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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 54780 of 2014

[Arising out of Order-in-Original No. DEL-SVTAX-ADJ-COM-80/2014-15 dated 26.06.2014 passed by the Commissioner (Adjudication), Service Tax, New Delhi]

M/s DLF Projects Ltd **......Appellant**
3rd Floor, Shopping Mall, Arjun Marg, DLF City,
Phase-I, Gurugram, Haryana 122002

VERSUS

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

AND

Service Tax Appeal No. 55405 of 2014

[Arising out of Order-in-Original No. DEL-SVTAX-ADJ-COM-80/2014-15 dated 26.06.2014 passed by the Commissioner (Adjudication), Service Tax, New Delhi]

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

VERSUS

M/s DLF Projects Ltd **......Respondent**
3rd Floor, Shopping Mall, Arjun Marg, DLF City,
Phase-I, Gurugram, Haryana 122002

<u>APPEARANCE:</u>

Mr. Anubhav Goel & Ms. Preeti Goel, Advocates for the Assessee

Mr. Maheswar Maji & Mr. Shantanu Kumar Meena, Authorized Representatives for the Revenue

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

FINAL ORDER NO. 60552-60553/2026

DATE OF HEARING: 05.08.2026
DATE OF DECISION: 21.08.2026

S. S. GARG :

These two appeals, i.e., Appeal No. ST/54780/2014 filed by the Assessee and Appeal No. ST/55405/2014 filed by the Revenue, are directed against the common impugned Order-in-Original No. DEL-SVTAX-ADJ-COM-80/2014-15 dated 26.06.2014 passed by the Commissioner (Adjudication), Service Tax, New Delhi.

1.1 By way of the impugned order, the learned Commissioner adjudicated the Show Cause Notice dated 18.10.2012 for the period FY 2011-12 and passed the following order:

(a) Confirmed service tax amounting to Rs. 3,57,22,070/- (including Cess) under the provisions of Section 73 of the Finance Act, 1994 and ordered for appropriation of the amount of Rs. 3,57,22,070/- (including Edu. Cess and SHE Cess) already paid by the Assessee towards the service tax demand confirmed as above, and further ordered for balance amounts, if any, to be paid by the Assessee;

(b) Confirmed payment of interest at the applicable rate on the balance amounts of the confirmed demand under the provisions of Section 75 of the Finance Act, 1994 and ordered for appropriation of the amount of Rs. 1,49,63,475/- (on differential service tax and reversal of Cenvat credit) already paid by the Assessee towards the interest payable;

(c) Ordered for reversal of Cenvat credit availed by the Assessee in terms of Notification No. 1/2006-ST and ordered for appropriation of the amount of Rs. 74,19,404/- already reversed by the Assessee towards the said reversal. Also ordered for recovery of interest on the said reversal of Cenvat credit and appropriation of the amount of Rs. 1,49,63,475/- (on differential service tax and reversal of Cenvat credit) already paid by the Assessee in cash towards the interest payable;

(d) Imposed a penalty of Rs. 100/- for every day during which such failure continues or @ 1% of such tax per month, whichever is higher, starting from the first day after the due date till the date of actual payment of the outstanding amount of service tax, under Section 76 of the Finance Act, 1994, provided that the total amount of penalty payable shall not exceed the balance amount of service tax payable;

(e) Imposed a penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994 for contraventions of Section 70 of the Finance Act, 1994 by way of not filing the periodical ST-3 returns in a proper manner for the relevant period;

(f) Refrained from imposing any penalty under Section 78 of the Finance Act, 1994.

1.2 For the purpose of convenience, both appeals are being taken up together for disposal by way of this common final order.

2. Firstly, the appeal filed by the Assessee, i.e., Appeal No. **ST/54780/2014**, is being taken up for discussion and disposal.

2.1 Briefly stated, the facts of the case are that M/s DLF Projects Ltd (hereinafter referred to as 'the Assessee') was engaged in the construction of residential and commercial projects. On such construction activity, the Assessee was paying service tax on "Composite Contracts" which had commenced even prior to 01.06.2007.

2.2 During the FY 2011-12, there were various projects under construction for which service tax was being paid. Out of these, there were certain projects where construction had commenced before 01.06.2007. Prior to 01.06.2007, there was only one category of service, i.e., 'Construction Service', but w.e.f. 01.06.2007, 'Construction Service' in the nature of 'Works Contract Service' was taxed by way of a different scheme of valuation. The Composition Scheme, which was introduced in 2007, was applicable only for those projects where construction was initiated on or after 01.06.2007. The projects where construction had commenced prior to 01.06.2007 were not permitted to be taxed as per the new valuation scheme effective from 01.06.2007, even though the construction of these projects was being carried out on or after 01.06.2007. All these projects were termed as 'on-going projects'. However, the Assessee continued to pay tax on such on-going projects as per the new valuation scheme, i.e., the Composition Scheme, introduced w.e.f. 01.06.2007.

2.3 The Department entertained a view that the Assessee was not entitled to avail the benefit of the Composition Scheme for such on-going projects. Consequently, the Department issued a Show Cause Notice dated 18.10.2012 proposing to disallow the benefit of the new scheme of valuation for the on-going projects and raised a demand for differential service tax alleging short payment of tax.

2.4 During the FY 2011-12, the Assessee was also engaged in the construction of projects which were initiated on or after 01.06.2007, and all such projects were termed as 'new projects'. During adjudication before the learned Commissioner, the Assessee provided details of turnover/billing with respect to both on-going projects and new projects, along with the details of service tax paid thereon.

2.5 On the basis of the details provided by the Assessee, the Department re-computed the tax liability for the on-going projects. Based on the information supported by a Chartered Accountant (CA) certificate, the Department calculated the differential amount of service tax to the tune of Rs. 3,57,22,070/-, which the Assessee paid along with applicable interest on or around 14.01.2014, well before the passing of the impugned order dated 26.06.2014.

2.6 After following the due process, the learned Commissioner, vide the impugned Order-in-Original, relied upon the judgment of the Hon'ble Supreme Court in the case of *Nagarjuna Construction Company Limited vs. Union of India [2012 (28) S.T.R. 561 (S.C.)]* and held that the Assessee was required to pay service tax as per the old valuation rules (and not under the Composition Scheme). Accordingly, the differential service tax to the tune of Rs. 3,57,22,070/- already paid by the Assessee vide Entry No. 748 dated 14.01.2014 was noted, confirmed, and appropriated in the impugned order. Though the Order-in-Original was passed on 26.06.2014 and the said amount was paid prior to adjudication, the Assessee had also reversed Cenvat credit amounting to Rs. 74,19,404/- along with applicable interest, which has been recorded and confirmed in the impugned order. The Assessee also paid interest to the tune of Rs. 1,49,63,475/- following the pronouncement of the judgment of the Hon'ble Supreme Court in the case of *Nagarjuna Construction Company Limited (supra)*, which has also been appropriated in the impugned order.

2.7 By way of filing the present appeal, the Assessee is only contesting the penalties imposed under Section 76 and Section 77 of the Finance Act, 1994, praying that penalties should be dropped since the service tax demand along with interest had been deposited prior to the passing of the impugned order.

3. Heard both sides and perused the material on records.

4. The learned Counsel for the Assessee-Appellant submitted that the impugned order, to the extent of imposing penalties under Sections 76 and 77 of the Act, is not sustainable and is liable to be set aside.

4.1 He further submitted that since there was an uncertainty in law, the Assessee held a *bona fide* belief that it was entitled to the benefit of the Composition Scheme even in respect of the on-going projects. However, after the pronouncement of the judgment by the Hon'ble Apex Court in the case of *Nagarjuna Construction Company Limited (supra)*, when the legal position became clear, the Assessee immediately paid the differential amount of service tax to the tune of Rs. 3,57,22,070/- along with applicable interest, and also reversed the Cenvat credit. Since the entire amount along with interest stands paid and appropriated in the impugned order, no penalty should have been imposed on the Assessee.

4.2 He further submitted that the Assessee is entitled to the benefit of Section 80 of the Finance Act, 1994, which statutorily provides for the waiver of penalties under Sections 76 and 77 if the Assessee proves that there was a 'reasonable cause' for the said failure. In this regard, he placed reliance on the judgment of the Hon’ble High Court of Delhi in the case of *Bajaj Travels Limited vs. Commissioner [2012 (25) S.T.R. 417 (Del.)],* wherein the Hon'ble High Court explained the concept of 'reasonable cause' under Section 80 of the Act andand held as under:

> *“Before we advert to this issue, it is necessary to understand the meaning which is to be assigned to expression "reasonable cause". It would mean, in common parlance a cause or ground which was not unreasonable. To put it otherwise, in the context of this case the appellant has to show that there was sufficient and proper reasons which occasioned the appellant to make short deposits of service tax than required under the provisions of the Act. If the appellant can show that the manner in which he was making the deposits of the service tax was* ***bona fide i.e., in good faith, it would amount to 'reasonable cause'. Bona fide implies in the absence of fraud or unfair dealing. The equivalent of this phrase is "honestly".*** *The correct province of this phrase is, therefore, to qualify things or actions that have relation to the mind or motive of the individual. Chambers 20th Century Dictionary defines bona fide to mean 'in good faith : genuine'. The word 'genuine' means 'natural: not spurious; real; pure; sincere'. In Law Dictionary Mozley and Whitley define bona fide to mean 'good faith, without fraud or deceit'. Thus the term bona fide or genuinely refers to a state of mind.”*

4.3 He further submitted that Section 80 of the Act begins with a non-obstante clause which overrides the provisions of Sections 76, 77, and 78 of the Act. In this regard, he placed reliance on the decision of the Tribunal in the case of *Real Mathematics Classes vs. Commissioner [2008 (10) S.T.R. 570 (Tri. - Del.)].*

4.4 He further submitted that there was a reasonable cause for the non-payment of service tax, as the issue involved the interpretation and applicability of the Valuation Scheme, which was clarified only after the pronouncement of the judgment by the Hon'ble Supreme Court in the case of *Nagarjuna Construction Company Ltd vs. Union of India (supra)*. Moreover, he submitted that since the entire demand of service tax along with interest was deposited by the Assessee before the passing of the impugned order, no penalty is imposable. He reiterated that in terms of Section 80 of the Act, penalties under Section 76 and Section 77 should be waived, and for this submission, he relied upon the following case laws:

- *Star Neon Singh vs. Commissioner [2002 (141) E.L.T. 770 (Tri. - Del.)]*
- *Flyingman Air Courier Private Limited vs. Commissioner [2004 (170) E.L.T. 417 (Tri. - Del.)]*
- *ETA Engineering Limited vs. Commissioner [2004 (174) E.L.T. 19 (Tri. - LB)]*
- *Medpro Pharma Private Limited vs. Commissioner [2006 (4) S.T.R. 322 (Tri. - Del.)]*

5. On the other hand, the learned Authorized Representative for the Revenue reiterated the findings of the impugned order and justified the imposition of penalties under Sections 76 and 77 of the Act. He submitted that the Assessee failed to supply the required information and did not file the statutory ST-3 returns within the prescribed time. It was only after an inquiry initiated by the

Department that the necessary details were supplied by the Assessee, based on which the present proceedings were started. He further submitted that there was no reasonable cause for the non-payment of service tax by the Assessee.

6. We have considered the submissions made by both the parties and perused the material available on record as well as the case laws relied upon by the learned Counsel for the Assessee.

6.1 We find it to be an admitted fact that during the FY 2011-12, there were certain projects under construction for which service tax was being paid, where the construction had commenced prior to 01.06.2007 and was on-going. We further note that w.e.f. 01.06.2007, the Composition Scheme came into being, and the Assessee availed of the said scheme in respect of those projects where construction had commenced prior to 01.06.2007.

6.2 The Department was of the view that the Assessee was not entitled to the benefit of the Composition Scheme for such on-going projects. Thereafter, information was sought from the Assessee, and the tax liability was re-computed for the on-going projects. On the basis of the information supplied by the Assessee, duly supported by a CA certificate, the differential service tax amounting to Rs. 3,57,22,070/- was deposited along with interest of Rs. 1,49,63,475/-. The Assessee also reversed the Cenvat credit amounting to Rs. 74,19,404/- along with applicable interest. All these amounts paid by the Assessee have been duly noted and appropriated in the impugned order.

6.3 In the present appeal, the Assessee is seeking relief against the levy of penalties under Sections 76 and 77 of the Finance Act, 1994, on the ground that the legal position attained clarity only after the judgment of the Hon'ble Supreme Court in the case of *Nagarjuna Construction Company Limited (supra),* and prior to the said judgment, there was a *bona fide* doubt regarding the valuation rules to be followed for the payment of service tax in respect of on-going projects.

6.4. Further, it is also an admitted fact that the Assessee had paid the entire differential service tax along with applicable interest, and had also reversed the Cenvat credit along with interest, prior to the issuance of the impugned order, and the same stands duly appropriated therein.

7. We further find that the issue involved in the present case relates to the interpretation and applicability of the valuation scheme, which attained final clarity only after the pronouncement of the judgment by the Hon'ble Supreme Court in the case of *Nagarjuna Construction Company Limited vs. Union of India (supra)*. Under such circumstances, there was a reasonable cause on the part of the Assessee for the initial non-payment of the differential tax. Therefore, the Assessee-Appellant is fully entitled to the benefit of Section 80 of the Finance Act, 1994, which statutorily provides that no penalty under Section 76 or Section 77 shall be imposed if the Assessee proves that there was a reasonable cause for the said failure.

8. In view of the facts and circumstances discussed hereinabove, we hold that the penalties imposed upon the Assessee under Sections 76 and 77 of the Finance Act, 1994 are not sustainable in law, and accordingly, we set aside the same by allowing the appeal of the Assessee-Appellant.

9. Now, we take up the cross-appeal filed by the Revenue, i.e., Appeal No. **ST/55405/2014**, which is directed against the very same impugned Order-in-Original dated 26.06.2014.

10. The learned Authorized Representative for the Revenue-Appellant submitted that, as per the grounds of appeal, the learned Commissioner (Adjudicating Authority) in the impugned order solely relied upon the computations and details provided by the Assessee-Respondent during the adjudication proceedings to determine the short-paid service tax, which was merely supported by a Chartered Accountant certificate.

10.1 He further submitted that the learned Commissioner erred in not examining an income of Rs. 43,39,90,174/- for its taxability under the Service Tax laws. The only claim made by the Assessee via the CA certificate dated 14.01.2014 was that this amount represented income from activities other than construction activity, forming part of the total turnover reflected in the balance sheet. He contended that the learned Adjudicating Authority failed to properly examine the details project-wise and overlooked discrepancies in the service tax rates applied to different 'new projects'. Furthermore, he argued that no steps were taken to cross-examine or verify the veracity of the data with the concerned Division or Investigation Agency. Such verification was highly warranted to arrive at a cogent conclusion, especially since these computations were never provided to the Divisional Office during the investigation stage.

10.2 He further submitted that the learned Adjudicating Authority erred in not taking note of the discrepancy between the service tax deposited by the Assessee and the figures actually reflected in the ST-3 returns. A comparison of both reveals a clear difference of Rs. 30,25,791/-, which has neither been discussed nor explained by the learned Commissioner in the impugned order.

11. In controverting the submissions of the learned Authorized Representative for the Revenue-Appellant, the learned Counsel for the Assessee-Respondent submitted that the grounds of appeal filed by the Revenue are wholly untenable, perverse and baseless, as raised in Para 4.1, 4.2, and 4.3 of the grounds of the Revenue's appeal.

11.1 He further submitted that during the pendency of the appeal, the Assessee-Respondent had filed a Misc. Application No. 60086 of 2020 dated 04.02.2020 for placing on record certain additional documents, and the same was allowed by this Tribunal vide its order dated 20.11.2023.

11.2 He further submitted that all the objections/grounds raised in Para 4.1, 4.2, and 4.3 of the Revenue's appeal have already been thoroughly dealt with by the learned Commissioner in the impugned order, who has recorded specific findings on each of them.

11.3 He further submitted that as per Para 4.1 of the grounds of appeal, it has been alleged by the Revenue that the learned Commissioner did not examine the nature of the income of Rs. 43,39,90,174/-, which, in fact, is the income arising from activities other than construction activity. He then referred to Para 7.5 of the impugned order, wherein the learned Commissioner explicitly examined this issue and gave a well-reasoned finding by considering the CA certificate issued by an independent Chartered Accountant clearly explaining the nature of the said income.

11.4 As regards the ground raised in Para 4.2 of the grounds of appeal, wherein the Revenue alleged that the learned Commissioner did not examine the tax computation project-wise and also erred in not cross-examining the veracity of the data produced by the Assessee, he argued that this ground is also entirely baseless. He pointed out that in Para 7.1 of the impugned order, the learned Commissioner has categorically observed: *"I have carefully gone through the facts, merits and circumstances of the case on record"*. Therefore, the allegation of the Revenue that the learned Commissioner did not examine the record has absolutely no basis.

11.5 As regards the ground raised in Para 4.3 of the grounds of appeal, wherein the Revenue raised a plea that the Assessee-Respondent had short-paid service tax of Rs. 30,25,791/- by contending that the Assessee-Respondent had shown a payment of Rs. 26,21,04,795/- in its CA certificate dated 14.01.2014 whereas the ST-3 returns reflected a payment of Rs. 25,90,79,004/-, he submitted that this difference of Rs. 30,25,791/- is due to the reversal of Cenvat credit on the clearance of capital goods upon being sold, which was duly declared in the ST-3 returns. He further submitted that this ground has also been fully examined by the learned Commissioner in Para 7.7 of the impugned order.

12. We have considered the submissions made by both the parties and perused the material available on record. We note that the primary grounds raised by the Revenue in their appeal are that the learned Commissioner (Adjudicating Authority) did not properly examine the entire case and arrived at a conclusion solely on the basis of a CA certificate placed on record by the Assessee, which was subsequently supported by additional documents filed by way of a Miscellaneous Application before this Tribunal.

12.1 We have gone through the impugned order and find that the learned Commissioner has thoroughly examined the records and recorded proper findings on all the grounds raised by the Revenue. We also find that the learned Commissioner has properly considered: (i) The CENVAT Register, (ii) GAR-7 challans and the reversal of CENVAT credit, and (iii) The reconciliation charts submitted by the Assessee along with the CA certificate dated 14.01.2014 issued by M/s PRA & Co., Chartered Accountants. By considering these records, the learned Commissioner has effectively clarified every doubt raised by the Revenue.

12.2 Furthermore, we find that in order to clear any remaining doubts of the Revenue, the Assessee had also filed another CA certificate dated 19.11.2019 issued by M/s Dharam Raj & Co., Chartered Accountants, which clearly explains the precise nature of the said income.

12.3 After considering the facts and circumstances of the case and the detailed findings in the impugned order, we find no infirmity in the order passed by the learned Commissioner. Accordingly, we uphold the same by dismissing the Revenue's appeal

13. In the result:

- Service Tax Appeal No. 54780 of 2014 filed by the Assessee is allowed.
- Service Tax Appeal No. 55405 of 2014 filed by the Revenue is dismissed.

(Order pronounced in the open court on 21.08.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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