

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75250 of 2024

(Arising out of Order-in-Original No. 15/CCE/S.TAX/RKL/2022-23 dated 22.12.2022 passed by the Commissioner of G.S.T. and C.X. Commissionerate, Rourkela, KK-42, Civil Township, Rourkela – 769 004)

M/s. Orissa Bengal Transport Co.

: Appellant

Plot No. 01, Sundara Basti, Near Primary School,
Kalinga Nagar, Barbil, Keonjhar,
Odisha – 758 035

VERSUS

Commissioner of G.S.T. and C.X.

: Respondent

Rourkela Commissionerate,
KK-42, Civil Township, Rourkela,
Odisha – 769 004

APPEARANCE:

Smt. Shreya Mundhra, Advocate, for the Appellant

Shri Desh Dulal Chatterjee, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 76536 / 2026

DATE OF HEARING: 15.10.2026

DATE OF DECISION: 28.10.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order whereby a demand of Service Tax amounting to Rs.3,03,62,750/- (inclusive of cesses) has been confirmed against them, together with applicable interest and penalties thereon under the provisions of the Finance Act, 1994.

2. The facts of the case are that the appellant, namely, M/s. Orissa Bengal Transport Company, is engaged in the provision of transportation services to various parties, including body corporates and firms.

During the impugned period viz. Financial Year, 2015-16, the appellant entertained a bona fide belief that the services provided or agreed to be provided by it in relation to such transportation did not occasion any liability to discharge Service Tax at its own end, in terms of Notification No. 30/2012-Service Tax dated 28.06.2012, under which the liability to pay Service Tax in respect of specified GTA services was placed upon the service recipient under the reverse charge mechanism. Proceeding on the aforesaid understanding of the applicable statutory regime, the appellant neither obtained Service Tax registration nor filed Service Tax returns during the period in question. Subsequently, on 23.02.2017, that the appellant has obtained registration under the Service Tax provisions.

3. The proceedings culminating in the impugned order were initiated on the basis of third-party information received by the Revenue from the Central Board of Direct Taxes (CBDT)/Income Tax Department in respect of the appellant for the Financial Year 2015-16. On the strength of the said information, the Revenue noticed that the appellant had received an amount of Rs.20,93,98,281/-, which was alleged to represent consideration towards the provision of taxable services. It was alleged that, notwithstanding the aforesaid receipts reflected in the appellant's Income Tax records, the appellant had failed to furnish the relevant documents necessary to ascertain the nature of the transactions and determine the precise tax liability arising therefrom. In the absence of such documents, the Revenue resorted to the method of best-judgment assessment contemplated under Section 72 of the Finance Act, 1994, and proceeded to quantify the Service Tax

liability by treating the gross receipts of Rs.20,93,98,281/- reflected in the Income Tax Return as the value attributable to taxable services. On that basis, a Service Tax liability of the appellant during the said period was worked out at Rs.3,03,62,750/-, inclusive of cesses.

4. In the course of the Pre-Show Cause Notice Consultation held on 05.10.2020, the appellant was duly represented by its Accountant, Shri Ajay Kumar Swain, who appeared on its behalf and furnished sample copies of the work orders and invoices raised by the appellant upon its clients.

5. Thereafter, a Show Cause Notice dated 21.10.2020 came to be issued to the appellant, proposing to demand Service Tax amounting to Rs.3,03,62,750/- (inclusive of cesses), by invoking the proviso to Section 73(1) of the Finance Act, 1994, together with applicable interest under Section 75 of the said Act and imposition of penalties under Sections 77 and 78 thereof. The proposals in the notice were founded, inter alia, upon the allegation that the receipts reflected in the Income Tax records represented consideration for taxable services and that the appellant had failed to discharge its corresponding Service Tax liability.

5.1. The appellant contested the allegations by filing a written reply dated 22.11.2020, denying the proposals contained in the Show Cause Notice. The appellant disputed the demand founded upon the gross receipts reported in its Income Tax records and maintained, in substance, that its transportation activities had to be examined in the context of the statutory framework governing GTA services and the reverse charge mechanism prescribed under

Notification No. 30/2012-Service Tax dated 28.06.2012. The appellant also contended that there was no basis for invoking the extended period of limitation and for imposing penalties under the Finance Act, 1994.

6. Upon adjudication, the Ld. Commissioner of G.S.T. and C.X., Rourkela Commissionerate, vide the impugned Order-in-Original No. 15/CCE/S.TAX/RKL/2022-23 dated 22.12.2022, confirmed the entire demand of Service Tax amounting to Rs.3,03,62,750/-, inclusive of cesses, along with interest thereon, by invocation of the extended period of limitation. The Id. adjudicating authority also imposed a penalty of Rs.2,16,000/- upon the appellant under Section 77(1)(c)(ii) of the Finance Act, 1994, a penalty of Rs.3,03,62,750/- under Section 78 of the said Act, and a further penalty of ₹10,000/- under Section 77(2) thereof. While arriving at the aforesaid conclusion, the Id. adjudicating authority, inter alia, observed that, in the absence of consignment notes, it could not be held that GTA services had been rendered so as to accept the appellant's contention that the liability to discharge Service Tax rested upon the recipients of the services under the reverse charge mechanism. It was also held that the appellant had failed to declare the correct value of taxable services provided by it in its statutory returns and that such failure was attributable to an intention to evade payment of Service Tax.

7. The Ld. Counsel appearing on behalf of the appellant made various submissions, both on merits as well as on limitation, which can be broadly summarized as under: -

The Adjudicating Authority having itself held that the services are not GTA service, the transportation of goods by road is covered under the negative list.

- (i) It is submitted that under Section 66B of the Finance Act, 1994, Service tax is levied on all services other than those specified in the negative list (Page 13); under Section 66D(p)(i), services by way of transportation of goods by road fall in the negative list, except the services of a goods transportation agency or a courier agency (Pages 14 to 17); and under Section 65B(26), a goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called, read with Rule 4B of the Service Tax Rules, 1994. Hence, transportation of goods by road is taxable only when it is the service of a GTA.
- (ii) It is submitted that the Adjudicating Authority has accepted that the work orders on record were placed for transportation (Para 17.3), and has itself held that the services “cannot be construed to be a GTA service by any stretch of imagination” (Para 17.4). Once the service is held not to be GTA service, the transportation of goods by road falls within Section 66D(p)(i). The Impugned Order does not examine this entry at all, and instead confirms the demand under forward charge on the ground that the Appellant has not proved that the receipts fall under the negative list (Para 21). Hence, the demand is contrary to the Adjudicating Authority’s own finding.

(iii) Reliance in this regard is placed on the following rulings:

- *M/s. Kalyani Transco v. Commissioner of CGST & Central Excise, Rourkela, Final Order No. 75740/2025 dated 19.03.2025, 2025 (3) TMI 1103 - CESTAT KOLKATA*
- *M/s. Anil Moharana v. Commissioner of CGST & Central Excise, Bhubaneswar, Final Order No. 76377/2026 dated 06.10.2026, 2026 (10) TMI 715 - CESTAT KOLKATA*
- *M/s. Devendra Nath Mahato & Sons v. Commissioner of CE & ST, Dhanbad, Final Order No. 75644/2026 dated 21.05.2026, 2026 (5) TMI 1667 - CESTAT KOLKATA*

The demand on the entire receipts in the CBDT data, without identifying any taxable service, is not sustainable.

- (i) It is submitted that the SCN demanded Service tax at 14.5% on the entire receipts of Rs. 20,93,98,281/- reflected in the CBDT data, without abatement and without specifying the taxable service allegedly rendered. The Adjudicating Authority framed the issue as whether the activity was GTA service "or any other taxable service" (Para 15.2,), held that it was not GTA service, and did not identify any other taxable service. Instead, it held that under the Negative List regime "it is not important to know the exact nature of service" and treated the entire receipts as taxable (Para 21).
- (ii) It is submitted that the burden of establishing that the receipts are consideration for a taxable service is on the Department. The work orders and invoices on record relate to transportation of iron ore fines by road, and the Department has not brought on record any evidence of any

other service. Hence, the demand based solely on the CBDT data is liable to be set aside.

(iii) Reliance in this regard is placed on the following ruling:

- *M/s. Manoj Kumar Singh v. Commissioner of CGST & Central Excise, Jamshedpur, Final Order No. 75291/2026 dated 24.02.2026, 2026 (2) TMI 1276 - CESTAT KOLKATA*

Without prejudice, even if the services are treated as GTA services, no Service tax is payable by the Appellant, as the liability is on the service recipients under reverse charge.

- (i) It is submitted that in terms of Paragraph I(A)(ii) read with Sl. No. 2 of the Table to Notification No. 30/2012-ST dated 20.06.2012 (Pages 20 to 26), issued under Section 68(2) of the Finance Act, 1994 (Page 18), where the person liable to pay freight for services provided by a goods transport agency is, inter alia, a factory registered under the Factories Act, 1948, a body corporate or a partnership firm, the entire Service tax is payable by such person and not by the service provider.
- (ii) It is submitted that the service recipients named in the work orders and invoices on record, namely M/s. Jindal Steel & Power Ltd., M/s. Brahmani River Pellets Ltd., M/s. Arya Iron & Steel Co. (P) Ltd., M/s. Auroglobal Comtrade Pvt. Ltd. and M/s. BTM Exports Ltd., are companies. The work orders themselves record that "Service Tax will be paid by the End User and Transporter is not liable for the same" and "Service Tax Paid by Jindal Steel & Power Ltd.". The Adjudicating Authority recorded this plea of

the Appellant, but, after holding that the services are not GTA service, confirmed the demand under forward charge without deciding this plea (Para 21). Hence, no Service tax can be demanded from the Appellant in any event.

(iii) Reliance in this regard is placed on the following rulings:

- *M/s. Kalyani Transco (supra)*
- *M/s. Pioneer Filing Station v. Commissioner of CGST & Central Excise, Bhubaneswar, Final Order No. 76379/2026 dated 06.10.2026, 2026 (10) TMI 638 - CESTAT KOLKATA*

That extended period of limitation is not invocable.

(i) It is submitted that the SCN dated 21.10.2020 for FY 2015-16 was issued beyond the normal period, solely on the basis of data received from CBDT. The receipts were reflected in the Income Tax Return data, and the work orders themselves record that Service tax was to be paid by the end user. The Department has not brought on record any evidence of suppression with intent to evade payment of tax. Hence, the demand is barred by limitation.

(ii) Reliance in this regard is placed on the following ruling:

- *M/s. S.K. Logitech Pvt. Ltd. v. Commissioner of CGST, Dibrugarh, Final Order No. 76009/2026 dated 05.08.2026, 2026 (8) TMI 332 - CESTAT KOLKATA*

7.1. In view of the above submissions, it is argued by the Ld. Counsel for the appellant that the impugned demand, along with interest and penalties thereon, deserves to be set aside in its entirety, being unsustainable on facts and in law.

8. On the other hand, the Ld. Authorized Representative appearing for the Revenue, while reiterating the findings recorded in the impugned order, submitted that the appellant had failed to obtain Service Tax registration and discharge its statutory obligations during the relevant period, despite having received substantial amounts towards the provision of taxable services. It was contended that, in the absence of consignment notes and adequate documentary evidence establishing the applicability of the reverse charge mechanism, the appellant's claim that the Service Tax liability devolved upon the service recipients could not be accepted. It was further submitted that, having failed to declare the correct value of taxable services and discharge the consequential tax liability, the appellant had rendered itself liable to the demand quantified under Section 72 of the Finance Act, 1994, along with interest and penalties under the relevant provisions of the said Act. It is accordingly the Revenue's stand that the suppression of material particulars, coupled with the failure to comply with the statutory requirements, justified invocation of the extended period of limitation. Thus, the Ld. Authorized Representative of the Revenue contended that the impugned order warrants no interference.

9. Heard the parties and considered their submissions.

10. We find that in this case, the appellant had claimed that during the Financial Year 2015-16, their services are liable to be treated as Goods Transport Agency (GTA) services, so as to attract the reverse charge mechanism in terms of Notification No. 30/2012-Service Tax dated 28.06.2012. The Revenue sought to deny this on the ground that due to the

absence of consignment notes, the services in question fall outside the ambit of GTA services and are consequently liable to Service Tax at the appellant's end.

10.1. In this context, we take note of the fact that during the impugned period viz. Financial Year 2015-16 (falling under the Negative List Regime), Section 66D(p)(i) of the Finance Act, 1994, specifically excluded from the levy of Service Tax services by way of transportation of goods by road, except where such transportation was undertaken by a GTA or a courier agency. On a careful consideration of the statutory framework, we find that the mere fact that the appellant undertook transportation of goods by road does not, by itself, render the activity liable to Service Tax. The nature of the service actually provided must first be ascertained, for the statutory scheme draws a material distinction between transportation undertaken by a Goods Transport Agency and transportation by road falling outside that category. Where the activity is confined to the provision of a vehicle or the carriage of goods by a truck operator, without the service provider undertaking the obligations characteristic of a GTA, the service would not, merely by reason of the transportation of goods, attract the levy of Service Tax during the relevant period.

10.2. In the present case, the Id. adjudicating authority has itself acknowledged that the work orders placed on record pertained to transportation services. More significantly, at paragraph 17.4 of the impugned order, the adjudicating authority has categorically observed that the services rendered by the appellant "cannot be construed to be a GTA service by any

stretch of imagination". This finding assumes considerable significance in determining the taxability of the very activity in respect of which the demand has been confirmed. Having declined to recognise the services as GTA services, the Id. adjudicating authority was required to examine the legal framework vis-a-vis applicability of Section 66D(p)(i) of the Finance Act, 1994, which has not been done. Despite the above observations, the demand has been confirmed vide the impugned order. It is well settled that in the absence of 'consignment notes', services cannot be considered GTA services, and therefore, the demand for Service Tax raised for the said period, for such transportation services rendered, cannot be sustained in law.

10.3. The aforesaid view finds support from the decision in the case of *M/s. Kalyani Transco v. Commissioner of C.G.S.T. & C.Ex., Rourkela [Final Order No. 75740 of 2025 dated 19.03.2025 in Service Tax Appeal No. 75271 of 2025 – CESTAT, Kolkata=2025 (3) TMI 1103 – CESTAT, Kolkata]*, wherein it was held as under: -

"6. In this case, we find that the appellant is a proprietorship concern and has not issued any consignment note. The same has been recorded by the Id. Adjudicating Authority in the impugned order, which is as under:

When asked about the consignment note, he produced various delivery challan in some of the challan Purchase order was mentioned along with the vehicle numbers, challan number weight details. He further added that from the details of the Purchase order the rate of transportation can be ascertained. In some of the delivery challan, P.O details were not mentioned wherein he asked for some time to give the details since the period involved is 2016-17."

The Id. Adjudicating Authority further observed that the appellants have been awarded with the work of transporting by the various parties to various destinations during the period 2016-17 and the appellant has submitted invoices raised against the consideration received from various service recipients. He further recorded that the services provided by the appellant to various entities as mentioned herein above, do not classify under the category of "Goods Transport Agency" as per Clause (26) of Section 65B of the Finance Act, 1944 w.e.f. 01.07.2012 read with Rule 4B of the Service Tax Rule, 1994. Admittedly, the Id. Adjudicating Authority found that the appellant is not the GTA. In that circumstances, the appellant is not liable to pay service tax under Section 66D (p) of the Act., which exempts services by way of transportation of goods by road except the services of goods transportation agency or courier agency. Admittedly, it has been held that the appellant is not the Goods Transport Agency, therefore, the said service falls under negative list as per Section 66D (p) of the Finance Act, 1994.

...

8. In that circumstances, we find that the demand of service tax against the appellant on transportation of goods by road, who has not issued consignment note and being not GTA, is not liable to pay service tax, therefore, whole of the demand of service tax is set aside. Consequently, no penalty is imposable on the appellant."

10.4. The same view has also been expressed in the case of *M/s. Anil Moharana v. Commissioner of CGST & Central Excise, Bhubaneswar* [Final Order No. 76377 of 2026 dated 06.10.2026 in Service Tax Appeal No. 76543 of 2024 – CESTAT, Kolkata =2026 (10) TMI 715 - CESTAT KOLKATA]. In the said case, the Tribunal observed that a transporter who has not issued consignment notes cannot be considered to be a Goods Transport Agency (GTA) for the purposes of Section 65B(26) of the Act and thus not liable to Service Tax.

11. In view of the above factual position and by relying on the decisions cited supra, we hold that the transportation services rendered by the appellant, not being GTA services, are not leviable to Service Tax in terms of Section 66D(p) of the Finance Act, 1994. The demand confirmed, merely by treating the gross receipts as consideration for taxable services, is therefore liable to be set aside.

12. Further, from a perusal of the impugned order, we find that the Id. adjudicating authority has also recorded that the appellant failed to produce work orders/agreements/other supporting documents in respect of the entire consideration received during the relevant period, pertaining to the CBDT Data/ITR during the Financial Year 2015-16. The Revenue has, accordingly, sought to sustain the demand by relying upon the gross receipts reflected in the said data. We find that in the instant case, the Show Cause Notice has demanded Service tax @ 14.5% on the entire receipts reflected in the CBDT data, without specifying the taxable service allegedly rendered by invoking the extended period of limitation and by treating the entire receipts as taxable. It is to be noted that the primary burden of establishing that the amounts received by the appellant represent consideration for a taxable service, exigible to Service Tax under the Finance Act, 1994, rested upon the Department. The mere reflection of receipts in the appellant's Income Tax records may furnish a basis for initiating an inquiry, but cannot, by itself, directly establish either the taxable character of those receipts or the precise nature of the services allegedly rendered. The statutory liability to pay Service Tax must be founded upon the identification of a taxable service and the application of the relevant charging provisions

thereto. Even otherwise, it has been held in a catena of decisions that in cases where the demand is raised mechanically on the basis of difference between ST-3 Returns and CBDT data, without any independent investigation as to the nature of services rendered, there can be no basis for invoking the extended period of limitation in such cases. It is a fact that the very basis of the impugned demand is the gross receipts available in the CBDT/Income Tax data filed by the assessee/appellant. Such receipts were reflected in the records available to the tax administration and were, therefore, amenable to verification by the Department. There is no independent investigation establishing that the appellant had deliberately concealed the nature of its activities, withheld material particulars with an intent to evade payment of Service Tax, or otherwise engaged in conduct satisfying the statutory conditions for invoking the extended period. In fact, from the facts before us as well as the submissions made, we find that the appellant's failure to obtain registration or file returns during the relevant period was due to a bona fide belief/understanding, especially considering the documentary evidence submitted during the course of adjudication proceedings. In the absence of any affirmative evidence demonstrating the requisite intent to evade tax, the mere non-disclosure of the receipts in statutory returns cannot be treated as sufficient justification for invoking the extended period. In the present case, the Revenue has failed to demonstrate that the circumstances contemplated by the proviso to Section 73(1) were present so as to justify recourse to the extended period. Hence, we are of the opinion that the invocation of the extended

period of limitation is not sustainable in the facts and circumstances of the case.

12.1. The aforesaid position finds support in a plethora of decisions wherein, for demands raised on the basis of data received CBDT/Income Tax Department, the invocation of the extended period has been held to be unsustainable, in the absence of independent evidence of suppression or intent to evade payment of tax. In the case of *M/s. S.K. Logitech Pvt. Ltd. v. Commissioner of C.G.S.T., Dibrugarh* [Final Order No. 76009 of 2026 dated 05.08.2026 in Service Tax Appeal No. 75626 of 2024 – CESTAT, Kolkata=2026 (8) TMI 332 – CESTAT, Kolkata], it was observed by the Bench, under similar circumstances, that: -

"11.2. What assumes even greater significance is the admitted absence of any independent investigation preceding the issuance of the impugned Show Cause Notice. Except for noticing the alleged difference between the figures reflected in Form 26AS and those appearing in the ST-3 Returns, the Department has not undertaken any enquiry whatsoever to ascertain the precise nature of the receipts, the taxability thereof, the contractual arrangements, the accounting treatment adopted by the appellant, or whether the differential figures represented taxable consideration at all. No independent evidence has been brought on record to establish any positive act of fraud, collusion, wilful misstatement or deliberate suppression attributable to the appellant. The entire edifice of the Revenue's case thus rests upon a mere comparison of figures contained in statutory documents already available within its own domain.

11.3. Such an approach, in our considered opinion, falls substantially short of the statutory threshold required for invocation of the extended period under the proviso to Section 73(1) of the Finance Act, 1994. The proviso is in the nature of an exceptional provision and cannot be pressed into service merely because a discrepancy is subsequently noticed by

the Department during scrutiny of records. The Legislature has consciously conditioned its invocation upon the existence of fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade payment of tax. These jurisdictional facts cannot be presumed; they must be affirmatively established by cogent and convincing material. In the present case, no such material is forthcoming. The Revenue has, in effect, sought to substitute its own failure to undertake timely scrutiny of statutory returns with an allegation of suppression against the assessee. Such a course is legally impermissible. The extended period of limitation cannot be invoked to compensate for administrative inaction or departmental oversight. It is equally well settled that where an assessee has been regularly filing statutory returns and the relevant information was always capable of verification by the Department, invocation of the extended period becomes wholly unsustainable in the absence of independent evidence establishing conscious concealment or an intention to evade tax."

[Emphasis supplied]

12.2. Similar was the view taken in the case of *Mohammed Fajlur Haque v. Commissioner of C.G.S.T. and C.Ex., Malda* [Final Order No. 75412 of 2026 dated 19.03.2026 in Service Tax Appeal No. 76356 of 2024 – CESTAT, Kolkata]. The relevant observation therein is reproduced below: -

"10. Further, I also find force in the contentions raised by the appellant that the demand confirmed in the impugned order is not sustainable on the ground of limitation. The demand in the present case has been raised for the period 2014-15 whereas the Show Cause Notice came to be issued on 17.10.2019, by invoking the extended period of limitation. Admittedly, the demand has been raised on the basis of the data received from the Income Tax Authorities / Form 26AS, without conducting any independent enquiry so as to ascertain the nature of service being rendered by the appellant. It has been held in a catena of decisions that the data available in Income Tax Returns / Form 26AS loses its evidentiary value in the absence of any

corroborative independent evidence. In this case, I do not find that any evidence has been brought on record by the Revenue to show that the appellant has indulged in any activity amounting to suppression or wilful mis-statement with the intent to evade Service Tax. Therefore, the allegation of suppression of facts and wilful mis-statement of facts for invocation of the extended period of limitation only on assumptions and presumptions cannot be sustained. Accordingly, in view of the facts and evidence available on record, I am of the view that the demand confirmed vide the impugned order, by invoking the extended period of limitation, is liable to be set aside. Thus, the impugned demand stands set aside on account of being barred by limitation also."

12.3. In the facts and circumstances of the present case, therefore, we are of the view that the Revenue has failed to bring on record sufficient evidence to establish the ingredients necessary for invoking the proviso to Section 73(1) of the Finance Act, 1994. Accordingly, without prejudice to our findings on the merits of the demand, we hold that the extended period of limitation has not been validly invoked in the present case. Consequently, the entire demand of Service Tax is unsustainable and deserves to be set aside on this count, being barred by limitation.

13. Accordingly, in view of the discussions hereinabove, we also find no sustainable basis for the imposition of penalties upon the appellant in the facts and circumstances of the present case. Therefore, the said penalties imposed upon the appellant are set aside.

14. In the result, the impugned order is set aside.

15. The appeal stands allowed, with consequential relief, if any.

(Order pronounced in the open court on **28.10.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd