# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHANDIGARH

REGIONAL BENCH - COURT NO. I

## Service Tax Appeal No. 60265 of 2024

[Arising out of Order-in-Appeal No. 149-ST-CGST-APPEAL-GURUGRAM-SKS-2023-24 dated 04.03.2024 passed by the Commissioner (Appeals), Central Goods and Services Tax, Gurugram, Haryana]

**Rakesh Singhal** **……Appellant**
11 Vishal Market, Opp Rahul Motors Hisar, Haryana 125001

*VERSUS*

**Commissioner of Central Excise and ST, Rohtak** **……Respondent**
2nd Floor, Pacific City Centre, Opposite Shangrila Hotel, Rohtak, Haryana 124001

**APPEARANCE:**

Present for the Appellant: Ms. Krati Singh with Shri Monarch Mittal, Advocates

Present for the Respondent: Shri Narinder Singh and Shri Yashpal Singh, Authorized Representatives

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

## FINAL ORDER No. 60621/2025

DATE OF HEARING: 06.03.2025
DATE OF DECISION:23.06.2025

**S. S. GARG:**

The present appeal is directed against the impugned order dated 04.03.2024 passed by the Commissioner (Appeals), whereby the Commissioner (Appeals) upheld the Order-in-Original dated

30.03.2022 passed by the Additional Commissioner, CGST, Rohtak whereby the Commissioner (Appeals) has confirmed the demand of Rs. 1,04,40,288/- under Section 73 of the Finance Act, 1944 read with Section 174 of Central Goods and Service Tax Act, 2017 along with appropriate rates of interest under Section 75 of the Finance Act and also imposed equal penalty under Section 78 of the act read with Section 174 of the CGST Act, vide the impugned order, also imposed penalty of Rs. 10,000 under Section 77(1)(c)(i) of the Act read with Section 174 of the CGST, Act.

2. Briefly the facts of the present case are that the appellant was running the proprietorship firm under the name of S.S. Cargo and was engaged in providing services in the category of Transport of goods by road/goods transport agency service ("GTA services") to various companies & transporters. He was regularly filing its ST-3 returns in accordance with the provisions the Act and after deducting Tax deducted at Source ("TDS"), also regularly filed its Income Tax Returns ("ITRs").

2.2 During the investigation, the Department on the basis of CBDT data of the appellant noticed certain discrepancies pertaining to sale of service figures as per the Service Tax Returns ("STR") and value on which TDS has been deducted as per Form 26AS and as per ITR filed for the relevant period. On the basis of these discrepancies, show cause notice dated 24.12.2020 was issued to the appellant proposing demand of service tax on account of short payment of tax due to mismatch between its ST-3 and 26AS/ITR returns, by invoking

the extended period of limitation. The appellant filed reply on 01.04.2021 through speed post but no personal hearing notice was received by the appellant. Thereafter, the adjudicating authority confirmed the demand along with interest and penalty against the appellant, on the ground that the GTA services provided by the appellant qualify to be 'taxable service' under the Section 65B(51) of the Act and thus is liable to be subjected to service tax under the Section 66B of the Act. The Order-in-Original was passed ex-parte on the ground that the appellant neither filed a reply to the show cause notice nor appeared for personal hearing. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) who vide the impugned order confirmed the demand along with interest and penalty. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. He further submits that it is a settled principle of law that demand cannot be raised on the appellant solely on the basis of difference between ST-3 and 26AS/ITR. She further submits that the Department failed in its duty to identify the activity on which the service tax is leviable, identify the service recipient and show that such differential amount of service tax demanded is in respect of a particular transaction/activity. In support of this submission, she relied upon the following decisions:

- ***M/s Indian Machine Tools Manufacturers Association v. The Commissioner of Central Excise, Panchkula, Final Order No. 60403/2023, dated 18.09.2023***
- ***M/s PS Construction v. Commissioner of Central Excise, Panchkula, Final Order No. 60330/2024, dated 25.06.2024***
- ***M/s Mercer Consulting India Pvt. Ltd. v. Commissioner of CGST, Gurugram, Final Order No. 60162/2024, dated 05.04.2024***
- ***M/s Shreejee RMC Pvt. Ltd. v. Commissioner of CGST&CE, Rohtak, Final Order No. 60233/2024, dated 14.05.2024***
- ***Sudesh Kumar Gupta vs. Commissioner of CE & CGST, Lucknow, Final Order No. 70088/2025, dated 25.02.2025.***
- ***Shri Vikas Singh, (Prop. Of Chambal Motor) vs. Commissioner (Appeals), Central Excise & Cgst, Jaipur, 2024 (5) TMI 889- CESTAT NEW DELHI.***

4.2 She has also placed reliance on the departmental instructions issued by CBIC vide letter dated 26.10.2021, wherein also the board emphasized on the fact that demand cannot be raised merely on the basis of difference between the ST-3 returns and figures given by income tax department. Learned Counsel further submits that even otherwise also in the present case the appellant was not liable to pay service tax on the services provided by them during the relevant

period. She further submits that the appellant has rendered the services to body corporates who are liable to pay tax under Reverse Charge Mechanism as per Notification No. 30/2012-S.T. dated 20.06.2012. She further submits that the 'body corporate' can be interpreted as per definition under the Section 2(7) of the Companies Act, 1956 in accordance with Rule 2(1)(bc) of the Service Tax Rules, 1994 which includes any company incorporated outside India or company as defined under the Companies Act. Further, the learned counsel has also given the list of body corporates to whom the appellant provided GTA services which qualify as 'company' under the Section 2(20) of the Companies Act, 2013. She further submits that the service which was rendered by the appellant to the body corporate can also be verified as per the MCA website and the same is also enclosed with the appeal paper book. She further submits that by virtue of RCM Notification, the appellant is not liable to pay tax on the GTA services provided to the body corporates which amounting to Rs. 47,59,469.

4.3 Secondly, the services rendered to other GTA are also exempted from payment of service tax as per the entry 22 of the Notification No. 25/2012-ST dated 20.06.2012 vide which the service by way of giving on hire a means of transportation to other GTAs provided by the appellant is exempted from service tax subject to fulfillment of following two conditions namely:

***(a)*** *Service is by way of giving on hire a means of transportation of goods.*

***(b)*** *The said services are provided to Goods Transport Agency.*

4.4 She further submits that the appellant provided vehicles on hire to various GTAs which has not been disputed in the impugned order. Further, she submits that the status of GTAs to whom the appellant has provided service can be verified on the basis of tax deduction and collection account number (TAN). Learned counsel has also submitted that the consignment notes issued by the appellant to other GTAs have been enclosed as annexure 10 with the appeal paper book. She further submits that the appellant is entitled to avail exemption from levy of service tax on account of providing service as a means of transport on hire to various GTAs. In support of this submission, she relied upon the following decisions:

- ***Narendra Road Lines Pvt. Ltd. Versus Commr. Of Cus., C. Ex. & CGST, Agra 2022 (64) G.S.T.L. 354 (Tri. - All.)***
- ***M/s Manak Chand Agarwal vs. Commissioner of Central Goods and Service Tax, Excise and Customs, Udaipur, Final Order No. 55908/2024, dated 07.06.2024.***

4.5 Learned Counsel further submits that for the period 2015-16 and 2016-17, the Form 26AS shows 'Rakesh Singhal as one of the TDS deductor. She further submits that due to the mistake committed by the accountant of the appellant the vehicles owned by the appellant has been shown as vehicles as hired by the appellant and that is why TDS amount was deducted on the said vehicles. She

further submits that Rakesh Singhal and the appellant are one and the same person and no service can be rendered by the Rakesh Singhal (proprietor) to its proprietorship firm as the proprietorship firm and the proprietor are one and the same person in the eyes of law. She further submits that by any stretch of imagination, the appellant Rakesh Singhal cannot render any service to itself and in the absence of two separate entities as service provider and service recipient, service tax cannot be leviable. For this submission, she relied upon the following decisions:

- ***General Manager, BSNL Cellular Mobile Services vs. Commr. Of GST & C. Ex., Tiruchirapalli 2019 (25) G.S.T.L. 238 (Tri. - Chennai)***
- ***Executive Engineer E, C/O Bsnl vs. Commr. Of C. Ex. & S.T., Jaipur 2019 (25) G.S.T.L. 110 (Tri. - Del.)***
- ***M/s. Karnataka Co-Operative Milk Producers Federation Ltd vs. The Commissioner of Central Excise Bangalore-II Commissionerate, 2022 (61) G. S. T. L. 39 (Tri. Bang.)***
- ***State of West Bengal Vs Calcutta Club Limited- 2019 (29) GSTL 545 (SC****).*

4.6 She further submits that the demand of service tax has been wrongly computed; she further submits that the appellant is entitled to avail abatement in respect of GTA services rendered by the appellant by virtue of entry 7 of Notification No. 26/2012-ST dated 20.06.2012 and as per the said entries the learned counsel submits that the appellant is only liable to pay on 30% of the total service tax leviable on the value of GTA services rendered by the appellant. She

further submits that as per the ST-3 returns which is on record makes it clear that the appellant has not availed any Cenvat credit in respect of the inputs, capital goods and input services used for providing GTA services. Hence, the appellant is entitled to avail abatement of 70% on the GTA services and thus not liable to pay tax on this amount. As regards the wrong computation on the basis of incorrect service tax rates, the learned Counsel pointed out that during the relevant period different rates of service tax was applicable but the same has not been correctly applied in appellant's case. She further submits that the Department has wrongly applied 'best judgment method' for computation of demand for April' 17 to June'17. Learned counsel produced on record the ST-3 returns filed during the relevant time but the Department has failed to assess the same as per the provisions of the Act. She further relied upon the following decisions:

- ***Bharti Airtel Ltd. vs. Commissioner of Central Goods and Service Tax, Gurugram, Final Order No. 60102/2025, dated 27.01.2025***
- ***Dhillon Aviation Pvt. Ltd. vs. Commissioner of Central Excise, Delhi-ll, 2020 (37) G.S.T.L. 434 (Tri. - Del.)***
- ***Ms Blue Star Communication, Ms Ek Onkar Digital Services, Ms Sharma Cable, Ms Ek Onkar Enterprises, Ms Shiva Cable Versus C.C.E. & S.T. -Ludhiana 2019-TIOL-3789-CESTAT-CHD***
- ***Shubham Electricals v. CCE & ST 2015 (40) S.T.R. 1034 (Tri. - Del.)***

- ***Pr. Commissioner, ST v. Creative Travel Pvt. Ltd. 2016 (45) S.T.R. 33 (Del.).***

She further submits that the Department has failed to extend cum-tax benefit to the appellant which the appellant is entitled as per Section 67(2) of the Act.

4.7. As regards the invocation of extended period of limitation, the learned Counsel submits that the show cause notice was issued on 24.12.2020 which was received on 01.01.2021 and the same was brought to the notice of the adjudicating authority as well as the appellate authority. She further submits that the appellant has been filing ST-3 returns and income tax returns regularly and was having a bona fide belief that no service tax is leviable on GTA services provided by the appellant and therefore no suppression can be alleged by the Department on the part of the appellant and therefore the invocation of extended period cannot be invoked against the appellant. For this submission, she relied upon the following decisions:

- ***Firm Foundations & Housing Pvt. Ltd. vs. Principal Commissioner, Office of The Principal Commissioner of Service Tax, 2018 (4) TMI 613-MADRAS HIGH COURT***
- ***M/s New Prakash Roadways vs. The Commissioner of Central Excise and Service Tax, Rohtak, Final Order No. 60484/2014, dated 22.08.2024 (CESTAT Chandigarh)***

- ***M/s Pappu Crane Service vs. Commissioner of Central Excise& Service Tax, (Lucknow), Final Order No. 71246/2019, dated 02.07.2019 (CESTAT Allahabad)***

5. On the other hand, learned authorized representative for the department reiterated the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record and the judgments relied upon by the appellant. We find that the show cause notice dated 24.12.2020 was issued proposing demand of service tax on account of short payment of tax due to mismatch between its ST-3 and 26AS/ITR returns by invoking the extended period of limitation. We also find that the appellant did file the reply to show cause notice on 01.04.2021 but the same was not considered by the learned appellate authority. We also find that Order-in-Original was passed ex-parte on the ground that the appellant did not file the reply to show cause notice and did not attend the personal hearing which is factually incorrect because the appellant did not get the personal hearing notice from the respondent.

7. Further, we find that it is a settled law that demand cannot be raised solely on the basis of difference between ST-3 and 26AS/ITR. This issue is no more res integra and has been considered by various benches of Tribunal and this Bench in the case of ***Indian Machine Tools Manufacturers Association Vs. Commissioner of Central Excise, Panchakula*** vide Final Order No. ***60403/2023*** decided on ***18.09.2023 and Shreejee RMC Private Limited Vs.***

***Commissioner of CGST & C.E., Rohtak*** vide Final Order No. ***60233/2024*** decided on ***14.05.2024*** has examined this issue and has held in para 11 which is reproduced herein below:

> ***11.*** *Coming to third and final issue as to whether any demand can be sustained on the basis of difference between the figures of ST-3 Returns and the balance sheets, we find that it is a settled principle of law that service tax can be levied only when there is a clear Identification of service provider, service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, we are of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns like Income Tax Returns or balance sheets. without proving that such service has been rendered by the assessee and consideration thereof has been received. Similarly, no service tax demand can be raised and confirmed on the basis of notional income.*

8. Further, the Tribunal in the case of ***Sudesh Kumar Gupta Vs. Commissioner of CE & CGST, Lucknow*** vide Final Order No. **70088/2025** decided on ***25.02.2025*** and has held in para 5 which is reproduced here in below:

> ***5.*** *On perusal of the above stated findings of this Tribunal in warious cases, we note that the issue is no more res integra and It has been decided that only on the basis of data in Form 26AS, Revenue cannot issue show cause notice*

*demanding service tax. Here we note that charging Section 66B of Finance Act, 1994 provides for levy of service tax at a specific percentage on the value of service. Section 67 of Finance Act, 1994 provides that where service tax is chargeable on a taxable service with reference to its value, then such value shall be the consideration in money charged by the service provider. Therefore, it is primarily important to determine the value on which service tax shall be levied at a specific percentage and such value should be the value of taxable service. Clause (44) of Section 65B of Finance Act, 1994 has provided for definition of service and it has elaborately dealt with a list of activities which shall not be included in such definition. Further, Section 66D of Finance Act, 1994 has provided for negative list of services where the activities covered by such negative list do not qualify to be a taxable service. Therefore, it is clear that while determining value of taxable service under Section 67 ibid, such aspect as to the activities which are covered by negative list and which are mentioned in the definition of service as those which are not covered by such definition become important. Therefore, we come to a conclusion that for arriving at amount of service tax not paid or not levied arriving at correct value of taxable service which has not suffered service tax needs to be determined as the first step. Further, there are services where entire or part of service tax is to be paid by service recipient. Further, through mega Notification No. 25/2012-ST dated 20.06.2012, large number of services are exempted from levy of service tax.*

*From any data, unless scrutiny in respect of all the above stated aspects is not done, then such data cannot be taken as such as value for calculation of service tax. Precisely this exercise has not been carried out in the present order-in-original.*

8.2 Therefore, by following the ratio of the decisions cited (supra) wherein, it has been consistently held that demand cannot be raised on the basis of the difference between ST-3 and 26AS/ITR returns, hence, on this issue alone, we set aside the demand.

9. As regards the second issue that the appellant is not liable to pay service tax, we find that the appellant has rendered services to body corporate and vide Notification No. 30/2012-S.T. dated 20.06.2012 the taxable services provided by the GTA in respect of Transportation of goods by road where the person is liable to pay freight is body corporate established by or under any law, then the liability to pay service tax in such cases will be on the body corporate receiving GTA service by way of reverse charge mechanism and we find that the most of the companies to whom the appellant has rendered the services are body corporates and therefore service tax cannot be demanded from the appellant. Further, we find that the services rendered to other GTA are exempted from the payment of service tax as GTA are also exempted from payment of service tax as per the entry 22 of the Notification No. 25/2012-ST dated 20.06.2012 because both the conditions which are required to be satisfied are satisfied by the appellant.

10. As regards the name of the appellant appearing in Form 26AS is concerned, this has been inadvertently mentioned because the appellant who is proprietor is one and the same person and no service can be rendered by the appellant to himself as held in the cases cited (Supra). We also find that in the present case during the relevant period the rates of tax has been changed and the computation of service tax made by the Department is incorrect. Further, we find that the Department has wrongly applied best judgment method for computation of demand from April'17 to June'17. Once, the appellant has duly filed the ST-3 returns during the relevant period therefore the question of invoking the best judgment method is not warranted as held in the cases cited (Supra).

11. Further, the Department has failed to extend cum-tax benefit to the appellant which the appellant was entitled in view of Section 67(2) of the Act. As regards extended period of limitation, we find that the show cause notice was issued on 24.12.2020 and the same was received by the appellant on 01.01.2021, we also note that the appellant was regularly filing the ST-3 returns and the Department was aware of the fact that the appellant is providing GTA service. The appellant was under a bonafide belief that they are not liable to pay the service tax on GTA service and therefore, suppression cannot be alleged by the Department on the part of the appellant in order to invoke the extended period of limitation as held in the cases relied upon by the learned counsel for the appellant as cited (Supra).

12. Therefore, keeping in view of our discussion above and by following the ratio of the decisions cited by the learned counsel for the appellant, we are of the considered opinion that the impugned order is not sustainable in law on merits as well as on limitation and therefore we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 23.06.2025)

**(S. S. GARG)**
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

Kailash