

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 87641 OF 2023

(Arising out of Order-in-Appeal No. KKS/89/THANE
APPEALS/BH/2023-24 dated 10.07.2023 passed by the
Commissioner of CGST & Central Excise (Appeals Thane), Mumbai)

Qaidjohar Husaini Jawadwala

.....Appellant

2102, Queens Gate, Hiranandani,
Off. Godbunder Road, Thane

VERSUS

Commissioner of CGST & Central Excise,

.....Respondent

12th Floor, Lotus Parel, Parel East,
Mumbai

APPEARANCE:

Shri S B Jhunjhunwala, Advocate for the appellant
Shri Dhananjay Dahiwale, DC (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 85009/2026

DATE OF HEARING : 17.07.2025

DATE OF DECISION : 13.01.2026

Per: AJAY SHARMA

This appeal has been filed assailing the Order-in-Appeal dated 10.7.2023 whereby the Commissioner, CGST & CEX, (Appeals Thane) rejected the appeal filed by the appellant by upholding the Order-in-Original dated 30.3.2022.

2. The facts in brief are that on the basis of third party data received from Income Tax Department along with the Income Tax Return (ITR) of the appellant for the financial year 2015-16, it had come to the notice of the department that the appellant had declared a turnover of Rs.21,20,004/- in the ITR, whereas the turnover declared in their ST-3 returns for the corresponding period was nil. As a result the appellant had failed to discharge service tax liability of Rs.3,07,401/- on the aforesaid taxable turnover, and had willfully and deliberately suppressed the material facts from the department.

3. Accordingly a show cause notice dated 29/30.12.2020, by invoking extended period of limitation, was issued to the appellant proposing recovery of service tax of Rs.3,07,401/- along with interest and penalty under the relevant provisions of the Finance Act, 1994, which culminated in the Order-in-Original dated 30.3.2022 wherein the demand of Service Tax along with interest and penalty was confirmed. Aggrieved, the appellant preferred an appeal before the Commissioner (Appeals) which was rejected vide impugned order dated 10.7.2023.

4. I have heard rival submissions and perused the case records including the synopsis/ written submissions placed on record. There is no dispute that the entire demand has been raised solely on the basis of third party data i.e. the Income Tax Return without any independent investigation or verification by the Service Tax authorities. The issue involved herein is whether

a demand of Service Tax can be sustained solely on the basis of third-party information, namely ITR, without any independent inquiry or determination as to the nature of taxable services rendered and the identity of the service recipients? This issue is no more *res integra* in view of various decisions of this Tribunal. Income-tax and Service Tax are levied under distinct and independent enactments, each operating in its own field. The taxable event, measure and incidence under the two statutes are fundamentally different. Mere disclosure of income in ITR cannot, by itself, lead to an automatic inference that such income is exigible to Service Tax.

5. The law is equally well settled that tax liability cannot be fastened on the basis of assumptions, presumptions or conjectures. Before confirming any demand of Service Tax, the burden lies on the department to establish (i) the existence of a taxable service; (ii) the nature and classification of such service; and (iii) the identity of service recipient. In the instant matter, the show-cause notice is conspicuously silent on all these aspects. It neither specifies the taxable service allegedly rendered by the appellant nor identifies the recipient of such service. In the absence of these fundamental aspects, the demand is not sustainable.

6. In the matter of *Sarosh Homi Forbes vs. Commr. Of CGST, Mumbai*, vide *Final Order No. 85324/2025 dated 13.3.2025* the demand raised on the basis of Income Tax Returns was set aside

by this Tribunal by holding that a demand raised on the basis of third-party data without identifying the taxable service and its recipient, is unsustainable in law. The relevant paragraph of the said decision is extracted as under: -

"4.....Admittedly the entire case of the department is based on the third party data received from the Income Tax Department for the F.Y. 2015-16 after which on the basis of best judgment the entire demand was calculated and show cause notice was issued after invoking the extended period of limitation.....From the record it is not coming out whether before issuing the show cause notice any independent enquiry had been conducted by the department to ascertain the receipt of amount in issue towards rendering any taxable service. In the absence of any specific allegation about the nature of service provided or the service recipient, it is not justified to held appellant liable for the service tax. In order to fasten any duty liability on the appellant the department, in the first place, has to identify the nature of taxable service and the recipient of such service as well. Section 72 ibid cannot be applied merely on the basis of income-tax return without identifying the specific taxable service and the service recipient. By way of various decisions, it is settled legal position that a show cause notice issued on the basis of presumption and third-party information without examining the books of account and records of an assessee is not sustainable. Reference can be made to the decisions of the Hon'ble Supreme Court in the matter of Oudh Sugar Mills vs. UOI; 1978(2) ELT (J172) (S.C.) and also of the co-ordinate bench of the Tribunal in the matter of Sharma Fabricators & Erectors Pvt. Ltd. vs. Commissioner.; 2017(5) GSTL 96 (Tri.-All.), later on confirmed by the Hon'ble High Court of Judicature at Allahabad by dismissing the appeal of the department against the said order as reported in 2019 (22) G.S.T.L. J166 (All.); Commissioner vs. Sharma Fabricators & Erectors Pvt. Ltd. Therefore in the present case also, the demand cannot sustain. [Emphasis supplied]

Similar views had been taken by the Tribunal in the matters of *Shree Kankeshwari Enterprise vs CCE & ST, Bhavnagar, reported in (2023) 9 Centax 77 (Tri.-Ahmd.)*; *Homeopathy Medical Publishers vs. Commr. CGST & Central Excise, Final Order No.86910/2025, dated 25.11.2025* and *Nitin Jaywantrao Jagtap vs. Commr. CGST, Final Order No. 86987/2025 dated 22.12.2025.*

7. Nothing has been placed on record on behalf of revenue to establish that the appellant had deliberately suppressed material facts from the department with intention to evade payment of service tax liability. The limitation period cannot be extended mechanically, merely because some discrepancy is noticed in third party records. The invocation of extended period of limitation requires a clear and cogent finding of willful suppression, fraud or intent to evade tax. No such material has been brought on record. Mere non-reflection of income in ST-3 returns, without establishing taxability, cannot be equated with deliberate suppression.

8. Thus, in view of the discussions made hereinabove, the impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 13.01.2026)

(Ajay Sharma)
Member (Judicial)