CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85019 of 2024

(Arising out of Order-in-Appeal No. SK/268/Appeals-II/ME/2023-24 dated 22.09.2023 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

One Vibgyor Limited **.... Appellants**
(Formerly known as Rosoft Limited)
401, B Wing, Jugal Jyoti CHS Limited
176, CST Road, Sashmira Center,
Kalina, Santa Cruz (East)
Mumbai – 400 098.

VERSUS

Commissioner of CGST **.... Respondent**
Mumbai East Commissionerate
9th Floor, Lotus Info centre,
Parel (East), Mumbai – 400 012.

Appearance:

Shri Mahesh Bhattur, Chartered Accountant for the Appellants

Shri S.B.P. Sinha, Authorized Representative for the Respondent

CORAM: HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85013/2026

Date of Hearing: 27.11.2025
Date of Decision: 12.01.2026

PER: M.M. PARTHIBAN

This appeal has been filed by M/s One Vibgyor Limited (formerly known as M/s Rosoft Limited), Mumbai (herein after, for short, referred to as 'the appellants') against the Order-in-Appeal No. SK/268/Appeals-II/ME/2023-24 dated 22.09.2023 (referred to, as 'the impugned order') passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, *inter alia*, are engaged in providing "Information technology design and development services" and for the purpose of payment of service tax and for compliance with service tax statute are registered with jurisdictional authorities holding Service Tax Registration No. AAACA3634PSD001. They are also holding PAN No. AAACA3634P for the purpose of income tax purpose. With the transition of Goods and Services Tax (GST) regime, the appellants are also holding GSTIN No. 27AAACA3634P2ZG. Since the name of the appellants have changed to the present one i.e., M/s One Vibgyor Limited from M/s Rosoft Limited, even though the address of the registered office/principal place of business remained the same, the relevant GSTIN No. 27AAACA3634P1ZH had become inactive.

2.3 During the course of verification of ST-3 Return data filed by the appellants with the data regarding declared turnover in Income Tax Return (ITR)/Tax Deducted at Source (TDS) through 26AS for the year 2013-14 (October, 2013 to March, 2014), the department had come to a conclusion that the ST-3 return indicated 'Nil' taxable value of services, whereas the ITR indicate the total value of services as Rs.25,11,236/-. Thus, the department had concluded that the appellants had not declared the turnover of services to the above extent and that the applicable service tax of Rs.3,10,389/- at the rate of 12.36% had not been paid by the appellants.

2.4 The Department issued Show Cause Notice (SCN) dated 18.04.2019 to the appellants and in the absence of having not received any reply and as they did not respond to submit his defence to the allegations in the SCN, it was felt by the department that the appellants have accepted all the allegations mentioned in the SCN and proceeded to adjudicate a case. The original authority i.e., Assistant Commissioner, Division-III, Mumbai East CGST & Central Excise Commissionerate in adjudication of the case had confirmed the demand of service tax amounting to Rs.3,10,389/- under Section 73(1) of the Finance Act, 1994 along with imposition of Penalty under Sections 77, 78 ibid vide Order-in-Original dated 28.05.2021. When jurisdictional CGST & Central Excise officials i.e., Superintendent, Range-IV, Division-III, Mumbai East Commissionerate had written a letter dated 04.01.2023 to the appellants for recovery of the aforesaid adjudged demands as arrear of revenue, the appellants vide their reply

letter dated 23.01.2023 had responded stating that they had not received any SCN or the Order-in-Original either by post or by e-mail. Therefore, they had requested the said jurisdictional Range Superintendent to provide the SCN and original order to them. On the above basis, the appellants,

being aggrieved with the aforesaid order dated 28.05.2021 of the original authority, had filed an appeal before the Commissioner (Appeals) on 28.03.2023. In deciding the said appeal vide impugned order dated 22.09.2023, learned Commissioner (Appeals) has upheld the order of the original authority by dismissing the appeal filed by the appellants, on the ground that the appeal has been filed beyond the time limit in terms of Section 85(3A) of the Finance Act, 1994. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submissions made in the form written paper book by both sides in this case were also perused carefully.

4.1 The Original authority had confirmed the adjudged demand of service tax on the appellants vide Order-in-Original dated 28.05.2021, on the ground that the appellants had accepted all the allegations. The relevant findings and conclusions arrived in passing such an order are extracted and given below:

"12. Further, I find that the reason advanced to demand service tax is difference of income reported in the Income Tax return filed by them vis a vis service tax return filed by them. From the AIO it is ascertained that the noticee was engaged in providing 'Information Technology Software Services'. The said service is taxable service under section 65(105)(zzzze). However, in absence of noticee's reply to SCN or not submitting any defence in the matter with regards to the difference in the turnover as declared in the ITR returns/ TDS vis-à-vis ST-3 returns, I have an opinion that the turnover of Rs.25,11,236/- pertains to taxable service provided by the noticee during the said period. Further, despite giving enough opportunities to noticee for submitting his defence, noticee did not respond, so it appears settled that the noticee has accepted all the allegations mentioned in the SCN and has nothing to add or submit in his defence.

xxx xxx xxx xxx

17. Based on the above discussions it can be concluded that the noticee has provided taxable services of Rs.25,11,236/- in the year 2013-14 and therefore liable to pay Service Tax. Accordingly, Service tax of Rs.3,10,389/- (@12.36%) on the taxable turnover/income of Rs.25,11,236/- is liable to be recovered along with interest under Section 75 and penalties under Section 77 and 78 of Finance Act, 1994 are liable to be imposed.

18. In view of the above I pass the following Order:-

ORDER

(i) I confirm the demand of Service Tax of Rs.3,10,389/- (Rupees Three Lakhs Ten Thousand Three Hundred Eighty Nine Only) [inclusive of Service Tax, Ed. Cess, SH Ed. Cess] under Section 73 (2) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 raised against the noticee.

(ii) I order recovery of interest applicable on above (i) under Section 75 of the Finance Act, 1994.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) under Section 77(1)(d) of the Finance Act, 1994 for failure to pay service tax electronically as prescribed under Rule 6 of the Service Tax Rules, 1994.

(iv) I impose penalty of 3,10,389/- (Rupees Three Lakhs Ten Thousand Three Hundred Eighty Nine Only) under Section 78 of the Finance Act, 1994. However, the noticee can avail benefit of reduced penalty of 25% of this amount if service tax, interest and reduced penalty is paid within 30 days of receipt of this order, as per the provisions of the section 78 of the Act."

4.2 In the appeal preferred by the appellants against the above Order-in-Original dated 28.05.2021, the learned Commissioner (Appeals) vide impugned order dated 22.09.2023, had rejected such appeal by upholding the order of the original authority as follows:

"5. The Appellant has also filed an 'Application for Condonation of Delay' along with his appeal. The Appellant has stated that they had not received the said Order-in-Original till reminder letters for recovery of arrears were received on 11.01.2023. They obtained the copy of the order only on 23.01.2023. The appellant has then approached the jurisdictional officer for recreation of service tax login details to make the pre-deposit. The appellant company has discontinued operations and hence time has been taken in arranging funds for making the required pre-deposit for filing the present appeal. Therefore, they have filed application with a request to condone the delay.

xxx xxx xxx xxx

10. Accordingly, I find that appellant has made payment of Rs.3,10,389/- through CIN no. 20230324160603081111 dated 24.03.2023 as pre-deposit as stipulated under Section 35F of Central Excise Act, 1944.Further, appellant have filed the present appeal on 28.03.2023 against impugned order issued on 01.06.2021 which is not within prescribed time limit of 2 months in terms of Section 85(3A) of the Finance Act, 1994. There is a delay of 605 days (excluding Sixty days) in filing the appeal.

11. As per Section 85 of the Finance Act, 1994, the last date for filing Appeal in this case was 31.07.2021, whereas, the appellant has filed the appeal only on 28.03.2023, i.e., after a delay of 605 days (excluding Sixty days). Since appeal period for filing appeal is two months from the date of receipt of order,

it is necessary to decide at the threshold itself whether the delay, of a period of 605 days in filing the appeal is condonable or not and whether the appeal is time barred in terms of the provisions of Section 85(3A) of the Finance Act, 1994.

xxx xxx xxx xxx

15. In the instant case, the present appeal has been filed after the expiry of statutory time period of 2 months prescribed under Section 85(3A) of the Finance Act, 1994 at the material time. I find that a dela of up to one month is condonable by Commissioner (Appeals) in terms of proviso ot Section 85 ibid, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within prescribed period of 2 months. Thus, I have to see if 'sufficient cause' exists which prevented them from presenting the appeal within the aforesaid period of two months. Since, the Appellant was well aware of the procedure as laid down in the Act regarding the filing of appeal as a further course of action on being aggrieved by any decision or order passed by an adjudicating authority. Thus there appears to be no compelling grounds to entertain the laxity on part of the Appellant…..

16. I find the instant appeal has been filed after a lapse of considerable time from the prescribed time limit of two months and though the appellant has submitted reasons for not filing the appeal, I find that under Section 85(3A) the statute does not allow condonation of delay beyond the prescribed limit and only a delay of one month is condonable by Commissioner (Appeals) in terms of proviso to Section 85 ibid.

xxx xxx xxx xxx

18. For the reasons discussed above, the appeal is dismissed as the same cannot be allowed to be presented in terms of Section 85(3A) of the Finance Act, 1994."

5. The short issues for determination before the Tribunal is the following:

(i) whether the impugned order dated 22.09.2023, in rejecting the appeal filed before the learned Commissioner (Appeals) as having been filed beyond the time limit prescribed under 85 of the Finance Act, 1994 is correct or not, in terms of the facts of present case?

(ii) whether the appellants are liable to pay service tax, in respect of the value of turnover towards Information Technology Software Service at Rs.25,11,236/- as shown in the Income Tax Return for the Financial Year 2013-14 (October, 2013 to March, 2014), in terms of the Finance Act, 1994?

6.1 For deciding on the disputed issue at paragraph 5(i) above, I find that the legal provisions contained in Section 37C of the Central Excise Act, 1944 as made applicable to matters of Service Tax in terms of Section 83 of the Finance Act, 1994 are relevant. These provide the

manner in which the Order or notice shall be served on the person to whom it is intended i.e., the noticee, assessee, tax-payer etc. and Section 85 of the Act of 1994 provide for the legal provision for filing an appeal before the Commissioner (Appeal). The extract of these are quoted below:

Central Excise Act, 1944

Service of decisions, orders, summons, etc.

"37C. *(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,—*

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [zz][or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-section (1).”

Finance Act, 1994

Application of certain provisions of Act 1 of 1944.

"Section 83. *The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:—*

sub-section (2A) of section 5A, sub-section (2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 35-O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, ***37C****, 37D, 38A and 40.”*

Appeals to the Commissioner of Central Excise (Appeals).

"Section 85. *(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner*

of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter ,made before the date on which the Finance Bill, 2012 receives the assent of the President :
***Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months :*

(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:
***Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.*

(4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:
***Provided** that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.*

(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).”

6.2 In order to address the disputed issue at paragraph 5(i) above, the factual details regarding the dispatch along with proof of delivery; and the date of receipt of the order of the adjudicating authority by the appellants, were called from the jurisdictional CGST & Central Excise authorities i.e., the Assistant Commissioner, Division III, Mumbai East Commissionerate, through the learned AR. In the reply letter dated 29.08.2025 of the department, the following details with respect of SCN, adjudication order proceedings have been provided:

(i) SCN dated 18.04.2019 and the Order-in-Original dated 28.05.2021 were duly despatched from the said office of the department through the postal authority/Department of Posts. However, the SCN was returned by the postal authority as

unclaimed; 'Despatch Register for Postal Dak' maintained by the department at page 21 indicate that a communication titled as "D-III/R-IV/ITR/RL/13/1920" has been sent in three Sl. Nos. 1290, 1291 and 1292 to (a) M/s Rosft Limited; (b) The Superintendent R-I and (c) The Principal Commissioner, respectively.

(ii) subsequent to migration of the appellants-assessee in GST Portal on 24.05.2019, the SCN was sent on e-mail id of the tax payer (singhalcacs@gmail.com) as available in the GST portal on 24.05.2019 from the e-mail id of the office of Range-IV in Division-III i.e., range4div3@gmail.com

(iii) The proof of dispatch of Order-in-Original is the proof of delivery, as the same has not been returned back to their office by postal authority

(iv) since the letter for recovery of arrears and the Order-in-Original had been sent to the same address of the appellant, in the absence of its return, the department had successfully delivered to the assessee through the Department of Posts, as envisaged in law.

7. On plain reading of the above legal provisions, it transpires that any person being aggrieved by any order passed in adjudication by any authority subordinate to the Principal Commissioner/ Commissioner, shall within two months from the date of receipt of the decision or order of such adjudicating authority, shall file an appeal before the Commissioner (Appeals) in terms of Section 85(3A) of the Act of 1994. The two important determining factor in understanding the time limit fixed under the said Section 85(3A) ibid are (i) date of receipt of the order of the adjudicating authority by the appellants; and (ii) date of filing an appeal before the Commissioner (Appeals).

8.1 From the details obtained from the jurisdictional CGST & Central Excise authorities vide letter dated 29.08.2025 and submitted by the learned AR, it is not in dispute that the appellants had not received the SCN dated 18.04.2019, as the department had admitted that the same has been returned back to them as being 'Unclaimed'. Further, in terms of Section 37C of the Act of 1944 made applicable to service tax matters vide Section 83 of the Finance Act, 1994, the mode of despatch of the SCN, Order in this case having been done by registered post/speed post, the proof of delivery can be ascertained from 'acknowledgement due' indicating the receipt by the appellant or the 'proof of speed post letter delivered' as reflected in the records of the

Department of Posts. There is no such document produced by the department to establish the proof of delivery of the Order-in-Original dated 28.05.2021. By inference that SCN dated 18.04.2019 was returned and since the Order-in-Original is stated to have not been returned by Postal authorities and hence, the department claimed that such order of the Original authority would have been delivered to the appellants. Such presumption by the department, in the absence of any evidence or documents to show the proof of delivery, in my view, cannot be acceptable for legal purpose. Further, private e-mail claimed to have been sent on 24.05.2019 enclosing the SCN by the Superintendent of Range-IV, Division-III from a gmail account and not from the official National Informatics Centre (NIC) mail or gov mail, does not give credence to the claim that SCN was served vide e-mail in terms of CGST Act, 2017. On the other hand, the appellants have submitted a letter dated 22.09.2023 of the Director, Department of Posts, Mumbai GPO, Mumbai addressed to the appellant stating that as against the complaint regarding non-receipt of Speed Post articles vide Nos. EM 79682983IN and EM 722857488IN preferred by them, it is treated as "time barred" as such details are being available for a period of one month from the date of booking with their department. Further, Shri Sumit Sharma, Director of the appellants company M/s One Vibgyor Limited has also filed an affidavit dated 13.09.2023 to state that they had come to know about the SCN dated 18.04.2019 and Order-in-Original dated 28.05.2021 for the first time on 23.01.2023. Therefore, in my view there exists no document to show the 'proof of delivery' in terms of the requirement under Section 37C of the Act of 1944 and that the effective date of delivery of the Order-in-Original dated 28.05.2021 for confirmation of the adjudged service tax demands is to be taken as only on 23.01.2023.

8.2 In this regard, I find that the Hon'ble Bombay High Court, in the case of *Amidev Agro Care Private Limited Vs. Union of India & Others* – 2012 (279) E.L.T. 353 (Bom.) had in identical set of facts of dealing with the issue of determining whether the requirement of Section 37C ibid have been complied with or not, have held as follows:

> ***"5.*** *As per Section 37C(1)(a), it was mandatory on the part of the Revenue to serve a copy of the order of Commissioner of Central Excise (Appeals) by registered post with acknowledgment due to the assessee. Admittedly in the present case, a copy of the order has not been sent by registered post. In these circumstances, it could not be said that the*

requirement of Section 37C has been complied with. The CESTAT was wrong in relying upon the judgment of the P & H High Court in the case of Mohan Bottling Company (P) Limited (supra), as in that case a copy of the order was sent by registered post, whereas in the present case, the order is said to have been sent by speed post and there is no evidence of tendering the decision to the assessee.

6. *In these circumstances, in our opinion the decision of the CESTAT that the requirements of Section 37C have been complied with cannot be accepted. As per Section 37C(1)(a) of the Central Excise Act, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the decision to the assessee or to sent it by registered post with acknowledgment due to the assessee or its authorized agent. In the present case, neither of the above have been complied with by the Revenue. Accordingly, the contention of the assessee that a copy of the order of Commissioner of Central Excise (Appeals) was received for the first time on 26th February 2010 would have to be accepted. Consequently, the decision of the CESTAT that the appeal filed by the assessee was time-barred cannot be sustained."*

8.3 I have also gone through the judgement of the Hon'ble Supreme Court in the case of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur* - 2008 (221) E.L.T. 163 (S.C.) relied upon by the department for urging that the appeal before the Commissioner (Appeals) cannot be entertained since it has been filed on 28.03.2023, after the prescribed period of three months i.e., two months normal time limit and the condonable period of further one month. I find that the Hon'ble Supreme Court had gone into the specific time period provided in the statute and had delivered the judgement in holding that on expiry of 60 days normal period or further period of 30 days condonable period, no appeal can be entertained by the Commissioner (Appeals), as there was no power provided in the statute to entertain any appeal beyond 60 days or to condone the delay after the expiry of further 30 days period. I am also in agreement that the legal provisions of Section 85 of the Finance Act, 1994 have to be interpreted in terms of the ratio laid down by the Hon'ble Supreme Court in the case of *Singh Enterprises* (supra).

8.4 From the facts of the case, it is not in dispute that the appellants have filed the appeal before the Commissioner (Appeals) on 28.03.2023, being aggrieved by the Order-in-Original passed by the Assistant Commissioner, CGST & Central Excise, Division-III of Mumbai East Commissionerate dated 28.05.2021. On the basis of the above discussions and by following the orders of the Hon'ble Bombay High Court and the Hon'ble Supreme Court, I am of the view that the two

dates for determining the time taken for filing appeal in terms of Section 85(3A) of the Finance Act, 1994 are as follows:

(i) date of receipt of the order of the adjudicating authority by the appellants, in the facts and circumstances of this case, is on 23.01.2023.

(ii) date of filing an appeal before the Commissioner (Appeals) is on 28.03.2023.

8.5 On the basis of the above analysis and discussions, I find that the appeal in the present case should have been preferred by the appellants before the Commissioner (Appeals) within 22.03.2023, by calculating the normal appeal period of two months from the date of receipt of the order with which they were aggrieved with. The Commissioner (Appeals) in terms of proviso to Section 85(3A) of the Finance Act, 1994, can condone the delay for a further period one month i.e., upto 22.04.2023, if the appellant shows that they were prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. In the present case, the order of the original authority has been sent to M/s Rosoft Limited having GSTIN 27AAACA3634P1ZH which had become inactive and the new entity i.e., M/s One Vibgyor Limited having GSTIN 27AAACA3634P2ZG was only active. It is also noted that the Directors of the appellants company presently are S/Shri Dyuti Biswas, Sumit Phool Chand Sharma and Ms. Renee Mallick and the earlier nine directors of the company who had served in the past have already resigned on various dates. Therefore, the reasons claimed by the appellants such as recreation of service tax login details from the departmental portal, making arrangements for pre-deposit in view of the change in the name/constitution of the appellant company, for the delay of five days caused if filing appeal, in my opinion qualify for being 'sufficient cause' for condoning the delay. This is also justifiable for one another reason, that the appellants was never given a change to explain their cause either in the form of a reply to the SCN or a personal hearing to explain their case before the Original Authority, by following the 'principles of Natural Justice' which is required to be adopted in any quasi-judicial proceedings conducted under the taxation statute.

8.6 In this regard, I would also like to be guided by the Hon'ble Supreme Court who had explained in detail about the principles of

natural justice and the need to follow the same, in its judgement delivered in the case of Uma Nath Pandey Vs. State of Uttar Pradesh - 2009 (237) E.L.T. 241 (S.C.) as follows:

> *5. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service.*
>
> *6. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.*
>
> *7. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.*
>
> *8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works [(1863) 143 ER 414], the principle was thus stated:*

> *"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".*

9. Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

10. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

xxx xxx xxx xxx

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

16. Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855(2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In James Dunber Smith v. Her Majesty the Queen (1877-78(3) App.Case 614, 623 JC) Sir Robort P. Collier, speaking for the judicial committee of Privy council, used the phrase 'the requirements of substantial justice', while in Arthur John Specman v. Plumstead District Board of Works (1884-85(10) App.Case 229, 240), Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice'. In Vionet v. Barrett (1885(55) LJRD 39, 41), Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding Hookings v. Smethwick Local Board of Health (1890(24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra) chose to define natural justice as 'fundamental justice'. In Ridge v. Baldwin (1963(1) WB 569, 578), Harman LJ, in the Court of Appeal countered natural justice with 'fair-play in action' a phrase favoured by Bhagawati, J. in Maneka Gandhi v. Union of India (1978 (2) SCR 621). In re R.N. (An Infant) (1967(2) B617, 530), Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'. In fairmount Investments Ltd. v. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. In Regina v. Secretary of State for Home Affairs Ex Parte Hosenball (1977 (1) WLR 766) preferred the homely phrase 'common fairness'.

17. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

9.1 On perusal of the records of the case, I find that the show cause proceedings were initiated and the impugned order confirming the original order in demanding service tax on the appellants was issued on the presumption that the entire value of Information Technology Software Service totaling to Rs.25,11,236/- are liable to service tax and such tax has not been paid by the appellants, without obtaining any reply from the appellants and giving them an opportunity for personal hearing to explain their case. This is apparent from the findings given by the authorities below in adjudication of the case, as given in paragraphs 4.1 and 4.2 above.

9.2 In this regard, I find that Central Board of Indirect Taxes and Customs (CBIC) had considered the appropriate action to be taken by the filed formations, in similar situation as the one referred in this case and issued instructions dated 26.10.2021, which is extracted and given below:

"Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes & Customs
***

New Delhi dated 26.10.2021

Subject : Indiscreet Show Cause Notices (SCNs) issued by Service Tax Authorities - Reg.

Representations have been received from various trade bodies and associations regarding instances of indiscriminate issuance of demand notices by the field formations on the basis of ITR-TDS data received from Income Tax Department.

2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 1-4-2021 and 23-4-2021 issued vide F.No. 137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns ***only after proper verification of facts, may be followed diligently.*** *Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention* ***that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee****."*

(emphasis supplied)

I find that though the SCN was issued in the present case prior to the issue of the above instructions dated 26.10.2021, the crux of the above instructions squarely apply to the present case. Firstly, the original authority did not discuss the issues under consideration and the learned Commissioner (Appeals) had upheld such order, rejecting on the grounds of delay in filing appeal on the basis of judgement of Hon'ble Gujarat High Court in the case of *Todays Petrotech Limited Vs. Joint Commissioner* – 2017 (7) G.S.T.L. 145 (Guj.) without discussing how the present facts of the case fits in to such relied upon decision.

9.3 I find that on rejection of appeal filed before the Commissioner (Appeals) on the ground of limitation, similar to the issue in the present case was examined by the Co-ordinate Bench of this Tribunal in the case of *Shree Cement Limited Vs. Commissioner of Central Excise and CGST, Jaipur* - 2023 (1) TMI 103 CESTAT New Delhi, wherein it was

held that when the department had failed to provide any evidence of proof of delivery of the order of original authority, the Commissioner (Appeals) rejecting the appeal filed before him, without proper substantiation, cannot be sustained. The relevant paragraphs of the said Order is extracted and given below:

> *"11. In fact, the burden was cast by the Commissioner (Appeals) upon the appellant to prove that the order was not received by the appellant since it had been despatched from the Office of the Assistant Commissioner, whereas, it was for the Commissioner (Appeals) to ascertain the date on which the order that was despatched on January 18, 2019 was actually served upon the appellant in order to controvert the submission of the appellant that the order was received only on March 27, 2019.*
>
> *12. In this view of the matter, when the Department failed to provide any evidence to controvert the submission of the appellant that the order was actually received by the appellant only on March 27, 2019, the appeal shall be deemed to have been filed within the stipulated period of sixty days as it was filed on May 27, 2019. The Order of the Commissioner (Appeals) rejecting the appeal on the ground of limitation cannot, therefore, be sustained."*

9.4 Further, I also find that the learned Counsel for the appellants had submitted that in terms of the Ledger Accounts maintained by M/s Rosoft Limited for the Financial Year 2013-2014, they had made necessary entry for payment of Service Tax of Rs.51,897.80/- on 01.04.2014 and also made VCES payment of Rs. 5,49,714/- on 01.04.2013, which the department had not examined in any of their proceedings.

10. In the above backdrop of the factual matrix of the present case, and taking into account that fact that the appellants have voluntarily paid service tax of Rs.3,10,389/- vide CBIC CTIN No.2303531073 dated 23.03.2023, I find that the appellants have fulfilled all the requirements for discharge of service tax liability as determined in the *ex-parte* adjudication proceedings. In the above circumstances and on the basis of the discussions at paragraphs at 6.1 to 9 above, I find that there are no strong grounds to hold that the appellants did not pay service tax in respect of the differential amount identified by the Department, for the period October, 2013 to March, 2014. Therefore, I do not find any merits in the impugned order of the learned Commissioner (Appeals) in upholding the order of the original authority for confirmation of adjudged demands on the appellants and in

rejecting the appeal filed by the appellants on the grounds of non-filing of appeal before the prescribed time limit.

11. In the result, the impugned order dated 22.09.2023 is set aside and the appeal filed by the appellants is allowed on the basis of their voluntary payment of differential service tax amount as indicated in paragraph 10 above, into the account of Government exchequer, as per law.

(Order pronounced in the open court on 12.01.2026)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha