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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75835 of 2025

(Arising out of Order-in-Original No. 50/Comm/ST/SLG/23-24 dated 29.02.2024 passed by the Commissioner of CGST & Central Excise, Commissionerate Siliguri Central Revenue Building, Hakimpara, Haren Mukherjee Road, Siliguri-734001)

M/s. Gouri Construction, **: Appellant**
Prop: Tathagata Sen
Kalitala, Gangarampur, South Dinajpur-733124

VERSUS

Commissioner of CGST & CX, **: Respondent**
Commissionerate Siliguri,
Central Revenue Building, Hakimpara,
Haren Mukherjee Road, Siliguri-734001

APPEARANCE:

Shri Navin Kumar Agarwal, Advocate for the Appellant
Shri P. Halder, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76231/ 2026

DATE OF HEARING: 21.09.2026
DATE OF PRONOUNCEMENT: 24.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 50/Comm/ST/SLG/23-24 dated 29.02.2024 passed by the Commissioner of CGST & Central Excise, Commissionerate Siliguri Central Revenue Building, Hakimpara, Haren Mukherjee Road, Siliguri-734001, wherein Service Tax of Rs. 54,91,765/- has been confirmed along with interest and penalties.

2. The facts of the case are that M/s. Gouri Construction (Prop: Tathagata Sen) (hereinafter referred to as the "the appellant"), are engaged in the business of Construction of Road, which falls under the category 'Works Contract' services. The Appellant provided their services mainly to Dakshin Dinajpur Highway Division PW Road and office of the Executive Engineer, Malda Highway Division.

2.1. The department has alleged that the appellant has short-paid service tax for Financial Years 2015-16 and 2016-17, based on the turnover reflected in the Form 26AS records. Such differences have been treated as suppression of taxable value, leading to invocation of the extended period under Section 73(1) of the Finance Act, 1994, along with demand of interest under Section 75 and penalty under Section 78.

2.1. On the basis of the said allegations, a SCN has been issued demanding service tax. After due process of adjudication, the Ld. Adjudicating authority has dropped some of the demands and confirmed the demand of service tax of Rs. 54,91,765/- including Cess, and demanded interest on the tax amount confirmed under section 75 of the Finance Act, 1994, as well as imposed penalty of Rs. 54,91,765/- under section 78 of the Finance Act, 1994. He also imposed a penalty of Rs. 10,000/- under section 77 of the Finance Act, 1994. On appeal, the Ld. Commissioner (Appeals) upheld the demands.

2.2. Aggrieved against the confirmation of the demands of service tax along with interest and penalties, the Appellant has filed this appeal.

3. At the outset, the Appellant contested the demands confirmed in the impugned order on the

ground of limitation. The Appellant submits that the impugned demand is wholly barred by limitation as the essential ingredients for invoking the extended period are absent. The appellant submits that they were duly registered under Service tax Regime and they were regularly filing ST-3 returns, thereby placing all material facts within the knowledge of the department. In such circumstances, there can be no allegation of suppression or wilful misstatement.

3.1. The Appellant submits that the Department has not conducted any independent investigation in this instant case. Further, it is evident from the Show Cause Notice itself that the Department (Anti evasion unit) has simply taken the figures available in the Form 26AS, Income Tax Returns of the appellant and Statement of Receipt provided by the appellant and worked out the differential demand. It is well settled by the CESTAT in several cases that where the demand is based solely on Form 26AS/ITR data, the extended period is not invocable and the demand is liable to be set aside on limitation alone. It is an admitted fact that the appellant has provided number of documents as asked for time to time. Therefore, the entire information was in the knowledge of the Revenue.

3.2. In support of their contention that extended period is not invocable in this case, the Appellant relied on the following cases :

I. 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)]

II. *M/s. Arya Logistics v Commissioner of C.Ex. & S.T., Rajkot [Final Order No. 11700 of 2023 dated 17.08.2023 in Service Tax Appeal No. 12389 of 2014 (CESTAT, Ahmedabad)]*

III. *M/s. Balajee Machinery v Commissioner of C.G.S.T. & Excise, Patna-II [2022 (66) GSTL 440 (Tri.-Kol)]*

4. Regarding merits of the case, the Appellant submits that the services rendered by them include materials and hence appropriately classifiable under the category of 'Works Contract service'. The 'Works Contract service' rendered in connection with construction of Roads, are exempted under Notification No. 25/2012 dated 20.06.2012. The Appellant submits that there is no dispute that the service provided by them fall under the definition of works contract. Further, all the contracts were exempted under notification no. 25/2012 dated 20.06.2012. The appellant were engaged in providing of works contract service to the Dakshin Dinajpur Highway Division PW Road and office of the Executive Engineer, Malda Highway Division, which is under the Government of West Bengal. Further, in the order itself, the Ld. Adjudicating officer has acknowledged that the service are being provided to **'Government Authority'** as defined under the service tax law under 2(s) of Notification No. 25/2012-ST dated 20.06.2012. Accordingly, the Appellant submits that the demands of service tax confirmed in the impugned order are legally not sustainable.

5. The Ld. A.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We find that the Appellant has contested the demands confirmed in the impugned order on merits as well as on limitation, Regarding the ground of limitation raised by the Appellant, we find that the Show Cause Notice in this case has been issued on the basis of the figures available in the Form 26AS, Income Tax Returns of the appellant and Statement of Receipt provided by the appellant. It is well settled by the CESTAT in several cases that where the demand is based solely on Form 26AS/ITR data, the extended period is not invocable and the demand is liable to be set aside on limitation alone.

7.1. In the present case, we find that suppression of facts and willful violation to invoke extended period has been claimed only on assumption and presumption basis, without any verification and due diligence. The show cause notice was issued without going through the relevant facts/figures/documents submitted by the appellant. Suppression is assumed without any finding/evidence on record. Hence, we hold that extended period is not available to the department in this case.

7.2. The Hon'ble Supreme Court in the case of **'Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise' [2005(9) TMI 331]** held that the term 'suppression' must be construed strictly. It does not mean any omission and the act must be deliberate and willful to evade payment of duty. In taxation matters, "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. When facts were known to both the parties, the omission by one to do what he might have done, not that he must have done, would not render it suppression. It is a settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find wilful suppression, which are absent in this case.

7.3. This view has been held by this Tribunal in M/s. Munna Construction v. Commissioner of C.Ex. & S.T., Jamshedpur, vide Final Order No. 77625 of 2024 dated 22.11.2024 in Service Tax Appeal No. 76359 of 2014 . The relevant portion of the said decision is reproduced below for ready reference:

7.4. The same view has been taken by this Tribunal in the following cases also:

(i) M/s. Arya Logistics v Commissioner of C.Ex. & S.T., Rajkot [Final Order No. 11700 of 2023 dated 17.08.2023 in Service Tax Appeal No. 12389 of 2014 (CESTAT, Ahmedabad)]

(ii) M/s. Balajee Machinery v Commissioner of C.G.S.T. & Excise, Patna-II [2022 (66) GSTL 440 (Tri.-Kol)]

7.5. Thus, by relying on the decisions cited supra, we hold that the demands confirmed in the impugned order by invoking the extended period of limitation is not sustainable.

8. Regarding merits of the case, we find that the the services rendered by them include materials and hence appropriately classifiable under the category of 'Works Contract'service. They have rendered 'Works Contract service' in connection with

construction of Roads which are exempted under Notification No. 25/2012 dated 20.06.2012,

8.1. We have perused the Work Orders on which service tax has been demanded in the impugned order. A summary of the taxable value on which service tax demand has been confirmed in the impugned order, is given below:

Year	Work Order No.	Nature of work	Amount	Value after abatement of 30%	Demand of Service Tax (14.5% / 15%)
2015-16	Memo No. 2037/W-45 Date 05.02.2015	Widening/ strengthening for providing double lane footpath on either side of English Bazar Kotowali Road in the District of Malda	5,25,00,001	3,67,50,001	53,28,750
2016-17	Memo No. 2037/W-45 Date 05.02.2015	Widening/ strengthening for providing double lane footpath on either side of English Bazar Kotowali Road in the District of Malda	15,52,519	10,86,763	1,63,014
		Total	**5,40,52,520**	**3,78,36,764**	**54,91,765**

8.2. A perusal of the description of the nature of services mentioned in the table above reveals that the Appellant has rendered woks contract services in connection with construction of roads.

8.3. We find that the Appellant has provided works contract service to the Dakshin Dinajpur Highway Division PW Road and office of the Executive Engineer, Malda Highway Division, which are under the Government of West Bengal. Further, in the order itself, we find that the Ld. Adjudicating officer has acknowledged that the service are being provided to **'Government Authority'** as defined under the service tax law under 2(s) of Notification No. 25/2012-ST dated 20.06.2012. The Appellant claimed that they are eligible for the exemption as provided under S. No. 13 Mega Exemption Notification No. 25/2012 Dt. 20/06/2012, as amended. For ready reference, the said exemption provided under No. 25/2012 Dt. 20/06/2012,is reproduced below :

> *"13. Services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of,-*
>
> - ***road, bridge, tunnel, or terminal for road transportation for use by general public;****;……….”*

8.4.We find that the services provided by the appellant to the government/government authority squarely falls under the aforesaid exemption entry 13 of the mega exemption notification. Although the services provided by the appellant are taxable under Finance Act 1994, but in view of the mega exemption notification 25/2012 as discussed above, it is amply evident that the said works contract services provided to the Government are exempted. The Ld. Adjudicating authority, while passing the order, in relation to work order in dispute, has observed that *from the nature/scope of the work as mentioned in the order, it is seen that 'Road' has not been constructed, rather, foothpath has been widened/strengthened and, that too on the edge of road. As 'Road' has not been constructed/erected/commissioned/installed etc. the activity would not be exempted in term of SI No 13(a) of Mega Exemption Notification No 25/2012-ST dated 20.06.2012.*

8.4.We find that the word 'Road' is not defined under the service tax law. However, the term 'Road' has been defined by various dictionary or websites, which are as follows:-

"A road is a thoroughfare for the conveyance of traffic that mostly has an improved surface for use by vehicles (motorized and non-motorized) and ***pedestrians****.*
The primary features of roads include lanes,
sidewalks (pavement), roadways (carriage ways), medians, shoulders, verges, bike paths (cycle paths), and shared-use paths. "

[Source: www.wikipedia.org]
"An open, generally public way for the pas sage of vehicles, people, and animals."
Source: www.thefreedictionary.com]

8.5.The expression **"road"** has not been restrictively defined under the service tax law. In its ordinary and legal meaning, a public road encompasses its integral components and facilities meant for movement of the public, including pedestrian pathways/footpaths. A footpath forming part of a public road and intended for pedestrian movement cannot be artificially segregated from the road merely for denying the exemption. The work done by the Appellant has been described in the Work Orders as **"Widening and Strengthening for providing double lane (7.00 m), slow lane (2.50 m), footpath (1.50 m) on either side of English Bazar–Kotwali Road from 0.00 to 2.00 Kmp & Widening and Strengthening from 2.00 to 8.20 Kmp in the District of Malda Highway Division."**

Thus, the work has to be examined as a composite road-development project and not by isolating the footpath component thereof. The main objective of this work is development of road by widening & strengthening the footpath. We do not agree with the findings of the lower authorities that 'widening /strengthening of road for providing double foot path' would not amount to road construction. Providing foot path on either side of the road is a part of construction of road. If foot paths are not there, people will walk on the road risking their life.

8.6.We also find that the work order for the said work has been awarded by the '**Office of the Superintendent Engineer, Northern Highway Circle, P.W. (Roads) Directorate**, which is responsible for the planning, survey, design, construction and maintenance of Roads. The Public Work (Roads) comes under the Public Works Department (PWD). The said directorate is responsible for the Road development work in the state Accordingly, we hold that the services of 'widening /strengthening of road for providing double foot path' rendered by the Appellant amounts to construction of road.

8.7. It is an admitted fact on record that the Appellant had neither charged nor collected service tax from the Public Works (Roads) Department, Government of West Bengal, since the services were bona fide treated as exempt services relating to public roads. There was accordingly no collection or retention of service tax by the Appellant.

8.8. In view of the above findings, we hold that the Appellant are eligible for the exemption as provided under entry 13 of the mega exemption notification 25/2012. Accordingly, we hold that the demands of service tax confirmed in the impugned order is legally not sustainable and hence we set aside the same. As the demands of service tax is not sustained, the question of demanding interest or imposing penalties does not arise and hence we set aside the same.

9. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 24.09.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP