

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 41344 of 2016

(Arising out of Order in Original No. CHN-SVTAX-001-COM-111/2015-2016-ST-1 dated 31.03.2016 passed by the Principal Commissioner, Service Tax, Chennai)

A.P. Constructions India Pvt. Ltd.

Rep. by its Managing Director Shri P.S. Shivakumar
No. 145, Vallalar Street, 17th Main Road
Anna Nagar West, Chennai – 600 040.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

With

Service Tax Appeal No. 40299 and 40300 of 2022

(Arising out of Order in Original No. 34/2022 CH.N. GST dated 04/03/2022 passed by the Principal Commissioner of GST & Central Excise, Chennai)

A.P. Constructions India Pvt. Ltd.

Rep. by its Managing Director Shri P.S. Shivakumar
No. 145, Vallalar Street 17th Main Road
Anna Nagar West, Chennai – 600 040.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

And

P.S. Shivakumar, MD

M/s. A.P. Constructions India Pvt. Ltd.
No. 145, Vallalar Street, 17th Main Road
Anna Nagar West, Chennai – 600 040.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
 Smt. G. Krupa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 41090-41092/2026

Date of Hearing: 24.04.2026
 Date of Decision: 15.10.2026

Per M. Ajit Kumar,

These appeals involve the same Appellant and are therefore heard and disposed of by this common order.

Factual Matrix**A. Appeal No. ST/41344/2016.**

2. The appellant, engaged in construction of residential complexes, was registered under "Construction of Commercial or Industrial Buildings and Civil Structures" and "Construction of Residential Complexes". Based on intelligence that appropriate service tax was not being remitted, the Department initiated investigation, called for financial records for 2008-09 to 2012-13, and visited the Appellants premises on 03.09.2013. Records including income tax returns, project details, debtor ledgers, service tax workings, trial balances, and joint venture agreements were obtained. List of the projects are given at para 4 & 5 of the SCN dated 22.09.2014. Verification allegedly showed that the Appellant undertook residential construction projects in and around Chennai but neither paid service tax nor filed ST-3 returns until investigation commenced on 29.08.2013. It was alleged that Service Tax of around Rs.41.80 lakhs had been collected from flat buyers

during 2011–12 and 2012–13 but not deposited to the Government exchequer. The Appellant also undertook joint venture projects with landowners, under which constructed flats were shared between the builder and landowners. The Appellant filed a declaration under the Voluntary Compliance Encouragement Scheme, 2013 (**VCES**), for Rs.78,99,080/- for May 2008 to December 2012 and paid 50% thereof before 31.12.2013. However, the Department found that the declaration covered only the builder's share and excluded the value of construction handed over to landowners in two joint venture projects, A.P. Anuditha and A.P. Arichandra. Service tax on this omitted value was computed at Rs.19,81,867/-, bringing the total liability to Rs.98,80,947/-. The Department viewed the VCES declaration as substantially false, alleging non-payment of service tax on customer receipts and landowner shares, retention of tax collected, belated registration, and failure to file ST-3 returns. A show cause notice dated 22.09.2014 demanded Rs.98,80,947/- with interest and proposed penalties. The adjudicating authority confirmed the demand and imposed equal penalty under Section 78 and Rs.10,000/- under Section 77 of the Finance Act, 1994. Hence, Appeal No. ST/41344/2016.

B. Appeal Nos. ST/40299 & 40300/2022

2.1 Based on similar allegations, relating to a separate project, visit to the appellant's premises was made on 07.01.2019. After obtaining necessary documents, a Show Cause Notice dated 06.04.2019 proposed demands of Rs.2,85,99,646/- towards service tax under Construction of Complex Service for flats handed over as the landowner's share, Rs.2,88,62,157/- for flats sold from the builder's

share, both for January 2013 to June 2017, and Rs.1,65,89,920/- under reverse charge for legal, security, manpower supply and GTA services availed during October 2012 to June 2017. After due process, the Adjudicating Authority confirmed the demands with interest, imposed equal penalties under Section 78 of the Finance Act, 1994, a penalty of Rs.10,000/- under Section 77, and Rs.1,00,000/- on Shri P.S. Shivakumar, Managing Director, under Section 78A. Hence, the present appeals.

3. The Ld. Advocate Shri N. Viswanathan appeared for the Appellant and Ld. Authorized Representative Smt. G. Krupa appeared for the respondent.

3.1 Shri N. Viswanathan the Id. Counsel for the Appellant submitted as follows:

I. Submissions made by the Appellant for ST/41344/2016

A. The Appellant is engaged in construction of commercial structures and residential complexes and undertook 11 redevelopment projects. It was under a bona fide belief that construction of flats for individual purchasers was not taxable that they obtained service tax registration only on 19.01.2012.

B. Pursuant to investigation, the Appellant filed a VCES declaration on 23.10.2013 declaring tax liability of ₹78,99,080 for May 2008 to December 2012 and paid 50% thereof. The Appellant maintained that, in redevelopment projects, the value attributable to landowners' share was not taxable in its hands, as the consideration and tax liability had been discharged in respect of the construction.

C. The SCN dated 22.09.2014 demanded ₹98,80,947 with interest and penalties under Construction of Residential Complex Services for

May 2008 to December 2012, invoking the extended period on the ground of non-inclusion of landowners' share, belated registration and suppression. The VCES declaration was not rejected through separate proceedings.

D. The demand is unsustainable as the activity involved a composite contract involving transfer of goods and is consequently classifiable as works contract. Reliance is placed on **Larsen & Toubro Ltd.**, 2015 (39) S.T.R. 913 (S.C.), **Real Value Promoters Pvt. Ltd. Vs Commissioner** [(2024) 19 Centax 377 (Tri.-Mad.)]; **Real Value Promoters Pvt. Ltd. Vs Commissioner** [Final Order 42436-42438/2018 Dated: 18.09.2018]; **Total Environment Building Systems Pvt. Ltd. Vs Deputy Commissioner of Commercial Taxes** [2022 (63) GSTL 257 (SC)] and subsequent decisions. Further the demand under Construction of Residential Complex Services is legally unsustainable. The impugned order itself granted abatement of 67%/75% towards the cost of materials used in execution of the projects, thereby recognising that the appellant supplied both labour and materials and that the activity was in the nature of a works contract.

E. Without prejudice, the demand relating to landowners' share is unsustainable, the issue having been decided in favour of the Appellant in several Tribunal decisions. [**Sandeep N. Savani Vs Commissioner** – (2014) 19 Centax 159 (tri-Mad); **Aparna Constructions & Estates Pvt. Ltd. Vs Commissioner, Hyderabad – II** – (2024) 23 Centax 80 (tri-Hyd)]

F. The extended period is not invocable since the Appellant had disclosed its activities under VCES, paid substantial tax, maintained

records and entertained a bona fide and reasonable interpretation on the taxability of landowners' share. There was no suppression or deliberate intent to evade tax. Further as per Tribunals Order in **M/s Suzlon Energy Ltd. Vs Commissioner of Customs, Pune** [Final Order – A/86907-86908/2025, dated: 10.12.2015], the onus to prove the indulgence of the appellant into fraudulent activities is that of Revenue, in which they have failed.

G. The Appellant therefore prayed for setting aside the impugned order with consequential relief.

II. Submissions made by Appellant for Appeal Nos. 40299 and 40300 of 2022

A. The investigation covered non-payment of service tax on landowners' share and alleged reverse-charge liabilities relating to security, manpower supply, GTA and legal services. The SCN dated 06.04.2019 proposed demand for January 2013 to June 2017 under Section 66E(b), besides ₹1,65,89,920 under reverse charge. During investigation, the Appellant paid ₹17,10,641 towards tax and ₹4,04,952 as interest, which were not appropriated.

B. The demand on construction of flats is unsustainable since the activity was a composite works contract. The impugned order itself granted abatement of 67%/75% towards the cost of materials used in execution of the projects, thereby recognising that the appellant supplied both labour and materials and that the activity was in the nature of a works contract. Even for the post-01.07.2012 period, the specific taxable entry for works contract was Section 66E(h); the demand under Section 66E(b) was therefore not legally sustainable.

Valuation, if any, was also required to be undertaken under Rule 2A of the Valuation Rules and not Notification No. 26/2012.

C. The demand relating to landowners' share is unsustainable since the Appellant and landowners were joint developers and the flats were allotted pursuant to redevelopment arrangements. The valuation based on sale price of independent flats was also disputed. Reliance was placed on the applicable Board circulars and decisions of the Chennai Bench.

D. In respect of the three projects, completion certificates established that certain flats were handed over only after completion. Further, figures appearing in the balance sheets represented unfinished work and could not automatically be treated as taxable consideration.

E. The reverse-charge demands were based substantially on ledger entries without establishing the actual nature of service, identity/status of the provider or fulfilment of the statutory conditions. The alleged manpower charges represented direct labour payments, with EPF records establishing an employer-employee relationship. Further as per **Transpek Silox Industries Pvt Ltd. Vs Commissioner, Vadodara – I**, [2018 (17) GSTL 434 (Tri.-Ahmd.)], if the service recipient has discharged 100% Service Tax, demanding 75% tax from the Appellant amounts to double taxation. The security liability was confined to payments made to a security agency for a specified period, for which tax had been paid.

F. The GTA demand was based merely on transport expenses without production of consignment notes or identification of the alleged GTA service providers. The transport was largely through owner-driven

local vehicles. Similarly, the legal payments did not establish that the recipient was a legal professional so as to attract reverse charge. He relied on **U.P. State Bridge Corporation Ltd. Vs Commissioner, Lucknow** [2017 (6) GSTL 523 (Tri.-All.)], to state that failure to produce consignment note showing receipt of service involving movement of goods, shows that Revenue has failed to establish the service as Goods Transport Service. In **Southern Eastern Coal Fields Ltd. Vs Commissioner, Raipur** [2018 (10) GSTL 50 (Tri.-Del.)], it was held that the appellant is not liable to pay Service Tax as recipient of such transporter's services.

G. The extended period and penalties are unsustainable since the relevant transactions and expenditure were recorded in the books, returns had been filed for part of the period, and the Department had already undertaken investigation and obtained the records. The alleged non-payment arose from bona fide interpretation and financial difficulties and not from suppression or intent to evade.

H. The Appellant also contended that the adjudication was contrary to the statutory time-limit prescribed under Section 73(4B), that the Section 78A penalty imposed on the Managing Director was unsupported, and that the tax and interest already paid should be appropriated.

III. Additional Submissions of Appellant

A. The Appellant reiterated that substantial portions of the demands are barred by limitation. If invocation of the extended period fails, the demand in the first SCN for May 2008 to September 2009 is beyond five years, while the demand in the second SCN for January 2013 to March 2014 is beyond the applicable normal period.

B. The construction activity was a composite works contract involving transfer of goods and therefore could not be taxed as Construction of Residential Complex Service. Reliance was placed on *Larsen & Toubro* and *Real Value Promoters* both cited above. For the post-01.07.2012 period, the appropriate entry was section 66E(h), and not section 66E(b).

C. The first SCN itself recorded that the Appellant undertook construction using its own labour and materials and did not engage sub-contractors. The alleged manpower supply liability was therefore not established.

D. The statutory records and returns did not require maintenance of any particular form of records beyond the prescribed requirements. Mere absence of documents expected by the Department could not amount to suppression, particularly when the relevant transactions were reflected in the books.

E. The Department itself acknowledged the Appellant's financial difficulties. Non-payment on account of financial hardship and a bona fide interpretation of the taxability of the transactions could not justify extended limitation or penalties.

F. The Appellant sought setting aside of the impugned orders, consequential relief and refund of amounts, wherever admissible, with applicable interest.

IV. Submissions of Respondent-Revenue in Appeal ST/41344/2016

3.2 Smt. G. Krupa Ld. Authorized Representative for Revenue, appeared for the respondent and submitted as under:

A. The Appellant undertook construction of residential complexes from May 2008 to December 2012, did not discharge service tax or file ST-3 returns and subsequently filed a VCES declaration of ₹78,99,080, excluding the landowners' share. The declaration was therefore rejected and the SCN dated 22.09.2014 was issued involving a tax liability of ₹98,80,947 with interest and penalty.

B. The Appellant had accepted tax liability in respect of construction for individual purchasers and the principal dispute related to construction attributable to landowners. As recorded in para 2.2 of OIO dated 31.03.2016, they have not collected any service tax during the years 2008-09 to 2010-11. However, they have collected Service Tax of Rs 19.30 lakhs for the year 2011-12 (from January 2012 to March 2012) and Rs 22.49 lakhs for the year 2012-13 and 22.49 lakhs for the year 2012-13. They also agreed to provide the tax collected data for the year 2023-24 (up to August 2013). In para 7.2 of the OIO it is recorded that the Appellant received the value of the service along with Service Tax but not only failed to disclose the same to the department but also failed to deposit the tax amount in the government exchequer.

C. The Appellant was registered only on 19.01.2012 despite undertaking taxable activity from 2008 and had neither discharged tax nor filed ST-3 returns before investigation. The VCES declaration also excluded the landowners' share despite the applicable Board circulars. Such construction was taxable pursuant to the applicable Board circulars and the redevelopment arrangements.

D. The non-disclosure constituted suppression of material facts. Considering the scale of the business and the Appellant's failure to

disclose the taxable activity, the extended period was rightly invoked and the penalty under Section 78 followed.

E. The challans claimed to have been paid towards the demand, including challan No. 00422 dated 06.02.2015 and challan No. 01435 dated 10.03.2015, required verification and appropriation only to the extent actually relatable to the confirmed liability.

V. Submissions of Respondent-Revenue in ST/40299/2022 & 40300/2022

A. Construction of flats handed over to landowners constituted taxable consideration in the form of transfer of development rights/land. Board Circulars 151/2/2012-ST and 170/2013-ST clarified the taxability and valuation of construction undertaken for landowners. The valuation based on the price of similar flats was therefore justified.

B. The redevelopment arrangement involved individual agreements with landowners and was distinguishable from the cases relied upon by the Appellant. Reliance was placed on **LCS City Makers Pvt. Ltd. Vs CST, Chennai**, 2013 (30) S.T.R. 33 (Tri.-Chennai).

C. The Appellant had not produced sufficient evidence to establish that the disputed construction constituted a works contract. Further, *Larsen & Toubro* did not assist the Appellant for the period subsequent to 01.07.2012, particularly when the Appellant itself was registered under Construction of Residential Complex Service.

D. The Managing Director, in his statement dated 07.01.2019, admitted that tax had not been paid during January 2013 to June 2017 due to financial difficulties. The statement was not retracted and supported the Revenue's case regarding non-payment.

E. The ledger reflected transport payments, and the Managing Director admitted such payments. Absence of the expression “consignment note” in the records did not, by itself, establish that the services were not GTA services. Reliance was placed on **M.L. Agro Products Ltd. Vs CCE & ST, Guntur** [2017 (6) GSTL 94 (Tri.-Hyd.)] and **Bharathi Soap Works Vs CCE, Guntur** [2008 (9) STR 80 (Tri.-Bang.)]. The Appellant, being the recipient who paid the freight, was liable under reverse charge.

F. Similarly, the security and manpower ledgers, coupled with the Managing Director’s statements, established receipt of taxable services liable to reverse charge. The claim that the expenditure represented the Appellant’s own workforce was contrary to the records. The legal payments were also liable to reverse charge under the applicable notification where the services were provided by an advocate/legal professional.

G. The taxable transactions and reverse-charge liabilities were not disclosed in the ST-3 returns and came to light only during investigation. The Appellant’s self-assessment obligations required complete disclosure of taxable activities and payment of the applicable tax.

H. Since the non-disclosure would have remained undetected but for investigation, suppression was established and the extended period was rightly invoked. Consequently, penalties under Sections 77 and 78 were justified.

I. The penalty of ₹1 lakh imposed under Section 78A on the Managing Director was also justified, as he was responsible for the affairs of the Appellant and had admitted the relevant facts.

J. The Id. A.R. therefore prayed for rejection of the appeals and upholding of the impugned order.

Discussion and Analysis

4. We have carefully considered the submissions made by the Id. Counsel for the Appellants and the Id. Authorised Representative for the Revenue, perused the impugned orders and the records relied upon by both sides. These appeals arise out of demands of Service Tax relating to construction of residential complexes undertaken by the Appellants, including construction undertaken pursuant to Joint Development Agreements with landowners, as well as demands under reverse charge mechanism in respect of GTA, security, legal and manpower services. Since the two sets of appeals pertaining to the same Appellant, arise from different periods and involve somewhat different factual and legal issues, they are discussed separately.

A. APPEAL No. ST/41344/2016

5. The appeal relates to the period May 2008 to December 2012, relates to SCN dated 22.09.2014. The proceedings originated from investigation by the Service Tax authorities into the Appellant's construction activities. The Appellant had constructed residential complexes under two broad arrangements: (i) construction of flats for individual purchasers and (ii) construction under Joint Development Agreements with landowners, under which the constructed area was shared between the developer and the landowners.

5.1 The Appellant had also made a declaration under the VCES, declaring a Service Tax liability of Rs.78,99,080/- and paying 50% thereof, amounting to Rs.39,49,540/-. The declaration was not accepted by the Department on the ground that the liability relating to

the landowners' share had not been disclosed. Thereafter, the show cause notice dated 22.09.2014 proposed demand of Rs.98,80,947/-, and for appropriating the amount of Rs.39,49,540/-. The adjudicating authority confirmed the demand and imposed penalty under Section 78.

6. The Appellant has submitted that further amounts of Rs.10,00,000/- and Rs.5,00,000/- were paid through Challans dated 06.02.2015 and 10.03.2015 respectively but were not appropriated in the impugned order. We find that the Revenue has pointed out that the impugned order does not record such payments and that Challan No.00422 is stated to reflect Rs.5,00,000/- rather than Rs.10,00,000/.

6.1 Since the fact and quantum of such payments are essentially matters of verification from the original records, the same cannot be appropriated merely on the basis of the assertion made before us. The Appellant shall, however, be entitled to consequential adjustment of any Service Tax payment duly established from the original challans and departmental records.

Limitation

7. The Appellant contends that, having regard to the statutory provisions and the Board's contemporaneous clarifications governing construction of residential complexes, the amounts in question were not liable to service tax for the relevant period prior to 01.07.2010, therefore, the demand for the earlier period cannot survive. The Revenue, on the other hand, submits that this contention was not raised before the adjudicating authority and that the Appellant had itself declared its liability under VCES and subsequently paid part of the tax.

7.1 While a pure question of law may be raised by an Appellant, appropriately at any stage of the dispute resolution process. However, a mixed question of fact and law, particularly one requiring the examination of facts not placed before the Original Authority, would generally not be entertained for the first time in appeal. The Tribunal cannot assume the role of the Original Authority and undertake a fresh examination of facts that were not part of the dispute at its inception. In this regard, reliance is placed on **Assistant Commissioner Vs Kapsons Online Pvt. Ltd.** [2026:KHC:4310-DB, dated 21.01.2026 – paras 10 to 13], and **Ramakant Ambalal Choksi Vs Harish Ambalal Choksi & Others** [2024 INSC 913, dated: 22.11.2024 – paras 30 to 32]

8. Further when an SCN is submitted to be wholly time-barred, it challenges the jurisdiction of the adjudicating authority to decide the matter and must be examined at the threshold. An order passed without jurisdiction is a nullity and cannot be cured in appellate proceedings.

8.1 The Appellant submits that the first SCN dated 22.09.2014 covers the period from May 2008 to December 2012 by invoking the extended period of limitation. Thus, if such invocation is held unsustainable, the whole demand for May 2008 to September 2009 would be time-barred. The Appellant challenges the evocation of extended period on the following grounds: (a) there was no suppression, as the relevant particulars were available in the books and were relied upon by the Department itself, relying on **Anand Nishikawa Co. Ltd. Vs CCE** [2005 (188) E.L.T. 149 (S.C.)], **Continental Foundation Joint Venture v. CCE** [2007 (216) E.L.T.

177 (S.C.)] and **CCE Vs Ballarpur Industries Ltd.** [2007 (8) SCC 89], (b) there was no deliberate intent to evade tax, relying on **Pushpam Pharmaceuticals Co. Vs CCE** [1995 (78) E.L.T. 401 (S.C.)], (c) the Department had knowledge of the relevant facts, including upon visiting the Appellant's premises on 29.08.2013, relying on **Nizam Sugar Factory Vs CCE** [2006 (197) E.L.T. 465 (S.C.)], (d) the Appellant had made a voluntary declaration under VCES, (e) the dispute principally concerns the value and Service Tax attributable to the landowners' portion, on which, according to the Appellant, the substantive issue stands decided in its favour, and (f) **M/s Suzlon Energy Ltd.** (supra), that the onus to prove the indulgence of the appellant into fraudulent activities is that of Revenue, in which they have failed.

9. We have considered the submissions and the judgments relied upon. The decisions cited by the Appellant above, establish that "suppression of facts" for invoking the extended period does not mean a mere omission or failure to disclose. It contemplates deliberate withholding of material facts required to be disclosed, ordinarily with an intent to evade tax. Mere inadvertence, bona fide interpretation of law, or non-disclosure of facts already known to the Department would not, by itself, constitute suppression. Further it is for the Department to prove its case. We need to test the facts in this appeal along with the ratio of the case laws cited.

10. The first SCN dated 22.09.2014 covers May 2008 to December 2012. The record shows that the Appellant was engaged in construction of residential complexes and obtained registration on 19.01.2012 under the taxable services of "Construction of Commercial or Industrial

Buildings and Civil Structures” and “Construction of Residential Complexes.”

11 The Appellant did not collect Service Tax during 2008-09 to 2010-11. However, after obtaining registration, it collected Service Tax from purchasers of residential flats but neither deposited the tax so collected with the Government nor disclosed such collection in its prescribed periodic returns. The issue, therefore, is not merely non-payment of tax. Having collected Service Tax from buyers, the Appellant was statutorily required under Section 73A of the Finance Act, 1994 to forthwith deposit with the Government any amount collected as representing Service Tax, whether or not such amount was legally collectible, and to disclose the relevant taxable transactions and tax collected in its statutory returns. Failure to discharge these obligations cannot be regarded as a mere neutral omission, as the statutory scheme specifically attaches significance to the collection and non-deposit of tax from another person.

12. The Supreme Court in **S.P. Chengalvaraya Naidu Vs Jagannath** [(1994) 1 SCC 1] explained fraud as involving deliberate deception to secure an advantage. In the present case, failure to disclose the relevant transactions and Service Tax collected thereon, despite the statutory obligation to report them, cannot be regarded as a mere passive omission. In the circumstances, such non-disclosure constitutes concealment of material particulars and appears to justify invocation of the extended period.

13. The contention that the relevant particulars were available in the books of account is not sufficient to defeat the charge of suppression, as maintenance of such records does not discharge the separate

statutory obligation to disclose the taxable transactions and Service Tax collected in the prescribed returns. Likewise, the Department's subsequent access to such records during investigation, and its ability to ascertain the liability therefrom, does not retrospectively cure the earlier non-disclosure or, by itself, negate suppression where material particulars were not disclosed in the statutory returns and the Service Tax collected from customers was not deposited. **Further, the first proviso to Section 78(1) itself contemplates cases where true and complete details are available in specified records and provides only for reduced penalty subject to prescribed conditions. Thus, mere availability of particulars in the records cannot, by itself, constitute a complete answer to the allegation of suppression or bar the statutory consequences flowing therefrom.**

14. The Appellant relies on *Nizam Sugar Factory* and contends that subsequent departmental knowledge bars invocation of the extended period. We find that in *Nizam Sugar Factory* the Apex Court held that where all relevant facts were already within the Department's knowledge when the first SCN was issued, the same facts could not subsequently constitute suppression for invoking the extended period in later SCNs. The decision was thus confined to its distinct factual context and the question of limitation. This being the first SCN under consideration, the principle would not be applicable to this appeal.

15. **The VCES declaration does not assist the Appellant, as VCES was a voluntary disclosure scheme and not a certificate of compliance,** and the Appellant's declaration was rejected for failure to disclose the liabilities in full. The Appellant has also failed to

satisfactorily explain why the Service Tax collected from the buyers was not deposited with the Government. **The plea of financial hardship is untenable, since the Appellant was merely required to remit to the Government the tax which it had already allegedly collected from the buyers and was not required to generate its own funds for payment of such tax.** Diversion of tax collected from the public for its use, without remitting the same to the Government exchequer, in the normal course, constitutes blameworthy conduct on the part of the appellant attracting the consequences prescribed by law. The burden was, therefore, on the Appellant to establish reasonable cause, bona fides and compliance with Section 73A, while pleading for relief. Section 80 of the Finance Act, 1994, requires the assessee to prove that there was reasonable cause for the said failure. A bald plea of financial constraint, unsupported by cogent and convincing evidence, cannot discharge that burden. The rule of best evidence requires production of the best evidence the nature of the case admits, so long as such superior evidence is within the party's possession or reasonably accessible to it [**Smt. J. Yashoda Vs Smt. K. Shobha Rani** - AIR 2007 SC 1721].

16. For the reasons discussed the submissions of the Appellant that the first SCN is wholly time-barred is prima facie not found sustained.

On Merits

17. The Appellant contends that the dispute concerns the taxability and valuation of construction undertaken under Joint Development Agreements (JDAs), particularly the flats allotted to the landowners, and that the issue is covered by the decisions relied upon by it. However, the relevant JDAs and connected agreements have not been

produced before us. The nature of the transactions must, therefore, be determined from the contractual terms, the rights and obligations of the parties and the consideration flowing between them; the nomenclature adopted by the parties is not conclusive.

17.1 In **Faqir Chand Gulati Vs Uppal Agencies Pvt. Ltd.** [2008 (10) S.T.R. 401 (S.C.)], the Hon'ble Supreme Court distinguished a 'genuine' joint venture, characterised by a community of interest and participation in management, control, profits and losses, from a construction contract, in the nature of 'collaboration agreement', under which a builder undertakes construction in return for land or development rights. Where the landowner merely transfers such rights and receives an agreed share of the constructed area, the arrangement may, in substance, constitute a contract for construction for consideration. The applicability of this distinction to the present case can be determined only upon examination of the relevant agreements and the actual nature of the arrangement.

18. The period of the demand is material to determining taxability. In **Jain Housing Vs Commissioner of Service Tax, Chennai**, the Hon'ble Madras High Court considered the Board's Circulars F. No. 332/25/2006-TRU dated 01.08.2006, Circular No. 96/7/2007-S.T. dated 23.08.2007 and Circular No. 108/2/2009-S.T. dated 29.01.2009 and explained the two situations contemplated by Circular No. 108/2/2009-S.T. dated 29.01.2009. The first concerns a builder, promoter or developer who constructs a property while retaining ownership and executes the sale deed upon completion and payment of the agreed consideration. Such an activity would be in the nature of self-service and consequently, would not attract service tax. The

second concerns construction undertaken by a builder, promoter or developer for an ultimate owner who receives the property for personal use, which may fall within the exclusion in the definition of a residential complex under Section 65(91a) of the Finance Act, 1994. The High Court distinguished these situations from services rendered by an independent contractor, designer or similar service provider, which remain taxable in accordance with law. The High Court held that the circular supported the assessee's case against levy of service tax for the period prior to 01.07.2010, subject to the conditions contemplated therein, while leaving the effect of the Explanation inserted in Section 65(105)(zzzh) with effect from that date outside the scope of its consideration. Accordingly, *Jain Housing* is material to the present dispute but does not establish a blanket exemption for every JDA. The adjudicating authority must determine whether the transactions in question satisfy the conditions addressed by the circular and separately examine the statutory provisions applicable from 01.07.2010 onwards.

19. As regards the flats allotted to the landowners, the Appellant contends that the parties participated jointly in the development and that no monetary consideration was paid by the landowners. They have relied upon *Aparna Constructions & Estates* (supra), to state that no service tax is payable on landowners share in joint development agreements, being joint venture on principal-to-principal basis. Revenue, on the other hand, submits that the landowners transferred land or development rights in return for constructed flats, constituting non-monetary consideration for the construction service. The absence of monetary consideration does not, by itself, exclude a transaction from Section 67 of the Finance Act, 1994. Where the arrangement is

found to constitute a taxable construction service for consideration in the form of land or development rights, the value must be determined in accordance with Section 67 and Rule 3 of the Service Tax (Determination of Value) Rules, 2006. However, valuation arises only after establishing that a taxable service was rendered during the relevant period. It cannot independently determine taxability or override an applicable exclusion. In *LCS City Makers Pvt. Ltd.* (supra), this Tribunal considered an arrangement in which constructed flats were allotted to the landowner in return for rights in land and held that the value of the flats could be determined with reference to similar flats sold to independent buyers. It also recognised that the entire value of the land could not be treated as the taxable value of the construction service, which comprised both material and service components.

20. The Appellant has also relied on **Vasantha Green Valley** [2019 (20) G.S.T.L. 568 (Tri.-Hyd.)], wherein this Tribunal held, on the facts of that case, that a further demand on the landowners' share would result in double taxation where the consideration represented by development rights had already been reflected in the value of flats sold to independent purchasers and service tax had been discharged on that value. In **Shri Krishna Builders & Property Developers Pvt. Ltd. Vs Commissioner of GST & CE, Chennai** [Final Order No. 41299/2025 dated 11.11.2025], this Tribunal addressed the situation where such inclusion and payment had not been established and directed valuation under Section 67 read with Rule 3(a), and Circular No. 151/2/2012-ST dated 10.02.2012, with reference to the price of similar flats charged to independent buyers around the relevant date.

20.1 We thus find no conflict or inconsistency between the orders of this Tribunal in ***Vasantha Green Valley*** and ***Shri Krishna Builders***. The former requires verification of whether the relevant consideration has already suffered service tax, while the latter addresses valuation where such inclusion has not been established. Where Rule 3(a) is invoked, the Revenue must establish the comparability of the flats and the applicability of the valuation method to the relevant transaction. An arbitrary sale price cannot be adopted. In the present case, the agreements and supporting valuation records are necessary to determine both the nature of the consideration and whether the value attributable to the landowners' share has already been included in the taxable value declared by the appellant.

21. The Appellant further contends that the construction activities involved the supply of materials along with construction services and constituted works contracts, relying on *Larsen & Toubro Ltd.* and *Real Value Promoters Pvt. Ltd.* Per contra, Revenue submits that the appellant has not produced sufficient contracts to establish the composite nature of the activities and points out that the appellant was registered under the category of Construction of Complex Service. Under Rule 23 of the CESTAT (Procedure) Rules, 1982, CESTAT being the final fact-finding authority has the power to call for documents. The Rule empowers the Tribunal, suo motu, to call for any documents or summon any witnesses on points at issue, if it considers such action necessary to meet the ends of justice. Where any direction has been made by the Tribunal to produce any documents or to examine any witnesses or to adduce any evidence before any departmental authority, the authority shall comply with the directions of the Tribunal.

21.1 The Revenue contends that the appellant produced no contracts establishing the composite nature of the activity and that it had itself registered under Construction of Complex service. While the question of fact requires determination and will be dealt with separately, the question of law regarding the payment of duty on construction services provided by the builder/ developer for the period **prior to 01.07.2010**, has been answered comprehensively in favour of the builder/ developers. It has been held that construction services provided by the builder/ developer will not be taxable, as has been clarified not only by the Board in their Circular No.108/2/2009-ST dt. 29.1.2009 and reiterated in Circular No.151/1/2012-ST dt. 10.02.2012 but also settled by number of Tribunal's decisions, for example, **Vijay Shanthi Builders Ltd. Vs CST Chennai** - 2018 (9) GSTL 257 (Tri.-Chennai); **Vinayaka Homes Vs CCE Cochin** - 2016 (43) STR 251 (T); **Krishna Homes Vs CCE Bhopal** - 2014 (34) STR 881 (Tri.-Del.) and **CCE Chandigarh Vs UB Constructions Pvt. Ltd.** - 2013 (32) STR 738 (Tri.-Del.).

21.2 Further, the ratio of *Larsen & Toubro Ltd.* is that a composite works contract involving transfer of property in goods is distinct from a contract for a pure service and cannot, for a period when no specific taxable category covered such works contracts, be taxed under an altogether different category. The correct classification must be determined from the nature of the actual contractual arrangement and the statutory provisions applicable during the relevant period. Registration under a particular taxable category does not, by itself, establish the correct classification.

21.3 Similarly, this Tribunal, in **Real Value Promoters Pvt. Ltd Vs Commissioner GST, Chennai** [Final Order Nos. 42436-42438 / 2018, dated: 18.09.2018], after considering and referring to a catena of judicial precedents, has held that the projects executed by the builders during the period prior to 01.06.2007, being in the nature of composite works contracts, cannot be brought within the ambit of Commercial or Industrial Construction Service or Construction of Complex Service, in view of the law laid down by the Hon'ble Supreme Court in *Larsen & Toubro* (supra). The relevant findings of this Tribunal are reproduced below:

"8. In the light of the discussions, findings and conclusions above and in particular, relying on the ratios of the case laws cited supra, we hold as under:-

a. **The services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 1.6.2007**

b. For the period after 1.6.2007, service tax liability under category of "commercial or industrial construction service" under Section 65(105)(zzzh) *ibid*, "Construction of Complex Service" under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services" simpliciter.

c. For activities of construction of new building or civil structure or new residential complex etc. involving indivisible composite contract, such services will require to be exigible to service tax liabilities under "Works Contract Service" as defined under section 65(105)(zzzza).

d. **The show cause notices in all these cases prior to 1.6.2007 and subsequent to that date for the periods in dispute, proposing service tax liability on the impugned services involving composite works contract, under "Commercial or Industrial Construction Service" or "Construction of Complex" Service, cannot therefore sustain.** In respect of any contract which is a composite contract, service tax cannot

be demanded under CICS / CCS for the periods also after 1.6.2007 for the periods in dispute in these appeals. For this very reason, the proceedings in all these appeals cannot sustain.”

(emphasis added)

22. The demand must, therefore, be reconsidered after examining the relevant contracts and records, with due regard to the period-wise taxability of the construction activities as discussed, the nature of the JDAs, the taxability and valuation of the landowners’ share, the possible duplication of taxable value and the applicability of the works-contract provisions. The appellant shall produce the agreements and records necessary to establish its claims, particularly those concerning the contractual arrangements, transfer of property in goods and inclusion of the landowners’ share in the value on which service tax was discharged.

22.1 The adjudicating authority shall also verify the payments claimed to have been made through challans dated 06.02.2015 and 10.03.2015 and grant appropriate appropriation wherever payment is established. Any claim concerning service tax already paid and its eligibility for credit shall likewise be examined and decided in accordance with law, upon verification of the supporting records.

23. As regards the burden of proof, Revenue’s initial burden to establish taxability or the alleged contravention is not immutable in the sense that the evidential onus can never shift to the assessee. Once Revenue produces sufficient direct or circumstantial evidence to support its allegation, an adverse inference may be drawn if the assessee fails to produce relevant material within its possession or special knowledge. The legal burden ordinarily remains on the party asserting the fact, in this case Revenue, whereas the evidential onus

shifts from time to time in the light of the evidence adduced, the inferences reasonably available and any applicable statutory presumptions. This shifting of the onus is a continuous process in the evaluation of evidence [**K.S. Nemji & Co. Vs Jatashanker Dosa**, AIR 1961 SC 1474; **A. Raghavamma Vs A. Chenchamma**, AIR 1964 SC 136; **Issardas Daulatram Vs Union of India**, AIR 1966 SC 1867; **Kanungo & Co. Vs Collector of Customs**, AIR 1972 SC 2136; **Collector of Customs Vs D. Bhoormull**, AIR 1974 SC 859]. However the principle that facts especially within the knowledge of a party must be explained by that party operates within this framework and does not, by itself, dispense with Revenue's initial burden.

Conclusion in Appeal ST/41344/2016

24. In view of the foregoing, Appeal No. ST/41344/2016 is allowed by way of remand. The adjudicating authority shall examine the JDAs and connected agreements to determine the true nature of the arrangements, applying the principles laid down in *Faqir Chand Gulati*. Determine taxability for the period prior to 01.07.2010 in the light of *Jain Housing* and the applicable Board circulars, particularly Circular No. 108/2/2009-S.T. dated 29.01.2009, which has also been relied upon in *Sandeep N. Savani* (supra), and independently examine the statutory provisions applicable from 01.07.2010 onwards. Determine the taxability and, where applicable, the value of the landowners' share under Section 67 and the applicable valuation rules and circulars, after verifying whether the relevant value has already been included in the taxable value on which service tax was paid; determine the correct classification of the construction activities, including the claim that they constituted works contracts, with reference to the contracts, the

transfer of property in goods and the law applicable during the relevant period. Reconsider limitation in the manner indicated above, verify the challan payments and examine any claim for credit or appropriation; and afford the appellant a reasonable opportunity to produce the relevant agreements and supporting records and to make its submissions before passing a reasoned order. All issues including that of limitation shall be determined in accordance with law and the judicial precedents relied upon by both sides, subject to the observations made herein.

B. APPEAL Nos. ST/40299/2022 & ST/40300/2022

25. These appeals concern the period January 2013 to June 2017 in respect of construction activities and October 2012 to June 2017 in respect of reverse-charge services. Visit by the officers to the Appellants premises were made on 07.01.2019. The name of the projects are indicated at Annexure C to the SCN dated 06.04.2019. The show cause notice dated 06.04.2019 proposed, inter alia, Service Tax of Rs.2,85,99,646/- on flats forming the landowners' share, Rs.2,88,62,157/- on flats sold from the developer's share and Rs.1,65,89,920/- towards legal, security, manpower and GTA services.

On Merits

25.1 The principal questions for determination are: (i) taxability of the landowners' share; (ii) taxability/classification of the developer's share; (iii) liability under reverse charge on GTA, security, legal and manpower services; and (iv) limitation and penalties.

26. The appellant contends that the landowners' share is not liable to Service Tax as there was no monetary consideration and the landowners were effectively co-developers, relying upon Vasantha

Green Valley (supra), and para 2.2 of Board Circular No.151/2/2012-ST dated 10.02.2012. Revenue submits that the land/development rights were transferred to the appellant against constructed flats and that such non-monetary consideration is covered by Section 67 and the applicable valuation provisions.

27. As discussed in Appeal No. ST/41344/2016, the absence of monetary payment does not, by itself, establish absence of consideration. The legal character of the arrangement must be determined from the JDA and the rights and obligations of the parties. Where development rights are transferred to the developer against construction and allotment of flats to the landowner, the transaction involves non-monetary consideration, the valuation of which, where taxable, is governed by Section 67 and the applicable valuation rules.

27.1 The applicability of para 2.2 of Circular No.151/2/2012-ST must be determined from the actual structure of the project and not its nomenclature. The adjudicating authority shall examine the relevant agreements to ascertain the identity and status of the landowners, the nature of the rights transferred and whether the arrangement falls within the redevelopment situation contemplated by the Circular.

28. Revenue has relied upon Section 67(1)(iii), Rule 3(a) of the Service Tax (Determination of Value) Rules, 2006 and *LCS City Makers Pvt. Ltd.*. As held in Appeal No. ST/41344/2016, the applicability and manner of valuation must be determined having regard to the nature of consideration and the relevant taxable event. Where Rule 3(a) applies, the comparable transaction must represent a similar service, and the value cannot be adopted mechanically from the sale price of any flat.

28.1 The adjudicating authority shall accordingly examine the landowners' flats and the flats relied upon for comparison, including their location, area, specifications and relevant date, and determine the taxable value strictly in accordance with Section 67 and Rule 3, consistent with the principles set out in Appeal No. ST/41344/2016.

29. The appellant submits that the construction activity was a composite works contract involving supply of materials and service and that, after 01.07.2012, works contract is specifically covered under Section 65B(54) and Section 66E(h). Reliance has been placed on *M/s Larsen & Toubro Ltd.*, *Real Value Promoters Pvt. Ltd.* and the subsequent decision in *Real Value* reported at [2024] 24 Centax 61 (Tri.-Chan.). The legal issue has been discussed above at paras 21.1 and 21.3. The same would apply here also.

30. Revenue further submits that, after 01.07.2012, classification ceased to be material under the negative-list regime. We are unable to accept the Revenue's broad contention that the nature of the activity becomes wholly irrelevant merely because, with effect from 01.07.2012, service tax was levied on all services other than those specified in the negative list. The post-01.07.2012 regime continued to recognise specified "declared services" under Section 66E of the Finance Act, 1994, including works contract service under Section 66E(h). Consequently, where the nature of the transaction is disputed as between a pure service and a composite works contract, the statutory definition of works contract and the factual character of the contract remain relevant for determining the taxable service and the manner of valuation. The appellant, in its additional submissions, has also referred to the change in law with effect from 01.07.2012,

contending that the service in question was appropriately classifiable under Section 66E(h) and not Section 66E(b), as alleged in the SCN and hence the notice is defective. We are of the view that the mere citation of an incorrect statutory provision does not, by itself, invalidate the SCN, provided the authority issuing it was otherwise competent to do so and the demand is legally sustainable. This principle was laid down by the Hon'ble Supreme Court in **J.K. Steel Vs Union of India**, [1978 (2) E.L.T. (J355)], and **Sanjana Vs Elphinstone Spinning & Weaving Mills**, [1978 (2) E.L.T. (J399)].

30.1 The decision of the Hon'ble Supreme Court in *Larsen & Toubro Ltd.* is relevant for identifying the distinction between a composite works contract involving transfer of property in goods and a contract for service simpliciter. The subsequent decisions, including *Real Value Promoters Pvt. Ltd.*, are also relevant to the treatment of composite construction contracts under the service-tax regime.

30.2 The appellant contends that the demand under Construction of Residential Complex Services is unsustainable, as the impugned order granted 67%/75% abatement towards material costs, thereby recognising the composite nature of the activity. While this finding may support the appellant's contention, it does not, by itself, establish that the contracts qualify as works contracts. As explained by the Hon'ble Supreme Court in *Larsen & Toubro Ltd.*, a works contract must involve transfer of property in goods leviable to sales tax or VAT and satisfy the other statutory requirements. The appellant must, therefore, establish from the contracts and contemporaneous records that these conditions are fulfilled.

31. The Revenue has relied upon the statement of Shri P.S. Shivakumar dated 07.01.2019, wherein he stated that Service Tax was collected but not paid because of financial difficulties and funds being blocked in the Puzhal project. The statement is stated to have remained un-retracted. Monies collected from the taxpayer as a tax, even if it was wrongly done, has to be deposited to Government as per Section 73A(2) of the FA, 1994.

31.1 Hence this admission may establish collection and non-payment of Service Tax, and would aid in the allegation of suppression of fact, but it cannot, by itself, determine the correct classification of the underlying construction service. Classification has to be determined in accordance with the contracts and statutory provisions.

31.2 Accordingly, the adjudicating authority shall examine the actual agreements and records to determine whether the developer's share represented construction service simpliciter or composite works contract service and quantify the liability under the legally appropriate provision.

32. The appellant contends that the Revenue has relied essentially on ledger entries concerning transportation of 2,000 bricks by M/s Shri Srinivasa Transport and that there was no consignment note, as leading to a failure by Revenue to establish its case as held in *U.P. State Bridge Corporation Ltd.* (supra). Further as per *Southern Eastern Coal Fields Ltd.* (supra), and other judgments cited by them, they are not liable to pay tax as recipient of such transporter's services. Per contra the Revenue relies upon the ledger, the Managing Director's statement, the statutory definition of GTA.

32.1 The Revenue has also relied upon **M.L. Agro Products Ltd. Vs CCE & ST, Guntur** [2017 (6) GSTL 94 (Tri.-Hyd.)], wherein the Tribunal considered the absence of a conventionally styled consignment note and held that a document accompanying the goods could constitute a consignment note. It also relied upon *Bharathi Soap Works*.

33. We find that the statutory definition of GTA during the relevant period specifically required a person providing service in relation to transport of goods by road and issuing a consignment note, by whatever name called. Therefore, the existence of a consignment note or a document satisfying the statutory requirement is a relevant jurisdictional fact for treating the transporter as a GTA.

33.1 The Revenue cannot substitute the statutory requirement merely by observing that freight must necessarily have been paid against some document. The question is whether the transporter was a GTA within the statutory definition and whether the document issued satisfied the requirement of a consignment note.

33.2 The decisions relied upon by the Revenue, namely *M.L. Agro Products Ltd.* and *Bharathi Soap Works*, shall be considered in the factual context of the documents actually available in the present case.

34. The appellant submits that, for 2013-14, security services were received from three agencies and the consideration including Service Tax had been paid, whereas thereafter the sites were secured by its own employees/workforce.

34.1 The adjudicating authority shall first determine whether the security service providers were persons falling within the class specified in Notification No.30/2012-ST and whether the appellant was

the person liable to pay service tax under the said notification. The Revenue must establish that the security services were actually provided by an outside agency. Expenditure incurred towards the appellant's own employees cannot be treated as receipt of security service from an independent service provider. Further where service tax has already been discharged on the same taxable service by the recipient of the service, the same liability being demanded again from the appellant under reverse charge, would be taxing the service twice. Hence the adjudicating authority shall accordingly reconcile the invoices, ledger accounts and payments to check whether duty has already been paid, subject to verification of the relevant invoices, period, taxable value and payment. The Appellant is also required to transparently disclose the information within its special knowledge to the officers facilitating the verification, failing which an adverse inference may be drawn against them.

35. The appellant submits that it employed skilled and casual labour directly, paid them wages and supervised their work, and had not engaged any manpower supply agency. Further as per *Transpek Silox Industries Pvt Ltd.* (supra), if the service recipient has discharged 100% Service Tax, demanding 75% tax from the Appellant amounts to double taxation. The Revenue relies on ledger entries and the Managing Director's statement.

35.1 The Revenue's reliance upon the entry recording payment to a carpenter as "labour expenses" does not, by itself, establish supply of manpower service. The distinction between direct employment of labour and supply of manpower by an independent service provider is fundamental.

35.2 If the Appellant demonstrates that the workers were directly engaged by the appellant, paid wages by it and worked under its supervision and control, such expenditure cannot be converted into manpower supply service merely because it was recorded under "labour" or "manpower" expenses. The Revenue must therefore establish the existence of a service provider supplying manpower to the appellant. In the absence of which, the demand under manpower supply service cannot be sustained.

36. The Revenue relies upon ledger entries showing payment of legal fees to A. Jagadeeswari and the statement of the Managing Director acknowledging legal expenditure. Notification No.30/2012-ST dated 20.06.2012 is relied upon for the reverse-charge liability. Per contra the appellant's principal defence is that the Department has not established that the recipient was a legal professional covered by the reverse-charge notification.

36.1 Mere classification of an expenditure as "legal fee" or "legal and professional charges" in the books cannot, by itself, establish liability under reverse charge. However, it is for the Appellant to satisfactorily explain the entry. The Revenue must then establish the identity and status of the service provider, that the provider was an individual advocate or firm of advocates covered by Notification No.30/2012-ST, that the service constituted "legal service" and that the appellant was the person liable to pay tax under the notification.

36.2 The demand shall therefore be sustained only to the extent the Revenue establishes these foundational facts from the bills, identity/status of the service provider and nature of service rendered,

after the Appellant supplies the necessary facts available in their possession.

Limitation

37. The appellant has raised a detailed objection to limitation, as regards the second SCN also, contending that substantial portions of the demand are beyond the normal period prescribed under Section 73(1) of the Finance Act, 1994. It is submitted that, during the relevant period, the normal period stood at eighteen months from 28.05.2012 and was subsequently extended to thirty months with effect from 14.05.2016. The appellant further submits that the extended period could not be invoked twice against the same Appellant. The Appellant has placed reliance on *Nizam Sugar Factory v. CCE*, [2006 (197) E.L.T. 465 (S.C.)], read with *P & B Pharmaceuticals (P) Ltd. v. CCE*, [2003 (153) E.L.T. 14 (S.C.)], *ECE Industries Ltd. v. CCE*, [2004 (164) E.L.T. 236 (S.C.)], and *Hyderabad Polymers (P) Ltd. v. CCE*, [2004 (166) E.L.T. 151 (S.C.)].

38. The question that arises for consideration is whether the extended period of limitation can be invoked in respect of a SCN relating to a distinct construction project merely because an earlier SCN had been issued to the same Appellant-Assessee under the same taxable service category.

38.1 In **Nizam Sugar Factory** (supra), the Hon'ble Supreme Court held that while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as those facts were already in the knowledge of the authorities. That facts already known to the Department could not

subsequently be treated as suppressed to invoke the extended period of limitation. The Hon'ble Court held:

"8. Without going into the question regarding Classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of ***P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise*** reported in (2003) 3 SCC 599 = 2003 (153) E.L.T. 14 (S.C.) has taken the view that **in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued** as the facts were already in the knowledge of the department."

(emphasis added)

38.2 This, however, does not establish that a subsequent SCN is barred merely because an earlier notice concerned the same assessee or the same category of service. It depends on whether the two notices arise from the same cause of action ("same set of facts") and must be determined by examining the material facts underlying each demand, including the transactions, agreements, projects, taxable activities, consideration and alleged contraventions. While separate projects or transactions founded on distinct agreements, records and factual circumstances may constitute distinct causes of action, however a different period of demand or method of proving the allegations does not, by itself, make the cause of action distinct where the notices rest on the same transactions and material facts. Equally, a separate investigation or notice does not, by itself, establish a distinct cause of action or justify extended limitation. Even where the causes of action are distinct, the Department must independently satisfy the statutory

conditions for invoking the extended period, including the applicable requirement of suppression or intent to evade tax. In terms of *Collector of Central Excise v. Chemphar Drugs & Liniments*, [1989 (40) E.L.T. 276 (S.C.)], *Pushpam Pharmaceuticals Co. v. CCE*, [1995 (78) E.L.T. 401 (S.C.)], *CCE v. H.M.M. Ltd.*, [1995 (76) E.L.T. 497 (S.C.)], *Easland Combines v. CCE*, [2003 (152) E.L.T. 39 (S.C.)], *Continental Foundation Joint Venture v. CCE*, [2007 (216) E.L.T. 177 (S.C.)], and *Uniworth Textiles Ltd. v. CCE*, [2013 (288) E.L.T. 161 (S.C.)], mere non-declaration, non-registration, non-payment, or bona fide omission is insufficient. The SCN must specifically allege, and the Revenue must establish by cogent, a positive act of fraud, deliberate suppression, or wilful misstatement committed with intent to evade tax on the lines discussed above, to invoke suppression and the extended period of limitation for the second time.

38.3 In **CCE, Surat-I Vs Neminath Fabrics Pvt. Ltd.**, [2010 (256) E.L.T. 369 (Guj.)], the Hon'ble Gujarat High Court, while distinguishing *Nizam Sugar Factory*, held that departmental knowledge does not efface an otherwise established suppression. Likewise, in **King Bell Apparels Vs CCE, Salem**, [2019 (365) E.L.T. 681 (Mad.)], the Hon'ble Madras High Court held that subsequent acquisition of knowledge does not bar invocation of the extended period where suppression is otherwise proved.

38.4 The governing test is not the identity of the taxable service classification, but the identity of the material facts alleged to have been suppressed. As observed by the Hon'ble High Court of Karnataka in **Commissioner of Central Tax Vs M/s. Scorpion Security Ltd.** [C.E.A. No. 46 of 2019, dated: 09.12.2021], where the Revenue

sought to invoke the extended period under Section 73 of the Finance Act on the ground that the assessee failed to retain copies of certain security service bills, the Court questioned what prevented the Department from conducting proper inquiries with end-users during the initial 2004 investigation to verify bill authenticity. **The High Court firmly held that a subsequent investigation or Show Cause Notice cannot be employed merely to cure investigative deficiencies, fill evidentiary gaps, or revise a demand founded on facts already within the Department's knowledge.**

38.5 As the limitation issue in Appeal No. ST/41344/2016 was remanded for fresh determination based on the evidence, this issue also merits remand on similar grounds. The adjudicating authority shall, therefore, examine the evidence relating specifically to the project and transactions covered by the impugned notices and determine the issue of limitation in accordance with the principles stated above.

Penalties

39. The Revenue contends that, upon establishment of the ingredients of the extended period, penalty under Section 78 would follow in accordance with the statutory requirements and that the Appellant is also liable to penalty under Section 77 for the specific contraventions alleged in the show cause notice. Penalty of Rs.1,00,000/- under Section 78A has further been imposed upon Shri P.S. Shivakumar. Since the tax liability and limitation require re-determination, the penalties also require reconsideration and are to be based on the conclusions that ultimately emerge.

C. Overall conclusion – Appeal Nos. ST/40299/2022 & ST/40300/2022

40. We hold that the landowners' share cannot be excluded from consideration merely because the consideration is non-monetary. The taxability of the landowners' share, however, has to be determined with reference to the terms and factual structure of each Joint Development Agreement, the applicable statutory provisions and the relevant point of taxation. The valuation shall thereafter be determined in accordance with the provisions applicable to the relevant period.

40.1 While deciding the matter the position of law as stated at paras 21.1 and 21.3 above, should be given due effect to.

40.2 The developer's share shall be examined from the agreements and contemporaneous records to determine whether the activity constituted a composite works contract or service simpliciter and the tax liability shall be determined under the statutory provisions applicable to the relevant period. The decisions in *Larsen & Toubro Ltd.*; *Real Value Promoters Pvt. Ltd.*; *Jain Housing & Construction Ltd.* *Aparna Constructions & Estates*; *Sandeep N. Savani* and the other decisions, all cited above and relied upon by the parties including Boards Circulars, shall be considered in their proper factual and legal context.

40.3 The GTA demand shall be re-examined by determining whether the transporter satisfied the statutory definition of a GTA, including the requirement relating to a consignment note, and whether the service fell within the applicable reverse-charge notification.

40.4 The security-service demand shall be re-examined with reference to the identity and status of the service providers, the

applicability of Notification No.30/2012-ST, the period and taxable value involved and the Service Tax, if any, already discharged.

40.5 The legal-service demand shall be sustained only upon establishing that the service provider and the service rendered fell within the scope of the applicable reverse-charge provisions.

40.6 The manpower-supply demand shall be sustained only upon establishing receipt of manpower-supply service from an independent service provider falling within the applicable reverse-charge provisions. Direct employment and payment of wages by the Appellant shall not, by themselves, constitute manpower-supply service.

40.7 Limitation shall be determined, after identifying the applicable normal period and examining whether the statutory ingredients for invoking the extended period are established by evidence.

40.8 Penalties, if any, shall be reconsidered consequentially.

Order

41. In view of the foregoing, the impugned orders [pertaining to **Appeal No. ST/41344/2016, ST/40299/2022 & ST/40300/2022**], are set aside and the appeals are allowed by way of remand to the Original Authority for fresh adjudication within ninety days of receipt of this Order, in accordance with the findings and directions contained in this order. The Original Authority shall afford an opportunity to the Appellant to submit documents as stated above and also allow them to file their written submissions and hear them if they so desire. The Appellant shall also cooperate in the matter. The demands shall be re-quantified only after determination of taxability, valuation and limitation. Interest and penalties shall then be

determined in accordance with law. The appeals are disposed of accordingly.

(Order pronounced in open court on 15.10.2026)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Sd/-
(P. DINESHA)
Member (Judicial)

Rex