

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 50608 Of 2021

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM(AUDIT)/003/2020 dated 28.05.2020 passed by the Commissioner of Central Goods, Service Tax and Central Excise, Raipur]

M/s Deepa Construction

Dantewada, Chattisgarh

: Appellant

Vs

**Commissioner of Central Goods
Service Tax, Central Excise, Raipur**

Tikrapara, Dhamtari Road, Raipur
Chattisgarh

: Respondent

APPEARANCE:

Shri Atul Gupta, Chartered Accountant for the Appellant

Shri Shashank Yadav, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50199/2026

Date of Hearing:01.12.2025

Date of Decision: 02.02.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Deepa Construction¹ to assail the impugned Order-in-Original No. RPR/EXCUS/000/COM(AUDIT)/003/2020 dated 28.05.2020 wherein the Commissioner confirmed the demand of Rs. 2,83,27,069/- along with applicable interest under Section 75, penalty amounting to Rs. 10,000/- each under section 77(1) & 77(2) and equivalent penalty under section 78.

1 the appellant

2. The facts of the case are that the appellant is a partnership firm which started in 2004. The Department received information that scrutiny of the TDS/ITR data of the appellant revealed that the firm had received total an amount of Rs. 5,00,11,867/- during the year 2013-14 and Rs. 7,59,27,497/- during the year 2014-15, towards supply of taxable services. Thereafter a letter dated 01.10.2018 was issued to the appellant asking them to submit the details of payment of service tax with relevant records with exemptions claimed, if any. However, no response was received from the appellant. On completion of the enquiry, a show cause notice dated 17.10.2018 was issued proposing a demand of Rs. 1,55,66,105/- along with interest and imposition of penalties under Section 76, 77, and 78. Thereafter, an addendum was also issued vide F.No.V(ST)15-339/ADC/RPR/2018 /ADJ/4088 dated 18.04.2019 for the subsequent period of 2015-16, 2016-17 and 2017-18 (upto June 2017) under which an additional amount of service tax of Rs. 1,27,60,964/- including cess was demanded. The adjudicating authority vide order dated 28.05.2020 confirmed the demand of Rs. 2,83,27,069/- along with interest and the imposition of penalties under section 77 & 78.

3. Learned counsel for the appellant submitted that the demand had been confirmed on the ground that the service tax had been paid in the partners service tax registration and not in the Partnership firm's registration is not sustainable and liable to be set aside. He contended that the appellant was providing the services of Construction, execution of works contract mainly to NDMC, TRF Ltd (a Tata Enterprise), Dee Tech Project Ltd. The Appellant had been duly paying tax for the services provided on the partial reverse charge basis

as per rule 2A, however the payment of the Service tax was made in service tax registration which was taken on the PAN of the partner Shri K. Surendran Nair. Learned counsel submitted that at the time of taking the registration, it was on the suggestion of the officials of the department that the service tax registration was taken using the PAN of Shri K. Surendra Nair. However, the payment of tax has not been disputed by the Commissioner, and the only dispute is with respect to the payment of service tax in the service tax registration taken on Shri K. S. Nair's PAN.

3.1 Learned counsel further submitted that since 2005, the appellant had been using the same service tax registration under the same PAN which has not been disputed by the department. Learned counsel stated that no issue since 2005 had been raised by the department regarding the service tax registration (ST-2) despite the fact that the appellant had continuously utilized the same service tax registration for payment of service and other compliances under the Act. Therefore, learned counsel contended that raising this issue after so many years of registration is not sustainable when the department had accepted all the earlier service tax payments for the previous years. He further submitted that the department while passing the impugned order has acknowledged that the appellant is registered with the department and the appellant had filed the ST-3 returns late. Therefore, when the service tax registration has never been disputed by the department prior to 2013, disputing the same in the present show cause notices and in the impugned order is bad in law and the demand is liable to be set aside.

3.2 Learned counsel for the appellant further contended that it is an admitted fact that the service tax payment had been made on the service tax registration taken on the PAN of the partner Shri S. Nair. It was for the reason that the payment of service tax was not considered by the department. The Commissioner while passing the order has also observed that the partner K. Surendran Nair and the Partnership firm (Appellant) were two separate entities, and on that account, did not consider the payment on the service tax registration. In case of Partnership, the liability of the partners is not limited and if the liabilities of the firm are not discharged by the partnership firm, the same is borne by the partners only. The partners were responsible for the acts of the Partnership firm. Thus, the aforesaid contention of the department that the service tax payment cannot be considered as it has been paid in the service tax registration taken on the partners PAN is devoid of merits and is liable to be set aside. In this regard, learned counsel relied upon the following decisions:-

- **Commissioner of Central Excise & Customs, SURAT-II Vs. Mohammed Farookh Mohammed Ghani²**
- **Commissioner of Central Excise Vs. Jai Prakash Motwani³**
- **Pravin N. Shah versus. CESTAT⁴**

As regards the provision of service by Shri K. Surendran Nair as alleged by the department, learned counsel submitted that the service of transportation of goods by road was provided to few clients was not taxable as per Section 66 D. He also submitted that the transportation services had been provided by the appellant viz. Deepa Constructions,

2 **2010 (259) E.L.T. 179-(Guj.)**

3 **2010 (258) E.L.T. 204 (Guj.)**

4 **2017 (52) S.T.R. 217 (Guj.)**

not by Shri K. Surendran Nair. Learned counsel further submitted that the transportation of Goods by road were not taxable, hence the amount received towards the aforesaid service was not included in the taxable value while paying the Service tax. The amount reflected as "Transportation and Hiring" receipts in the books was received for these service of „Transportation of Goods“ provided by the Appellant. The finding of the Commissioner in para 11.1 "that the amount shown as Transportation and Hiring receipts in the Profit & Loss Account is a consideration towards a „taxable service“ is not sustainable and liable to be set aside. He submitted that the appellant was working in the capacity of Sub-Contractor for Tecpro systems and providing the Works Contract Service. Further, Tecpro Systems Limited as the main contractor paid tax on the whole transaction. The demand of service tax against the Appellant on the aforesaid consideration would amount to double taxation which is not legal and proper. Thus, the demand on the consideration received from Tecpro systems is not sustainable. Learned counsel submitted that as service tax had already been paid by Tecpro Systems Limited on the entire transaction, the appellant was under the bonafide belief that they are not liable to pay any service tax for the services provided. Reliance, in this regard, was placed on: -

- **M/s Mammen Engineering Works Vs. Commissioner, Central Excise & Customs Raipur⁵**
- **Vishal Engineering Vs. Commissioner of Central Excise and Service Tax, Panchkula⁶**

5 **2019 (8) TMI 1027 CESTAT NEW DELHI**
6 **2023 (9) Centax 154 (Tri. - Chan.)**

- **Vinoth Shipping Services Vs. Commissioner Of C. Ex. & S.T., Tirunelveli⁷**

3.5 Learned counsel submitted that the appellant was providing the Works Contract Services to various clients including Tecpro Systems Limited. Rule 2A of the Service Tax (Determination of Value) Rules, 2006 provides for discharging the service tax at the abated value after giving the benefit of value of material. The Appellant had discharged the service tax liability at the abated rate as prescribed in Rule 2A. Notification 30/2012 dated 20.06.2012 provided for partial reverse charge mechanism for payment of service tax, as per rule 2A. Learned counsel contended that there was suppression on part of the appellant as the appellant was regularly paying the service tax and filing the ST-3 returns. Learned counsel relied on the following cases:

- **Johnson Matthey Chemical India P. Ltd. versus Commissioner Of C. Ex, Kanpur⁸**
- **Aneja Construction versus Commissioner of Service Tax⁹**
- **Central Warehousing Corporation versus Commissioner of Service Tax, Ahmedabad¹⁰**

He prayed that the impugned order may be set-aside.

4. Learned Authorized Representative submitted that the Adjudicating Authority vide Order-in-Original dated 28.05.2020 has held that there was no legal provision available to consider the service tax paid in a wrong registration code to a correct registration code. He further contended that the appellant's claim that they have provided services of Transportation of goods which is exempted under Section 66D(p) of the Act has not submitted any documentary evidence.

7 2021 (55) GSTL 313 (Tri. - Chennai)
 8 2014 (34) S.T.R. 458 (Tri. - Del.)
 9 2013 (32) S.T.R. 458 (Tri. - Ahmd.)
 10 2016 (41) S.T.R. 106 (Tri. - Ahmd.)

Further, the claim of the Appellant of being a sub-contractor of works contract on consideration received from **M/s Tecpro Systems Limited** was not legal in view of the Tribunal's order in **Commissioner of Service Tax versus M/s Melange Developers Pvt. Ltd¹¹**. Certain deductions/abatement claimed by the appellant were denied as the appellant did not produce any evidence in support of their claim. Learned Authorized Representative submitted that the Adjudicating Authority had correctly confirmed the demand of Service Tax along with interest and penalties as proposed in the show cause notices. The contention of the appellant raised in the grounds of appeal that partnership firm and partners are not separate entities is legally not tenable.

4.1 Learned Authorized Representative further submitted that the appellant had deliberately failed to obtain the required registration with the Service Tax Department and to discharge the Service Tax liability which establishes the presence of the element of suppression of facts on their part. The fact of rendering taxable service by the Appellant came to the notice of the Department only when the data from Income Tax Authorities was shared, which justifies the invocation of the extended limitation period of five years under the proviso to Section 73(1). The CESTAT Hyderabad in **M/s S.R. Consultancy Services vs Commissioner of Central Tax, Rangareddy¹²** has upheld the extended period in case of suppression of facts, as evidenced here by the appellant's non-disclosure. The appellant's failure to comply with statutory provisions warrants penalties under

11 2020 (33) GSTL 116 (Tri.-LB)

12 2025 (4) TMI-1393-CESTAT Hyderabad

Sections 77 and 78 of the Finance Act, 1994. The deliberate suppression of facts and not obtaining registration as per service tax law, which came to the knowledge of the Department only after data shared by Income Tax Department, justifies penalties, as supported by judicial precedents like **Madras Petro-chem Limited v. Collector of Central Excise**¹³.

5. We have heard the learned counsel for the appellant and the learned Authorized Representative for the Department and perused the records.

6. The two issues before us (i) whether the appellant has paid the service tax due on the provision of services (ii) computation of service tax liability on „Works Contract Service“ and „Transportation of Goods“ services. Learned counsel has submitted before us that the appellant had used the PAN of the partner Shri K. S. Nair at the time of taking registration. However, in this context, we note that the impugned order has held as follows:-

“8.2. The Noticee do not dispute the fact that they have provided the taxable services and that they are liable to pay tax. Section 69 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall obtain a service tax registration (which is granted based on PAN of the applicant). In the instant case, such a service tax registration was already in existence for Shri K. Surendran Nair for the obvious reason that Shri K. Surendran Nair was also providing taxable services for which he was liable to pay service tax. In the written submissions, it has been stated that proprietorship firm of Shri K. Surendran Nair has not provided any taxable services. However, from the documents produced, I find that, contrary to the claim, the Noticee, Shri K. Surendran Nair, has during the period under consideration, also provided taxable services to clients, namely Shree Nakoda Ispat Ltd, Drolia Electrosteels P Ltd, D.B.Corp Ltd, Shivalay Ispat & Power Ltd, API Ispat & Powertech Ltd etc. as is clear from the relevant TDS Form-26AS where payments made to Shri K. Surendran Nair and TDS deducted by these clients are reflected. It is thus clear that the service tax registration

under PAN-ADSPN7217K was consciously obtained by Shri K. Surendran Nair in his own right to discharge his service tax liability.

8.3 It is the Noticee's argument that they have reflected the taxable value and tax payable by them in the service tax returns filed under the PAN- ADSPN7217K of Shri K. Surendran Nair and that this is human error which should be condoned. As noted earlier, the identity of a partnership firm and that of an individual are separate and distinct; and the argument of human error here does not hold good particularly when the individual concerned is also engaged in providing taxable services on his own. I therefore, unable to convince myself to accept such argument of condonable human error in the facts and circumstances of this case."

7. In this context, our attention has been drawn to Board's Circular No. 58/07/2003-CX (ST) dated 20.05.2003 that in case the incorrect service code is mentioned, the Department would sort the same out with the office of the PAO. In the instant case, we find that the service tax was paid by one of the partners on behalf of the appellant. It is an admitted fact that service was provided by the appellant and service tax was paid using the service tax registration of the partner Shri K. S. Nair. In this context, we note that Section 4 of the Partnership Act, 1932 which defines Partnership partner, firm and firm name reads as under:-

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm"

8. In the above context, we find that the Gujarat High Court in **Commissioner of Central Excise & Service Tax, Surat-II** versus **Mohammad Farookh Mohammad Ghani (supra)** held as follows:-

"5. As can be seen from the order of Commissioner (Appeals), Commissioner (Appeals) after appreciating the

evidence on record, has held that merely because the respondents had paid duty before the issuance of show cause notice would not absolve the respondents from the liability of removing the goods without payment of duty. However, considering the fact that the duty had been deposited prior to issuance of show cause notice, Commissioner (Appeals) was of the view that the same could be considered as a mitigating factor for reducing the penalty and accordingly, reduced the penalty imposed on the partnership firm from Rs. 4,00,000/- to Rs. 50,000/-. Insofar as the penalty imposed on the partners, namely, respondents herein is concerned, Commissioner (Appeals) after placing reliance upon various decisions of the Tribunal, was of the view that there was no justification for imposition of separate penalties on partnership firm as well as the partners."

9. In some what similar circumstance, the Tribunal in **Commissioner of Central Excise & Service Tax, Bhopal** versus **K.**

K. Kedia¹⁴ held as follows:-

"3.....Admittedly, the Service Tax was wrongly deposited in a wrong code belonging to partnership firm which was dissolved at the relevant time. As such, it is a mistake on the part of the respondents which is required to be rectified and the amount deposited in the partnership firm is required to be adjusted in the assessee"s registered code."

10. As observed by the Gujarat High Court in **Commissioner of Central Excise Vs. Jai Prakash Motwani (supra)** that there is no provision in the central excise law which treats a partnership firm as a separate excisable entity from its partners. Admittedly, a partner is not a separate legal entity and cannot be equated with the employees of a firm..... "

11. In view of the settled position of law, we hold that payment of service tax by the partner can be adjusted against the liability of the firm. However, the tax liability of Shri K. S. Nair for any services provided by his proprietorship firm would also have to be taken into account.

12. We now take up the second issue for consideration. As regards the demand on transportation of goods by road, we note that the impugned order has held that the appellant did not provide any details of receipt under this head. Hence, the demand has been confirmed. The appellant has submitted some documents which are required to be examined by the adjudicating authority. As regards their work as sub-contractor to main contractor M/s Tecpro systems, we find that the liability of the sub-contractor to pay service tax has been decided by this Tribunal in the case of **Commissioner of Service Tax versus M/s Melange Developers Pvt. Ltd (supra)**. The relevant para is reproduced hereinafter:-

"29. The submission of the Learned Counsel for the Respondent regarding „revenue neutrality“ cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

Hence, the liability of the appellant to pay service tax is upheld.

13. We now turn to the issue of abatement claimed by the appellant. The impugned order has rejected the reconciliation statement observing certain inconsistencies in their manner of calculation of tax as enumerated in para 11.3 of the impugned order. The appellant has

submitted copies of payment documents work orders, invoices/bills, challans etc. However, it would be appropriate that these documents are examined by the adjudicating authority. Therefore, it would be appropriate to remand this issue to the adjudicating authority for fresh consideration.

14. In view of the above discussions, we hold as follows:-

(i) The payment of service tax under Shri K. Surendran Nair's PAN is allowed and same should be adjusted against the liability of the appellant.

(ii) The demand on the services provided by the appellant as a sub-contractor is upheld.

(iii) As regards the computation of the demand on „Works Contract Service“ and „Transportation of Goods“, we remand the matter to the original authority to consider the issue giving an opportunity to the appellant to submit all the relevant documents in support of their contention.

15. The impugned order is upheld as extent indicated in Para 14 (ii) above. The appeal is partly allowed as indicated in Para 14 (i). As regards computation of demand, the same is remanded to the original authority for re-consideration.

(Order pronounced in the open Court on 02.02.2026)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.