

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 54328 of 2015 [DB]

[Arising out of Order-in-Original No. 24/ST/SVS/DL-III/2015 dated 21.07.2015 passed by the Commissioner of Service Tax, Delhi-III]

Commissioner of Service Tax - Delhi III

...Appellant

Block-11, 7th Floor,
CGO Complex, Lodhi Road,
Central New Delhi - 110003

VERSUS

M/s. Globe Civil Projects Pvt. Ltd.

...Respondent

31, Sarojini Nagar Market,
Sarojini Nagar, New Delhi - 110023

APPEARANCE:

Shri S.K. Meena, Authorized Representative for the Appellant
Shri B.L. Narasimhan and Shri Ashutosh Choudhary, Advocates for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 06.11.2024
DATE OF DECISION: **03.03.2025**

FINAL ORDER No. 50356/2025

DR. RACHNA GUPTA

The present order disposes off the appeal filed by the Revenue Department assailing the Order-in-Original bearing no. 24/2015 dated 21.07.2015. The facts relevant for the adjudication, succinctly, are as follows: -

1.1 M/s Globe Civil Projects Pvt. Ltd., the Respondents, (herein after referred as GCPL) are registered for providing "Commercial or Industrial Construction Service", "Construction of Complex Service" and "Works Contract Service". The anti- evasion branch of service tax Commissionerate, Delhi initiated the investigation against GCPL

based on the Intelligence that the respondent GCPL had not paid due service tax on taxable service relating to 'Construction of Commercial or Industrial building and civil structure and 'Works Contract'. After several reminder, the department received documents from respondent / GCPL vide letter dated 8.1.2014 and 30.1.2014 for the Financial Year 2012-13 to Financial Year 2018-19. From scrutiny of these documents, it was observed that respondent has provided construction services to the following parties:

- (i) Indian Institute of Management, Noida (IIM, Noida)
- (ii) Consulting Engineer Association of India Limited (CEAI)
- (iii) Construction of residence for Mr. Manish Arora
- (iv) Civil work of residence of Mr. Anuj Dandone
- (v) Project at Sirifort Auditorium
- (vi) Belgravia – II project at Central Park-II, Sec-48, Gurgaon.
- (vii) AVA Court commercial complex at Malibu Towers Gurgaon
- (viii) School building for Birla Edutech Limited.

1.2 It was observed that the respondent had not paid service tax on the contracts mentioned at Serial No. (i) to (v) above. It was also observed that respondent had paid service tax under "Works Contract Service" (WCS) for the services provided for Execution of the Contracts mentioned above.

1.3 The department formed the opinion as follows: -

- (i) The respondent had charged service tax for providing construction service to Consulting Engineer Association of India Ltd. (CEAI) but intentionally categorized the said projects as non-taxable with an intention of tax evasion.

(ii) Indian Institute of Management, Noida (IIM), since charges a hefty amount as fee from their student which is similar to the fee charged by other institute providing the similar courses the IIM Noida is therefore engaged in commercial activities.

(iii) With respect to construction work for residents of Mr. Manish Arora and Mr. Anuj Dandone and for project at Sri Fort Auditorium, the benefit of exemption from payment of service tax was not available to the assessee-respondent suo moto and the assessee-respondent is liable to pay service tax on the gross billed / receipt amount on account of aforementioned contract.

(iv) The respondent paid service tax under Composition Scheme of Work Contract Service on account of services provided to M/s Sweta Estates Private Limited for Civil & structural works of three towers (tower 24-26) at Belgravia -II project at Central Park-II, Sector 48, Sohna Road, Gurgaon. Whereas, on scrutiny of Letter of Intent dated 13.06.2011 (RUD-13) assessee-repondant is found to have received free of cost material from the contractee for execution of the said contract. Whereas, on scrutiny of ST-3 returns as submitted by the assessee-respondant, during the course of investigation, it appears that they had not included the value of free supplies in gross amount for the purpose of computation of service tax under Composition Scheme of Works Contract Service. Whereas, despite of repeated requests, the assessee did not made available copies of agreement with BOQ, running account bill, invoices, etc. with reference to aforementioned project.

(v) With respect to AVA Court commercial complex at Malibu towers Gurugram and school building at Birla Edutech Limited department observed that the services provided were taxable under Construction of Commercial or Industrial Complex' Service, "and or "Works Contract Service" as the case may be.

1.4 Based on the above observations the department alleged as follows: -

(i) The exemption from payment of service tax under notification no. 25/2012-ST dated 20.06.2012 is available only when the

construction services are provided to the Government or the Government authorities however, none of the service recipients fall under any of the said categories. Hence the exemption is wrongly availed by the assessee respondent.

(ii) The abatement under the composition scheme has also been wrongly availed as per notification no. 1/2006-ST dated 1.3.2006 for the reason that M/s Sweta Estates Pvt Ltd, the recipient of the respondent GCPL, had provided free of cost material to the assessee GCPL and restricted their effective control over the wastage of such material supplied. Also, the conditions of work contract composition scheme for payment of service tax rules 2007 were not complied with.

(iii) The respondent GCPL received "Secured Advance" and "Advances from Customer" for execution of construction activities under heading "Current Liabilities" which were nothing but the taxable amount for which no tax were paid by the respondent.

(iv) GCPL – respondent also incurred freight expenditure under the head "Freight and Cartage Expenses which were taxable under "Goods Transport Agency" but the tax was not paid by the appellant.

1.5 With these allegations, the service tax amounting to Rs. 15,90,60,547/- has been demanded from the respondents along with the interest and the penalties vide show cause notice no. 789/2012/6687 dated 22.04.201. The order in original bearing no. 24/2015 dated 21.07.2015 however has set aside the major amount of the said demand except the demand of Rs. 22,661/- of service tax on 'Good Transport Agency Service' has been confirmed. The interest of Rs. 15,909/- has also been confirmed. The respondent-assessee has not challenged the confirmed portion of the demand. However, the department has filed the impugned

appeal in furtherance of the review order no. 36/2015-16 dated 20.11.2015.

2. We have heard Shri S.K. Meena, learned Authorized Representative for the department and Shri B.L. Narsimhan and Shri Asuhtosh Choudhary, learned Advocates for the respondent.

3. Learned Authorized Representative for the department has submitted that the adjudicating authority below has committed a grave error while setting aside the substantial amount of service tax as was proposed in the impugned show cause notice. It is further submitted that IIM and CEAI are wrongly denied to be commercial concerns. The nature and working of these institutes has been absolutely ignored by the adjudicating authority. In case of **M/s Sweta Estate Pvt Ltd.** the value of free of cost material supplied by the service receipt has been wrongly included in the gross taxable value. In respect of **M/s AVA Builders Pvt. Ltd.** and **M/s Birla Edutech Ltd.** also the adjudicating authority has erred in dropping the demand on account of non-inclusion of the value of material used in the gross value for the purpose of service tax as per the legal provisions contained in the explanation to the Clause 3(1) of Notification No. 32/2007-ST dated 22.05.2007 read with Notification No. 23/2009-ST. Learned Authorized Representative also submitted that the demand of service tax on the amounts received as advance is wrongly dropped by observing that most of the said amounts were relating to the construction activities which were outside the scope of the construction of commercial complexes or of the residential complexes without discussing the

nature of work as well as legal provisions under which the same were exempt. Learned Departmental Representative has relied upon the decisions of this tribunal in the case of **ABL Infrastructure Ltd. vs. Commissioner of Central Excise Customs and Service Tax Nasik reported as 2018 (11) G.S.T.L 106 (Tri.Mum)**. With these submissions the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting the submissions, learned Counsels for the respondent-assessee have submitted that the SCN is vague as the demand of service tax proposed under three different categories of services for one single activity is not sustainable.

4.1 It is submitted that during the period prior to 01.07.2012, the charge of Service Tax was on various categories of taxable services referred to in Section 66 read with Section 65(105) of the Act with specific definitions thereof. It is settled position that if the services rendered by the assessee were appeared to be classifiable under more than one service, the Department should indicate the service under which entire activity rendered by the assessee need to be proposed. The SCN is vague as it does not provide the specific category of service under which the Department had proposed to classify the service rendered by Respondent during the period prior to 01.07.2012.

4.2 Learned Counsels relied upon following decisions: -

- **Central Registry of Securitisation, Asset Reconstruction and Security Interest of India**

(CERSAI) vs. Principal Commissioner CGST, South, Delhi, 2023 (4) TMI 435 – CESTAT New Delhi;

- **Ess Gee Real Estate Developers Pvt. Ltd. vs. Commr. of C.Ex., Jaipur, 2020 (34) G.S.T.L. 486 (Tri.-Del.) affirmed by the Hon'ble Supreme Court in Commissioner vs. Ess Gee Real Estate Developers Pvt. Ltd., 2020 (34) G.S.T.L. J93 (S.C.); and**
- **CMS India Operation and Maintenance Company Pvt. Ltd. vs. Commissioner of Central Excise, Puducherry, 2017 (2) TMI 65-CESTAT Chennai.**

4.3 It is further submitted that construction services provided to IIM, DDA and CEAI were not for commercial concerns and thus are not classifiable under 'Commercial or Industrial Construction Service', 'Construction of Complex Service' and 'Works Contract Service'.

4.4 Learned Counsels made a reference to Circular No. 80/10/2004-S.T. dated 17.09.2004, wherein it was clarified in para 13.2 thereof that the leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or is to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature."

4.5 In the present case, it is submitted that construction activities undertaken by the Respondent for IIM, DDA, CEAI are not taxable under 'Commercial or Industrial Construction Service' or 'Works Contract Service' for the reason that the said construction activities were carried out for not-for-profit organizations and constructed buildings were not primarily used for commerce or industry. The building for these institutes were otherwise used for educational purposes.

4.6 Reliance is also placed on the following decisions wherein it was held that construction activity with reference to non-commercial buildings is not susceptible to Service tax:

- **Jyoti Sarup Mittal vs. Commissioner of Central Tax, Delhi-East, 2024-VIL-61-CESTAT-DEL-ST;**
- **Jatan Constructions P. Ltd. vs. C.C.E., Jaipur-II, Service Tax Appeal No.ST/60249/2013-CU[DB], Final Order No. 58135/2017 dated 21.11.2017 Upheld by the Hon'ble Rajasthan High Court in Commissioner of Central Goods and Service Tax, Jaipur vs. Jatan Construction Private Limited, 2018 (8) TMI 629 – Rajasthan High Court;**
- **URC Constructions Private Limited vs. Commissioner of CGST & Central Excise Salem, 2024-VIL-977-CESTAT-CHE-ST;**
- **Aakriti Construction vs. Commissioner of Central Excise & Service Tax, Jaipur-I, 2019(6) TMI 866 – CESTAT New Delhi;**
- **Modern Engineering Constructions vs. Commissioner of Central Excise, Tirunelveli, 2018(7) TMI 90 – CESTAT Chennai;**

4.7 Similarly, the construction of stadium at Sri Fort Complex was not taxable as this stadium was to be used by the government for holding the commonwealth games and not for generating any profit. Stadium is otherwise a public facility used for the public

recreation. **Above all the demand on the said activities was subject matter of earlier show cause notice no. 199/2011-13 dated 17.7.2012 with respect to which it was held that no service tax was payable on construction of indoor sport stadium for conducting common wealth games i.e. non-commercial construction.**

4.8 Learned counsels for appellant further submitted that the construction of private residences is outside the ambit of service tax hence the demand has rightly been set aside. The Hon'ble Supreme Court decision in case of **Commissioner of Service Tax, Chennai vs Macro Marvel Projects Ltd. reported as 2012(25) STR J154SC** has been relied upon. Learned Counsels also referred to the decision in the case of **Bhayana Builders(P) Ltd. vs. CCE, Delhi, 2013 (32) STR 49 (Tr-LB)**. **The said decision was affirmed by the Hon'ble Supreme Court in 2018 (10) G.S.T.L. 118 (S.C.)** mentioning that the issue is no longer res integra that the value of free of cost material is not includible in the value of gross amount charged for payment of service tax. It is also impressed upon that the demand on "Advances and Miscellaneous income" has also been rightly set aside being solely based on the figures in the balance sheet . With these submission no infirmity viz-viz the drop of demand is apparent in the order under challenge. The appeal filed by the department is therefore prayed to be dismissed.

5. Learned Departmental Representative on the other hand has reiterated the findings of the impugned order and prayed for dismissal of appeal.

6. Having heard the submissions of both the parties, the rival contentions and perusing the record, we observe that the impugned show cause notice proposed the demand of service tax of Rs. 15,90,60,547/- along with interest and penalties on following issues:

- Non-payment of Service tax on construction services provided to IIM, DDA, CEAI, Mr. Manoj Arora and Mr. Anuj Dandone;
- Short payment of Service tax on construction services provided to Sweta Estates Private Limited, AVA Builders Pvt. Ltd. and Birla EduTech Limited.
- Non-payment of Service tax on 'Advances' and 'Miscellaneous Income' shown in balance sheet; and
- Non-payment of Service tax on 'Freight and Cartage Expenses' shown in balance sheet;

6.1 We further observe that the impugned order has held as follows:

- **IIM:** In respect of Construction Services rendered to IIM, it has been observed that Certificate 80G was issued by Income Tax Authorities. Accordingly, it was held that IIM was a non-profit organization, thereby not being in the nature of a commercial concerns. Therefore, construction activities undertaken by Respondent for IIM were outside the purview of Construction of Complex Service.
- **CEAI:** In respect of Construction Services rendered to CEAI, it has been observed that Memorandum of Incorporation of CEAI under Section 25 of the Companies Act 1956 suggests that CEAI is a non-profit organization, thereby not being in the nature of a commercial concerns. Therefore, construction

activities undertaken by Respondent for CEAI were outside the purview of Construction of Complex Service.

- **DDA:** In respect of Construction Services rendered to DDA, it has been observed that the activities were subject matter of earlier Show Cause Notice No. 199/AE/Gr.12/2012-13 dated 17.07.2012 and Show Cause Notice No. 256/Div-1/2012-13 dated 23.10.2012, which were adjudicated by a common Order-in-Original No. 61-62/GB/2013 dated 31.03.2013 holding that no service tax was payable on construction of Indoor Sports Stadium for conducting Common Wealth Games i.e., non-commercial construction. The said position is also clarified vide Circular No. 80/10/2004-S.T. dated 17.09.2004. Therefore, it has been held that there is no taxability on the construction activities undertaken for DDA.
- **Mr. Manish Arora and Mr. Anuj Dandone:** In respect of Construction Services rendered to Mr. Manish Arora and Mr. Anuj Dandone, it has been observed that the construction was undertaken in respect of standalone 'single' residential building prior to 2012. Therefore, it has been held that the said services were outside the purview of construction of residential complexes. Further, it has been observed that proper documents were submitted to support the claim that a single residential unit was constructed by the Respondent.
- **AVA Builders Pvt. Ltd. and Birla Edutech Limited:** In respect of Construction Services rendered to AVA Builders Pvt. Ltd. and Birla Edutech Limited, it has been observed that there is no provision w.r.t. supply of free of cost ('FOC') material by the service recipient. Therefore, it has been held that the SCN was issued without verifying the correct facts.
- **M/s Sweta Estates Private Limited:** In respect of Construction Services rendered to Sweta Estates Private Limited, it has been held that the value of free of cost ('FOC') material was not required to be included towards value of

taxable services in view of Larger Bench decision in the case of Bhayana Builders Pvt. Ltd. vs. Commissioner of Service Tax Delhi, 2013 (32) S.T.R. 49 (Tri.-LB).

- **Advances:** In respect of the Advances shown in the balance sheet, it has been observed that out of the total amount received as advances by the Respondent from customers, certain advances were in respect of the construction activities which in itself outside the purview of Service tax, resultantly, it has been held that said advances were also not liable to Service tax. With respect to advances pertaining to taxable construction activities, it has been held that the service tax was paid at the time of adjustment of such advances towards construction services and not on the date of receipt of such advances, therefore, interest liability of Rs. 15,909/- accrues in respect of such payment.
- **Miscellaneous Income:** In respect of the Miscellaneous Income shown in the balance sheet, it has been held that the said income was in the nature of the amount of the creditors which have not been claimed and security deposits received by the Respondent. Therefore, the said income was not related to any taxable activity and hence, no demand is sustainable on Miscellaneous Income.

6.2 We have perused the Circular No. 86/4/2006-S.T. dated 01.11.2006, as brought to our notice, wherein it was clarified that *"a commercial concern is an institution/establishment that is primarily engaged in commercial activities, having profit as the primary aim. It is not one/few isolated activities which determine whether or not an institution is a commercial concern. It is the totality of its activity and the objective of its existence that determines the commercial nature of an institution as an 'entity' or*

*a 'concern'. The principal activity of institutes like IITs or IIMs is to impart education without the objective of making profit. Therefore, **these institutes cannot be called a commercial concern**, even if on some of their activities (like holding campus interviews), they charge fee."*

6.3 Thus, it is clear that IIMs are not-for-profit educational bodies and not in the nature of commercial concerns. It is submitted that services in relation to the construction of Noida campus for IIM, Lucknow were carried out for not-for-profit organization and constructed buildings were not primarily used for commerce or industry. Hence, the impugned services are not covered under 'Commercial or Industrial Construction Service' or 'Works Contract Service'.

6.4 We draw our support from the decision in the case of **Banna Ram Choudhary Vs. Commissioner of Central Excise, Jaipur, 2017 (3) G.S.T.L. 338 (Tri.-Del.)**, wherein it was held that buildings used for educational purpose by recognized educational institutions cannot be categorized as 'commercial buildings', and the construction thereof is not leviable to Service tax under 'commercial or industrial construction service'.

6.5 Similarly Delhi Development Authority (DDA) is observed to be a statutory body established under Delhi Development Act, 1957 (DDA Act) with the primary objective to promote and secure the development of Delhi as stated in Section 6 of the DDA Act. It is an autonomous body which reports directly to the Ministry of Urban Development, Government of India. Hence, construction of Indoor Stadium at Siri Fort Sport Complex was for being used by the

Government for holding Commonwealth Games and not for generating any profit from the same. It was a non-commercial project, and the construction was undertaken for national interest. Above all, it is submitted that the stadium is a public used for the recreation of the public. Thus, it cannot be said that construction services were used by DDA primarily for commerce or industry.

6.6 Further consulting Engineering Association of India Limited (CEAI) is incorporated under Section 25 of the Companies Act, 1956 as a 'not-for-profit' company as stated in Preamble of Memorandum of Association (MOA) of CEAI. Clause 5.0 of MOA of CEAI stipulates that *"all the income, earnings, movable, immovable properties of the Association shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the Memorandum of Association. No profit thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members of the Association who shall have no personal claim on any moveable or immoveable properties of the Association or make any profits whatsoever by virtue of his membership."*

6.7 Thus, it is clear that CEAI also is a 'not-for-profit' organization and not in the nature of commercial concerns. It is submitted that construction services of Secretariat Building for CEAI were carried out for a not-for-profit organization and constructed buildings were not primarily used for commerce or industry. Hence, the impugned services are not covered under 'Commercial or Industrial Construction Service' or 'Works Contract Service'.

6.8 Above all onus is on department to establish that the building was being used for such purposes by which the organization using the same was making profit. We draw our support from the decision in the case of **Manisha Projects Pvt. Ltd. Vs. Commissioner of Central Excise & S.T., Ghaziabad reported as 2019 (3) TMI 448 – CESTAT Allahabad.** In view of above discussions, it is held that construction services provided to IIM, DDA and CEAI are not taxable under 'Commercial or Industrial Construction Service', 'Construction of Complex Service' or 'Works Contract Service'. Thus, the impugned demand is not sustainable.

6.9 Coming to the construction activities pertaining to private residence of Shri Manish Arora and Shri Anuj Dandone were outside the ambit of Service Tax, it is held that the impugned services are not covered under sub-clause (a) to Section 65(25b) and sub-clause (ii)(b) of the Explanation to Section 65(zzzza) of the Act, therefore, not taxable under 'Commercial or Industrial Construction Service' or 'Works Contract Service'.

6.10 Further, as per sub-clause (a) of Section 65(30a) of the Act defined 'Construction of Complex Service' to mean construction of a new residential complex or a part thereof. Similarly, sub-clause (ii)(c) of the Explanation to Section 65(zzzza) of the Act defined 'Works Contract Service' to mean a contract for construction of a new residential complex or a part thereof. For this purpose, the term 'Residential Complex' has been defined under Section 65(91a) of the Act to mean 'a building or buildings, having more than twelve residential units. In turn, the 'Residential Unit' has been defined under Section 65(91a) to mean a single house or a single

apartment intended for use as a place of residence. Thus, construction activities must be carried out for buildings having more than twelve (12) residential units to be covered under sub-clause (a) of Section 65(30a) and sub-clause (ii)(c) of the Explanation to Section 65 (zzzza) of the Act.

6.11 In the present case, the respondent had undertaken the construction of single residential unit for Shri Manish Arora and Shri Anuj Dandone, which cannot qualify as 'residential complex' as defined under Section 65(91a) for the purpose of sub-clause (a) of Section 65(30a) and sub-clause (ii) (c) of the Explanation to Section 65(zzzza) of the Act. Thus, impugned services are not covered under 'Construction of Complex Service' or 'Works Contract Service'. We rely upon the decision in the case of **Macro Marvel Projects Ltd. Vs. Commissioner of Service Tax, Chennai reported as 2008 (12) S.T.R. 603 (Tri.-Chennai)** affirmed by the Hon'ble Supreme Court in **Commissioner Vs. Macro Marvel Projects Ltd. reported as 2012 (25) STR J154 (SC)**.

6.12 Coming to the issue of construction services provided to Sweta Estates Private Limited, AVA Builders Pvt. Ltd. and Birla Edutech Limited, we observe that the issue is no longer res integra as the value of free of cost material is not includible in the value of gross amount charged for payment of service tax. The value of free of cost material supplied by M/s. Sweta Estates Private Limited (service recipient) to the Respondent (service provider) was not required to be included in the assessable value for determination of service tax liability as it does not form part of the value charged by the service provider for rendering the services. The value of free of

cost material is neither an amount 'charged' by the service provider, nor a 'consideration' paid by the service recipient. The issue is no longer res integra in light of the larger bench decision in the case of **Bhayana Builders (P) Ltd. Vs. CCE, Delhi reported as 2013 (32) STR 49 (Tri.-LB)**. The said decision was affirmed by the **Hon'ble Supreme Court in 2018 (10) GSTL 118 (SC)**.

6.13 The Service tax demand on 'advances' and 'miscellaneous income' shown in the balance sheet is with respect to the advances received during relevant period includes the amount in respect of the construction services provided to IIM, DDA, CEAI, Shri manish Arora and Shri Anuj Dandone which in itself outside the purview of service tax. Accordingly, said advances were also not liable to service tax. Also the amount declared as 'miscellaneous income' in the balance sheet during 2009-10 to 2011-12 was not pertaining to any taxable services. The said amount pertained to the unclaimed amount by the creditors and security deposits received by the respondent. The said facts are not in dispute in the present appeal. Thus, the impugned demand of service tax on 'miscellaneous income' is not sustainable.

6.14 With respect to service tax demand on 'freight and cartage expenses' that amount shown as 'Freight and Cartage Expenses' in the balance sheet consists of expenditure towards cartage, transportation and pumping charges, transportation charges, insurance and car policy, side expenses and freight charges. The amount shown as a 'cartage' is related to payments made to the supplier of the goods which included the transportation cost. Transportation and pumping charges are in respect of pumping of

ready-mix concrete (RMC) material for construction activity. The aforesaid expenses also include expenses towards insurance and car policy and site expenses (payment made to cab supplier). The said amount/expenses/charges were not paid by the respondent directly to the transporter for transportation of any goods. Thus, the said activity cannot be covered under GTA Services, hence, no service tax liability can be levied on the aforesaid amount/expenses/charges under GTA services.

6.15 Finally we observe that the respondent was maintaining all the records and reflecting the same in the books of account as also in the balance-sheet in the present case. The demand was proposed basis the records of the respondent's data shown in the balance sheet. Thus, suppression cannot be alleged.

6.16 Further it is submitted that the respondent was under the *bona fide* belief that it was not liable to pay service tax in the alleged manner. The respondent followed a reasonable and correct interpretation of law. Therefore, the respondent cannot be alleged to have suppressed fact with the malafide intention. We draw our support from the decision in the case of **GD Goenka Private Limited Vs. Commissioner of Central Goods and Service Tax, Delhi South reported as 2023 (8) TMI 995 – CESTAT New Delhi** and **CCE & Customs Vs. Reliance Industries reported as 2023 (385) ELT 481 (SC)**. Also the department was fully aware of the activities of the respondent and had issued earlier show cause notices on 17.07.2012 and 23.10.2012. Thus, subsequent SCN for the same period could not be issued invoking extended period of limitation. In this regard, reliance is place on **J.K.**

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Alwar reported as 2023 (70) GSTL 297 (Tri.-Del.).**

Resultantly, no interest is recoverable and no penalties are imposable.

7. In view of the above observations, we uphold the order under challenge. Consequent thereto, appeal filed by the department is accordingly dismissed.

[Order pronounced in the open court on **03.03.2025**]

**(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**

HK