IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75626 of 2024

(Arising out of Order-in-Appeal No. 101/GHY(A)/COMMR/ST/DIB/2023 dated 17.02.2023 passed by the Commissioner (Appeals), C.G.S.T., Central Excise and Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

M/s. S.K. Logitech Private Limited **: Appellant**
Anand Nagar, Bhagwati Bhawan,
A.T. Road, Sivasagar,
Assam – 785 640

VERSUS

Commissioner of Central Goods and Service Tax **: Respondent**
Dibrugarh Commissionerate,
Milan Nagar, Lane: 'F', P.O.: C.R. Building,
Dibrugarh – 786 003 (Assam)

APPEARANCE:

Shri Aditya Dutta, Advocate, for the Appellant

Shri Argho Mukherjee, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76009 / 2026

DATE OF HEARING: 22.07.2026

DATE OF DECISION: 05.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by M/s. S.K. Logitech Private Limited, assailing the Order-in-Appeal No. 101/GHY(A)/COMMR/ST/DIB/2023 dated 17.02.2023 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati, whereby the Order-in-Original No. 31/ADC/ADJ/ST/COMMR/DIB/2021-22 dated 01.03.2022 came to be upheld in toto, confirming the demand of Service Tax amounting to Rs.1,99,20,968/- along with applicable interest and penalties thereon, primarily by invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994.

2. The facts of the case are that M/s. S.K. Logitech Private Limited, Anand Nagar, Bhagwati Bhawan, A.T. Road, Sivasagar, Assam – 785 640 [hereinafter referred to as the "appellant"] is a company registered under the provisions of the Finance Act, 1994 as a provider of taxable services bearing Registration No. AAMCS4070KSD001 under the categories of "Supply of Tangible Goods Service" and "Rent-a-Cab Scheme Operator Service". It is the case of the appellant that, during the period in dispute, it had been regularly filing the prescribed ST-3 Returns and discharging its Service Tax liability thereunder, though some returns were filed belatedly, which, according to the appellant, was neither deliberate nor indicative of any intent to withhold material particulars.

3. The dispute traces its genesis to an exercise undertaken by the Department on the basis of an apparent difference noticed between the gross receipts reflected in the appellant's Form 26AS and the taxable value disclosed in the ST-3 Returns for the period commencing from 2014-15 (October to March) to 2017-18 (up to June, 2017). In the course of such enquiry, the jurisdictional Superintendent, Central Goods and Service Tax, Dibrugarh issued communications dated 06.11.2019, 28.01.2020, 16.12.2020 and 21.12.2020 calling upon the appellant to furnish, inter alia, copies of ST-3 Returns, Service Tax payment challans, Form 26AS, Income Tax Returns, bank statements, copies of contracts and invoices relating to the said period. According to the appellant, owing to shortage of staff and the unprecedented disruption caused by the outbreak of the COVID-19 pandemic, the requisite documents could not be furnished within the time stipulated by the Department.

4. Thereafter, the Department independently procured certain financial records, including the appellant's Form 26AS, from the Income Tax Department and, upon scrutiny thereof, formed a prima facie opinion that substantial receipts reflected therein had not been disclosed in the ST-3 Returns. Proceeding on the assumption that such differential receipts represented consideration received towards taxable services rendered by the appellant, the Department arrived at an aggregate taxable value of Rs.13,42,74,938/- and consequently computed the alleged Service Tax liability of Rs.1,99,20,968/- (inclusive of applicable cesses). It was further alleged that the appellant had failed to disclose the said taxable receipts in its statutory returns and had thereby suppressed material facts with intent to evade payment of Service Tax.

5. On the aforesaid premise, a Show Cause Notice dated 30.12.2020 came to be issued proposing recovery of Service Tax amounting to Rs.1,99,20,968/- for the period from October, 2014 to June, 2017, together with interest under Section 75 of the Finance Act, 1994 and imposition of penalties under the applicable provisions of the Act, while simultaneously invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994.

5.1. The appellant contested the allegations contained in the Show Cause Notice by filing its reply, contending, inter alia, that demanding service tax on the basis of the values taken directly from the Form 26AS was not justified in law.

5.2. However, the adjudicating authority, vide Order-in-Original No. 31/ADC/ADJ/ST/COMMR/ DIB/2021-22 dated 01.03.2022, confirmed the proposed demand of Service Tax amounting to Rs.1,99,20,968/-, together with applicable interest and imposed an equivalent penalty upon the appellant under Section 78 of the Finance Act, 1994, besides imposition of a further penalty under Section 77 ibid.

5.3. Aggrieved thereby, the appellant carried the matter in appeal before the Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati. The Commissioner (Appeals), however, vide the impugned Order-in-Appeal No. 101/GHY(A)/COMMR/ ST/DIB/2023 dated 17.02.2023, concurred with the findings recorded by the adjudicating authority and upheld the Order-in-Original in its entirety.

6. Being dissatisfied with the confirmation of the above demand of Service Tax, together with interest and penalties thereon, the appellant has preferred the present appeal before this Tribunal.

7. During the course of hearing, the Ld. Counsel appearing for the appellant assails the impugned Order-in-Appeal primarily on the grounds of limitation as well as violation of the mandatory requirement of pre-show cause notice consultation, which are summarized below: -

On the issue of limitation:

(i) The Learned Counsel submits that the entire demand is ex facie barred by limitation. It is contended that the very foundation of the Show Cause Notice is the alleged discrepancy between the figures reflected in Form 26AS and those disclosed in the appellant's ST-3 Returns, as is evident from Annexure-A to paragraph 7 of the Show Cause Notice. The demand thus rests entirely upon statutory records and information which were admittedly available with the Department at all material times.

(ii) It is argued that where the demand itself has been founded exclusively upon statutory returns and information already within the knowledge of the Revenue, the essential jurisdictional ingredients for invoking the extended period under the proviso to Section 73(1) of the Finance Act, 1994, namely fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade payment of Service Tax, are conspicuously absent. According to Learned Counsel, no independent investigation was undertaken by the Department, nor has any positive act of suppression or deliberate concealment been either alleged or established against the appellant.

(iii) The appellant further submits that the Department merely compared the figures reflected in Form 26AS with those declared in the ST-3 Returns and proceeded to issue the Show Cause Notice without undertaking any enquiry into the nature or taxability of the receipts in question. Such a mechanical exercise, cannot furnish a legally sustainable basis for invocation of the extended period of limitation.

(iv) It is, therefore, contended that the Show Cause Notice dated 30.12.2020, covering the period from October, 2014 to June, 2017, having been issued well beyond the normal period prescribed under law, is barred by limitation and is liable to be quashed on this ground alone.

(v) In support of the aforesaid submissions on limitation, reliance is placed, inter alia, upon the following decisions:

- *M/s. Nanu Shome & Co. v. Commissioner of CGST & Central Excise [Final Order No. 75084/2026 dated 20.01.2026];*
- *M/s. Munna Construction v. CCE & ST [Final Order No. 77625/2024 dated 22.11.2024];*

- *Arya Logistics v. CCE & ST, Rajkot [ST Appeal No. 12389 of 2014 decided on 17.08.2023];*
- *Balajee Machinery v. Commissioner of CGST & Central Excise, Patna-II [2022 (66) GSTL 440 (Tri.-Kolkata)].*

On the issue of absence of mandatory pre-show cause notice consultation:

(i) Without prejudice to the aforesaid submissions on limitation, Learned Counsel for the appellant further contends that the impugned Show Cause Notice itself is void ab initio, having been issued in complete disregard of the mandatory requirement of pre-show cause notice consultation prescribed under the binding instructions of the Central Board of Excise and Customs. It is submitted that, on the date of issuance of the Show Cause Notice, Board Instruction F. No. 1080/09/DLA/MISC/15 dated 21.12.2015, read with the clarificatory Circular F. No. 1053/02/2017-CX dated 10.03.2017, mandated pre-show cause notice consultation in all cases involving demands exceeding Rs.50 lakhs, except preventive/offence-related matters.

(ii) It is submitted that the present proceedings admittedly did not arise out of any preventive or offence-related investigation and, therefore, the aforesaid Board Instructions squarely governed the field. Nevertheless, no opportunity of pre-show cause notice consultation was ever afforded to the appellant before issuance of the Show Cause Notice proposing recovery of Service Tax amounting to Rs.1,99,20,968/-.

(iii) It is further submitted that the subsequent Circular No. 1079/03/2021-CX dated 11.11.2021, whereby pre-show cause notice consultation was made non-mandatory in cases involving allegations of suppression, came into existence much after issuance of the impugned Show Cause Notice and cannot be applied retrospectively so as to validate proceedings already initiated. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Suchitra Components v. CCE, Guntur, reported in 2007 (208) E.L.T. 321 (S.C.),* wherein it has been held that oppressive circulars operate only prospectively.

(iv) It is, therefore, submitted that the mandatory procedural safeguard prevailing on the date of issuance of the Show Cause Notice having admittedly been ignored, the Show Cause Notice itself stands vitiated in law and all proceedings emanating therefrom, including the confirmation of Service Tax, interest and penalties, are rendered unsustainable.

(v) In support of the aforesaid submissions, the Learned Counsel further relies upon:

- *M/s. Nanu Shome & Co. v. Commissioner of CGST & Central Excise [Final Order No. 75084/2026 dated 20.01.2026];*
- *M/s. SIS Limited v. Principal Commissioner of CGST & Central Excise – CESTAT Kolkata [Final Order No. 77549/2025 dated 15.10.2025];*
- *Suchitra Components v. CCE, Guntur [2007 (208) E.L.T. 321 (S.C.)].*

7.1. On the aforesaid grounds, the Learned Counsel for the appellant prays that the impugned Order-in-Appeal dated 17.02.2023, upholding Order-in-Original No. 31/ADC/ADJ/ST/COMMR/DIB/2021-22 dated 01.03.2022, be set aside in entirety, along with the Show Cause Notice dated 30.12.2020, thereby quashing the consequential demand of Service Tax amounting to Rs.1,99,20,968/-, interest and penalties confirmed thereunder, granting all consequential reliefs as may be admissible in law.

8. On the other hand, the Ld. Authorized Representative of the Revenue reiterates the findings recorded by the authorities below and submits that the appellant had failed to correctly disclose the full value of taxable services rendered during the material period and had thereby suppressed material facts from the Department with intent to evade payment of Service Tax. According to him, the discrepancies noticed between the figures reflected in Form 26AS and those declared in the ST-3 Returns clearly establish wilful misstatement and suppression of taxable value, thereby justifying invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994. It is further contended that the demand has been rightly confirmed on the basis of the material gathered during investigation and that the appellant, having failed to discharge its statutory obligations under the self-assessment scheme, cannot now seek to avoid the consequences flowing therefrom. He, therefore, prays for dismissal of the appeal and for upholding the impugned Order-in-Appeal in toto.

9. Heard both the sides and perused the records available before us.

10. Having considered the rival submissions and upon careful perusal of the records available before us, we find that the principal issue which falls for determination at the threshold is whether the Revenue was legally justified in invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994.

11. At the very outset, it is noticed that the foundation upon which the impugned Show Cause Notice proceeds is not in dispute. A plain reading of paragraph 7 of the Show Cause Notice, read with Annexure-A appended thereto, unmistakably reveals that the entire demand has been raised solely on the

basis of a comparison between the figures reflected in Form 26AS and those disclosed by the appellant in its statutory ST-3 Returns for the relevant period. Although the appellant disputes certain figures appearing in the said comparison and contends that the tax paid particulars have not been correctly portrayed by the Department, the fact remains that the Revenue itself has founded the entire proceedings exclusively upon statutory documents already available with it.

11.1. The inevitable consequence flowing therefrom is that the material constituting the very basis of the demand was never outside the knowledge or reach of the Department. Both Form 26AS as well as the ST-3 Returns are statutory records maintained under law and are available to the Department for scrutiny, verification and reconciliation in the ordinary course of administration. Once the Revenue itself admits that the demand emanates entirely from such statutory disclosures, it becomes difficult to sustain the allegation that the appellant had suppressed material facts or had wilfully concealed taxable receipts from the Department.

11.2. What assumes even greater significance is the admitted absence of any independent investigation preceding the issuance of the impugned Show Cause Notice. Except for noticing the alleged difference between the figures reflected in Form 26AS and those appearing in the ST-3 Returns, the Department has not undertaken any enquiry whatsoever to ascertain the precise nature of the receipts, the taxability thereof, the contractual arrangements, the accounting treatment adopted by the appellant, or whether the differential figures represented taxable consideration at all. No independent evidence has been brought on record to establish any positive act of fraud, collusion, wilful misstatement or deliberate suppression attributable to the appellant. The entire edifice of the

Revenue's case thus rests upon a mere comparison of figures contained in statutory documents already available within its own domain.

11.3. Such an approach, in our considered opinion, falls substantially short of the statutory threshold required for invocation of the extended period under the proviso to Section 73(1) of the Finance Act, 1994. The proviso is in the nature of an exceptional provision and cannot be pressed into service merely because a discrepancy is subsequently noticed by the Department during scrutiny of records. The Legislature has consciously conditioned its invocation upon the existence of fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade payment of tax. These jurisdictional facts cannot be presumed; they must be affirmatively established by cogent and convincing material. In the present case, no such material is forthcoming. The Revenue has, in effect, sought to substitute its own failure to undertake timely scrutiny of statutory returns with an allegation of suppression against the assessee. Such a course is legally impermissible. The extended period of limitation cannot be invoked to compensate for administrative inaction or departmental oversight. It is equally well settled that where an assessee has been regularly filing statutory returns and the relevant information was always capable of verification by the Department, invocation of the extended period becomes wholly unsustainable in the absence of independent evidence establishing conscious concealment or an intention to evade tax.

11.4. The allegations contained in the Show Cause Notice, therefore, remain at the level of assertions unsupported by any corroborative investigation. Mere existence of a variance between Form 26AS and ST-3 Returns, without anything more, cannot ipso facto lead to the conclusion that the assessee had indulged in fraud, wilful suppression or misstatement so as to justify recourse to the extended period of limitation. Acceptance of such a proposition would virtually render the normal period of limitation otiose and permit invocation of the extended period in every case involving reconciliation of statutory records, a consequence wholly alien to the legislative intent underlying the proviso to Section 73(1).

11.5. We further observe that the above issue is no longer res integra. It has consistently been held that where the demand is founded merely upon comparison of figures available in Form 26AS and ST-3 Returns, without any independent investigation or tangible material evidencing deliberate suppression, invocation of the extended period is legally unsustainable. The Tribunal has repeatedly taken this view in a catena of decisions, holding thereby that the extended period of limitation cannot be invoked in such cases. For instance, in the case of *M/s. Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur [Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 (CESTAT, Kolkata)]* this Tribunal has opined as follows: -

> *"12. Regarding confirmation of the demand of service tax by invoking the extended period of limitation, we observe that the Show Cause Notice has been issued on the basis of the data submitted by the Appellant, i.e., from their balance sheet, Profit & Loss Account and Form 26AS.The Appellant submitted that they had obtained registration with the service tax department in the year 2006 and have been filing their Returns. Accordingly, it is their submission that they have not suppressed any information from the Department and thus the extended period of limitation is not invokable.*
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> *12.1. In this regard, we observe that the Appellant had been filing their Returns and paying Service Tax regularly. They have registered with Service Tax Department since 2006, but till the date of audit conducted in 2011, the Department had not raised any objection regarding any short payment of Service Tax by the Appellant. We observe that the if*

the demand has been confirmed on the basis of the data submitted by the appellant, i.e., from their balance sheet, Profit & Loss Account and Form 26AS, then extended period of limitation is not invokable. We observe that this view has been held in various judicial pronouncements.

12.2. In the case of Arya Logistics v CCE & ST Rajkot [Service Tax Appeal No. 12389 of 2014], it has been held as under:

> *"4. We have carefully considered the submissions made from both the sides and perused the records. On going through the entire facts of the case we are of the view that the case can be disposed of on the ground of limitation itself.*
>
> *4.1 We find that the issue involved in this case is regarding the demand of service tax for the period April 2008 to March 2011 on the ground that the appellant has availed in-eligible benefit of notification No. 1/2006-ST dated 1-3-2006 by discharging the service tax liability by availing Cenvat Credit and paid service tax after availing abatement of 70% of the gross amount. We find from the records and copy of ST-3 produced before us that appellant had been filing the ST-3 returns regularly to the Jurisdictional Range officers. It is on record that the appellant shown all the details in ST-3 returns. We find that Appellant has shown the category of Transport of Goods by Rail services in all the ST-3 returns and has also shown the fact that they were availing Cenvat Credit. In the said ST-3 return, admittedly against the "Column A1 -Name of Taxable Service" Appellant have shown name of service as Goods Transport Agency and Transport of Goods in Container by Rail Service. Further in column 5B appellant have shown the details of Cenvat Credit Taken and utilized.*
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> *4.2 It becomes clear from the ST-3 return that the fact that appellant were discharging Service tax on Transport of Goods in container by Rail service and availing Cenvat credit and utilized the Cenvat credit was in the knowledge of the Revenue. However show cause notice to the Appellant was issued on 26-2-2013. Inasmuch as the entire information was in the knowledge of the Revenue, the longer period of limitation is not available. In view of these facts the show cause notice should have been issued within*

> *the normal period of one year as prescribed under section 73(1), whereas the show cause notice for the period April 2008 to March 2009 was issued on 26-2-2013 i.e. after prescribed limit of one year. As per the above fact, there is no suppression of fact on the part of the appellant. We also find that it is admitted fact that the appellant have taken service tax registration and are filing the periodical returns regularly. The appellant have maintained proper books of accounts in the normal course of business. It is pertinent to note that the entire case of the department on merit is that since appellant have availed Cenvat Credit, they violated the condition of abatement notification No. 01/2006-ST. As discussed above the facts that availment of Cenvat Credit and payment of Service Tax on the abated value were declared in the ST-3 return. Hence, having all the facts were disclosed to the department, nothing prevented department from issue of show cause notice within normal period of one year. Therefore, the demand raised in the show cause notice is clearly time-barred.*
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> *4.3 Since the demand is not sustainable on limitation alone, we refrain from giving finding on merit of the case and the same is left open."*

12.3. In the case of Balajee Machinery v Commissioner of CGST & Excise, Patna-II [2022 (66) G.S.T.L. 440 (Tri-Kolkata)],wherein it has been held as under:

> *"10. In so far as the issue of limitation is concerned, we do not find any ingredient of fraud or suppression with an intent to evade payment of tax. In the case of Pappu Crane Services v. CCE, Lucknow (Final Order No. 71246 of 2019 in ST Appeal No. 70707 of 2018), the Co-ordinate Bench of Tribunal at Allahabad has held that where the demand is merely based on the data appearing in the Income Tax Portal, there cannot be said to any fraud or suppression so as to justify invocation of extended period of limitation. Therefore in the present case, in our view, the demand raised for the period up to March, 2015 is completely barred by limitation and accordingly the demand is set aside. Further, since there is no element of fraud or suppression, we are of the view that the entire penalty amount is liable to be set aside."*

12.4. It is also observed that in the case of Quest Engineers & Consultant Pvt. Ltd. v Commissioner, CGST & C Ex, All [2022(58) G.S.T.L. 345 (T-All)], it has been held that: -

> *"12. Appreciating the facts and circumstances, we find that the allegations of Revenue are frivolous, that it was only on enquiry it came to know about the affairs of the appellant, i.e. providing of taxable service in view of the admitted facts that appellant is a registered assessee under the Service Tax provision, and have been filing their returns and paying tax. It is not alleged by the Revenue that the appellant was not maintaining proper financial records, register and vouchers for their transaction. We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived.*
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> *13.We further hold that the extended period of limitation is not available to Revenue under the facts and circumstances. We further hold that the appellant is entitled to exemption under the Notification No. 25/2012-S.T. under Sl. No. 13(a) of the said notification for providing consulting engineer services in the matter of road construction. When road construction is exempt, every activity is exempt relating to the road construction including consulting engineer services. The appellant also relied on the ruling in Lord Krishna Real Infra Pvt. Limited v. Commissioner of Customs, CE & ST, Noida, Final Order No. 70126/2019, dated 27-12-2018. This Tribunal has held in other disputed cases, that even the barricade provided on the side of highway, maintaining greenery on the side or middle of highway, construction of any facility, refreshment centre for road users, is also part of the road construction and such activity is also exempt. Even the administrative building constructed by the concessionaire, for construction of the*

> *road or highway for administration and collection of toll etc. is part of road.*
>
> *14.---*
>
> *15. Accordingly, in view of our findings, we allow the appeal and set aside the impugned order. We also hold that extended period of limitation is not available to Revenue. We also hold that appellant is also entitled to consequential benefits, in accordance with law."*

12.5. Accordingly, by relying on the decisions cited above, we hold that the demand cannot be raised in this case by invoking the extended period of limitation. Thus, we hold that the demand confirmed in the impugned order by invoking the extended period of limitation is not sustainable."

11.6. The ratio emerging from the aforesaid judicial pronouncements lends complete support to the proposition that a demand founded exclusively upon statutory returns and Form 26AS data, without any further investigation establishing the indispensable ingredients of fraud or suppression, cannot be sustained by invoking the extended period of limitation. Respectfully following the aforesaid line of authority, we hold that the invocation of the proviso to Section 73(1) in the facts of the present case is wholly without jurisdiction and consequently unsustainable in law.

12. We find that the jurisdictional Superintendent, Central Goods and Service Tax, Dibrugarh had called for certain details such as, copies of ST-3 Returns, Service Tax payment challans, Form 26AS, Income Tax Returns, bank statements, copies of contracts and invoices relating to the said period. We find that during the above said period there was an unprecedented disruption caused by the outbreak of the COVID-19 pandemic. Thus, the appellant cannot be faulted for non-submission of the documents within the time stipulated by the Department, during the

COVID pandemic period. We also find that most of the documents called for by the Department were statutory documents available with the Department. Thus, we observe that although the appellant has not furnished a satisfactory explanation reconciling the difference noticed between the figures reflected in Form 26AS and those disclosed in the ST-3 Returns, such omission, by itself, cannot be elevated to a circumstance sufficient to absolve the Revenue of its own statutory obligations while invoking the extended period of limitation. If the Department entertained any doubt regarding the correctness of the disclosures made by the appellant, it was incumbent upon it to substantiate such suspicion by conducting an independent investigation and by adducing cogent and tangible evidence within the period prescribed under the statute. The law does not countenance invocation of the extended period merely because the assessee's explanation is perceived to be inadequate. More importantly, the indispensable ingredient of fraud, wilful misstatement, suppression of material facts, or deliberate intent to evade payment of tax has not been established by any acceptable evidence whatsoever. Suspicion, however strong, cannot assume the character of legal proof; nor can the Department's omission to act within the statutory timeframe be condoned by shifting the burden onto the assessee. The delay occasioned in issuance of the Show Cause Notice, in the absence of proof of the jurisdictional ingredients contemplated under the proviso to Section 73(1), therefore remains fatal to the very foundation of the demand. Hence, we are of the view that the extended period of limitation, as contemplated by the Revenue in the present proceedings, cannot be invoked in the facts and circumstances of the case.

12.1. In this context, we have also taken note of the fact that certain ST-3 Returns were filed with some delay, which the appellant has explained as being attributable to shortage of staff. The said explanation has not been controverted by the Revenue through any cogent material. In any event, such delays were not inordinate and, by themselves, cannot give rise to an inference of fraud, wilful misstatement or suppression of facts with intent to evade payment of Service Tax, particularly when the returns were admittedly filed thereafter and the relevant particulars stood disclosed to the Department. This circumstance, therefore, does not advance the Revenue's case for invocation of the extended period of limitation.

13. Having thus held that the Revenue has failed to establish the essential jurisdictional ingredients of fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of Service Tax so as to warrant invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994, the inevitable consequence would be to examine whether the impugned demand can nevertheless survive within the normal period of limitation prescribed under the statute. Once the extended period fails, any demand falling beyond the said limitation period necessarily cannot survive. There is no dispute that the period involved in the present proceedings extends from October, 2014 to March, 2015 up to April, 2017 to June, 2017. Equally, there is no dispute that the last statutory ST-3 Return pertaining to the period April, 2017 to June, 2017, albeit filed with some delay, came to be furnished on 05.09.2017. Even reckoning the "relevant date" for the purpose of limitation as the date of filing of the said statutory return, the normal period of thirty months, as was applicable during the material period, expired on 05.03.2020. The impugned Show Cause Notice, however, came to be issued only on

30.12.2020, nearly ten months thereafter. Consequently, even on the Revenue's own admitted facts, the demand relatable to the last return falls beyond the normal period prescribed by law.

13.1. The same is the position even in respect of the earlier tax periods. The records reveal that the statutory returns for the preceding periods had also been filed, though with some delay. Such delays were neither of such magnitude as to justify an inference of deliberate suppression, nor can they have the effect of indefinitely postponing the commencement of limitation. Accordingly, after reckoning the date of actual filing of return as the relevant date, we find that the normal period of limitation in respect of all the earlier returns had also expired much prior to issuance of the impugned Show Cause Notice dated 30.12.2020. It, therefore, follows that no part of the impugned demand survives within the normal period of limitation, the entire demand having travelled beyond the statutory period available to the Department for initiating proceedings.

13.1.1. For better appreciation of the facts, the details of the actual dates of filing of ST-3 Returns by the appellant during the underlying period along with the corresponding last dates available thereto for issuance of demand notices for the said periods, have been tabularized below: -

Financial Year / Return Period	Due Date of Filing ST-3 Return	Actual Date of Filing ST-3 Return	No. of days Delay	Expiry of Normal Period (30 Months)
2015–16 (April–September)	25.10.2015	24.10.2015	NO DELAY	24.04.2018
2015–16 (October–March)	29.04.2016	21.07.2016	83 days	21.01.2019
2016–17 (April–September)	25.10.2016	16.12.2016	52 days	16.06.2019
2016–17 (October–March)	30.04.2017	26.06.2017	57 days	26.12.2019
2017–18 (April–September)	15.08.2017	05.09.2017	21 days	05.03.2020

14. We also find that the benefit of extension of limitation occasioned by the outbreak of the COVID-19 pandemic does not advance the Revenue's case in the peculiar facts mentioned herein. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) and subsequent extensions only extended deadlines that were falling due on or after March 20, 2020. As noticed hereinbefore, the normal period, reckoned from the last return filed on 05.09.2017, expired on 05.03.2020, well before the extraordinary measures adopted owing to the COVID-19 pandemic assumed relevance for computation of limitation. The subsequent exclusion of limitation during the pandemic cannot revive a cause of action or breathe life into a demand which had already become time-barred under the statute. The law relating to exclusion of limitation was intended to preserve subsisting rights; it was never intended to resurrect proceedings which had already become barred by efflux of time. In any case, even before the pandemic and the consequent suspension or exclusion of limitation came into operation, the Revenue had at its disposal the entire statutory period to initiate proceedings, which they failed to do.

15. In view of the foregoing discussion, once the invocation of the extended period of limitation is held to be legally unsustainable, the impugned demand is left entirely unsupported by the normal period of limitation. The inevitable corollary is that the Show Cause Notice dated 30.12.2020, having been issued beyond the period prescribed under the statute, is barred by limitation in its entirety. Consequently, the demand of Service Tax, together with the interest and penalties founded thereon, cannot be sustained in the eyes of law. Resultantly, the demand of Service Tax amounting to Rs.1,99,20,968/-, together with the consequential liability towards interest under Section 75 and penalty imposed under Section 78 of the Finance Act, 1994, cannot be sustained in the eyes of law and is accordingly set aside. To the aforesaid extent, the impugned Order-in-Appeal affirming the Order-in-Original is found to be unsustainable and does not merit judicial approval.

On the issue of pre-Show Cause Notice consultation:

16. We also finds considerable force in the alternative contention advanced on behalf of the appellant regarding the mandatory requirement of pre-show cause notice consultation. The impugned Show Cause Notice dated 30.12.2020, proposing a demand of Rs.1,99,20,968/-, came to be issued at a point of time when the field formations were governed by the Board's Instructions dated 21.12.2015 bearing F. No. 1080/09/DLA/MISC/15, as clarified by Circular dated 10.03.2017 bearing F. No. 1053/02/2017-CX. The aforesaid instructions unequivocally mandated pre-show cause notice consultation in all cases involving demands exceeding Rs.50 lakhs, save and except preventive/offence-related matters. Admittedly, the present proceedings do not fall within the excepted category.

16.1. It is not the case of the Revenue that any pre-show cause notice consultation was undertaken or that any opportunity of such consultation was afforded to the appellant prior to issuance of the impugned notice. No material has been brought on record evidencing compliance with the binding administrative instructions holding the field on the relevant date. The subsequent Circular No. 1079/03/2021-CX dated 11.11.2021, whereby such consultation was dispensed with in specified suppression-related cases, was issued long after the issuance of the impugned Show Cause Notice and cannot be pressed into service to validate an action already undertaken contrary to the prevailing instructions. The principle that a subsequent and more onerous circular operates only prospectively stands authoritatively recognised by the Hon'ble Supreme Court in *Suchitra Components v. Commissioner of C.Ex., Guntur [2007 (208) E.L.T. 321 (S.C.)].*

16.2. The object underlying the requirement of pre-show cause notice consultation is not an empty formality but to afford an opportunity for meaningful engagement, narrow the areas of dispute and obviate avoidable litigation wherever possible. Where such a mandatory procedural safeguard, binding upon the departmental authorities at the relevant point of time, is admittedly bypassed without any justification, the very initiation of proceedings stands vitiated.

16.3. In fact, the very same issue came up for consideration before this Tribunal in *M/s. SIS Limited v. Principal Commissioner of C.G.S.T. & Central Excise, Patna-I [Final Order No. 77549 of 2025 dated 15.10.2025 in Service Tax Appeal No. 75555 of 2024 (CESTAT, Kolkata)].* The relevant portion of the aforesaid decision is reproduced below: -

"7.1. A careful reading of the above Circulars would clarify that in the first Circular dated 10th March 2017, there is no whisper about suppression and non-suppression cases. A plain reading makes it clear that in both the cases, the pre-consultation procedure is mandated if the demanded amount is more than Rs.50 lakhs.

8. For the first time the Circular dated 11th November 2021, very specifically lists (a) to (e) cases, where such pre-consultation procedure need not be followed. The word 'reiterated' on its own cannot give any retrospective effect as has been canvassed by the Ld. Departmental Representative. Further, Paragraph 6 of the above Circular talks about the 'Trade and Industry and field formations' to be suitably informed. This itself clarifies that it is for future reference, since a specific change has been made as to how the pre-consultation procedure is to be followed.

9. Therefore, we are in agreement with the appellant that the required procedure of pre-consultation was not followed.

10. In the present case, it is also is seen that the Revenue has issued the Show Cause Notice demanding Rs.6.79 crores for the extended period. Out this demand, the Adjudicating authority has dropped the demand to the extent of Rs.6.45 crores [about 95% of the demand). The Revenue is not aggrieved by the same and no appeal has been filed. Therefore, we take the view that no proper investigation was made while issuing the Show Cause Notice for the extended period. It is also on record that the data has been obtained from the ST 3 Returns and the Balance Sheets of the appellant. This also fortifies the view that there was no case of suppression has been made out against the appellant, in the first place. Viewing this from another angle, it is more in the nature of a demand for the normal period only, which in any case, required pre-consultancy procedure to be followed, which has not been done in this case.

11. Coming to the case law cited by the appellant, we find that the Hon'ble Gujrat High Court in the case of Jay Mahakali Industrial Service Versus Union of India [(2025) 29 Centax 353 (Guj.)), has considered the issue in a very detailed way and interpreted various decisions of the High Courts and held as under: -

...

11.1. We find that even as per the Board Circulars, the Revenue was required to follow the pre-

> *consultation procedure, which was not done in this case. The cited case law is squarely applicable to the facts of the present case.*
>
> *12. In view of the foregoing, we set aside the confirmed demand of Rs.34,63,730/- along with the interest and penalty thereon. The appellant would be eligible for consequential relief, if any, as per law."*

16.4. It is also noteworthy that the decision in *M/s. SIS Limited (supra)* was a conscious decision rendered upon due consideration of the law laid down by the Hon'ble Gujarat High Court in *Jay Mahakali Industrial Service (supra)* wherein the very same issue has been addressed by the Hon'ble High Court.

17. Accordingly, even on this independent count, the initiation of the impugned proceedings suffers from a serious procedural infirmity, which lends further support to the conclusion already arrived at that the impugned Show Cause Notice and the orders emanating therefrom cannot be sustained in law.

18. However, insofar as the penalty imposed under Section 77 of the Finance Act, 1994 is concerned, the position stands on a different footing. It is not in dispute that there had been delays on the part of the appellant in filing certain statutory ST-3 Returns, though the same have been satisfactorily explained and, as discussed hereinbefore, are wholly insufficient to attract the ingredients necessary for invocation of the extended period of limitation or to establish fraud, collusion, wilful misstatement or suppression of facts. Nevertheless, the statutory obligation to furnish returns within the prescribed time is an independent requirement under the Finance Act, 1994, and any breach thereof is amenable to the consequences contemplated under Section 77 of the Act. In the present case, the delay in filing the returns is an admitted and undisputed factual position borne out from the records. Such default, though not of a nature warranting invocation of the extended period of

limitation, cannot altogether be overlooked while considering the levy of penalty specifically prescribed for contravention of the statutory procedural requirements. The legislative intent underlying Section 77 is to ensure timely compliance with the procedural obligations cast upon registered assessees, independent of the existence of any intention to evade tax.

18.1. Accordingly, no infirmity is found in the imposition of penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994. The appellant's challenge on this limited aspect is, therefore, rejected, and the penalty imposed under the said provision is upheld.

19. In the result, and in view of the foregoing findings, the impugned Order-in-Appeal is modified to the following extent:

(i) The demand of Service Tax amounting to Rs.1,99,20,968/-, together with the consequential liability towards interest under Section 75 and penalty imposed under Section 78 of the Finance Act, 1994, is set aside.

(ii) The penalty of Rs.10,000/- imposed under Section 77 of the Finance Act, 1994 is upheld.

20. The impugned Order-in-Appeal stands modified to the extent indicated hereinabove.

21. Consequently, the appeal is allowed in part in the aforesaid terms, with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on **05.08.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd