under Section 73(1) is unsustainable.

B. Audit conducted was illegal

There was no statutory power to conduct Departmental audit until Section 94(2) of the Finance Act, 1994 was amended with effect from 06.08.2014. Pursuant thereto, Rule 5A(2) of the Service Tax Rules, 1994 was inserted vide Notification No. 23/2014-ST dated 05.12.2014, empowering audit parties deputed by the Commissioner to scrutinize records. Therefore Audit conducted before 05.12.2014 is illegal.

C. No service provider–client relationship

Upon sanction of the Scheme of Amalgamation, M/s Apex merged with the appellant with effect from 01.05.2006. The sanction relates back to the appointed date, and the transferor and transferee cease to be separate legal entities from that date. Consequently, any inter se activity constitutes service to self and is not taxable. This principle is affirmed in ITC Hotels Ltd., Skol Breweries, Usha International Ltd., Manipal Health Enterprises Pvt. Ltd., Precot Mills, and BSNL Cellular Mobile Services. Accordingly, during the disputed period, no service provider–client relationship existed and no service tax liability arose.

D. Information Technology service excluded from BAS

The amounts received by M/s Apex were for data capturing and data processing of books and journals, which constitute Information Technology Services (IT Services), specifically excluded from Business Auxiliary Service (BAS) during the relevant period. The Finance Act, 2006, Circular No. 334/4/2006 dated 28.02.2006, and the decisions in TCS E-Serve Ltd., Suntec Business Solutions Pvt. Ltd., Ferromatik

Milacron India Pvt. Ltd., and IBM India Pvt. Ltd. affirm this position. Alternatively, if classified as Business Support Service, no tax is leviable prior to 01.05.2006 when BSS became taxable, and thereafter no tax arises due to the amalgamation. Further, the notice fails to specify the applicable limb of BAS, rendering the demand unsustainable, as held in Balaji Enterprises and Reynolds Petro Chem Ltd.

E. Penalty

When service tax itself is not payable, no penalty survives. In any event, penalties under Sections 76, 77 and 78 are not imposable absent any intent to evade. Further, Section 80 of the Finance Act, 1994 grants relief where reasonable cause is shown. Hence, penalty is liable to be set aside.

The Ld. Counsel prayed that the Appeal may be set aside.

Submission made by the Respondent-Revenue

3.2 The Ld. Authorized Representative Shri M. Selvakumar who appeared for the respondent, reiterated the findings in the impugned orders and further submitted as under:

A. The Appellant has stated that the subcontracted activity merits classification under Business Support Service (BSS), which became taxable only from 01.05.2006. However, the Hon'ble High Court of Madras, in C.P. No. 58659/2007 dated 20.04.2007, ordered that the scheme would take effect only upon fulfilment of the conditions in Clause 19, including approvals, sanctions and filing of the High Court's order with the Registrar of Companies, which could be only after 20.04.2007. Thus, the amalgamation could become effective only after

20.04.2007. Accordingly, the contention that no service provider-client relationship existed from 01.05.2006 is untenable.

B. As regards classification, the exclusion of Information Technology service from Business Auxiliary Service applies only where the output service is in relation to designing, developing or maintaining computer software, computerized data processing, system networking, or other services primarily relating to operation of computer systems.

C. The Board's Circulars dated 20.06.2003 and 21.08.2003 clarify that mere use of computers or IT inputs does not render the output service an IT service. Activities such as payroll processing, accounts management and similar back-office functions remain taxable where the primary activity is business-related work. In the present case, data capturing and processing of books and journals cannot be regarded as services primarily relating to operation of computer systems. The use of computer in these services is secondary, and the primary activity is that of business-related work. Thus, these services will be taxable as Business Auxiliary Services. This is exactly the position that has been clarified in the circular dated 20-6-2003. The services rendered by M/s Apex are, therefore, rightly classifiable under Business Auxiliary Service and are liable to service tax.

The Ld. A.R. prayed that the appeal may be set aside.

Discussion and Analysis

4. We have carefully gone through the appeals and have heard the parties to the dispute. We find that the appellant has raised the following issue:

A) The extended period is not invocable.

B) There was no statutory power to conduct Departmental audit before 05.12.2014.

C) Upon sanction of the Scheme of Amalgamation, from the appointed date, the transferor and transferee cease to be separate legal entities and any inter se activity constitutes service to self and is not taxable.

D) Data capturing and data processing of books and journals, which constitute Information Technology Services (IT Services), specifically excluded from Business Auxiliary Service (BAS) during the relevant period.

E) No tax is leviable on Business Support Service, prior to 01.05.2006 from when it became taxable.

F) When service tax itself is not payable, no penalty survives.

We discuss the issues sequentially.

5. As the Appellant has raised the plea of limitation for the entire demand, it merits examination at the threshold. **Limitation is a jurisdictional issue that goes to the root of the matter and hence must be examined whenever it arises, even if not specifically pleaded. If a proceeding is time-barred, an authority lacks jurisdiction to decide the issues involved on merits, and any order passed in the circumstances would be *coram non judice*, void, and a nullity in the eye of law.** Further where the show cause notice discloses only a bona fide interpretational dispute, full disclosure of facts being done in the normal course, or a bonafide mistake or there being no intent to evade tax etc, the demand may be held time-barred at the threshold. Fruitful 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]. 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.)]; **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]; **E.T.A. General Pvt. Ltd. Vs Additional Commissioner of Central Excise, Chennai** [2016 (44) STR 409 (Mad.)] and **Precision Equipments Chennai Pvt. Ltd. Vs Commissioner of GST & Central Excise, Chennai** [FINAL ORDER NO. 40706/2026, Dated: 09.06.2026 / 2026 (6) TMI 530 - CESTAT CHENNAI]

5.1 We find that the SCN dated 24.07.2009 pertains to the period 10.09.2004 to 31.03.2007. Under Section 73(1) of the Finance Act, 1994, the normal period for issuing a show cause notice was one year up to 27.05.2012. It was enhanced to eighteen months with effect from 28.05.2012. During the relevant period, ST-3 returns under Rule 7 of the Service Tax Rules, 1994 were required to be filed half-yearly—by 25 October for April–September and by 25 April for October–March. For the period ending 31.03.2007, the ST-3 Return was to be filed on the 25th of April 2007. Hence the SCN has been clearly issued after a period of one year. The question arises whether the demand could be raised for the extended period. The charge in the SCN is that the liability of the subsidiary M/s Apex, which was subsequently amalgamated with the appellant, was not brought to the notice of the Department until it was discovered by the Audit team. Hence it was alleged that the Appellant had supressed facts with an intention to evade payment of duty. The following question arises. Whether irregularities found during an audit including the non-filing of ST-3 Returns in themselves would amount to suppression of fact?

5.2 The Principal Bench of this Tribunal at New Delhi examined a similar issue in its Order in the case of **M/s GD Goenka Private Limited Vs The Commissioner of Central Goods and Services Tax, Delhi South** [FINAL ORDER NO. 51088 /2023, Dated: 21.08.2023 / 2023 (8) TMI–995-CESTAT NEW DELHI], and held as under:

> "21. This legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs [CBEC] in its **Manual for Scrutiny of Service Tax Returns** the relevant portion of which is as follows:
>
> > 1.2.1A The importance of scrutiny of returns was also highlighted by **Dr. Kelkar in his report on Indirect Taxation [Report of the Task Force on Indirect Taxation 2002,** Central Board of Excise and Service Tax, Government of India.]. The observation made in the context of Central Excise but also found to be relevant to Service Tax is reproduced below:
> >
> > > **It is the view that assessment should be the primary function of the Central Excise Officers. Self- assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of**

> **<u>duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.</u>**
>
> 22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have come to light is neither legally correct nor is it consistent with the CBEC's own instructions to its officers."
>
> (emphasis added)

The question remains as to whether the non-filing of returns is an indication of suppression of fact. We are of the opinion that mere non-registration, non-filing of ST-3 returns, or non-declaration of activities does not by itself establish suppression of facts or intent to evade service tax. It may equally arise from a bona fide belief that the activity was not taxable. Such omissions need not automatically mean that the act is deliberate and willful to evade payment of duty. Further it is well settled that "suppression of facts" for invoking the extended period does not include every omission, non-disclosure, or erroneous understanding of law. As held by the Supreme Court in **CCE Vs Chemphar Drugs and Liniments** [(1989) 2 SCC 127]; **Cosmic Dye Chemical Vs CCE** [(1995) 6 SCC 117]; **Pushpam Pharmaceuticals Company Vs Collector of Central Excise** [1995 (78) ELT 401], and **Uniworth Textiles Ltd. Vs Commissioner of Central Excise, Raipur** [2013 (288) ELT 161 (SC)], suppression or misstatement must be wilful and deliberate, with intent to evade duty; mere omission or failure to disclose, without such intent, is insufficient. Revenue has hence not established a case for invoking the extended period of limitation. Hence the impugned order is void, and a nullity in the eye of law. It hence merits to be set aside on grounds of lack of jurisdiction.

6. In the light of the discussions above we find that the SCN fails the jurisdictional test. The proceeding hence stands vitiated and is rendered void ab initio. This being so no charge made in the SCN relating to duty, interest, penalty etc. survives.

Conclusion

Accordingly, the impugned order is set aside. The Appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 13.07.2026)

Sd/-	Sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

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