CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 51741 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 147-149/ST/DLH/2024 dated 16/10/2024 passed by The Commissioner (Appeals-I), Central Tax, CGST & Central Excise, Delhi, New Delhi.]

M/s Kaps Advertising, **......Appellant**
30, Community Centre, 2nd Floor,
East of Kailash, New Delhi – 110 065.

Versus

Joint Commissioner, Central Tax, **....Respondent**
Delhi East,
Office of the Commissioner of
Central Tax – GST Delhi East,
C.R. Building, I.P. Estate,
New Delhi – 110 002.

APPEARANCE:

Shri Shaubhik Gupta, Advocate for the appellant.
Shri Rohit Issar, Authorized Representative for the Department

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

FINAL ORDER NO. 51423/2026

DATE OF HEARING : 14.08.2026
DATE OF DECISION: 03.09.2026

P.V. SUBBA RAO

M/s Kaps Advertising[1] filed this appeal to assail the order dated 16.10.2024 passed by the Commissioner (Appeals – I), New Delhi in which he decided the appeal against the order dated 14.03.2024 passed by the Joint Commissioner and set aside the demand of service tax of Rs. 1,76,28,906/- of the

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1. the appellant

total Rs. 2,03,56,222/- but upheld the demand of service tax of Rs. 27,27,316/-. There is no appeal by the Revenue against that part of the order which set aside the demand of service tax by the Revenue. Therefore, the dispute attained finality to that extent.

2. The appellant was registered with the service tax department for providing advertising agency services exigible to service tax under the Finance Act, 1994[2]. Gathering intelligence, the officers of the Anti Evasion Branch of the service tax Commissionerate invested the appellant and found that it had incurred various expenses for services received by it which, as per Notification No. 30/2012-ST dated 20.06.2012 as amended, were exigible to service tax under reverse charge mechanism. Accordingly, the show cause notice dated 24.04.2019[3] was issued to the appellant covering the period 2012-2013 to 2016-2017. A statement of demand dated 17.06.2020 was issued for the subsequent period 2017-2018.

3. Both SCNs were decided by the Joint Commissioner through a common order-in-original dated 14.03.2024.

4. Aggrieved, the appellant appealed before the Commissioner (Appeals) who, by the impugned order, set aside the major portion of the demand, but only upheld service

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2. the Act
3. SCN

tax demand of Rs. 27,27,316/- along with interest and penalties. Aggrieved, the appellant filed this appeal.

Submissions of the appellant

5. Learned counsel for the appellant submits that the demand has been raised solely on the basis of the figures appearing with balance sheet of the appellant without identifying or classifying the category of services said to have been received. Without such a classification, it cannot be said with certainty that the service tax was chargeable under reverse charge at the hands of the appellant. The impugned order merely rubber stamped the findings of the order-in-original and, therefore, deserves to be set aside.

6. The onus of determining the taxability of service and its classification is on the department and demand cannot be raised merely on the basis of difference in figures between the balance sheet and Form 26AS/Income Tax Returns.

7. In view of the above, the impugned order may be set aside and the appeal may be allowed.

Submissions of the Revenue

8. Learned Authorized Representative for the Revenue vehemently supported the impugned order and asserted that as is evident from the impugned order as well as the synopsis submitted by the appellant in which the portions of the impugned order are reproduced, not only has the nature of

service been determined, but it was classified and it was explained how it was chargeable to service tax under reverse charge mechanism under Notification No. 30/2012-ST.

9. The demand has been confirmed under reverse charge mechanism on the following expenses :-

(a) Business promotion expenses incurred by the appellant;
(b) Conveyance expense ;
(c) Legal expense;
(d) Insurance expense and
(e) Freight.

10. The findings of the Commissioner (Appeals) with respect to these were as follows :-

> "**Business Promotion Expense** :-The appellant, vide their submission had informed that the expenses incurred by partners, employees of the appellant which can never be subject to service tax. As per their submission the expenses under Sponsorship Fees is actually amount incurred towards promotion of sales and not towards sponsorship of events. It mainly includes amounts incurred towards meeting with clients for obtaining contracts and development of business. In support of their claim, they have enclosed the copy of ledgers. I find that the appellant has not enclosed the copies of bills/ vouchers/journals in this regard. Therefore, it cannot be ascertained whether the expenses incurred under Business Promotion Expenses are towards sponsorship fees or promotion of sales. Hence, the AA has rightly confirmed the service tax of Rs. 19,68,024/- for the subject period.
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> **Conveyance Expense** :- The appellant has submitted that they have paid to employees for commuting from office for the purpose of business. It does no include

hiring of motor vehicles on contract basis. No supporting documents have been submitted in this regard. Therefore, the appellant is liable to pay service tax of Rs. 6,89,363/- confirmed on this account.

Legal Expense :- The appellant has submitted that the expenses incurred under Legal Expenses includes Advocate charges and Professional Fees, I find that the appellant has submitted copy of ledgers along with invoice /vouchers/bills in respect of professional charges which is not taxable under RCM. Only advocate fee amounting to Rs. 1,70,500/- is taxable under RCM. Hence, I hold that the appellant is liable to pay service tax of Rs. 21,074/- only under RCM on above said Legal expenses.

Insurance :- The appellant has submitted that the expense incurred by them is the payment made to insurance company for insurance of office and motor vehicle. The appellant has enclosed copy of Motor insurance cover Note in support of their claim. Since the expense incurred on insurance paid to insurance company by the appellant does not cover under RCM, I hold that the appellant is not liable to pay service tax on this account.

Freight :- The appellant submitted that expense includes amount charged by vendor for delivering the goods at the premises of assessee by private conveyance. The appellant has enclosed copy of invoice of the goods purchased. From the documents submitted it is not clear whether the goods were delivered through transport agency or private vehicle. Therefore, the appellant is liable to pay service tax of Rs. 48,855/- confirmed on this account".

11. As far as the question of limitation is concerned, the appellant failed to furnish the details of the services provided by them and received by them by not filing the correct returns during Financial Year 2012-2013 to 2016-2017. When the department found the details by issuing several letters and summons, the appellant never responded properly. This shows that the appellant had deliberately suppressed facts on the department with an intent to evade payment of service tax.

12. However, to the extent the appellant was entitled to relief, it has already been granted and the major portion of the service tax confirmed by the original authority has already been dropped by the Commissioner (Appeals).

13. In view of the above, the impugned order is correct and proper and calls for no interference. The appeal may, therefore, be dismissed.

Findings

14. I have considered the submissions advanced by both sides and perused the records.

15. The submission of the learned counsel for the appellant that the nature of services was not examined or classified by the Commissioner (Appeals) is factually wrong as is evident from the extract of the impugned order reproduced by the appellant in its own submissions. These pertain to business promotion expenses, conveyance expenses, legal expenses and freight expenses. The amount of service tax payable under each of these heads for each financial year was also computed as is evident from the impugned order, the order of the original authority, as well as the synopsis submitted by the appellant itself. The second argument of the appellant is that demand cannot be confirmed merely because there is a difference between the figures in its own balance sheets and Form 26AS and the figures reported in its ST-3 returns. This

submission deserves to be rejected. When the department has to examine if the appellant had paid service tax correctly, it can be done by checking the returns and comparing them with the books of accounts. The books of accounts in this case are the appellant's own balance sheets and Form 26AS generated by the Income tax based on the TDS returns filed by the persons who paid amounts to the appellant. I do not see how these figures can be doubted. If the ST-3 returns filed by the appellant do not correctly reflect and reconcile with its own accounts, the department is entitled to call for information and if despite several letters and summons, the appellant fails to respond or submit the details, it is for the department to make a judgment based on the available records.

16. Both the show cause notices were issued accordingly.

17. After adjudication, when the appellant appealed before the Commissioner (Appeals), he examined the issue at length and dropped the major portion of demand (to Rs. 1,76,28,906/- from Rs. 2,03,56,222/-). On merits, I do not find any case in favour of the appellant. The appellant has not put forth any findings to show any findings of the Commissioner (Appeals) has not classified the services.

18. However, I find the appellant was a service tax payer. Any amount paid by it as service tax under reverse charge mechanism would have been available to the appellant as Cenvat credit. Therefore, it was a case where the appellant

had to pay with one hand and could take credit with the other. The net effect of this would have been that the appellant's service tax liability under reverse charge mechanism would have increased and the appellant's liability under forward charge in cash would have reduced as part of the amount would have been paid through the Cenvat credit availed on the service tax paid under reverse charge. Therefore, the appellant could not have had an intent to evade payment of service tax. Extended period of limitation under the proviso to section 73 (1) of the Act can be invoked only if the non-payment or short payment of service tax is by reason of fraud or collusion or willful statement or suppression of facts or violation of the Act or rules with an intent to evade. If the appellant is required to pay with one hand and could take credit with the other, he could not have an intent to evade. For this reason, the demand for the extended period of limitation deserves to be set aside.

19. The ingredients necessary to impose penalty under section 78 of the Act are also the same as those for invoking extended period of limitation under the proviso to section 73 (1) of the Act. Therefore, the penalty under section 78 also deserves to be set aside.

20. In view of the above, I uphold the demand of service tax confirmed in the impugned order but only for the normal

period of limitation. I also uphold the penalty imposed except the penalty under section 78.

21. The impugned order is modified as above and the matter is remanded to the original authority only for the purpose of calculation of demand of service tax for the normal period and interest.

22. The appeal is partly allowed and the impugned order is modified as above.

(Order pronounced in open court on 03/09/2026.)

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

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