CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH-COURT NO. 3

SERVICE TAX APPEAL NO. 50759 OF 2024

[Arising out of Order in Original No. 11/Commr/CGST/ADT-1/2023-24, dated 12.02.2024 passed by the Commissioner of Central GST Audit, Delhi-1]

WEST WIND CONCEPTS PRIVATE LIMITED **...APPELLANT**
Plot No. 45, Village Satbari,
PO Mehrauli, New Delhi-110030

Vs.

PRINCIPAL COMMISSIONER OF CGST-DELHI EAST **...RESPONDENT**
C.R. Building. IP Estate,
New Delhi-110002

Appearance:

Present for the Appellant : Shri J.K Mittal, Senior Advocate, Shri Harshvardhan Tyagi and Ms. Monisha, Advocates

Present for the Respondent: Shri Shashank Yadav, Authorised Representative

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51278 /2026

DATE OF HEARING : 17/07/2026
DATE OF DECISION: 06/08/2026

ASHOK JINDAL

1. The appellant is in appeal against the impugned order wherein the demand of service tax amounting to Rs. 2,61,24,786/- has been confirmed against the appellant.

2. The facts of the case are that the appellant is engaged in providing interior decoration and designing registered with service tax department and filing the st-3 returns periodically. During the impugned period office of the Commissioner CGST-Audit II, Delhi initiated audit of the appellants records for the period October 2014

to June 2017 vide notice dated 07.11.2019 under Rule 5(a) of service tax Rule, 1994. During the course of audit, certain discrepancies were communicated to the appellant vide letters dated 16.03.2020 dated 30.03.2020 and 21.05.2020 and raised certain queries (a) miscellaneous income received from Mr. Virat Kohli (b) miscellaneous income from M/s Reebok India Company and (c) service tax paid on 40% of the work contract/ original work after 60% abatement as per service tax (Determination of Valuation Rules, 2006). Therefore, a show cause notice was issued by the Commissioner of Central GST, Audit-II Delhi dated 25.06.2020 demanded the service tax as under:

(a) Service Tax Rs. 4,37,568/- on miscellaneous income of Rs.30,17,713/- in year 2015-16 as advance amount received from Mr. Virat Kohli forfeited as goods order was not taken away.

(b) Service Tax of Rs.43,56,671/- on miscellaneous income of Rs. 30,00,46,008/- in year 2015-16 from M/s Reebok India Company for the goods destroyed in fire broke in the appellant’s showroom.

(c) Service tax Rs.2,13,30,547/- for alleged wrong availment of abatement on account of work contract, for the period 2014-15 to 2017-18.

3. The final audit report no. IAR No. 338/2020-21 dated 14.01.2021 was issued after issuance of show cause notice.

4. The appellant contested the show cause notice saying that the said show cause notice made answerable to Commissioner of CGST, Delhi South Commissionerate but actually after inordinate delay of

three and a half years the hearing was fixed before the Commissioner of CGST Audit-I. Against the said order, the appellant is before us.

5. The learned counsel appearing on behalf of the appellant submits as under:

(i) The Appellant filed his reply dated 04.01.2024 to the show cause notice dated 25.06.2020 contesting the allegations made therein.

(ii) The said show cause notice was made answerable to the Commissioner of CGST, Delhi South Commissionerate, but actually after the inordinate delay of 3 years the hearing was fixed before the Commissioner of CGST Audit-1.

(iii) The Commissioner of CGST Audit-1, by impugned Order dated 12.02.2024, confirmed the entire demand of service tax of Rs.2,61,24,786/-under Section 73(2) of the Finance Act, 1994 along with interest under Section 75 and with equal amount of penalties under section 78 and further penalties of Rs. 10,000/- under Sections 77 and of the Finance Act, 1994.

(iv) **Extended period of limitation is not applicable:** In para 5 of the show cause notice, it is alleged that the Appellant has wilfully misstated/classified work as original works and availed 60% abatement instead 30% as per Service Tax (Determination of Value) Rules, 2006. The show cause notice was issued for extended period of limitation under proviso to section 73 of the Finance Act, which is not applicable in the present case. The entire demand is beyond the normal period limitation. Firstly, as given in table each half yearly returns were filed, and the department had an opportunity to scrutinize the return from time to time. It is admitted facts that payment of service tax on works contract was shown in the return, whereas allegations is wrong availment of abatement. Secondly, the entire proceeding is based upon the Audit conducted by the department and this Hon'ble Tribunal in the catena of judgments has held that extended period of limitation cannot be invoked in such circumstances. Thirdly, in para 5 of the show cause notice, for invocation of extended period, it is alleged that the Appellant has willfully misstated/classified work as original works and availed 60% abatement instead 30% as per Service Tax (Determination of Value) Rules, 2006, this cannot be ground for invocation of extended period. Fourthly, it is alleged that miscellaneous income were shown in service tax return, whereas, once it is not for any taxable service, it was not required to be shown in service tax return and merely non-payment of service tax, even if applicable, cannot give rise to invocation of extended period. In Stemcyte India Therapeutics (P) Ltd. v. CCE, (2025) 144 GSTR 662; [14.07.2025], it is held that "9.3. It is a settled principle of law that, for the department to invoke the extended period of limitation, there must be an active and deliberate act on the part of the assessee to evade payment of tax. Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract the extended limitation period." The Tribunal in Sunshine Steel Industries v Commissioner of CGST, Customs & Central Excise, Jodhpur (2023) 8 Centax 209 (Tri. -Del), noted that "17. The show cause notice, in the present case, merely makes reference to an audit conducted without even mentioning the date." The Tribunal held that "26... The Officers of the Department could also have scrutinized the returns and raised a demand within the normal period of limitation. The assessee cannot be blamed by merely stating that it was only when the audit pointed out that suppression was noted or by stating that it was a case of self-assessment." In the case, the Tribunal has held that "34. In such circumstances, the extended period of limitation could not have been invoked." The said decision of the Tribunal has been affirmed by the Supreme Court by dismissing the Appeal filed by the Revenue Commissioner of CGST, Customs and Central Excise v Sunshine Steel Industries (2023) 8 Centro.: 210 (SC). In **Shyam Spectra Pvt. Ltd. vs. Commissioner of Service Tax, Delhi II (2025) 32 Centax 341 (Tri.Del) [31-07-2024],** also the Tribunal rejected the contentions of the Department for invoking the extended period that "24… had the audit not been conducted by the department this fact would not have come to the notice of the department. **Fifthly,** in the show cause notice reference is made to the ordinance dated 31.03.2020 and notification dated 03.04.2020 for extension of time limit for issuance of show cause notice whereas the same have no applicability in the present case. The said ordinance was applicable only when the time limit is expiring between 20th March 2020 to 29th June 2020, whereas this has never been the case set up by Revenue. Whereas the Appellant has filed his half yearly return within the period of limitation therefore, the time period for issuance of show cause notice has already expired as per the normal period of limitation even prior to the issuance of said ordinance.

(v) When Show cause notice is barred by limitation, the issue on merit is not to be looked into: It is settled principle of law that when demand itself is barred by limitation then the Tribunal cannot go into the merit of the disputes. If it is done so, it will be committing an illegality. The Allahabad High Court in **Commr. of Cus., C. Excise & S. Tax v Monsanto Manufacturer Pvt. Ltd. 2014 (35) S.T.R. 177 (All.) [para 24]** held that "24..we have held, in coming to the conclusion that the demand was time barred, there was no occasion for the Tribunal to enter upon the merits of the dispute." Further, in the said judgment, the High Court referred and relied upon the decision of the Supreme Court in ***State Bank of India v. B.S. Agricultural Industries*** *(I}* - **(2009) 5 SCC 121 [para 12]** wherein it is held that "12... If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside."

(vi) Commissioner of CGST Audit-I acted without authority of law and passed the impugned order: The show cause notice was made answerable to the Commissioner of CGST, Delhi South Commissionerate, but the impugned order has been passed by the Commissioner of CGST Audit-I. In the impugned Order-in-Original dated 12.02.2024, the change in adjudication authority is made through corrigendum dated 10.11.2023. The Board by Circular No. 985/9/2014- CX., dated 22-9-2014, has limited the power of Commissioner (Audit) to issue show cause notice has directed that such show cause notice shall be adjudicated by the executive jurisdictional commissioner. Similarly, in the GST regime also, by Circular No. 169/01/2022 - GST, dated 12.03.2022, the Board has divested the power of the Commissioner (Audit) from adjudication of show cause notice and the Commissioner (Audit) power is limited to issuance of show cause notice. This Hon'ble Tribunal in case of **Telenor Consult AS v CST (Audit-I), Delhi-1 (Supra)** after considering the board Circular No. 985/9/2014- CX., dated 22-9-2014 held that "13...It becomes clear that once the SCN was issued by Audit and was confirmed by MCM it should have been adjudicated only and only by Executive Commissioner. The Audit Commissioner has no competent jurisdiction to adjudicate rather as per above circular, he is held to have become functus officio after issuing the SCN and the Audit objections if any are confirmed. Thus, the order as passed by the Commissioner (Audit} is otherwise not sustainable as being beyond jurisdiction." Therefore, the Respondent/ Commissioner of CGST Audit-I acted without authority of law and passed the impugned order;

(vii) Corrigendum dated 10.11.2023 is illegal:

The show cause notice was made answerable to the Commissioner of CGST, Delhi South Commissionerate, but actually adjudicated by the Commissioner of CGST Audit-I. In the impugned Order-in-Original dated 12.02.2024, the change in adjudication authority is made because of corrigendum dated 10.11.2023. Whereas the copy of the said corrigendum was never provided to the Appellant. The corrigendum dated 10.11.2023 mentioned in the impugned order is illegal and without authority of law. The corrigendum can only be issued for typographical error and for changing the adjudication authority on the back of the Appellant cannot be permitted in name of corrigendum and that too after an inordinate delay of 3½ years. The Commissioner cannot act against the board circular for making a show cause notice answerable to the Commissioner, Audit-I by issuing corrigendum when no such power is assigned by board to the Commissioner.

(viii) **Central Tax officer acted illegally for issuance of show cause and passing adjudication order:** The show cause notice as well as the impugned order are issued by the officers appointed under the CGST Act by Notification No. 02/2017-Central Tax, dated 19.06.2017 issued under section 3 read with section 5 of the CGST Act, 201 7 and the said notification itself states that they have the power and discharge their duties conferred or imposed under the CGST Act 2017. Therefore, the said officers' power was under the CGST Act and never extended under the Finance Act 1994. Therefore, the entire proceedings under the Finance Act by Central Tax Officers are bad in law. Therefore, the findings recorded in para 1.4 of the impugned order that there is a concurrent jurisdiction of the Central tax officer under the CGST Act and the

Finance Act has no basts in law. Further the finding recorded in para 1.2 and 1.3 of the impugned order that by virtue of section 174(2) of the CGST Act authorized the central tax officer to adjudicate the show cause notice issued under the Finance Act 1994, is a complete misunderstanding of the law as said provisions are only a saving clause and does not assign the power of adjudication to the officers. It is respectfully submits that the decision in **Rajasthan State Agriculture Marketing Board v C CGST & Central Excise Jaipur (2025) 33 Centax 138 (Tri.-Del) [02-06-2025]** is per incuriam and needs reconsideration. It appears that the Tribunal fell in error of law as neither discussed the provisions of law and the notification under which Central Tax officer is appointed, and merely on the assumption that the successor officer will carry on the function of the service tax. Section 174 of CGST Act, 2017 considered by the Tribunal in this decision is only a saving clause, it does confer any power on the CGST officer to carry function under the Finance Act, 1994.

(ix) **Audit was without authority of law, subsequent proceedings are also illegal:** The entire proceeding is based upon the Audit conducted by the department whereas said Audit itself was without authority of law as appear from the Audit notice dated 07.11.2019 as the said

Audit was initiated by the Deputy Commissioner at his own, whereas in terms of Rule 5A of the Service Tax Rules, the Audit could not have been conducted unless authorized by the Commissioner, whereas there is no such authorization is on record. Therefore, if the Audit is itself bad in law, the subsequent proceedings are also not valid. [reference **Jeevan Buy N. Save vs. Joint Commissioner (CT), Chennai reported in 2018 (15) GSTL 533 (Mad.)].**

(x) **Show Cause issued prior to Final Audit Report is illegal:** The show cause notice dated 25.06.2020, was bad in law as issued even prior to the final Audit report dated 14.01.2021, which is contrary to the Audit manual and **Board Circular No. 985/09/2014-CX dated 22.09.2014,** which specifically states that show cause notice can be issued after Audit objection and confirmation by the Audit monitoring committee. It is settled principle of law that the officer is bound by the board circular. Thus, issuance of show cause notice even prior to audit findings approved and final audit report issued by the Department is illegal.

(xi) **Demand and levy of cess illegal:** Without prejudice, the Education Cess and other cesses imposition was illegal as the same were levied by separate enactment and also was omitted by separate enactment in year 2015 without having any saving clause. the Education Cess was levied under the Finance Act, 2004 and Secondary & Higher Education Cess was levied under the Finance Act, 2007, which both have been omitted by the Finance Act, 2015 w.e.f. 1-6-2015 vide 'Notification No. 14/2015-ST, dated 19-5-2015, without any saving clause, therefore, no proceedings could be initiated for recovery of such cess, after omitting of such provisions, when there is no saving clause. It is submitted that no cess could be recovered in the present case as the provisions related to **Swacbh Bharat Cess and Krishi Kalyan Cess** contained under the Finance Act, 2015 and the Finance Act, 2016 respectively, which have also been omitted separately by the Taxation Laws (Amendment) Act, 2017 and not by section 173 or 174 of the CGST Act, 2017, without any saving clause in CGST Act, 201 7 as such there could not saving of such cess under CGST Act, 201 7, which have been omitted separately, therefore, no proceedings could be initiated for recovery of such cess, after omitting of such provisions. (Ref. **Kolbapur Canesugar Works Ltd. v Union of India, 2000 (119) ELT 257 (SC) : 2000 (2) SCC 536].** Therefore, once cess itself were abolished neither the cess could have been demanded or any demand on account of cess could have been confirmed.

(xii) **No service tax is applicable in the present case:** The show cause notice has demand tax on following amount, which is confirmed in the impugned order, whereas no service tax is applicable on the same.

(a) Service Tax Rs. 4,37,568/- on miscellaneous income of Rs. 30,17,713/-in year 2015-16 as advance amount received from Mr. Virat Kohli forfeited as goods ordered was not taken away. No service tax is applicable on the same as it is the advance amount forfeited because the customer did not purchase the ordered goods.

(b) Service Tax 43,56,671/- on miscellaneous income of Rs. 3,00,46,008/-in year 2015-16 from M/s. Reebok India Company for the goods destroyed in fire broke in the showroom. No service tax is applicable on the same as it is the amount received from M/s. Reebok India Company for the goods destroyed in fire broke in the showroom.

(c) Service Tax Rs. 2,13,30,547 /- for alleged wrong availment of abatement on account of work contract, for the period 2014-15 to 2017-18. This is the additional service tax demanded on works contract is not sustainable in law. The Appellant had provided service of complete implementation of the showroom including construction and interior. The Appellant paid service tax was paid on 40% value/ amount received for works contract in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. In the show cause notice it has been admitted that "taxable value declared in the ST-3 return" in respect of works contract. In Para 5 of the show cause notice it is alleged that the Appellant in the service tax return has not shown the value of the taking abatement and such allegation was confirmed by giving findings in para 33.3 of the impugned order. Whereas Rule 2A of the Service Tax (Determination of Value) Rules, 2006 is only for value and not for the abatement at all. Whereas the letter dated 30.03.2020 issued by the Audit party of the department itself on this subject matter refers to Rule 2A of the (Determination of Value) Rules, 2006. Therefore, the department has proceeded on the wrong premise in the law, hence the appellant did not take any abatement. Further, the adjudication authority in para 18.2 of the impugned order admitted the Appellant has paid VAT on 80% on the value of the bill. Therefore, the findings recorded in para 21 of the impugned order that such services completion and finishing services are erroneous and not the works contract/original works. Therefore, finding recorded in para 33.3 of the impugned order (rely upon the allegations made in the show cause notice is absurd and not sustainable in law.

(xiii) In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to set aside the impugned Order-in-Original dated 12.02.2024 and allow the present appeal with all consequential relief.

6. On the other hand learned authorized representative submits that the issue of jurisdiction was not raised by the appellant before the adjudicating authority. Therefore, the same cannot be raised at this stage. He further submits that with regard to valuation it is the submission of the learned authorized representative that in the impugned order the actual scope of work under appellant’s agreement with M/s Inditex Trent Retail India Pvt Ltd. and M/s H.&M. Hennes & Mauritz Retail Pvt Ltd. and invoices based thereunder and

found that activities performed of flooring and tiling, electrical installation, painting, lighting, fire-fighting systems, glazing, HVAC, plumbing, carpentry etc., were carried out upon existing buildings/ structures handed over to the appellant and not upon the vacant land or admittedly abandoned or damage structures. Therefore, explanation 1 to Rule 2A(i) restricts "original works" to (i) all new constructions, (ii) additions/ alterations to abandoned or damage structures to make them workable, and (iii) erection, commissioning or installation of plant, machinery or equipment or structures. None of the appellant's contracts evidence the emergence of a new civil structure; on the contrary, clauses such as the obligation to "protect the structure of the building and relevant existing pipelines, facilities etc. in the Inditex agreement affirmatively demonstrate that the appellant worked upon a pre-existing structure. Therefore, it is settled position that completion of service under rule 2A(ii)(B) is residual inclusive category, and the illustrative activities mentioned therein, glazing, floor/ wall tiling, installation of electrical fittings, are not exhaustive. He also relied on the decision of Supreme Court in the case of **Skill Lotto Solutions Pvt Ltd.** vs. **Union of India**[1], holding that inclusive definition is always intended to enlarge, and not restrict, the meaning of the expression defined. He also relied on the decision of this Tribunal in the case of **Cherry Hill Interiors Ltd**. vs. **Commissioner of Service Tax, Delhi**[2]**,** wherein in has been held that interior fit-out activities such as wooden and metal partitions, plastering, painting, civil work, joinery, floor and wall tiling in respect of an existing building or civil structure are more appropriately

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1 2020 (43) GSTL 289 (SC)
2 2016 (42) STR 74 (Tri.-Del.)

classifiable as "completion and finishing services" and not "original works". Therefore, the appellant activity is indistinguishable from the original work. He also submitted that the miscellaneous income is taxable under section 66E(e) declared service as declared service in case of forfeiture advance paid by Mr. Virat Kohli and in respect of M/s Vigo India Company.

7. With regard to the limitation it is the submission that the appellant has willfully classified their activity as original work to avail excess abatement i.e., 60% instead of admission of 30 %. Therefore, it is case of the suppression of facts, therefore, extended period of limitation is rightly invoked. Therefore, he prayed that the impugned order is to be upheld.

8. Heard both sides and considered the submissions.

9. Shri J.K. Mittal, learned senior advocate argued the matter at length raising the technical issues whereas learned authorized representative contested that these issues have not been raised before the adjudicating authority.

10. On merit the only issue is to be decided by us is that the work undertaken by the appellant is a original work or completion of finishing work.

11. A similar issue was dealt with by this Tribunal in the case of **Kalpakaaru Projects Pvt Ltd.** vs. **Principal Commissioner, CGST-Delhi South** in Service Tax Appeal No. 50302 of 2022, wherein the Final Order has been passed vide Final Order No. 50769 of 2025 dated 26.05.2025 wherein the facts of the case are that the appellant receives bare structures of newly constructed commercial buildings with roof and floor from its clients and converts them into a modern

commercial showrooms/ outlets. This work involves making useable floor, proper ceiling, internal walls and constructing internal walls and partition, HVAC(heating, ventilation and air-conditioning), fire suppression works, plumbing, construction of toilets and other fit-outs as required by the clients. There is no dispute that in rendering these services, the appellant had also used material and, therefore, these services were in the nature of works contract services and were not services simpliciter. What is in dispute is the valuation of these services. The appellant paid service tax considering this work as original work and claiming abatement of 60% under Rule 2A(ii)(A) of the Service Tax Valuation Rules. According to the Revenue these services were not original works but merely completion and finishing services and, therefore, they were covered by Rule 2A(ii)(B) of the service tax Valuation rules on which abatement of only 30% of the contract price was available. Service tax had to be paid on the remaining 70%.

12. And this Tribunal observed as under:

> "8. We have considered the submission on both sides on this count. Rule 2A of the Service Tax Valuation Rules, reads as follows:
>
> > "**2A. Determination of value of taxable services involved in the execution of a works contract.-**
> >
> > Subject to the provisions of section 67, the value of taxable service involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in clause (8) of section 66E of the Act, shall be determined by the service provider in the following manner, namely:-
> >
> > (i) Value of works contract service shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.
> >
> > Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -
(i) labour charges for execution of the works;
(ii) amount paid to a sub-contractor for labour and services;
(iii) charges for planning, designing and architect’s fees;
(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
(vi) cost of establishment of the contractor relatable to supply of labour and services;
(vii) other similar expenses relatable to supply of labour and services; and
(viii) profit earned by the service provider relatable to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract:

PROVIDED that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract:

PROVIDED that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract:

PROVIDED FURTHER that in case of works contract for construction of residential units having carpet area up to 2000 square feet or where the amount charged per

> residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract:
>
> PROVIDED that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract:
>
> PROVIDED FURTHER that in case of works contract for construction of residential units having carpet area up to 2000 square feet and where the amount charged per residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract.
>
> PROVIDED that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract."

9. Evidently, in case of "works contract" the assessee has two options-either to deduct the value of materials used from the works contract under rule 2A(i) and pay service tax on the remaining part of the works contract or claim abatement under rule 2A(ii) on notional basis. The appellant's claim is that the total value of the goods in its works contracts worked out to 61.23% and these figures were provided to the Commissioner. Under such circumstances, service tax had to be paid only 38.73. However, the appellant opted for rule 2A(ii). This covers two types of contracts- those which are original works and those which are completion and finishing services.

10. We have seen the photographs of the buildings in the form in which they are received and how they are completed. We also gone through the extensive work carried out by the appellant. Essentially, the appellant converts a bare skeletal structure of a building into a complete show room including the electricity, HVAC, plumbing, flooring, ceiling, air-conditioning, partitioning etc. In our considered view, this has to be considered as original work and it cannot be called merely finishing or completion work. If they are considered as original works they will be covered by 2A(ii)(A) of the Valuation Rules and will be entitled to 60% abatement. Service Tax has to be paid only on 40% of the value which the appellant did. We also note it is value taken by previous audit teams who audited the appellants work. Therefore, demand on this count cannot be sustained either on merits or on limitation."

13. Admittedly the work undertaken by the appellant is that the appellant received structures of the newly constructed commercial buildings with roof and floor from its clients and converted them into modern commercial showroom outlets. This work involves making usable floors and ceiling internal walls, constructing internal walls partition HVAC, fire suspension, wall plumbing, construction and other fit outs as requirements of their clients. Admittedly, in all these works executed by the appellant material is involved and the appellant is paying VAT on the 80% of the value of the work contract as goods. As the appellant, had discharged VAT which is evident from the records placed before us, the appellant is paying tax considering the work as original work by claiming abatement of 60% under rule 2A(ii)(A) of Service Tax Valuation Rules.

14. We hold that the work undertaken by the appellant is an original work as held by this Tribunal in the case of **Kalpakaru Projects Pvt Ltd. (supra),** therefore, the appellant has rightly paid service tax under rule 2A(ii)(A) on notional basis by claiming abatement of 60% of the value of works contract. Therefore, no demand is sustainable against the appellant.

15. We also take note of the fact that the demand of Rs. 4,37,568/- has been confirmed on miscellaneous income on account of forfeiture of advance paid by Shri Virat Kohli for purchase of goods which Shri Virat Kohli had abandoned, in that circumstance forfeiture amount cannot be termed as any service provided by the appellant. Therefore, no service tax is payable by the appellant on forfeiture of advance received from Shri Virat Kohli.

16. We also take note of the fact that a demand of service tax of Rs. 43,56,671/- has been confirmed on account of miscellaneous income shows by the appellant which is reimbursement of the loss of goods happened due to fire broke out in the showroom. The said reimbursement is against the loss incurred by the appellant which cannot be termed as service provided by the appellant. Therefore, no service tax is payable on the said reimbursement on account of fire broke out in the showroom of M/s Reebok India Pvt Ltd.

17. In view of the above, we hold that no demand is payable by the appellant as confirmed in the impugned order. Consequently, no penalty can be imposed on the appellant, therefore, we set aside the impugned order and allow the appeal with consequential relief.

[Order pronounced on **06/08/2026**]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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