

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85984 of 2024

(Arising out of Order-in-Appeal No. SK/CGST/A-I/Mum/301/23-24 dated 14.11.2023 passed by the Commissioner of CGST & Central Excise (Appeals-I), Mumbai.)

Varkha Deepak Melwani

32, Shangrilla Building
Old Colaba Post
Mumbai – 400 005.

.... Appellant

VERSUS

**Commissioner of CGST & Central Excise
Mumbai South Commissionerate**

13th & 15th Floor, Air India Building,
Nariman Point,
Mumbai – 400 021.

.... Respondent

Appearance:

Shri Mayur Makadia, 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/85027/2026

Date of Hearing: 27.11.2025

Date of Decision: 20.01.2026

PER: M.M. PARTHIBAN

This appeal has been filed by Mrs. Varkha Deepak Melwani, Mumbai (herein after, for short, referred to as 'the appellant') against the Order-in-Appeal No. SK/CGST/A-I/Mum/301/23-24 dated 14.11.2023 (referred to, as 'the impugned order') passed by the Commissioner of CGST & Central Excise (Appeals-I), Mumbai.

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

2.2 The appellant herein, *inter alia*, is engaged in providing "Renting of immovable property service" 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. AAHPM3360QST001. They are also holding PAN No. AAHPM3360Q for the purpose of income tax purpose. The appellant was also erroneously

allotted by the departmental AIO portal one another Service Tax Registration being No. AAHPM3360QST002, which was not operational.

2.3 During the course of verification of ST-3 Return data filed by the appellant with the data regarding declared turnover in Income Tax Return (ITR)/Tax Deducted at Source (TDS) through 26AS for the year 2015-16, the department had come to a conclusion that the ST-3 return indicated lesser taxable value of services at Rs.4,20,000/-, whereas the ITR data indicated the total value of services as Rs.14,40,000/- resulting into a differential value of taxable services of Rs.10,20,000/-. Thus, the department had concluded that the appellant had not declared the turnover of services to the above extent and that service tax on the value of Rs.10,20,000/- at the higher rate of 14.50%, had not been paid by the appellant. The department had applied higher rate of tax, in the absence of month-wise break-up figures of taxable services, to determine and apply the relevant tax rate of 12.36% upto 31.12.2014 & 14.50% from 01.01.2015.

2.4 On the above basis, Department issued Show Cause Notice (SCN) No.75/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020 to the appellant. In the absence of any reply to the SCN and by simply sending an e-mail stating that the SCN had been issued beyond the statutory period of five years and that in none of the personal hearing dates/opportunities given, the appellant had appeared before the adjudicating authority, on the basis of the allegations mentioned in the SCN and the data available on record, the original authority had proceeded to adjudicate the case. The original authority i.e., Assistant Commissioner, Division-IX, Mumbai South CGST & Central Excise Commissionerate in adjudication of the case had confirmed the demand of service tax amounting to Rs.1,39,721/- under Section 73(1) of the Finance Act, 1994 along with interest and had imposed Penalty of Rs.1,39,721/- under Section 78 and further penalty of Rs. 5,000/- each, under sub-sections (1)(c), (1)(d) and (2) of Section 77 ibid vide Order-in-Original dated 21.03.2023. Being aggrieved with the aforesaid order dated 21.03.2023 of the original authority, the appellant had filed an appeal before the Commissioner (Appeals) on 11.07.2023. In the grounds for delayed filing of the appeal, the appellant had stated that she had received the order of the original authority only on 13.07.2023 on her e-mail and she not being computer savvy, she came to see the mail in April,2023 when

she was preparing to file Income Tax returns. Further, as her Chartered Accountant who was handling the tax compliance issues had expired, she was clueless about the service tax login credentials. In deciding the said appeal vide impugned order dated 14.11.2023, learned Commissioner (Appeals) has condoned the delay in filing the appeal beyond the sixty days but within 90 days' time limit in terms of Section 85(3A) of the Finance Act, 1994 and upheld the order of the original authority by dismissing the appeal filed by the appellant on merits of the case. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submissions made in the form of written paper book by both sides in this case were also perused carefully. Learned Counsel for the appellant had pleaded that since the SCN has not been issued and served upon the appellant as per Section 37C of the Central Excise Act, 1944 and the facts of the case has not been taken into consideration by the learned Commissioner (Appeals), the appeal filed by her may be considered by the Tribunal, by not applying the threshold limit prescribed under the second proviso to Section 35B(1) *ibid*, since the tax demand is less than Rs.2 lakhs. In the additional written submission filed, in lieu of miscellaneous petition, the appellant has stated that since the appeal raises pure question of law relating to confirmation of adjudged demands in the absence of service of SCN as per law, her appeal may be admitted though the tax amount is less than Rs. 2 lakhs. As the submission of the appellant through her counsel has force, as the basic question of legality of quasi-judicial proceedings conducted without due service of SCN and that in the interest of justice, I am of the considered view that the appeal can be taken up for consideration and disposal without applying the threshold limit as per second proviso to Section 35B(1) *ibid*.

4.1 The Original authority had confirmed the adjudged demand of service tax on the appellant vide Order-in-Original dated 21.03.2021, by computing taxable value on which no service tax had been paid by the appellant on *ex-parte* basis. The relevant findings and conclusions arrived in passing such an order are extracted and given below:

"19. *I have gone through ITR, Profit & Loss Account and Form 26AS submitted by the noticee, I find that the income tax return receipts gross amount i.e. Professional receipts includes service tax paid by the noticee.*

Service tax paid was shown in expenditure of Profit & Loss Account. Working of taxable value is tabulated below:

Particulars	Amount in Rs.
Gross Professional receipts as per ITR	14,40,000/-
Less: Service Tax paid	56,406/-
Taxable Value	13,83,594/-
Taxable Value as per ST-3 Return	4,20,000/-
Difference	9,63,594/-
Service Tax @ 14.5%	1,39,271/-

20. Further, in view of above discussions and findings, it is observed that the difference in Taxable Service Value as per ITR and ST-3 returns is Rs.9,63,594/- on which Service Tax amounting to Rs.1,39,271/- is due as it was not paid and disclosed in the return for the period F.Y.2015-16, I hold that the Service Tax amounting to Rs.1,39,271/- is payable by the noticee and the same is recoverable under 73(1) of Finance Act, 1994 along with applicable interest under Section 75 and penalty under Section 78 and 77(1)(c), 77(1)(d) and 77(2) of the Finance Act, read with Rule 174 of Central Goods and Services Tax Act, 2017 for the F.Y 2015-16.

21. In view of the above foregoing facts and circumstances, I pass the following Order:-

ORDER

(i) I confirm the demand of Service Tax of Rs.1,39,271/- (Rupees one Lakh Thirty Nine Thousand Seven Hundred and Twenty One Only) for the period 2015-16 under Section 73 (1) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act, 2017).

(ii) I confirm the demand of interest at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act, 2017).

(iii) I impose a Penalty of 1,39,271/- (Rupees one Lakh Thirty Nine Thousand Seven Hundred and Twenty One Only) under Section 78 of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act, 2017). The noticee shall be entitled to reduced penalty of 25% of the duty amount, provided they pay the entire service tax along with interest and the amount of reduced penalty within 30 days from the date of communication of this order.

(iv) I also impose a Penalty of Rs.5,000/- (Rupees Five Thousand Only) under Section 77(2) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act, 2017) for failure to declare the value of taxable service in their periodical ST-3 Returns.

(v) I also impose a Penalty of Rs.5,000/- (Rupees Five Thousand Only) under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act, 2017) for non-submission of documents to the department.

(vi) I also impose a Penalty of Rs.5,000/- (Rupees Five Thousand Only) under Section 77(1)(d) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 (CGST Act, 2017) for

failure to pay service tax electronically as prescribed under Rule 6 of the Service Tax Rules, 1994.

Since SCN No.76/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020 issued under F. No. CGST/M.South/Div-IX/R-V/ITR-TDS/Misc.15-15/2019 is duplication of demand of service tax for the same financial year 2015-16 which was already covered vide SCN No. 75/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020 for which order is passed above, I am withdrawing the said SCN i.e., SCN No. 76/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020."

4.2 In the appeal preferred by the appellants against the above Order-in-Original dated 21.03.2023, the learned Commissioner (Appeals) vide impugned order dated 14.11.2023, had rejected such appeal by upholding the order of the original authority as follows:

"12 I further find that the appeal is within the prescribed condonable time limit of 90 days, as prescribed under section 85(3A) of the Finance Act, 1994, for filing appeal in service tax matter from the date of communication of the impugned order on 13.04.2023 (as mentioned by appellant in their appeal memorandum ST-4).

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17. Hence, I have the opinion that the appellant's arguments regarding non-receipt of impugned SCN and therefore time barred is not tenable, specifically, when already discussed by lower authority and a reasoned speaking order as already been passed, and no fresh evidence is put forth before me. Further, no other arguments is raised by appellant on merit in counter of service tax liability. During the PH, it was specifically stated that appellant cannot produce the records as they were with their CA who has passed away. Further, from the impugned order, the non-cooperative behaviour of appellant can be seen as they have not attended Personal Hearing before lower authority inspite of being scheduled six time.

18. Hence, In view of afore stated reasons, in my opinion, the appeal filed is liable to be rejected. Further, as the disputed demand is not contested on merit, hence stand liable to be recovered from the appellant invoking extended period under section 73 of the Act. Therefore, the interest under Section 75 of the Act, being compulsory in nature, is also recoverable from them. Further, it is settled law that once the demand of duty has been held to be confirmed under extended period, there remains no scope or discretion for waiver or reducing the amount of mandatory penalty as prescribed under section 78 of the Act. Hence, I hold penalty recoverable form the appellant under Section 78 of the Act. However, the provision of reduced penalty as per proviso to Section 78 is available to them. Further, I have no reason/s to reduce and waive the other penalties held recoverable from the appellant by lower authority under Section 77(1)(c), 77(1)(d) and 77(2) of the Act. Hence, uphold unchanged the same."

5. In the above backdrop of the case, the short issues for determination before the Tribunal are the following:

(i) whether the appellants are liable to pay service tax, in respect of the value of renting of immovable property Service at

Rs.13,83,594/- as short reported in the ST-3 returns as opposed to the Income Tax Return for the Financial Year 2015-16, in terms of the Finance Act, 1994 and in specific reference to the facts of the case?

(ii) whether the impugned order dated 14.11.2023, in rejecting the appeal filed before the learned Commissioner (Appeals) and upholding the order of original authority in confirmation of adjudged demands including imposition of penalties on the appellant, is correct or not, in terms of the facts of present case?

6.1 On perusal of the facts of the case and the documents submitted by the appellant, the following facts are relevant for consideration:

(i) SCN No.75/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020 was issued to the appellant, against Service Tax Registration No. AAHPM3360QST001 by the jurisdictional Service Tax authorities and one another SCN No. SCN No.76/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020 was again issued under F. No. CGST/M.South/Div-IX/R-V/ITR-TDS/Misc.15-15/2019. It has also been accepted by the adjudicating authority in Order-in-Original dated 21.03.2023 that there was duplication of second SCN issued and he had withdrawn such second SCN.

(ii) The appellant claimed that they did not receive the SCN dated 30.12.2020 and that the demand of service tax is time barred;

(iii) The appellant had paid the disputed service tax amount of Rs.1,39,721/- vide three challans dated 11.07.2023; 19.02.2024 and 04.03.2024;

(iv) The original authority had given a number of personal hearing dates to the appellant and did not get any response from the appellant; and therefore decided to adjudicate the case on *ex-parte* basis.

(v) The Commissioner (Appeals) though allowed the delay in filing the appeal filed by the appellant, by condoning it, had rejected the appeal filed by the appellant as the same not being contested on merits.

6.2 On perusal of the case records, it transpires that while adjudicating the SCN dated 30.12.2020, the Assistant Commissioner, Division IX, Mumbai South Commissionerate, had confirmed the service tax demands simply based on the difference between the figures indicating the value of services in ST-3 returns and the ITR-TDS data for the financial year 2015-2016. There is no other document or evidence taken on record to show that the taxable service had been rendered by the

appellant for substantiation and in confirmation of the service tax demand. Further, the appellant was not heard, though opportunities were given, before deciding the case by the original authority. Though the first appellate authority had found the reasons claimed by the appellant as justifiable for condoning the delay caused if filing appeal, no documents were examined by him in upholding the confirmation of the service tax demands and penalty.

7. On perusal of the records of the case, I also 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 value of renting of immovable property service for an amount of Rs.9,63,594/- are liable to service tax and such tax has not been paid by the appellants. This is apparent from the findings given by the original authority in paragraphs 19 and 20 of the adjudication order dated 21.03.2023, and in paragraphs 17 and 18 of the impugned order dated 14.11.2023 of the Commissioner (Appeals).

8.1 In this regard, I find that Central Board of Indirect Taxes and Customs (CBIC) had considered the appropriate action to be taken by the field 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)

8.2 I find that though the SCN was issued in the present case prior to the issue of the above instructions dated 26.10.2021, but since the adjudication and appeal proceedings was undertaken after issue of such instructions, the above instructions squarely apply to the present case. Firstly, the original authority did not discuss the issues under consideration and verified the facts, reasons for difference in the figures arising on account of ST-3 and ITR-TDS data, and further the learned Commissioner (Appeals) had also upheld such order, without proper appreciation of facts submitted by the appellant, as provided in the above instructions of CBIC.

8.3 Learned Counsel for the appellant also contended, by relying on the decision of the Tribunal in the case of *Baideep Singh Vs. Commissioner of Customs, ACC (Export), New Delhi* – 2021 SCC Online CESTAT 176 and the judgement of Hon'ble Gujarat High Court in the case of *Regent Overseas Private Limited & Anr. Vs. Union of India and Another* reported in 2017 (6) G.S.T.L. 15 (Guj.), to state that orders of lower authority passed without giving sufficient opportunity of personal hearing is denial of principles of natural justice, and such orders are liable to be set aside.

8.4 On perusal of the relied upon cases, I find that the underlying principle decided in those cases is that the serving of valid show cause notice is essential and providing sufficient opportunity for personal hearing to the noticee is *sine qua non* for any proceedings held in any quasi-judicial process. The relevant paragraphs dealing with such issues in the case of *Baideep Singh* (supra) is as follows:

"9. In the present case inspite of opportunity given, Revenue failed to produce the proof of delivery of the show cause notice. Further, from perusal of the order-in-original, I find that the Adjudicating Authority have not recorded satisfaction of service of show cause notice and have proceeded to pass the ex-parte order-in-original, which is held to be a nullity in the eyes of law. Substituted service by way of affixation on the notice board of the Department is by way of last resort. In the facts of the present case, I find that without identifying, the noticee, nor taking any reasonable measures of any substituted service as mentioned in clause (d) and (e) of Section 153(1), the Adjudicating Authority have proceeded to pass the ex-parte adjudication order. For passing a valid adjudication order, valid service of show cause notice is essential.

10. Accordingly, I hold that there is no valid service of show cause notice. Thus, the order-in-original is held without authority of law. Therefore, the impugned order is set aside and appeal is allowed with consequential benefits, in accordance with law."

8.5 Further, the extract of the judgement dated 01.03.2017 delivered by the Hon'ble Gujarat High Court in the case of *Regent Overseas Private Limited & Anr.* (supra) by holding that an order passed ex-parte where the party/noticee is unable to be present is breach of principles of natural justice. The relevant paragraphs of such order is as follows:

"6. From the facts and contentions noted hereinabove, it is apparent that the principal ground on which the impugned order-in-original has been assailed by the petitioners is breach of principles of natural justice. Such breach is alleged, firstly, on the ground that the notice for personal hearing had not been served upon the petitioners in accordance with the provisions of Section 37C of the Act, and secondly, on the ground that in one single notice, a choice of three dates of hearing has been given and non-appearance on all the three dates has been considered to amount to three adjournments having been sought in terms of the proviso to Section 33A of the Act.

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8. Thus, under clause (a) of sub-section (1) of Section 37C of the Act, in case of service of notice by speed post, the same has to be with proof of delivery. To put it differently, service by speed post is valid provided there is proof of delivery. In the present case, it is an admitted position that the letter of personal hearing was sent to the petitioners through speed post; however, though details of date of despatch, etc., have been produced on record by the learned counsel for the respondents, including tracking number, there is no material by way of proof of delivery to the petitioners; whereas, on the other hand, it is the specific case of the petitioners that they have not received the notice for personal hearing. Thus, in view of the mandate of Section 37C of the Act, which provides for notice by speed post with proof of delivery, it is incumbent upon the respondents to furnish proof of delivery. In the absence of any proof of delivery, it cannot be said that there is effective service of notice, as contemplated under Section 37C of the Act. In the absence of service of notice of personal hearing, the petitioners or their representative could not remain present before the adjudicating authority during the course of personal hearing and hence, the

impugned order which has been passed ex parte is clearly in breach of principles of natural justice.

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13. *As discussed hereinabove, in view of the fact that the notice for personal hearing was not served upon the petitioners in accordance with law, no one could remain present for personal hearing on behalf of the petitioners on the dates specified in the notice and the adjudicating authority has proceeded on the footing that three adjournments have been granted and has passed and the impugned ex parte order. Such order is, therefore, clearly in breach of the principles of natural justice warranting interference by this court in exercise of powers under Article 226 of the Constitution of India."*

8.6 On perusal of the above decisions of the Tribunal and the Hon'ble High Court of Gujarat, and the factual matrix of the case, I find that there is enough force in the arguments made by the appellant. In the case before me, the appellant had claimed before the authorities below that they had not been served with the SCN and it is also a fact that there is no 'proof of delivery' of the SCN having been served on the appellant in terms of Section 37C of the Central Excise Act, 1944 as made applicable to matters of service tax under Section 83 of the Finance Act, 1994. Further, it is also a fact that two SCNs have been issued to the same appellant vide SCN No.75/AC/Dn.IX/R-V/HRR/ 2020-21 dated 30.12.2020 from File F. No. CGST/M.South/Div-IX/R-5/ITR-TDS/Misc.15-16/2019 and another SCN No.76/AC/Dn.IX/R-V/HRR/2020-21 dated 30.12.2020 from file F. No. CGST/M.South/Div-IX/R-V/ITR-TDS/Misc.15-15/2019, that too on the same day. This mistake had also been accepted by the adjudicating authority and he had accordingly withdrawn the second SCN No.76. in the order passed in respect of SCN No.75 itself. It is also recorded in paragraph 10 of the order of the original authority that in terms of the Notification dated 30.09.2020 and instructions issued by CBIC, the last date issue of SCN in respect of proceedings under Chapter V of the Finance Act, 1994 being 31.12.2020, the SCNs have been issued within the specified time limit. Therefore, the above facts clearly establish that the jurisdictional service tax authorities have issued such SCNs on the penultimate date without proper appreciation of the facts and that too with no due substantiation of evidence or grounds. Furthermore, in the order passed by the original authority, he had not considered any of the submissions to be made by the appellant, as neither they had participated in the adjudication proceedings nor their reply was taken into account for deciding the case,

except the figures available in the ITR-TDS and ST-3 returns. In view of the above, I am of the considered view that due process of quasi-judicial proceedings in observing the principles of natural justice had not been followed in the present case. Further, the instruction of CBIC dated 26.10.2021 had not been followed diligently by the service tax authorities as required, and rather such instructions have been violated in the present case, as neither there was proper verification of the facts nor there was any attempt to check indiscriminate issue of SCNs, as two notices have been issued to the very same appellant, that too on the same day. The above situation also indicates that there was no attempt by any senior/supervisory officials to devise any mechanism to monitor or address such indiscriminate issue of SCNs.

8.7 Further, I find that the learned Counsel for the appellant had submitted that the appellant had paid the entire service tax demand of Rs.1,39,721/-, vide three challans of CIN No.20230711133642875683 dated 11.07.2023 for Rs.10,480/-; CIN No. 2024022016193846065 dated 19.02.2024 for Rs.3,500/- and the balance of Rs.1,25,741/- vide CIN No. 20240304163201360912 dated 04.03.2024.

9. 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. Rs.1,39,721/-, I find that the appellant has 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 8.3 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 2014-2015, had proper opportunity to explain their case was given by the authorities below and as instructed by CBIC circular, if the departmental authorities would have conducted verification of facts during adjudication process. 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 including imposition of penalties on the appellant and in rejecting the appeal filed by the appellant. Therefore, the impugned order is liable to set aside as it does not stand the scrutiny of law.

10. In the result, the impugned order dated 14.11.2023 is set aside and the appeal filed by the appellants is allowed on the basis of their voluntary payment of differential service tax amount into the account of Government exchequer, as indicated in paragraph 8.7 above, as per law.

(Order pronounced in the open court on 20.01.2026)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha