CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 54203 of 2014

[Arising out of Order-in-Original No. 91/ST/SRB/2014 dated 15.07.2014 passed by the Commissioner of Service Tax (Adjudication), New Delhi]

SBI Card and Payment Service Ltd. **......Appellant**
(earlier knowns as Ge Capital Business Process Management Services Pvt. Ltd.), 10th, 11th and 12th Floor, DLF Infinity Tower-C, Block No.02, Building-3, Gurgaon, Haryana-122002

VERSUS

Commissioner of Central Goods & Service Tax, Gurugram **......Respondent**
GST Bhawan, Plot No.36-37, Sector-32, Gurugram, Haryana-122001

<u>APPEARANCE:</u>

Ms. Krati Singh and Ms. Samiksha Uniyal, Advocates for the Appellant

Shri Narinder Singh, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60487/2026

DATE OF HEARING: 14.05.2026
DATE OF DECISION: 05.08.2026

<u>P. ANJANI KUMAR</u>:

The appellant SBI Card and Payment Services, filed this appeal No. ST/54203/2014, challenging the impugned order, dated15.7.2014, passed by Commissioner of Service Tax, Gurugram.

2. Brief facts of the case are that the Appellant, a joint venture between GE Consumer (Mauritius) Investment II Limited, a subsidiary of General Electric Capital Corporation, USA and State Bank of India, is engaged in sale of embossed cards and providing back-end services to various clients including associated and non-associated entities. After conducting the audit of the Appellant, the department was of the opinion that the appellant did no pay applicable tax on the unbilled revenue pertaining to the sale of cards and provision of services to the associated and non-associated enterprises and that there was difference in the figures shown in ST-3 Returns and Income Tax Returns. Accordingly, revenue issued the SCN dated 16.10.2012, invoking the extended period of limitation, covering the period 2007-2008 to 2011-2012, raising the demand of service tax amounting to Rs. 2,39,26,095 along with interest and penalty. A demand of Service Tax of Rs. 2,39,26,095 was confirmed, under proviso to Section 73 of the Finance Act, 1994, along with interest and equal penalty under Section 78 and penalties under Sections 75 and 77 of the Act.

3. Ms Krati Singh, Learned Counsel for the appellants, submits that the SCN has vaguely proposed the demand on the unbilled revenue recorded in the balance sheet and on the difference between the income recorded under the head "Profits and Gains from Business and Profession" in the income tax returns and ST-3 returns; However, the SCN failed in identifying the type of services which are alleged to be provided by the Appellant and the recipient of such services; It is a settled principle of law that for levying the service tax, the category of services and recipient of services are to be

identified; in the instant case, the department failed in identifying the category of services provided by the Appellant and the recipients of such services; therefore, the demand confirmed vide the Impugned Order is liable to be set aside. She relies on Nestle India Ltd 2018 (11) TMI 461 – CESTAT Chandigarh [Affirmed in 2023 (2) TMI 1349 – Punjab and Haryana High Court; Aircom International India Pvt Ltd 2024 (12) TMI 353 - CESTAT Chandigarh and Kuoni Travel India Pvt Ltd. (Now SOTC Travels Services Pvt Ltd) 2024 (3) TMI 406 - CESTAT New Delhi.

4. Learned Counsel for the appellants, submits that unbilled revenue means the revenue which has accrued due to the performance of the service or sale, but the time of issuance of invoice or the right to receive the payment has not arrived as per the contractual agreement; the Appellant has recorded such revenue pertaining to the services provided and sale of cards to associated and non-associated enterprises as unbilled revenue in the balance sheet for the Relevant Period; the unbilled revenue reflecting in the balance sheet of the company consists of revenue on account of sale of credit cards as well as services to the associated and non-associated enterprises; the bifurcation of unbilled revenue into sales and service portion is certified vide the CA certificate. She submits that the Appellant purchases/imports the material required on its own account for making the credit cards; the Appellant hires the vendor for manufacturing, embossing, personalizing, indenting and printing the cards; these cards are then sold by the Appellant to the

ultimate customers on which applicable VAT/CST is paid; therefore, the Appellant is not liable to pay service tax.

5. Learned Counsel for the appellants submits that Service tax cannot be levied on the unbilled revenue pertaining to the services provided to non-associated enterprises; Section 67 of the Act was amended vide the Finance Act, 2008 with the effect from 10.5.2008; Section 67 provides that the service tax is chargeable on the gross amount charged by the service provider against any taxable service; explanation (c) to Section 67 defines 'gross amount charged' in an inclusive manner to include payment by cheque, credit card etc., book adjustment and any other amount credited or debited to any account in the books of accounts of the assessee in case of the transaction of taxable service with the associated enterprises. She submits that before the introduction of Point of Taxation Rules, 2011, the service tax was charged on the amount received against the taxable service; Section 67 of the Act read with Rule 6 of ST Rules carved out a situation in the case of provision of service to associated enterprise wherein the service tax shall also be levied on the amount credited or debited in the books of accounts irrespective of the realization/receipt of this amount; it is pertinent to note that since these provisions are only applicable on the associated enterprises, therefore, the service tax cannot be levied on the unbilled revenue pertaining to the transactions with the non-associated enterprises. She submits that after the introduction of POT Rules with effect from 1.4.2011, the service tax was levied on accrual basis. Therefore, in any case, the service tax cannot be

levied on the unbilled revenue till 1.4.2011 for the non-associated enterprises; unbilled revenue cannot be exigible to service tax as the Appellant has neither raised the invoice in respect of such services nor received the consideration for the same as held in Blue Star Ltd 2024 (5) TMI 619-CESTAT Hyderabad and Lotte Engineering & Construction (India) (P) Ltd 2023 (12) TMI 10 - CESTAT Chennai.

6. Learned Counsel for the appellants submits that Service tax cannot be levied on the unbilled revenue pertaining to services provided to associated enterprises; there is no unbilled revenue pertaining to associated enterprises in the financial years 2008-2009 and 2010-2011; the Appellant had already submitted the CA certificate in support of the same; the unbilled revenue recorded in the balance sheet is in the nature of provision created at the end of the year in accordance with the accounting standards; the Appellant follows the mercantile system of accounting wherein the revenue is to be recognized when there are reasonable chances of the materialization of the revenue; accordingly, the Appellant recorded the unbilled revenue in the balance sheet at the end of the year; the Appellant reversed this provision for the unbilled revenue created on 18.3.2010 in the subsequent month on 30.4.2010; the Appellant had already enclosed the journal entries showing the reversal of the unbilled revenue along with the CA certificate; the Appellant paid the service tax when the above revenue was billed; the demand of service tax on the unbilled revenue pertaining to the financial year 2009-2010 is liable to be set aside. She submits that, in the financial

year 2011-2012, the Appellant had recorded unbilled revenue amounting and has already made the payment of service tax on unbilled revenue pertaining to financial year 2011-2012 in the month of March 2012 itself; the Appellant has already enclosed the CA certificate to that effect. She submits that the commissioner has not considered the CA certificates; the onus shifts on the department to establish the contrary to the contents of the CA certificates as held in The Indure P Ltd. 2024 (8) TMI 202 - CESTAT New Delhi.

7. Learned Counsel for the appellants submits that the demand based on figures appearing in the balance sheet and the difference between ST-3 returns and income tax returns without conducting any further inquiry is not sustainable; it is settled principle of law that the service tax cannot be demanded solely based on the figures of the balance sheet or the difference between ST-3 returns and income tax returns without establishing that such amounts are attributable to the provision of services and identifying the nature of services, service recipient and consideration received against the provision of the services; In absence of such corroborative evidence, the demand confirmed in the above stated manner is liable to be set aside. She relies on M/s PS Construction 2024 (6) TMI 1185 – CESTAT Chandigarh; M/s Mercer Consulting India Pvt Ltd 2024 (4) TMI 328 - CESTAT Chandigarh; M/s. Indian Machine Tools Manufacturers Association 2023 (9) TMI 815 - CESTAT Chandigarh and M/s Shreejee RMC Pvt Ltd Final Order No. 60233/2024 dated 14.5.2024 (Tri. -Chan.)]

8. Learned Counsel for the appellants submits that SCN dated 16.10.2012 has invoked the extended period of limitation to raise the demand for the Relevant Period; the demand for the period between 2007-2008 to 2010-2011 is barred by limitation; demand raised on basis of difference between ST-3 returns and income tax returns entirely pertains to financial year 2007-2008; the Appellant had recorded the unbilled revenue in respect of the services pertaining to which the invoice was not raised and the revenue did not become recoverable; department is wrong in alleging that the Appellant did not disclose the recovery of consideration in the service tax returns; the Appellant was not under the obligation to submit the balance sheet and P&L A/c with the department or vivisect the amount reflected in the financial statements; Be that as it may be, the Appellant continuously exchanged the correspondences with the department and provided the requested information; therefore, the department was well-aware of the amount included in the unbilled revenue; Appellant has not suppressed any fact as it was under the bona fide belief that the unbilled revenue shall not be exigible to tax; earlier, the department had issued two show cause notices dated 24.9.2012 and 4.10.2012 after conducting the audit for the period from 2007-2008 to 2009-2010; all the records were available with the department; extended period of limitation cannot be invoked as held in M/s. Goodyear India Ltd 2023 (12) TMI 1009-CESTAT Chandigarh [Affirmed in 2024 (4) TMI 534-SC Order] and M/s. Reliance Industries Ltd. and

Commissioner of Central Excise and Service Tax v. M/s. Reliance Industries Ltd., 2023-TIOL-94-SC-CX.

9. Learned Counsel for the appellants submits that in the instant case is based on the figures reflecting in the balance sheet which represents the actual amount accrued to the Appellant; since, the Appellant has not charged the service tax from the service recipients separately, the taxable value shall deem to include the amount of service tax; accordingly, the benefit of cum tax should be extended to the Appellant. She submits that demand of interest and penalty are not sustainable when the demand is in itself liable to be set aside.

10. She relies on the following cases in support of all her submissions:

10.1. **Demand is liable to set aside as SCN has not identified services and service recipient.**

- M/s. Nestle India Ltd. v. CCE & ST, LTU, Delhi, 2018 (11) TMI 461 - CESTAT Chandigarh [Affirmed in 2023 (2) TMI 1349 Punjab and Haryana High Court]
- M/s. Aircom International India Pvt. Ltd. v. Commissioner of Service Tax, Delhi, 2024 (12) TMI 353 - CESTAT Chandigarh
- Kuoni Travel India Pvt Ltd. (Now SOTC Travels Services Pvt. Ltd.) v. Pr. Commissioner of Central Excise, New Delhi, 2024 (3) TMI 406 - CESTAT New Delhi.

10.2. **Service tax cannot be levied on the unbilled revenue.**

- Commissioner of Central Tax Secunderabad - GST v. M/s. Blue Star Ltd., 2024 (5) TMI 619-CESTAT Hyderabad
- M/s. Lotte Engineering & Construction (India) (P) Ltd. V. Commissioner of Central Excise and Service Tax, Chennai, 2023 (12) TMI 10-CESTAT Chennai

10.3. **Onus is on department to establish contrary to contents of CA certificate.**

- CST v. The Indure P Ltd., 2024 (8) TMI 202 - CESTAT NEW DELHI

10.4. **Demand cannot be raised merely based on ST-3 returns, income tax returns and balance sheets.**

- M/s PS Construction v. Commissioner of Central Excise, Panchkula, 2024 (6) TMI 1185 - CESTAT Chandigarh
- M/s Mercer Consulting India Pvt. Ltd. v. Commissioner of CGST. Gurugram, 2024 (4) TMI 328 - CESTAT Chandigarh
- M/s. Indian Machine Tools Manufacturers Association v. The Commissioner of Central Excise, Panchkula, 2023 (9) TMI 815 - CESTAT Chandigarh
- M/s Shreejee RMC Pvt. Ltd. v. Commissioner of CGST&CE, Rohtak, 2024 (5) TMI 671 - CESTAT Chandigarh]

10.5. **Extended period of limitation cannot be invoked.**

- M/s. Goodyear India Ltd. v. Commissioner of Central Excise and Service Tax, Delhi, 2023 (12) TMI 1009-CESTAT Chandigarh [Affirmed in 2024 (4) TMI 534-SC Order]
- The Commissioner, Central Excise and Customs and Anr. v. M/s. Reliance Industries Ltd. and Commissioner of Central Excise and Service Tax v. M/s. Reliance Industries Ltd., 2023-TIOL-94-SC-CX

10.6. **Specific category of service needs to be specified for raising the demand.**

- Clix Capital Services Pvt. Ltd. v. CCE&ST, Panchkula, 2025 (5) TMI 1830-CESTAT Chandigarh
- Confederation of Indian Industry v. CCE&ST, Chandigarh-1, 2023 (7) TMI 57-CESTAT Chandigarh
- Himachal Pradesh Housing & Urban Development Authority, Shimla V. CCE&ST, Shimla, 2025 (10) TMI 1194-CESTAT Chandigarh
- Shubham Electricals v. CCE&ST, Rohtak, 2015 (40) STR 1034 (Tri. Del.), affirmed by the Hon'ble Delhi HC in 2016 (42) S.T.R. J312
- Hindustan Zinc Ltd. v. CCE, Udaipur, 2021-TIOL-601-CESTAT-DEL
- Outote India Private Limited v. Principal Commissioner of Service Tax-I, Kolkata, 2026 (1) TMI 714-CESTAT Kolkata
- Balaji Integrated Shipping India Pvt. Ltd. v. Commissioner of Central Tax, Secunderabad-GST, 2024 (5) TMI 620-CESTAT Hyderabad
- CMS (India) Operations & Maintenance Co. (P) Ltd. v. CCE Puducherry, 2017 (3) G.S.T.L. 164 (Tri.-Chennai)

- ILFS Clusters Development Initiative Ltd. v. CCE&ST, Noida, 2018 (10) TMI 1007-CESTAT Allahabad

10.7. **Demand cannot be raised merely based on ST-3 returns, income tax returns and balance sheets**

- Firm Foundations & Housing Pvt. Ltd. v. Principal Commissioner, Office of Principal Commissioner of Service Tax, 2018 (4) TMI 613-Madras High Court
- Rakesh Singhal v. CCE&ST, Rohtak, 2025 (6) TMI 1731-CESTAT Chandigarh
- Principal Commissioner of CGST and Central Excise, Mumbai v. SBI Life Insurance Company Ltd., (2024) 15 Centax 57 (Tri.-Bom.)
- J.B. Mangharam Foods Pvt. Ltd. v. Principal Commissioner, Office of Principal Commissioner of CGST, Central Excise, Bhopal (M.P.), 2025 (6) TMI 122-CESTAT New Delhi.

11. Shri Narinder Singh, learned authorized representative for the Revenue reiterates the findings of the impugned order and submits that the classification is not an issue in dispute in the impugned case; the services rendered by the appellant have been declared by them while obtaining registration and are clear and hence, the demand was raised only for short payment of service under Section 73 and as such the appellants claim that the Show Cause Notice did not identify the service is not acceptable. He submits that a Show Cause Notice can not be invalidated on hyper-technical grounds; the test is whether the notice conveys the basis of demand and enables the noticee to suitably respond; when the short levy is clearly pointed out, mere absence of classification does not render the notice null and void. He relies on ITC Ltd 2014(36) STR 481(del); ITC Ltd 2015(38) STR J362(SC) and Pradumna Steel Ltd 1996(82) ELT 441(SC).

12. Learned Authorized Representative submits that extended period has been rightly invoked. The internal audit was conducted from 17.06.2009 to 22.06.2007 and vide letter 10.07.2009 the notice was informed of the deficiencies; the appellant complied with the departments letter and reminders on 5.10.2012 and the SCN was issued immediately, within 11 days i.e. on 16.10.2012. Revenue had no option but to invoke extended period due to deliberate non-compliance, delaying tactics, selective disclosure and delayed compliance by the appellant. He submits that the contention of the appellant that two show cause notices cannot be issued for the same period is not tenable; there is no bar in law to issue multiple show cause notices for the same period where the issues involved are distinct and independent.

13. Learned Counsel for the appellants submits in a counter to the Revenue submissions that demand of service tax was confirmed for the period 2007 to 2012, falling under positive service tax regime, where the department was under the obligation to classify the service under categories provided in Section 65(105) of the Finance Act, 1994; the Appellant was registered under six categories viz., Online Information and Data services, Business Support services, Banking and Financial services, Business Auxiliary services, Credit Card related services and Information Technology & Software services; Despite the fact that the Appellant had provided the details of transactions to the department through various letters, the Show Cause Notice dated 16.10.2012 failed to classify the service and demand the service tax under any particular category. She

submits that there was no delay on the part of the appellant, in furnishing information, which necessitated invocation of extended period and the proviso under Section 73, as wrongly alleged by Revenue; Appellant provided all the information sought by the department; in fact, the department delayed in seeking the information from the Appellant. She submits a date-sheet in support of her contentions and submits that:

- The letter dated 10.07.2009 and reminder 31.07.2009, claimed to have been sent by Revenue, directing the Appellant to deposit service tax on unbilled revenue for the period 2008-2009 and on difference in taxable income and revenue in income tax and ST-3 returns respectively, for the period 2007-2008 and directing the Appellant to submit the details of unbilled revenue from April 2009 onwards and details of gross receipts in income tax returns and ST-3 returns and differential amount, if any, for the period 2004-2005, 2005-2006, 2006-2007 and 2008-2009, were not received by the appellant; Reminder 31.07.2009 was received but it did not contain any request for specific details.
- The said letter dated 10.07.2009 was received by the appellant on 24.08.2009
- Appellant addressed a letter, dated 21.08.2009, requested the department to serve the audit objections
- Department sent a reminder dated 22.09.2009, 05.11.2009 and 17.11.2009

- Vide letter dated 11.11.2009 (received by department on 18.11.2009), the Appellant explained as to how the demand of service tax on unbilled revenue and difference in Income Tax and ST-3 returns is not tenable and The Appellant also explained the reasons for difference in Income Tax and ST-3 returns;
- On 11.07.2012, after almost 2 years 7 months, the department again sought the same information from the Appellant which was requested vide letter dated 10.07.2009; department did not consider the reply filed by the Appellant or point out the deficiencies in the Appellant's reply.
- Vide letter dated 23.07.2012, the appellant sought extension of time to submit the documents as the information pertained to a much prior period.
- Department sent a Reminder letter dated 17.08.2012
- Vide letter dated 23.08.2012, the Appellant sought extension of time to submit the documents as the information pertained to a much prior period.
- Department issued a Reminder letter dated 04.10.2012
- Appellant submitted, vide letter dated 05.10.2012, that the service tax is not payable on the unbilled revenue accrued from non-associated enterprises; service tax is already discharged on the unbilled revenue accrued from associated enterprises at the time of invoicing and the reasons for difference in receipts in Income Tax and ST-3 returns.

14. She submits that the Appellant provided the details and information as requested by the department and never tried to intentionally delay the process.; in fact, the department acted late upon the information furnished by the Appellant on 17.11.2009; after 2 years 7 months, the department again requested for the same information/ documents from the appellant on 11.07.2012; department's letters never sought the information regarding the nature of transaction which would have enabled the department to categories the activities of the Appellant under any service; all the letters written by the department either quantified the service tax payable by the Appellant or sought details of unbilled revenue and difference in the receipts in Income Tax returns and ST-3 returns; it is clear that the department never even attempted to find out the nature of transaction underlying the unbilled revenue and difference in the receipts in Income Tax returns and ST-3 returns.

15. Heard both sides and perused the records of the case. Brief issues to be considered in this case are as follows:

(i) Whether the SCN is vague and whether demand could have been issued on the basis of those differences between Income Tax returns and the ST-3 returns.

(ii) Whether the appellants are liable to pay service tax on the unbilled revenue recorded in the balance sheet.

(iii) Whether in the facts and circumstances of the case, extended period can be invoked.

16. Coming to the issue no. (i), we find that the appellants contend that the SCN seeks to demand on a vague basis; it is settled principle that it is required to identify the category of the service, the recipient of the service and the consideration before proceeding to issue a SCN. We find that the impugned SCN has been issued consequent upon an audit conducted on the records of the appellant for the year 2008-09. On going through the SCN, we find that the SCN records the audit objections and the correspondence between the appellants and the Revenue; it is also stated that the appellants did not agree with the audit objection and submitted that the gross receipt as shown in the Income Tax returns was inclusive of recovery of shared personnel cost from SBI, CPSL and that after a prolonged communication, the appellants submitted the details on 09.10.2012 and that on the basis of reconciled figures, the appellants were required to pay duty as indicated. We find that there is no mention of either the service provided by the appellant or the service recipients; it is also not made clear as to how the Revenue came to the conclusion that the appellant was liable to pay the service tax demanded. As regards the extended period, the SCN merely says that the assessee had deliberately avoided payment of service tax by suppressing the facts regarding rendering of the above mentioned services and also having recovered the above mentioned consideration with intent to evade due discharge of service tax liability.

17. We find that the SCN does not specify as to what was the service rendered by the appellants and to whom and what was the

consideration thereon. We find that learned Authorized Representative for the Revenue submits that the appellants have registered themselves for the services viz. Online Information and Data Services, Business Support Services, Banking and Financial Services, Business Auxiliary Services, Credit Card related Services, Information Technology & Software Services and therefore, separate specification of the service is not required to be spelt out in the SCN. We find that this argument is not acceptable. It is incumbent upon the Department to identify the services rendered by the appellants and the services recipients thereof and thereafter to fix the tax liability after arriving at the consideration. Understandably, the SCN has been issued after a lapse of two to three years from the conduct of audit. The Department should have ascertained the nature of service rendered for the demanding question.

18. Though, the Revenue alleges that the appellants did not cooperate and have not replied to various correspondences, it is very difficult to believe that the Department with all the might at their disposal could have verified the nature of service as well as the transaction. It is not possible to believe that a public sector company like SBI withheld the information with intent to evade payment of service tax. Even if the Department’s allegation of non-cooperation by the appellants is to be believed. On going through various correspondence, it is seen that the correspondence made by the Department with the appellant appear to dwell on the discrepancies in figures and it is seen that there were no queries regarding the nature of services. That being a case, the allegation of

non-cooperation by the appellant cannot be stated to be a valid reason for non-identification of service and the recipients.

19. We find that in the case of Shubham Electricals – 2015 (40) STR 1034 (Tri. Del.), Tribunal held as follows:

> **6.** Suffice it to notice that in the entirety of the show cause notice there is not a single assertion proposing to levy and collect Service Tax on the basis of any specified taxable services allegedly rendered by the appellant except the several alternative taxable services speculated to have been proved and set out in para 8 (supra).
>
> **7.** In response to the show cause notice, appellant submitted a reply on 30-12-2011 *inter alia* pleading that all contracts executed by it were registered as works contracts which are also assessable to VAT; that since the contracts were works contracts involving deemed sale of goods, exclusion of the value of the goods, either under Notification No. 12/2003, dated 20th June, 2003 or abatement of 67% of the value, under Notification No. 1/2006, dated 1-3-2006 or under the composition scheme provided in Works Contract Composition Scheme Rules, 2007 should be granted; that a substantial number of the works executed were non-commercial and non-industrial in nature and therefore fall outside the ambit of commercial or industrial construction service, prior to 1-6-2007 as also sub-clause (b) of explanation (ii) of Section 65(105)(zzzza), post 1-6-2007; that the show cause notice was ambiguous and vague since it failed to specify the exact taxable service under which the activity of the appellant falls to be considered as a taxable service; and that in several contracts, works involved segments which were outside the purview of commercial or industrial construction or even works contract service, vide the exclusionary clauses in the definition of these taxable services. Appellant also

pleaded before us that Section 98 of the Act with retrospective effect exempted levy and collection of Service Tax in relation to Management, Maintenance and Repair services provided for non-commercial Government buildings during the period 16-6-2005, till the Negative Tax Regime (whole of the period of the services provided by the appellant). This interim response was followed by another reply to the show cause notice, dated 10th January 2013, reiterating the same claims/defences.

8. Learned Consultant for the appellant adverts to page 11 of the memorandum of appeal which sets out in a tabular form the total consideration received by the appellant during the relevant period in issue; the reasons for non-liability to tax and setting out at Sl. No. (v) that certain services which do not fall under the category of construction of complex but could be liable to tax would be in respect of receipt of Rs. 84,28,830/-, which were in respect of works contract services. Shri Batra, the learned Consultant would submit that on this consideration, after availing abatement benefits of 67% of the value, Service Tax of Rs. 3,00,442/- was remitted on 26th April, 2013, after the impugned order was passed and the present appeal preferred. We are recording this fact only to complete the narrative.

9. The impugned adjudication order is drafted in 32 paras spread over 22 printed pages. Paragraphs 1 to 17 reiterate almost verbatim, the contents of the show cause notice dated 21-10-2011. Para 18 elaborates the response of the appellant and its several defences to the vague and incoherent allegations in the show cause notice. Para 19 sets out particulars of the personal hearing provided. Paras 20 to 31 purport to be part of discussion and findings of the Commissioner. Para 20 is formal in nature and States to have considered the facts of the case, the records and as to providing personal hearing. Para 21 identifies the issues involved in the case. The third sentence in para 21 onwards is a reproduction of para 7 of the show cause notice. Paras 22 to 28 are reproduction of paras 8, 9, 11, 12, 14, 15, 16 and 17 of the show cause notice. Paras 29 to 31 could alone be considered, if at all, the analysis by the learned Commissioner. Para 29 asserts that none of the contentions of the appellant are tenable since it failed to provide the required information to the Department during investigation. It is also observed that the appellant obtained Service Tax registration for Works Contract on 10-12-2007 and was therefore aware of the applicable law. From this observation, the Commissioner infers that the appellant wilfully suppressed the fact of earning/receiving taxable income and withheld information which led to evasion of Service Tax. In para 31, the impugned order records that though the appellant intentional and wilfully suppressed the taxable value and failed to remit Service Tax, the facts came to light only during the process of audit. Para 31 abruptly jumps to the conclusion, without any preceding analysis nor a finding as to the specific taxable services provided by the appellant, that Service Tax of Rs. 1,53,14,782/- is recoverable under the proviso to Section 73(1) of the Act along with interest, excluding penalty under Section 76. Para 32 records the operative portion of the order declaring the specified liability to Service Tax, interest and penalties.

10. It is a axiomatic that a best judgment assessment under Section 72 could only be for ascertaining the quantum of the tax liability, in a context where the actual extent of liability cannot be determined with mathematical precision on account of non-availability of relevant documents or financial records. There cannot be a best judgment assessment regarding the specific taxable service provided. There can be no best judgment, for instance as to whether the tax liability is for income tax, sales tax, excise duty, customs duty, Service Tax or professional tax. A conclusion as to the taxable event and the liability to tax under the

> appropriate fiscal legislation authorizing the levy and collection of such tax is a matter for determination with precision and clarity and not by a process of guess-work or speculation.
>
> **11.** Neither the show cause notice dated 21-10-2011 nor the impugned adjudication order dated 18-1-2013 record any assertion/conclusion whatsoever as to which particular or specific taxable service the appellant had provided. In the absence of an allegation of having provided a specific taxable service in the show cause notice and in view of the failure in the adjudication order as well, neither the show cause notice nor the consequent adjudication order could be sustained.

20. We find that in the impugned case also, the scheme of the SCN is as follows:

> Para 1…. Preliminary Introduction
> Para 2 & 3 ….. Conclusions of the audit and the fact that correspondence was made with the appellants on unbilled revenues
> Para 4…… Conclusions of the audit and the fact that correspondence was made with the appellants on difference between ST-3 and Income Tax returns.
> Para 5…. Conclusions of the inquiry on figures in various documents.
> Para 6…. Invocation of provision to Section 73(1).
> Parra 7 & 8…. Averment that the appellants are liable to pay interest and penalties.
> Para 9….. Show Cause
> Para 10, 11 & 12….. Standard Format

21. It is clear from the above that the SCN does not make even remotely an attempt to identify the service alleged to have been rendered by the appellant and the service recipient thereof. Thus, in view of the decision of the Tribunal in the case of Shubham Electrical Ltd. (supra) and the cases relied upon by the appellants, a vague,

non-committal, unclear SCN cannot be sustained; accordingly, the impugned order passed on the basis of SCN can also not be sustained. As we find that the SCN is not sustainable, there is no need to go into the other issues involved in the case.

22. In the result, the appeal is allowed.

(Order pronounced in the open court on 05/08/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK