IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 51848 of 2024

(Arising out of Order-in-Original No. 100-107/Commr/Delhi East/AP/2022 dated 18.08.2022 passed by the Commissioner of Central Tax, Delhi East, C.R. Building, I.P. Estate, New Delhi – 110 002)

M/s. Twenty Four Guarding Private Limited **: Appellant**
5 Mathura Road, Jangpura-A,
New Delhi – 110 014

VERSUS

Commissioner, Central Goods & Service Tax **: Respondent**
Delhi (East), C.R. Building, IP Estate,
New Delhi – 110 002

APPEARANCE:

Shri Anurag Mishra, Advocate,
Ms. Sanya Bhatia, Chartered Accountant,
For the Appellant

Shri Rajeev Kapoor, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51353 / 2026

DATE OF HEARING: 04.05.2026
DATE OF DECISION: 20.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

1. The present appeal has been preferred by M/s. Twenty Four Guarding Private Limited, having its registered office at 5, Jangpura-A, Mathura Road, New Delhi – 110014 (hereinafter referred to as "the appellant"), assailing the common Order-in-Original No. 100-107/Commr/Delhi East/AP/2022 dated 18.08.2022, passed by the Commissioner, C.G.S.T., Delhi East, whereby the proceedings arising out of

eight Show Cause Notices/Statements of Demand, covering the period from Financial Year 2005-06 to Financial Year 2017-18 up to June, 2017, were adjudicated together and Service Tax/CENVAT credit liabilities aggregating to Rs.60,00,93,724/-, together with applicable interest and various penalties thereon, were confirmed against the appellant, except to the extent of certain amounts appropriated/dropped upon verification of payments made by it.

2. The facts of the case are that the appellant is engaged in the business of providing Security Agency Services, falling under the applicable provisions of Section 65(105)(w) of the Finance Act, 1994, and had obtained service tax registration under STC No. AABCV0898FSTOO, with the registration particulars dated 10.09.2007. The appellant was operating its security-service business on a pan-India basis through various branch offices, including establishments at Noida, Gurgaon, Sonepat, Chandigarh, Ludhiana, Mumbai and Bangalore, while the Service Tax registration was initially associated with its premises at Jangpura, Delhi. The Department subsequently took the view that the appellant ought to have obtained appropriate registration particulars in respect of the various places from which it was carrying on its taxable activities.

3. The proceedings originated from a Service Tax audit conducted between 14.03.2011 and 05.04.2011 under Rule 5A of the Service Tax Rules, 1994, covering the period 2005-06 to 2009-10. During the course of such audit, the Department examined the books of account and other records of the appellant and, on the basis of the material so examined, raised various objections concerning the appellant's taxable

receipts, disclosures in its financial records, availment of exemptions and alleged availment/utilisation of CENVAT credit.

3.1. According to the Department, the appellant had failed to discharge its appropriate Service Tax liability on the gross income reflected under the head "Security & Professional Charges" in its Profit & Loss Accounts. The Department also took exception to the appellant's disclosures concerning its business model and the manner in which the expenditure reflected in its accounts had been described. It was alleged that the appellant had initially indicated that it had undertaken/sub-contracted certain security operations and had utilised CENVAT credit, whereas scrutiny of the ledger accounts disclosed that the expenditure was overwhelmingly attributable to salary payments, with no corresponding expenditure towards sub-contracting of security operations. The appellant is subsequently found to have clarified that it had neither actually sub-contracted the operations nor maintained CENVAT accounts in the manner earlier indicated.

3.2. The appellant's claim with regard to services rendered to units situated in Special Economic Zones (SEZs) was also scrutinized, subsequent to which the Department alleged that the exemptions claimed in this regard were not duly substantiated. According to the investigation, valid SEZ-related services were identifiable in respect of M/s. HCL Technologies during Financial Years 2008-09 and 2009-10, whereas services claimed in relation to M/s. Genpact Infrastructure commenced only from 11.08.2010, i.e. outside the audit period. It was also alleged that Service Tax had, in fact, been charged and collected by the appellant in respect of services provided to M/s. IFFCO Kisan SEZ during the period under audit. On this basis, the Department alleged that the appellant had made incorrect declarations regarding exempt services and had suppressed relevant financial particulars.

4. The Department further entertained the view that, notwithstanding the appellant's claim of having utilised CENVAT credit towards discharge of service tax liability, such credit was not supported by the requisite statutory documents, including input-service invoices and CENVAT records. It was consequently alleged that the credit claimed was doubtful and incapable of verification. The cumulative allegation was that the appellant had failed to disclose its complete financial and operational particulars, had carried on taxable activities from various unregistered premises, had failed to discharge the correct Service Tax liability and had thereby suppressed material facts with intent to evade payment of Service Tax.

5. The aforesaid audit proceedings culminated in the issuance of Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011 covering the period from Financial Year 2005-06 to Financial Year 2009-10 (hereinafter, for the sake of convenience, referred to as "SCN-I"), proposing, inter alia, recovery of service tax on the taxable receipts alleged to have been suppressed by the appellant, together with applicable interest and penalties. The issues arising from the said notice constituted the foundational basis of the subsequent proceedings. Thereafter, on substantially similar allegations and on the basis of the same broad set of alleged contraventions concerning non-disclosure of taxable receipts, non-

filing/non-compliance with statutory requirements, availment of disputed exemptions and CENVAT credit, and alleged suppression of material particulars, proceedings were initiated in respect of the subsequent periods up to Financial Year 2017-18 (April 2017 to June 2017). Such proceedings culminated in the issuance of various further Show Cause Notices/Statements of Demand (hereinafter, for the sake of convenience, referred to as "SCN-II", "SCN-III", "SCN-IV", "SCN-V", "SCN-VI", "SCN-VII" and "SCN-VIII"), the particulars whereof are set out below:

Sl. No.	**SCN No. & Date**	**Corresponding Period**	**Demands (INR)**	**Notes / Core Valuation Method**
I.	SCN No. 25/Audit/2011-12 Dated: 21.04.2011	FY 2005-06 to FY 2009-10	Rs.8,04,16,915/- *(inclusive of cesses)*	Demanded on gross "Security & Professional charges" from P&L accounts via an audit setup.
II.	SCN No. 152/Div-1/2011-12 Dated: 20.10.2011	FY 2010-11	Rs.6,23,51,828/- *(inclusive of cesses)*	Section 72 Best Judgment Assessment (assumed 50% pro-rata growth due to non-filing).
III.	SCN No. 263/Div-I/2012-13 Dated: 23.10.2012	FY 2011-12	Rs.9,35,27,741/- *(inclusive of cesses)*	Section 72 Best Judgment Assessment (assumed 50% pro-rata growth).
IV.	SCN No. 183/Div-I/2014-15 Dated: 22.05.2014	FY 2012-13	Rs.16,83,49,934/- *(inclusive of cesses)*	Section 72 Best Judgment Assessment (assumed 50% pro-rata growth).
V.	Demand Cum SCN No. 13/Div-VIII/2016-17 Dated: 28.04.2016	FY 2013-14 and FY 2014-15	Rs.1,68,14,271/- *(Total)* •Rs.1,23,97,840/- *(Exemption)* • Rs.44,16,431/- *(CENVAT)*	Issued under Section 73(1A) for wrong availment of SEZ exemptions and CENVAT credit mismatch.

VI.	Statement of Demand No. 15/2018 Dated: 02.04.2018	FY 2015-16	Rs.19,74,97,900/- *(inclusive of cesses)*	Section 72 Best Judgment Assessment using the highest turnover of the past 4 years (FY 2012-13 data).
VII.	Statement of Demand No. 23/2018-19 Dated: 12.04.2019	FY 2016-17	Rs.1,27,40,568/- *(inclusive of cesses)*	Section 73(1A) periodic demand calculated directly from data shared via the parallel DGGSTI investigation.
VIII.	Statement of Demand No. 40/2019-20 Dated: 13.02.2020	FY 2017-18 *(April 2017 to June 2017)*	Rs.45,21,625/- *(inclusive of cesses)*	Section 72 Best Judgment Assessment based on pro-rated 1/4th of FY 2016-17 data plus 50% growth.

Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011 (SCN-I) – Financial Years 2005-06 to 2009-10

6. The first of the proceedings arose from Show Cause Notice No. 25/Audit/2011-12, issued under C. No. I-26(494)ST/Audit/TFGL/GRAS/150/2010 dated 21.04.2011, covering the period Financial Years 2005-06 to 2009-10. The above Show Cause Notice arose out of a Service Tax audit conducted by the officers of the Service Tax Commissionerate, New Delhi from 14.03.2011 to 05.04.2011, under Rule 5A of the Service Tax Rules, 1994, for the period 2005-06 to 2009-10. During the course of the audit, the Department scrutinised, inter alia, the appellant's financial records, Profit & Loss Accounts, Total Revenue Summary, Financial Data Summary Sheets (FDSS), the "Profile of the Company" furnished by the appellant and other records placed before the audit team.

6.1. Reference was made to the appellant's Company Profile, wherein it had disclosed figures towards CENVAT credit allegedly availed and utilised and had stated that it was sub-contracting its operations and providing qualified and trained security services on a pan-India basis. The Profile also disclosed offices at Delhi, Noida, Gurgaon, Sonepat, Chandigarh, Ludhiana, Mumbai and Bangalore, whereas the service tax registration, according to the notice, covered only the premises at 5, Jangpura, Delhi.

6.2. The Notice also scrutinised the appellant's claims concerning exempt services rendered to SEZ units. The appellant had referred to services provided to M/s. HCL Technologies Limited, M/s. IFFCO Kisan SEZ Limited, Nellore and M/s. Genpact Infrastructure (Bhopal) India Pvt. Ltd.; however, it was alleged that, during the audit period, the relevant ledger records supported such services only in the case of M/s. HCL Technologies Limited during 2008-09 and 2009-10, that services to M/s. Genpact Infrastructure commenced only from 11.08.2010, and that service tax had been charged on the services provided to M/s. IFFCO Kisan SEZ Limited during the relevant period.

6.3. Certain further discrepancies were also alleged concerning the appellant's declarations regarding sub-contracting and CENVAT credit. It was gathered that the Profit & Loss Accounts predominantly reflected salary expenditure, with no corresponding expenditure shown towards sub-contracting of services. The notice also recorded the appellant's subsequent clarification dated 05.04.2011 that it had not sub-contracted its services and had not availed CENVAT credit since inception. Similar observations were made regarding the appellant's earlier declaration of providing exempt sports-related services, which was subsequently clarified to mean that no non-taxable services were being provided and that service tax was being charged on the services rendered.

6.4. The Department accordingly took the view that the appellant was providing taxable Security Agency Services by supplying security personnel to various organisations, showrooms and commercial establishments and that the taxable value was liable to be determined on the basis of the gross amount charged/received for such services in terms of Section 67 of the Finance Act, 1994. The Department further alleged that service tax had been collected from service recipients but had not been duly deposited with the Government.

6.5. On the basis of the income reflected in the appellant's financial records, the alleged unpaid service tax for Financial Years 2005-06 to 2009-10 was quantified at Rs.8,04,16,915/-, inclusive of Education Cess and Secondary & Higher Education Cess. The notice also alleged failure to file the prescribed ST-3 returns and proposed recovery under the applicable provisions of the Finance Act, 1994 and Service Tax Rules, 1994. The Department further alleged that the aforesaid discrepancies, including the particulars relating to taxable receipts, exempt services, CENVAT credit, unregistered operating premises and non-filing of returns, amounted to suppression of material facts with intent to evade payment of service tax, thereby warranting invocation of the extended period under the proviso to Section 73(1) of the Finance Act, 1994.

6.6. The appellant was accordingly called upon to show cause before the Commissioner of Service Tax, New Delhi as to why Service Tax amounting to Rs.8,04,16,915/- should not be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994 read with the relevant provisions of the Act and Rules; why applicable interest under Section 75 should not be recovered; why penalty under Section 76 should not be imposed for failure to pay service tax; and why penalty under Section 78 should not be imposed for the alleged deliberate suppression of facts with intent to evade payment of service tax. A further penalty under Section 77 was proposed for failure to file the prescribed returns and comply with the corresponding statutory requirements.

<u>Show Cause Notice No. 152/Div-I/2011-12 dated 20.10.2011 (SCN-II) – Financial Year 2010-11</u>

7. Subsequently, Show Cause Notice No. 152/Div-I/2011-12 dated 20.10.2011, issued vide C. No. DL-1/ST/R-11/SCN/Twenty Four/42/11/12638-40 dated 20.10.2011, was issued to the appellant for the period Financial Year 2010-11, proposing recovery of Service Tax amounting to Rs.6,23,51,828/-, inclusive of applicable cesses, together with interest and penalties.

7.1. The notice proceeded on the allegation that, despite being called upon through various communications to furnish particulars regarding the gross amount received and service tax discharged during the relevant period, the appellant had failed to furnish the requisite information and had not properly filed the prescribed ST-3 returns. In the absence of the necessary financial particulars and other records, the Department proceeded to determine the taxable value by resorting to the best-judgment assessment contemplated under Section 72 of the Finance Act, 1994.

7.2. For the purpose of such assessment, the Department adopted a pro-rata methodology, assuming a 50% increase in the value of taxable services over the preceding year, and, on that basis, computed the service tax liability for Financial Year 2010-11 at Rs.6,23,51,828/-, inclusive of applicable cesses. The notice alleged, inter alia, that the appellant had failed to discharge the appropriate service tax on the receipts arising from its security services and had thereby contravened the provisions of Sections 66 and 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, besides the provisions relating to Education Cess and Secondary & Higher Education Cess.

7.3. The notice further alleged that the appellant had failed to disclose the complete particulars of its taxable activities and had not filed the prescribed ST-3 returns, and reiterated the allegations concerning the appellant's declaration of non-taxable/sports-related services, its claim regarding exempted services, the particulars of CENVAT credit reflected in the documents furnished during audit, and the fact that only the Jungpura premises was registered with the Department despite the appellant having offices/branches at various other locations. On the basis of these circumstances, the Department alleged that the taxable value had escaped assessment and that the appellant had suppressed material facts with intent to evade payment of service tax.

7.4. The notice accordingly proposed recovery of Service Tax amounting toRs.6,23,51,828/-under Section 73 of the Finance Act, 1994, read with the applicable provisions of Sections 66 and 68 and Rule 6 of the Service Tax Rules, together with applicable interest under Section 75. It further proposed imposition of penalties under Sections 76, 77 and 78 of the Finance Act, 1994 for the alleged failure to discharge the tax liability, non-filing of statutory returns and alleged suppression of material facts.

<u>Show Cause Notice No. 263/Div-I/2012-13 dated 23.10.2012 (SCN-III) – Financial Year 2011-12</u>

8. For the Financial Year 2011-12, the Department issued Show Cause Notice No. 263/Div-I/2012-13 dated 23.10.2012, issued vide C. No. DL-1/ST/R-I/SCN/Twenty Four/42/11/15310-15315 dated 23.12.2012, proposing recovery of service tax amounting to Rs.9,35,27,741/-, inclusive of applicable cesses, together with interest and penalties.

8.1. The allegations contained in the said notice were essentially the same as those raised in SCN-II, the Department alleging that the appellant had failed to furnish the requisite information regarding the gross amounts received and the service tax discharged during the relevant period. Proceeding on the premise that the appellant had not furnished the requisite returns and financial particulars, the Department resorted to best-judgment assessment under Section 72 of the Finance Act, 1994, and, following the methodology adopted for the preceding period, proceeded on the basis of an assumed 50% increase in the value of services provided over the previous year for determining the taxable value and consequent service tax liability. On the same set of allegations, the Department proposed recovery of the aforesaid service tax under Section 73 of the Finance Act, 1994, along with applicable interest under Section 75 and penalties under Sections 76, 77 and 78 of the said Act.

Show Cause Notice No. 183/Div-I/2014-15 dated 22.05.2014 – (SCN-IV) – Financial Year 2012-13

9. For the Financial Year 2012-13, the Department thereafter issued Show Cause Notice No. 183/Div-I/2014-15 dated 22.05.2014, issued vide C. No. DL-/ST/R-II/SCN/Twenty Four/42/11/8044-48 dated 22.05.2014, proposing recovery of service tax amounting to Rs. 16,83,49,934/-, inclusive of applicable cesses, together with interest and penalties.

9.1. The allegations in the said notice were essentially the same as those contained in SCN-II and SCN-III. The Department alleged that the appellant had failed to furnish the requisite particulars of the gross amounts received and service tax discharged for the relevant period and, consequently, proceeded to determine the taxable value by resorting to best-judgment assessment under Section 72 of the Finance Act, 1994. The taxable value was worked out on a pro-rata basis by assuming a 50% increase in the value of services provided over the preceding year, and the resulting service tax liability, inclusive of applicable cesses, was quantified at Rs.16,83,49,934/-.The Department accordingly proposed recovery of the Service Tax under Section 73 of the Finance Act, 1994, together with interest under Section 75 and penalties under Sections 76, 77 and 78 of the said Act.

Demand-cum-Show Cause Notice No. 13/Div-VIII/2016-17 dated 28.04.2016 (SCN-V) – Financial Years 2013-14 and 2014-15

10. Thereafter, the Department issued Demand-cum-Show Cause Notice No. 13/Div-VIII/2016-17, issued vide C. No. DL-II/ST/DIV VIII/R-40/TFG/36/2015/5542 to 5545 dated 28.04.2016, covering the period Financial Years 2013-14 and 2014-15. The notice proceeded on the basis of the provisions and alleged infractions set out in the preceding proceedings and was issued, inter alia, under the newly inserted sub-section (1A) of Section 73 of the Finance Act, 1994. An aggregate service tax liability of Rs.1,68,14,271/- was proposed, comprising Rs.1,23,97,840/-, inclusive of Education Cess and Secondary & Higher Education Cess, on account of alleged wrongful availment of exemptions, and Rs.44,16,431/- towards allegedly inadmissible CENVAT credit availed and utilised, besides applicable interest and penalties.

10.1. The proceedings originated from a letter dated 10.02.2015 issued by the Range Officer calling upon the appellant to furnish information for the Financial Year 2013-14. In response, the appellant, vide letter dated 23.02.2015, furnished certain documents, including the Balance Sheet, copies of challans and monthly figures of service tax paid for the said financial year. Thereafter, the Department issued successive communications dated 19.03.2015, 01.10.2015, 21.12.2015, 28.12.2015, 21.01.2016, 03.02.2016 and 17.02.2016, calling upon the appellant to furnish supporting documents in relation to the CENVAT credit availed/utilised and the exemptions claimed for Financial Year 2013-14. A summons dated 29.02.2016 was also issued requiring appearance on 09.03.2016 at 11:30 hours. The appellant, vide letter dated 04.03.2016, sought further time for furnishing the requisite documents and information and, subsequently, vide letter dated 30.03.2016, informed the Department that the documents/information would be submitted on or before 11.04.2016. The Department, however, recorded that the requisite supporting documents in respect of the exemptions claimed and CENVAT credit utilised for Financial Year 2013-14 had not been received.

10.2. The notice further recorded that the appellant had filed the ST-3 return for the period April 2013 to September 2013 only on 21.02.2015, with a stated delay of 484 days, and the return for October 2013 to March 2014 on 10.02.2015, with a stated delay of 291 days. In respect of Financial Year 2014-15 also, the appellant was called upon to furnish the requisite information vide letter dated 28.12.2015, followed by reminders dated 20.01.2016, 04.02.2016 and 17.02.2016. The summons dated 29.02.2016 requiring appearance on 09.03.2016 at 11:30 hours was applicable to this period as well. The appellant sought further time vide letter dated 04.03.2016 and subsequently stated, vide letter dated 30.03.2016, that the information would be furnished by 11.04.2016. According to the notice, however, the requisite documents/information for Financial Year 2014-15 were also not furnished.

10.3. On scrutiny of the ST-3 returns, the Department alleged that the appellant had wrongly availed exemption in respect of security services purportedly provided as export of services and/or to SEZ units during Financial Years 2013-14 and 2014-15. The exemption was treated as unsubstantiated on the ground that the appellant had not furnished the supporting invoices and other documentary material despite repeated requisitions. The notice also alleged that the appellant had wrongly availed and utilised CENVAT credit during the said period, since the underlying invoices and other supporting records necessary to establish the admissibility of such credit had not been produced.

10.4. On the aforesaid basis, the Department proposed recovery of Rs.1,23,97,840/- towards service tax, including applicable cesses, on the alleged wrongful availment of exemptions, and Rs.44,16,431/- towards allegedly wrong availment and utilisation of CENVAT credit, by invoking the extended period of limitation. The notice alleged contravention of the provisions of Sections 66/66B, 67 and 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, besides the provisions relating to Education Cess and Secondary & Higher Education Cess. Accordingly, the notice called upon the appellant to show cause as to why the aforesaid Service Tax and CENVAT credit amounts should not be recovered together with applicable interest and the corresponding penalties under Sections 76, 77 and 78 of the Finance Act, 1994 and Rule 15 of the CENVAT Credit Rules, 2004 should not be imposed.

<u>Statement of Demand No. 15/2018 dated 02.04.2018 – (SCN-VI) – Financial Year 2015-16</u>

11. For the subsequent period, i.e. Financial Year 2015-16, the Department issued Statement of Demand No. 15/2018, issued vide C. No. DL-II/ST/DIV-VIII/R-40/TFG/36/2015/664 dated

02.04.2018. The notice recorded that the legal provisions and the allegations forming the basis of the earlier proceedings, particularly Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011, were applicable to the present proceedings mutatis mutandis. The Statement of Demand was issued in terms of the subsequently inserted sub-section (1A) of Section 73 of the Finance Act, 1994.

11.1. Prior to issuance thereof, the Department had addressed communications to the appellant under C. No. DL-II/ST/Div-VIII/R-40/TFG/2015, dated 14.07.2017, 04.10.2017, 17.10.2017, 22.11.2017, 29.01.2018 and 09.02.2018, calling upon the appellant to furnish the requisite books, records, financial particulars and other information for the period 01.04.2015 to 31.03.2016 in relation to the issues arising from the earlier proceedings. According to the Department, no reply or supporting documents were furnished by the appellant pursuant to the said communications. It was further recorded that the appellant had not filed the prescribed ST-3 returns for Financial Year 2015-16.

11.2. Proceeding on the aforesaid basis, the Department invoked the best-judgment assessment mechanism under Section 72 of the Finance Act, 1994, on the premise that the appellant had neither furnished the requisite information/documents nor filed the statutory returns for the relevant period. For purposes of determining the taxable value, the Department adopted the highest taxable value recorded during the preceding four financial years, namely 2011-12 to 2014-15, which was stated to be Rs.1,36,20,54,484/-, pertaining to Financial Year 2012-13, as reflected in Show Cause Notice No.

183/Div-I/2014-15 dated 22.05.2014. Applying the Service Tax rate of 14.5%, the Department accordingly quantified the service tax liability for Financial Year 2015-16 at Rs.19,74,97,900/-, inclusive of the applicable Education Cess, Secondary & Higher Education Cess and Swachh Bharat Cess, as applicable during the relevant period.

11.3. The Statement of Demand further proceeded on the allegation that the appellant's failure to furnish the prescribed ST-3 returns for Financial Year 2015-16 attracted the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. The Department also alleged that, in the circumstances recorded in the notice, the appellant had failed to discharge the service tax liability in accordance with the applicable provisions of the Finance Act, 1994 and the Service Tax Rules, 1994.

11.4. Accordingly, the appellant was called upon to show cause as to why Service Tax amounting to Rs.19,74,97,900/-, inclusive of cesses, should not be demanded and recovered under Section 73(1A) read with the applicable provisions of Sections 68, 66A and 66B of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, together with applicable interest under Section 75, besides imposition of penalties under Section 76 for failure to discharge the Service Tax liability, under Section 77 for failure to furnish the prescribed ST-3 returns, and under Section 78 on the allegation that the appellant had deliberately suppressed material facts with intent to evade payment of Service Tax.

Statement of Demand No. 23/2018-19 dated 12.04.2019 (SCN-VII) – Financial Year 2016-17

12. In respect of the subsequent period, i.e. Financial Year 2016-17, the Department issued Statement of Demand No. 23/2018-19, issued vide C. No. DL-II/ST/DIV-VIII/R-40/TFG/36/2015/29 dated 12.04.2019. The notice recorded that the legal provisions and the allegations forming the basis of the earlier proceedings, particularly Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011, were applicable to the present proceedings mutatis mutandis. The Statement of Demand was issued in terms of sub-section (1A) of Section 73 of the Finance Act, 1994.

12.1. Prior thereto, the Department had issued communications dated 29.01.2018 and 30.07.2018 to the appellant under C. No. DL-II/ST/Div-VIII/R-40/TFG/36/2015, calling for documents and information pertaining to Financial Year 2016-17 and the period April 2017 to June 2017, in relation to the issues forming the subject matter of the earlier proceedings. In response, the appellant, vide letter dated 20.08.2018, informed the Department that the DGGSTI, R.K. Puram, New Delhi, was already conducting an investigation into its affairs for the period 2012-13 to 2016-17 and that the appellant had already furnished the requisite details, documents and records before the said investigating authority and had explained the relevant particulars and responded to the queries raised during such investigation.

12.2. The appellant accordingly expressed the view that requiring the same documents and information once again would result in parallel proceedings on the same subject matter. It also furnished a list of the documents stated to have already been submitted before the DGGSTI, including, inter alia, the Balance Sheet along with its annexures, Profit & Loss Account, Auditor's Reports and Notes to Accounts for the relevant period. The appellant further represented that the investigation by the DGGSTI had already consumed considerable time and affected its operational activities and that requiring it to undergo a parallel investigation by the jurisdictional Department in respect of the same period and issues would cause further disruption. It therefore requested that the documents already furnished before the DGGSTI not be requisitioned again.

12.3. In order to ascertain the status of the parallel investigation and, in particular, whether any proceedings had already been initiated for the period April 2016 to March 2017, the jurisdictional Department addressed communications dated 06.09.2018, 27.09.2018, 02.01.2019 and 29.01.2019 to the Deputy Director, DGGSTI, West Block No. 2, Wing-6, 2nd Floor, R.K. Puram, New Delhi. The DGGSTI, vide communication dated 26.03.2019, thereafter furnished the relevant documents/details available with it to the jurisdictional formation. The Department proceeded to quantify the Service Tax liability for the period in question on the basis of the material so received from the DGGSTI. On the ground that the appellant had not filed ST-3 returns for Financial Year 2016-17, and consequently that the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 were attracted, the Statement of Demand, covering the period 01.04.2016 to 31.03.2017, proceeded on the basis of the allegations contained in the original proceedings, as applicable mutatis mutandis to the relevant period.

12.4. On the basis of the documents and details obtained from the DGGSTI, the said Show Cause Notice quantified the Service Tax liability pertaining to the said period at Rs.1,27,40,568/- (inclusive of cesses), inclusive of applicable cesses, for Financial Year 2016-17 which was proposed to be recovered under Section 73(1A) of the Finance Act, 1994, read with the applicable provisions of Sections 66 and 68 of the Finance Act, 1994 along with applicable interest under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017, from the respective due dates until the date of actual payment. It also proposed penalties under Section 76 for failure to discharge the service tax liability, Section 77 for failure to furnish the prescribed ST-3 returns, and Section 78 on the allegation of deliberate suppression of facts with intent to evade payment of service tax.

<u>Statement of Demand No. 40/2019-20 dated 13.02.2020 (SCN-VIII) – Financial Year 2017-18 (April 2017 to June 2017)</u>

13. These proceedings relate to the period April 2017 to June 2017, i.e. the first quarter of Financial Year 2017-18 immediately preceding the implementation of the GST regime. In respect of the said period, the Department issued Statement of Demand No. 40/2019-20, issued vide C. No. DL-II/ST/DIV-VII/R-40/TFG/36/2015/691 dated 13.02.2020. The notice recorded that the legal provisions and the allegations forming the basis of the earlier proceedings, particularly Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011, were applicable to the present proceedings, and the

Statement of Demand was issued in terms of sub-section (1A) of Section 73 of the Finance Act, 1994.

13.1. Prior to issuance of the Statement of Demand, the Department had addressed letters dated 15.07.2019 and 05.08.2019 to the appellant, calling upon it to furnish documents and information pertaining to the period 01.04.2017 to 30.06.2017 in relation to the issues forming the subject matter of the earlier proceedings. According to the Department, no response or supporting material was furnished by the appellant pursuant thereto.

13.2. The Department further recorded that the appellant had not filed its service tax returns for the relevant transitional period and, according to the Department, had discontinued filing ST-3 returns from Financial Year 2015-16 onwards. In the absence of the requisite returns and supporting financial records, the Department considered that there was no reliable contemporaneous data available for determining the taxable value for April to June 2017 and, consequently, invoked the best-judgment assessment mechanism under Section 72 of the Finance Act, 1994.

13.3. For the purpose of such assessment, the Department relied upon the figures relating to Financial Year 2016-17 which had been furnished by the DGGSTI, R.K. Puram, New Delhi, vide its letter dated 26.03.2019. The taxable value for the period April to June 2017 was thereafter estimated by taking one-fourth of the preceding financial year's taxable value and applying a further 50% growth factor. On the basis of this methodology, the service tax liability for the period was quantified at Rs.45,21,625/-, inclusive of the applicable cesses.

13.4. The notice also recorded that the appellant had not furnished ST-3 returns for the period April 2017 to June 2017, and accordingly proposed penal action under Section 70(1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. It was further stated that the allegations and charges contained in the earlier proceedings, as applicable to the relevant period, would apply to the present proceedings mutatis mutandis.

13.5. Accordingly, the appellant was called upon to show cause as to why the provisions of Section 72 of the Finance Act, 1994 should not be invoked and why the service tax demand of Rs.45,21,625/- (inclusive of cesses) should not be demanded and recovered under Section 73(1A) of the Finance Act, 1994, read with the applicable provisions of Sections 68, 66A and 66B, Rule 6 of the Service Tax Rules, 1994, together with the saving provisions under Section 174 of the CGST Act, 2017.The notice further proposed recovery of interest under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017, from the respective due dates until actual payment, and penalties under Section 76 for failure to discharge the service tax liability, Section 77 for failure to furnish the prescribed service tax returns, and Section 78 on the allegation of deliberate suppression of facts with intent to evade payment of service tax.

14. The aforesaid eight Show Cause Notices/Statements of Demand were thereafter taken up for common adjudication and came to be disposed of vide Order-in-Original No. 100-107/Commr/Delhi East/AP/2022 dated 18.08.2022 passed by the Commissioner, C.G.S.T., Delhi East, in the following manner: -

(i) Adjudication of SCN-I: In respect of SCN-I, covering Financial Years 2005-06 to 2009-10, the adjudicating authority held that the activities undertaken by the appellant were classifiable under the taxable category of Security Agency Services. The appellant's claims for exclusion of certain components from the taxable value, including alleged pure-agent reimbursements, maintenance-related amounts, uniform allowances and supply of equipment, were rejected on the ground that the appellant had failed to produce the requisite contractual arrangements or documentary evidence substantiating such exclusions. The adjudicating authority also relied upon the Profit & Loss Accounts, observing that the appellant's expenditure was predominantly attributable to salary payments, while no corresponding expenditure towards sub-contracting of services was reflected. The claim regarding utilisation of CENVAT credit was similarly rejected for want of requisite statutory invoices and records. The demand of Rs.8,04,16,915/- was accordingly confirmed, together with interest under Section 75. An equivalent penalty of Rs.8,04,16,915/- under Section 78 was imposed for alleged deliberate suppression, besides a further penalty of Rs.10,000/- under Section 77 for the alleged failure to furnish/amend registration and return particulars. No separate penalty under Section 76 was imposed in view of the invocation of Section 78.

(ii) Adjudication of SCN-II: In respect of SCN-II, covering Financial Year 2010-11, the adjudicating authority accepted the invocation of Section 72 and the best-judgment methodology adopted by the Department, holding that the appellant's alleged non-cooperation and failure to produce authentic financial records justified determination of the taxable value on the basis of the information available with the Department. The demand of Rs.6,23,51,828/- was accordingly confirmed in full, together with interest under Section 75. A penalty of Rs.62,35,183/- under Section 76, stated to represent 10% of the confirmed tax liability, and a further penalty of Rs.10,000/- under Section 77 were imposed. No penalty under Section 78 was imposed for this period.

(iii) <u>Adjudication of SCN-III:</u> In respect of SCN-III, relating to Financial Year 2011-12, the adjudicating authority considered the returns and the cash payments subsequently verified on record and modified the original proposal. Against the proposed demand of Rs.9,35,27,741/-, an amount of Rs.2,61,80,826/- was dropped on account of service tax found to have been deposited in cash by the appellant, and the balance demand of Rs.6,73,46,915/- was confirmed. Interest under Section 75 was ordered to be recovered, and a penalty of Rs.67,34,692/- under Section 76, calculated at 10% of the revised confirmed demand, was imposed.

(iv) <u>Adjudication of SCN-IV:</u>In respect of SCN-IV, pertaining to Financial Year 2012-13, the adjudicating authority accepted certain cash payments made by the appellant and accordingly modified the proposed demand. Out of the proposed Rs.16,83,49,934/-, an amount of Rs.99,46,232/- was dropped and the balance amount of Rs.15,84,03,702/- was confirmed. Interest under Section 75 was sustained. A penalty of Rs.1,58,40,370/- under Section 76 and a further penalty of Rs.10,000/- under Section 77(1)(c)(iii) were imposed.

(v) Adjudication of SCN-V: In respect of SCN-V, covering Financial Years 2013-14 and 2014-15, the adjudicating authority rejected the appellant's claims regarding exemption for export/SEZ-related services on the ground that the requisite supporting invoices and documentary evidence had not been produced. The claim of CENVAT credit was also rejected on the ground that the appellant had failed to furnish verifiable input-service invoices. The composite demand of Rs.1,68,14,271/- was consequently confirmed in full, comprising Rs.1,23,97,840/- towards the disputed exemptions and Rs.44,16,431/- towards inadmissible CENVAT credit, together with applicable interest. A penalty of Rs.44,16,431/- under Rule 15 of the CENVAT Credit Rules, 2004 was imposed in respect of the CENVAT credit, while a penalty of Rs.12,39,784/- under Section 76 and a further penalty of Rs.10,000/- under Section 77(1)(c)(iii) were imposed in relation to the service tax liability. No penalty under Section 78 was imposed for this period.

(vi) Adjudication of SCN-VI: In respect of SCN-VI, covering Financial Year 2015-16, the adjudicating authority upheld the Department's invocation of Section 72 and the best-judgment methodology based upon the highest taxable value from the preceding four-year period. The taxable turnover of Rs.1,36,20,54,484/- pertaining to Financial Year 2012-13 was adopted as the relevant benchmark and the service tax was computed at the applicable rate of 14.5%.The entire demand of Rs.19,74,97,900/- was accordingly confirmed, together with interest under Section 75. A penalty of Rs.1,97,49,790/- under Section 76, representing 10% of the confirmed liability, and a further penalty of Rs.10,000/- under Section 77 were imposed. The Section 78 penalty was not imposed.

(vii) Adjudication of SCN-VII: In respect of SCN-VII, pertaining to Financial Year 2016-17, the adjudicating authority relied upon the financial and transactional material forwarded by the DGGSTI on 26.03.2019 and rejected the appellant's objection regarding the parallel investigation. It was held that the appellant had failed to furnish an independent reconciliation or supporting records before the jurisdictional adjudicating authority. The service tax demand of Rs.1,27,40,568/-, quantified on taxable value of Rs.8,52,73,469/-, was accordingly confirmed in full, together with interest under Section 75. A penalty of Rs.12,74,057/- under Section 76 and a further penalty of Rs.10,000/- under Section 77 were imposed. No penalty under Section 78 was imposed.

(viii) Adjudication of SCN-VIII: In respect of SCN-VIII, covering April 2017 to June 2017, the adjudicating authority upheld the invocation of

Section 72 and the methodology adopted by the Department, namely, pro-rating the Financial Year 2016-17 turnover received from the DGGSTI to one quarter and applying the assumed 50% annual growth factor. The demand of Rs.45,21,625/- was accordingly confirmed in full, together with interest under Section 75 read with Section 174 of the CGST Act, 2017. A penalty of Rs.4,52,163/- under Section 76 and a further penalty of Rs.10,000/- under Section 77 were imposed. The Section 78 penalty was dropped.

14.1. Ultimately, the original proposals were thus modified only to the limited extent of the verified payments recognised under SCN-III and SCN-IV, the adjudicating authority confirmed an aggregate liability of Rs.60,00,93,724/-, together with applicable interest and the respective penalties recorded hereinabove. The material modifications granted by the adjudicating authority included, in particular, the dropping of Rs.2,61,80,826/- from the demand proposed under SCN-III and Rs.99,46,232/- from the demand proposed under SCN-IV, aggregating to Rs.3,61,27,058/-, upon verification of the service tax amounts paid in cash by the appellant. The eight Show Cause Notices and the manner in which the respective proposals ultimately came to be dealt with in the common adjudication order may, for ready appreciation of the factual and operative position, be tabulated as under:

Sl. No.	Show Cause Notice / Statement of Demand	Period	Demand proposed in SCN	Common Order-in-Original	Demand / penalty confirmed in adjudication
I	SCN No. 25/Audit/2011-12 dated 21.04.2011	FY 2005-06 to 2009-10	Service Tax: Rs.8,04,16,915/- (incl. cesses), with interest and penalties	OIO No. 100-107/Commr/Delhi East/AP/2022 dated 18.08.2022	Service Tax confirmed: Rs.8,04,16,915/-; Section 78 penalty: Rs.8,04,16,915/-; Section 77 penalty: Rs.10,000/-; interest under Section 75
II	SCN No. 152/Div-I/2011-12 dated 20.10.2011	FY 2010-11	Service Tax: Rs.6,23,51,828/- (incl. cesses), with interest and penalties		Service Tax confirmed: Rs.6,23,51,828/-; Section 76 penalty: Rs.62,35,183/-; Section 77 penalty: Rs.10,000/-; interest under Section 75
III	SCN No. 263/Div-I/2012-13 dated 23.10.2012	FY 2011-12	Service Tax: Rs.9,35,27,741/- (incl. cesses), with interest and penalties		Service Tax confirmed: Rs.6,73,46,915/-; Rs.2,61,80,826/- dropped; Section 76 penalty: Rs.67,34,692/-; interest under Section 75
IV	SCN No. 183/Div-I/2014-15 dated 22.05.2014	FY 2012-13	Service Tax: Rs.16,83,49,934/- (incl. cesses), with interest and penalties		Service Tax confirmed: Rs.15,84,03,702/-; Rs.99,46,232/- dropped; Section 76 penalty: Rs.1,58,40,370/-; Section 77 penalty: Rs.10,000/-; interest under Section 75
V	Demand-cum-SCN No. 13/Div-VIII/2016-17 dated 28.04.2016	FY 2013-14 & 2014-15	Total: Rs.1,68,14,271/-, comprising Rs.1,23,97,840/- Service Tax and Rs.44,16,431/- CENVAT credit,		Service Tax: Rs.1,23,97,840/- confirmed; CENVAT credit: Rs.44,16,431/- confirmed; Rule 15 CCR penalty: Rs.44,16,431/-;

			with interest and penalties		Section 76 penalty: Rs.12,39,784/-; Section 77 penalty: Rs.10,000/-; interest under Section 75
VI	Statement of Demand No. 15/2018 dated 02.04.2018	FY 2015-16	Service Tax: Rs.19,74,97,900 /- (incl. cesses), with interest and penalties		Service Tax confirmed: Rs.19,74,97,900/ -; Section 76 penalty: Rs.1,97,49,790/-; Section 77 penalty: Rs.10,000/-; interest under Section 75
VII	Statement of Demand No. 23/2018-19 dated 12.04.2019	FY 2016-17	Service Tax: Rs.1,27,40,568/- (incl. cesses), with interest and penalties		Service Tax confirmed: Rs.1,27,40,568/-; Section 76 penalty: Rs.12,74,057/-; Section 77 penalty: Rs.10,000/-; interest under Section 75
VIII	Statement of Demand No. 40/2019-20 dated 13.02.2020	FY 2017-18 (April 2017 to June 2017)	Service Tax: Rs.45,21,625/- (incl. cesses), with interest and penalties		Service Tax confirmed: Rs.45,21,625/-; Section 76 penalty: Rs.4,52,163/-; Section 77 penalty: ₹10,000/-; interest under Section 75 read with Section 174 of CGST Act

[*interest component in each of the above proceedings was ordered to be recovered at the applicable rate]

14.2. In its final and cumulative conclusion, the adjudicating authority held that the appellant had systematically operated from several unregistered locations, failed to furnish statutory ST-3 returns for substantial periods, claimed exemptions and CENVAT credit without adequate supporting documentation, and failed to furnish financial books and other records despite repeated requisitions. On that basis, the Commissioner concluded that the appellant had deliberately withheld material information with intent to evade payment of service tax and that the circumstances justified invocation of the extended period wherever applicable as well as the consequential penal provisions.

15. Aggrieved by the aforesaid common adjudication order, whereby the proposals contained in the eight Show Cause Notices were substantially confirmed, subject to the limited reliefs recorded hereinabove, together with interest and consequential penalties, the appellant has approached this Tribunal contending, inter alia, that the impugned adjudication suffers from serious factual, legal and procedural infirmities, including erroneous resort to best-judgment assessment, disregard of the actual financial records and returns, incorrect rejection of exemption/CENVAT credit claims, and unsustainable invocation of the extended period of limitation.

16. The Ld. Counsel for the appellant, during the course of hearing, at the outset, submitted that the impugned Order-in-Original dated 18.08.2022 is liable to be set aside in toto as the same suffers from fundamental legal infirmities including violation of principles of natural justice, lack of jurisdiction, arbitrary determination of taxable value and illegal invocation of extended period of limitation. They made detailed submissions on the various issues arising for consideration in the present appeal which are, inter alia, as under: -

Submission with regard to 1st SCN - SCN DATED 21.04.2011 (PERIOD: 2005-06 TO 2009-10)

(i) The SCN dated 21.04.2011 covering the period 2005–06 to 2009–10 is wholly unsustainable in law as well as on facts and is liable to be set aside in entirety. The demand has been raised pursuant to a service tax audit conducted during 14.03.2011 to 05.04.2011, wherein the Department has compared various financial records of the Appellant, including audited financial statements (Profit & Loss Account), account ledgers and service tax challans submitted by the Appellant.

(ii) In the Impugned SCN the Department has raised a demand of Rs. 8,04,16,915/- for the period 2005-06 to 2009-10 after deduction of the amount of service tax paid in cash amounting to Rs. 5,03,40,648/-, however, no benefit of CENVAT credit has been given to the Appellant. The bifurcation of the amount paid in cash and credit by the Appellant for each year is as under –

Period	Service Tax paid in cash	Service Tax paid through CENVAT credit
2005-06	49,35,959.00	41,34,339.11
2006-07	62,10,241.00	58,37,984.00
2007-08	48,35,955.00	87,00,486.00
2008-09	1,41,70,378.00	1,21,25,955.00
2009-10	2,01,88,115.00	1,38,65,432.00
Total	**5,03,40,648.00**	**4,46,64,196.11**

(iii) It is submitted that the entire demand in the SCN dated 21.04.2011 is based on the turnover reflected in ITR/audited PL for the period 2005–06 to 2009–10 which is wholly inaccurate and not sustainable in law. The entire demand is wrong as it is based only on assumption, presumption and surmises. The demand of service tax cannot be based only on the turnover appearing in ITR/audited PL. It is well settled principle of law that corroborative evidence to prove charges of demand of Service Tax is essential. Whereas in the present case, except the figures shown in the ITR/audited PL nothing has been relied upon to prove that the Appellant has provided the services which are liable for payment of Service Tax. The Appellant has submitted all the required documents such as audited Profit & Loss Account for the period 2005–06 to 2009–10 (RUD-I); total revenue summary showing service tax paid in cash and CENVAT credit (RUD-II); profile of the company showing details of CENVAT credit availed and utilized (RUD-III); FDSS showing details such as total income, exempted services, non-taxable services and net taxable value (RUD-IV) and ledger accounts (RUD-VI), and fully coordinated with the Department during the audit, however, the Department considered the figures as per their convenience only to raise such a huge demand based on assumptions and presumptions. This act of the Ld. Adjudicating Authority is totally against the principles of natural justice.

(iv) At the outset, it is submitted that the very basis of the demand is flawed. While computing the alleged service tax liability in Table F and Table G of the SCN, the Department has adopted the figures of income as reflected in the audited Profit & Loss Account of the Appellant. However, while reducing the value of exempted, non-taxable services and reimbursements, the Department has failed to consider the correct figures which were also submitted by the Appellant vide its audited financial statements by giving vague reasoning for the excluding the same. The Ld. Adjudicating Authority while upholding the same has failed to understand that the said figures have been taken by the Department from the Appellant's audited financial statements which have been duly verified by a Chartered Accountant after validating all the supporting documents with regards to said figures.

(v) It is further submitted that the rejection by the Department of the amounts pertaining to exempted and non-taxable services is wholly arbitrary and unsupported by any cogent evidence. The Department has merely made a bald assertion that no such services were provided by the Appellant, without undertaking any verification or independent enquiry to substantiate the same. The Appellant had specifically disclosed and claimed the value of exempted and non-taxable services on the basis of its audited financial statements and supporting records. These figures were neither examined in detail nor rebutted by the Department through any contrary material. In particular, the Department has failed to conduct any independent enquiry from the concerned clients or recipients of services to verify whether such services were in fact rendered or whether any service tax was collected by the Appellant in respect thereof. A mere blanket rejection without investigation cannot form the basis of a sustainable demand. In absence of any enquiry, verification or corroborative evidence, the conclusion drawn by the Department is based purely on assumption and is therefore liable to be set aside.

(vi) It is further submitted that the allegation of the Department, as recorded in Para 2.6 of the Impugned SCN, that the Appellant has not incurred any expenditure on sub-contracting services and that its expenditure consisted only of salary payments on which no CENVAT credit is admissible, is factually incorrect, misconceived and contrary to the material available on record. The said finding is directly contradicted by the audited financial statements of the Appellant, which clearly reflect that, in addition to employee-related expenses, the Appellant had incurred substantial *"Administrative and Other Office expenses"* in the course of providing taxable services during the relevant period. These expenses form an integral part of the business operations of the Appellant and are duly recorded in the audited books of accounts, which have not been considered by the Department in the entire SCN. It is submitted that the Department has selectively relied upon certain components of the financial statements while completely ignoring other relevant heads of expenditure, thereby arriving at an incorrect and incomplete conclusion. The audited financial statements, being primary and statutory records, clearly demonstrate that the Appellant's cost structure was not limited to salaries alone, but included various operational and administrative expenses necessarily incurred for rendering taxable services. Further, the year wise bifurcation of said expenses is as under –

Period	Administrative and Other Office expenses (Rs.)
2005-06	18,15,43,07.56/-
2006-07	2,31,43,335.07/-
2007-08	3,22,12,471.78/-
2008-09	4,57,44,448.60/-
2009-10	4,76,86,585.91/-
Total	**12,57,71,148.92/-**

(vii) A proper reconciliation of the audited figures for the period 2005-06 to 2009-10 clearly demonstrates that the Appellant had correctly computed and discharged its service tax liability as under -

Particulars	As per the Appellant	As per the Department
Total Income as per audited financial statements	1,24,55,85,263.50	1,24,58,06,261.00
Total Amount received after adjusting the debtors		1,16,68,42,714.00
Less: Exempted services, Non-taxable services and Reimbursements as per audited financial statements	46,04,41,792.87	1,83,71,838.00

Net Taxable Income	78,51,43,470.63	1,14,84,70,876.00
ST Liability for the period 2005-06 to 2009-10	9,50,04,844.11	13,07,57,563.00
ST Paid in Cash	5,03,40,648.00	5,03,40,648.00
CENVAT credit adjusted	4,46,64,196.11	NIL
ST payable	**NIL**	**8,04,16,915.00**

(viii) It is submitted that the Department in the Impugned SCN has based the entire demand of service tax on the figures of ITR/audited PL without going into the details of the type of services provided by the Appellant. ITR/audited PL which is a public document clearly specifies the type of services provided by any taxpayer. The Ld. Adjudicating Authority could have easily seen from the ITR/audited PL filed by the Appellant that the Appellant was into the business of security agency services wherein major portion was that of exempted services, non-taxable services and reimbursement expenses. Further, all these financials were duly audited by a Chartered Accountant. The Ld. Adjudicating Authority in the Impugned SCN has not provided any basis for arrival at figures of net taxable value.

(ix) It is further submitted that the Department has ignored the fact that merely going by the Balance Sheet/ITR figures to arrive at the taxable services amount is erroneous and if the turnover was being considered from the audited financials, then all other figures should also have been considered from the audited financials as upheld by various courts. The

Department cannot pick and choose the figures as per their convenience just to impose such a huge demand on the Appellant. For demand of Service Tax, first of all the nature of services rendered has to be considered, thereafter it has to be examined whether the service is covered by definition of services in the Finance Act, 1994 and classified under a particular service category, thereafter it has to be seen what rate of tax and consideration is received and the tax has to be calculated. This is the process to be followed for assessment of tax and in the absence of proper assessment by the assessee, the Ld. Adjudicating Authority is also required to proceed in a same manner for adjudication. In the absence of such a process, it would not be possible to apply any law and decide the matter. It's important to recognize that a balance sheet provides a comprehensive overview of a company's financial activities and overall status. Therefore, the entire case of evasion of service tax liability is only based on Balance Sheet/ ITR Figures and has not been corroborated by any other evidence and hence the demand is not sustainable.

(x) The term *'income'* has been defined specifically under the Income Tax Act and it is not necessary that an income which is taxable under the Income Tax Act should be liable to Service Tax. In fact, the following point will establish the fact that both the legislation works under different provisions and need not be reconciled:

a. Receipt of an advance does not attract income tax since income tax is applicable only when income is received or deemed to be received or accrues or arises or deemed to accrue or arise.

b. A few activities are set out in the Negative List which are not liable to service tax. However, the said income would attract income tax unless specifically excluded or exempted under Income Tax Law. In other words, the service recipient would be deducting tax at source under applicable provisions of Income Tax Act and the said amount will be reflected in Form 26AS of the service provider, however the same will not be included in taxable services of the service provider under the Finance Act, 1994.

c. Reimbursements would not attract service tax subject to various conditions but in many cases, the service recipient out of abundant caution would deduct tax at source.

d. Where a transaction does not result in income, the service recipient would still deduct tax at source out of abundant caution factoring interest and disallowance provisions under the Income Tax Act.

e. There are number of situations where there is excess tax deduction or erroneous tax deduction by the service recipient.

f. For several transactions, service tax is payable by a service recipient under reverse charge mechanism whereas Form

26AS of the service provider would reflect the income and the tax deduction at source.

(xi) It is a well-established law that no service tax demand can be raised only on the basis of income reflected in Profit and Loss Account /ITR– reliance has been placed on the decision of the CESTAT, Mumbai in the case of *Umesh Tilak Yadav v. Commissioner of Central Excise, (2024) reported at 159 taxmann.com 336***.**

(xii) It is further submitted that the very foundation of the impugned demand is contradictory and unsustainable. On the one hand, the Department has alleged that the Appellant did not provide any exempted or non-taxable services and had not incurred eligible expenses for the purpose of availing CENVAT credit during the impugned period. However, on the other hand, the demand raised in the SCN is not based on verification or disallowance of such specific components, but instead on a complete re-computation of the Appellant's turnover as reflected in Table F of the Impugned SCN. This approach of the Department is inherently inconsistent. If the primary allegations pertain to inadmissibility of exemptions or CENVAT credit, the demand ought to have been confined to those specific issues, duly supported by evidence and proper quantification. Instead, the Department has chosen to discard the Appellant's actual financial data and substitute it with an entirely reworked turnover figure, without establishing any nexus between the allegations and the computation adopted. It is a settled principle that a demand must be founded on clear, specific and substantiated allegations, and the quantification must flow logically from such allegations. In the present case, the disconnect between the allegations and the computation clearly demonstrates non-application of mind and renders the demand unsustainable.

(xiii) The Department's approach in the present SCN is inconsistent and reflects non-application of mind. In the Impugned SCN, the Department is itself confused about the proper allegation against the Appellant. On one hand, the Department is alleging short-payment, non-payment of service tax by the Appellant and on the other hand alleging service tax collected but not paid, however, Section 73A has not been invoked by the Department while raising demand in the entire SCN. Such contradictory stands within the same SCN clearly establishes a lack of clarity on the Department's part regarding the correct classification, rendering the Impugned SCN vague and faulty.

(xiv) In this regard, reference is made to the case of *Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd. And Ors. MANU/SC/2645/2007*wherein the appeal of Revenue was dismissed.

(xv) Without prejudice, it is further submitted that the only alleged lapse on part of the Appellant pertains to non-filing or delayed filing of returns. Such procedural lapse, at best, may attract late fee or penalty which may extend to Rs. 10,000/- under Section 77 of the Act but cannot be equated with suppression of facts or intent to evade tax. The Appellant was regularly depositing service tax on a monthly basis, and such payments were within the knowledge of the Department. The financial records of the Appellant, including audited statements and tax filings, were available in the public domain and before various statutory authorities. In such circumstances, the Department could have examined the issue within the normal period of limitation. Non-filing of returns, by itself, cannot be construed as wilful misstatement or suppression so as to justify invocation of the extended period.

(xvi) The entire demand in the present SCN has been raised by invoking the extended period under the proviso to Section 73(1) of the Finance Act, 1994, which is wholly untenable. The sine qua non for invoking extended limitation is the existence of fraud, collusion, wilful misstatement, suppression of facts or contravention of provisions with intent to evade tax. In the present case, the demand is admittedly based on turnover figures derived from audited financial statements and other records maintained by the Appellant in the ordinary course of business. These documents are statutorily maintained, duly audited by independent Chartered Accountants, and form part of the regular books of account. Therefore, when the very foundation of the demand is drawn from disclosed records, there can be no allegation of suppression of facts.

(xvii) The law on this issue is well settled. The Hon'ble Supreme Court in *Pushpam Pharmaceuticals Company v. CCE, 1995 (78) E.L.T. 401 (S.C.)* held that suppression of facts must be wilful and with intent to evade duty, and mere omission or failure to disclose does not amount to suppression.

(xviii) It is a settled principle of law that where the information is available in books of account or financial statements, invocation of extended limitation is not permissible. The burden to establish suppression with intent to evade tax lies squarely on the Department, which has not been discharged in the present case.

(xix) Reliance is placed upon the following case laws–

a. *M/s. MAHANAGAR TELEPHONE NIGAM LTD. Versus UNION OF INDIA reported as 2023 (73) G.S.T.L. 310 (Del.)*

   The above case has been affirmed by the Hon'ble Apex Court (2024 (388) E.L.T. 141 (S.C.))

b. *M/s. STEMCYTE INDIA THERAPEUTICS PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, AHMEDABAD – III reported at 2025 (7) TMI 1007*

(xx) It is further a settled proposition that mere non-payment or short payment of tax does not automatically justify invocation of the extended period. Where the Department itself seeks to rely on financial statements, income tax returns or similar disclosed records, it cannot then allege suppression of facts. In the present case, the Department has itself relied upon such records to raise the demand, which clearly demonstrates that all material facts were within its knowledge.

(xxi) In the present case, the Appellant was duly registered with the Service Tax Department and was operating under a valid registration for providing security agency services. The fact of registration itself establishes that the Department was fully aware of the nature of activities undertaken by the Appellant.

(xxii) It is a settled law that:

a. Mere non-payment or short payment of tax does not automatically justify invocation of the extended period;

b. When information is available in statutory records, it cannot be alleged that there was suppression of facts;

(xxiii) The Impugned SCN is based on alleged discrepancies derived from audit findings; however neither the basis of computation has not been disclosed nor any supporting documents have been provided. Further, no reconciliation with actual financial records has been carried out by the Department. Therefore, in absence of any verifiable basis, the demand is arbitrary and cannot be sustained.

(xxiv) It is further submitted that, even otherwise, a substantial portion of the demand is clearly barred by limitation even beyond the extended period of five years as contemplated under the proviso to Section 73(1) of the Finance Act, 1994. In the present case, the impugned SCN dated 21.04.2011 seeks to raise demand for the period 2005-06, which is ex facie beyond the maximum permissible limitation period of five years from the relevant date. Even assuming, without admitting, that the extended period is invocable, the Department could not have travelled beyond the statutory outer limit of five years. It is a settled principle of law that the extended period under the proviso to Section 73(1) does not enlarge the limitation indefinitely, but only permits a maximum period of five years from the relevant date. Any demand raised beyond such period is wholly without jurisdiction and liable to be set aside on this ground alone. In the present case, the SCN having been issued on 21.04.2011, the maximum period that could have been covered, even under the extended limitation, would be from October 2005. Therefore, the demand pertaining to the period April 2005 to September 2005 falls clearly outside even the extended limitation period and is thus ex facie time-barred.

(xxv) It is therefore, submitted that the entire demand for the period 2005-06 to 2009-10 raised vide SCN dated 21.04.2011 is liable to be set aside in entirety.

Submission with regards to ILLEGAL INVOKATION OF BEST JUDGEMENT ASSESSMENT UNDER SECTION 72 OF THE ACT

(i) The SCNs dated 20.10.2011, 23.10.2012, 22.05.2014, 02.04.2018 and 13.02.2020 covering the period 2010-11 to 2012-13 and 2015-16 to June 2017 are liable to be set aside as the demand has been raised on an erroneous and legally impermissible invocation of best judgment assessment under Section 72 of the Finance Act, 1994, despite the availability of actual financial records and statutory data pertaining to the Appellant. The entire approach adopted by the Department is contrary to the statutory scheme and settled legal principles governing assessment.

(ii) At the outset, it is submitted that Section 72 is an exceptional provision which can be invoked only in limited circumstances, namely where the assessee fails to furnish returns and the relevant information is not otherwise available to the Department. The provision does not authorize the Department to disregard actual financial data and substitute the same with hypothetical or estimated figures. In the present case, the Appellant had maintained proper books of accounts and the financial data, including audited Profit & Loss Accounts and other statutory records, which were furnished to the Department as and when required for verification.

(iii) Despite this, the Department has proceeded to determine turnover on an entirely notional basis under Section 72. The methodology adopted is inconsistent and arbitrary. For earlier years, the turnover has been artificially enhanced by applying ad hoc percentage increases, while for later years, figures have been derived without any disclosed rationale, including adoption of peak turnover of previous years. Such an approach is inherently flawed and demonstrates that the assessment is based on conjecture rather than evidence.

(iv) It is further submitted that the audited financial statements placed on record by the Appellant before the Ld. Adjudicating Authority have not been duly considered while passing the Impugned OIO. The Impugned OIO itself records, in Para 48.4, 48.5, 48.6 and 49.1.9, that the Appellant had furnished all relevant financial statements duly audited by a Chartered Accountant. Having acknowledged the existence and submission of such primary records, the Ld. Adjudicating Authority was duty-bound to examine the same and base his findings on such verified data. However, in a clear contradiction, while dealing with the invocation of Section 72 of the Act, the Ld. Adjudicating Authority has, in Para 58.2 of the Impugned OIO, proceeded on the erroneous premise that no such financial records were submitted by the Appellant. This inconsistency in findings goes to the root of the matter and renders the reasoning adopted in the Impugned OIO self-contradictory and unsustainable.

(v) It is submitted that once the availability and submission of audited financial statements is admitted on record, the very basis for invoking best judgment assessment under Section 72 ceases to exist. The said submission of audited financials to the Department is also clear from various letters provided by the Appellant**.** The failure to consider such material evidence, coupled with contradictory findings in the Impugned OIO, demonstrates non-application of mind and vitiates the adjudication proceedings. Consequently, the demand confirmed on such flawed reasoning is liable to be set aside.

(vi) It is further submitted that the allegation of the Department that no service tax returns were filed by the Appellant during the relevant period is factually incorrect and contrary to the record. The Appellant had duly filed service tax returns for the period 2005–06 to 2009–10 and 2011–12 to 2014–15, as is evident from the findings recorded in Para 58.2 and 59 of the Impugned OIO itself. Despite this admitted position, the Ld. Adjudicating Authority has failed to consider the said returns while upholding the invocation of Section 72 of the Act, thereby rendering the findings inconsistent and unsustainable.

(vii) Without prejudice, even for those limited periods where returns may not have been filed, the invocation of Section 72 is still wholly unjustified. The Appellant had maintained complete financial records, including audited financial statements, income tax returns and other statutory documents, which provided a reliable and verifiable basis for determination of tax liability. All these records were furnished to the Department by the Appellant itself.

(viii) Further, the Appellant had discharged its service tax liability through statutory challans, which are part of the Department's own records. Likewise, ST-3 returns, being filed electronically, are also maintained within the Department's system and could have been readily accessed for verification. In such circumstances, it cannot be contended that relevant information was unavailable so as to warrant resort to best judgment assessment.

(ix) It is a settled principle that best judgment assessment is a measure of last resort and cannot be invoked merely on account of non-filing of returns when sufficient material is otherwise available with the Department. The mere absence of returns does not justify discarding primary financial records and substituting them with hypothetical or estimated figures.

(x) The law is well settled that best judgment assessment must be based on reasonable material and cannot be arbitrary. Even where such assessment is permissible, it must bear a rational nexus to the available evidence and cannot be founded on guesswork, presumption or extrapolation. In the present case, no such nexus is established. There is no correlation between the alleged taxable value and actual services rendered or consideration received. The Department has not undertaken any transaction-wise verification nor has it disclosed the basis of computation.

(xi) The impugned demands, therefore, are not anchored in any verifiable evidence but are the result of speculative estimation. Such an approach is contrary to settled principles of taxation, which require that liability be determined on the basis of real income and actual transactions, and not on hypothetical assumptions.

(xii) Reliance is placed on the following case laws –

a. *The Commissioner of Central Tax, CGST Delhi South Versus TheIndure (P) Limited reported at 2025 (8) TMI 1348*

b. *Dhillon Aviation Pvt. Ltd. Versus Commissioner of central excise, Delhi-II reported at 2020 (37) G.S.T.L. 434*

(xiii) In view of the above, it is submitted that the invocation of Section 72 in the present case is wholly without jurisdiction and contrary to law. The demands raised in the impugned SCNs, being based on arbitrary and inconsistent best judgment assessment despite availability of reliable financial records, are liable to be set aside in entirety. Consequently, the impugned demand in the said SCNs along with interest and penalties deserve to be quashed with all consequential reliefs.

Submission with regards to HYPHOTHETICAL CALCULATION OF NET TAXABALE VALUE RESULTING IN INFLATED DEMAND FOR THE PERIOD 2010-11 to JUNE 2017

(i) A proper reconciliation of the audited figures for the period 2010-11 to June 2017 clearly demonstrates that the Appellant had correctly computed and discharged its service tax liability as under –

Particulars	**As per the Appellant**	**As per the Department**
Total Income as per audited financial statements	1,58,93,33,719.80	-
Total Income on the basis of inflated figures by the Department	-	4,35,47,53,857.00
Less: Exempted services, Non-taxable services and Reimbursements as per audited financial statements	71,02,50,623.78	NIL
Net Taxable Income	87,90,83,096.02	4,35,47,53,857.00
ST Liability for the period 2010-11 to June 2017	11,12,59,013.62	55,58,03,867.00
ST Paid in Cash	8,33,82,446.00	3,61,27,058.00
CENVAT credit adjusted	2,78,78,567.62	NIL
ST payable	**NIL**	**51,96,76,809.00**

(ii) In view of the above reconciliation, it is evident that the Appellant has correctly computed and fully discharged its service tax liability for the period 2010–11 to June 2017 on the basis of audited financial statements and statutory records. The Appellant's total taxable value, after duly accounting for exempted services, non-taxable services and reimbursements, stands at Rs. 87.90 crore, resulting in a service tax liability of Rs. 11.12 crore, which has already been discharged through a combination of cash payment and utilisation of CENVAT credit.

(iii) In stark contrast, the Department has arbitrarily inflated the taxable value to Rs. 435.47 crore by completely disregarding audited financial data and legitimate deductions, thereby computing an exaggerated and hypothetical demand of Rs. 55.58 crore. The failure to consider exemptions, reimbursements, taxes already paid and 50% increase in turnover each year has led to a grossly distorted demand, which is not supported by any cogent evidence or reconciliation with actual records.

(iv) The above comparative analysis clearly demonstrates that there is no short payment of service tax by the Appellant, and the entire demand is the result of erroneous assumptions, inflated estimations and non-consideration of material evidence on record. Accordingly, the impugned demand for the period 2010-11 to June 2017 is liable to be set aside in toto.

Submission with regards to DEMAND RAISED IN SCN DATED 28.04.2016 FOR THE PERIOD 2013-14 AND 2014-15

(i) It is submitted that the allegations raised in SCN dated 28.04.2016 with respect to the alleged wrongful claim of exemption on account of export of services and services provided to SEZ, amounting to Rs. 1,23,97,840/-, as well as the alleged wrongful availment of CENVAT credit amounting to Rs. 44,16,431/- for the period 2013–14 and 2014–15, are wholly unsubstantiated and liable to be set aside.

(ii) The Department has failed to provide any cogent basis or supporting evidence for the said allegations. The entire case appears to rest merely on the assertion that the Appellant did not submit supporting documents. It is submitted that such a bald allegation, without any verification or corroboration, cannot form the foundation of a sustainable demand.

(iii) It is further submitted that the Appellant had maintained proper books of accounts wherein the details of clients, nature of services rendered and corresponding receipts were duly recorded. In such circumstances, it was upon the Department to conduct independent verification from the concerned clients, particularly in cases involving export of services and services provided to SEZ units, before arriving at any adverse conclusion. However, no such exercise has been undertaken in the present case.

(iv) Further, the Department has also disregarded the fact that other than employee salary expenses, the Appellant has also incurred other expenses for the provision of taxable services during the period 2013-14 and 2014-15 as under –

Period	**Finance Cost (Rs.)**	**Administrative and Other Office expenses (Rs.)**
2013-14	93,30,747/-	67,87,751/-
2014-15	37,74,728/-	1,01,13,754/-
Total	**1,31,05,475/-**	**1,69,01,505/-**

(v) The failure of the Department to carry out even basic verification, such as examining contracts, invoices, foreign remittance details or obtaining confirmations from the concerned parties, clearly demonstrates that the allegations are based on presumption rather than evidence. It is a settled principle of law that the burden to establish ineligibility of exemption or wrongful availment of credit lies upon the Department, and such burden cannot be discharged by mere allegations or assumptions. Therefore, in absence of any independent enquiry or corroborative material, the conclusion that the Appellant has wrongly claimed exemption or availed CENVAT credit is arbitrary and unsustainable. The impugned demand, being based solely on non-submission of documents without any further investigation, is liable to be set aside on this ground alone.

Submission with regards to DEMAND RAISED IN SCN DATED 12.04.2019 FOR THE PERIOD 2016-17

(i) It is further submitted that the demand of Rs. 1,27,40,568/- raised in SCN dated 12.04.2019 is wholly unsustainable, as the same has been computed solely on the basis of figures reflected in the Income Tax Returns and audited Profit & Loss Account of the Appellant, without any examination of the nature and character of the services actually provided.

(ii) The Income Tax Returns and audited financial statements, which are public documents, clearly indicate the nature of business carried on by the Appellant, namely provision of security agency services. A careful reading of these documents would also reveal that a substantial portion of the Appellant's receipts pertained to exempted services, non-taxable services and reimbursement of expenses, which do not form part of the taxable value. These financial statements were duly audited by an independent Chartered Accountant and constitute reliable primary evidence of the Appellant's financial position. However, the Department has mechanically adopted the gross figures from the ITR/audited Profit & Loss Account without undertaking any analysis or segregation of taxable and non-taxable components. No exercise has been carried out to identify the nature of services, examine the underlying transactions or reconcile the figures with actual invoices or contracts. In absence of such examination, the adoption of gross receipts as taxable value is wholly arbitrary and contrary to settled principles of valuation.

(iii) Additionally, it is pertinent to note that a parallel investigation in respect of the Appellant was already being conducted by DGGSTI, New Delhi for the same period. The Appellant had specifically brought this fact to the notice of the Department. Despite this, the Department proceeded to issue the present SCN without considering the ongoing investigation or coordinating with the concerned authority. Such action not only leads to duplication of proceedings but also reflects non-application of mind and lack of procedural discipline.

Submission with regards to UNLAWFUL INVOKATION OF EXTENDED PERIOD OF LIMITATION UNDER THE PROVISO TO SECTION 73(1) OF THE ACT

(i) At the outset, it is submitted that the demands raised in the SCNs dated 21.04.2011, 23.10.2012, 22.05.2014, 28.04.2016, 02.04.2018, 12.04.2019 and 13.02.2020 for the period 2005-06 to 2009-10 and 2011-12 to June 2017 respectively are wholly unsustainable in law as they have been issued by invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994, in complete absence of the statutory preconditions required for such invocation. The impugned SCNs, covering multiple years, are founded on identical facts and records, and the invocation of extended limitation across these periods is both legally impermissible and contrary to settled judicial principles.

(ii) The proviso to Section 73(1) permits invocation of an extended period only in cases involving fraud, collusion, wilful misstatement, suppression of facts or contravention of provisions with intent to evade payment of tax. It is a settled proposition that the burden to establish the existence of these ingredients lies squarely upon the Department, and such ingredients must be demonstrated through cogent evidence. In the present case, there is a complete absence of any such material.

(iii) The demands in the impugned SCNs are admittedly based on financial records maintained by the Appellant, including audited financial statements, income tax returns, and other statutory documents. These records were either furnished by the Appellant or were otherwise available to the Department and were also examined during audit proceedings. When the very foundation of the demand is drawn from disclosed records, the allegation of suppression of facts is ex facie untenable.

(iv) It is a settled principle of law that when information is available in the books of accounts or statutory records, extended limitation cannot be invoked. The Hon'ble Supreme Court in *Anand Nishikawa Co. Ltd. v. CCE [2005 (188) E.L.T. 149 (S.C.)]* has held that suppression of facts must be wilful and with intent to evade duty, and mere omission or failure does not constitute suppression. It was held that extended limitation cannot be invoked unless there is deliberate withholding of information.

(v) Reliance is also placed on the judgment of the Hon'ble Delhi High Court in *Mahanagar Telephone Nigam Ltd. v. Union of India [2023 (73) G.S.T.L. 310 (Del.)],* wherein Hon'ble Court while setting aside the impugned Show Cause Notice, held that when receipts are duly reflected in books of account and are available in the public domain, the allegation of suppression is without any basis. The said judgment has been affirmed by the Hon'ble Supreme Court *[2024 (388) E.L.T. 141 (S.C.)]*, thereby settling the position that disclosure in financial records negates invocation of extended limitation.

(vi) In the present case, the Appellant had maintained proper books of accounts and had regularly discharged service tax liability. The alleged liability has been computed by the Department itself from these records. There is no allegation, much less any evidence, of deliberate concealment or misstatement. Therefore, the essential requirement of intent to evade tax is wholly absent.

(vii) It is further submitted that the Department had conducted audit and examined the records of the Appellant. Once such audit has been conducted, the Department is deemed to have knowledge of all material facts. In such circumstances, invocation of extended limitation is impermissible. The Hon'ble Supreme Court in *Nizam Sugar Factory v. CCE [2006 (197) E.L.T. 465 (S.C.)],* while setting aside the Impugned order, has categorically held that once the Department is aware of the facts, it cannot invoke the extended period for subsequent demands on the same issue.

(viii) The present case involves multiple SCNs issued over successive periods on the same set of facts. The continuation of proceedings for later periods i.e., for the periods 2010-11 to June 2017 by invoking the extended period again, after the conduct of audit for the period 2005-06 to 2009-10 clearly establishes that the Department was fully aware of the Appellant's activities, financial records and manner of tax payment. Therefore, invocation of extended limitation repeatedly for subsequent periods is legally unsustainable.

(ix) Reliance is also placed on the latest case of *Shri Himanshu Srivastava Versus Commissioner of Central Excise & CGST, Allahabad reported at 2026 (3) TMI 912* wherein the CESTAT, Allahabad relying upon the case of Nizam Sugar while setting aside the impugned Order has held that when a Show Cause Notice invoking the extended period has already been issued on a particular set of facts, the Department cannot issue a subsequent SCN on the same facts again invoking the longer limitation on the ground of suppression. The extended period is available only where there is evidence of conscious fraud, collusion or suppression with intent to evade tax; absent such evidence and where returns had been filed, the larger period is not invocable. The reasoning relied on prior authority and the fact that the earlier SCN for F.Y. 2015-16 had been decided in favour of the appellant, indicating the Department had prior knowledge of the facts.

(x) It is further submitted that the Ld. Adjudicating Authority, in the Impugned Order, has itself recorded a clear finding that penalty under Section 78 of the Finance Act, 1994 is not imposable in respect of SCNs covering the period 2010 to June 2017, on the ground that there was no suppression of facts. The Ld. Adjudicating Authority has rightly observed that once earlier SCNs on the same issue had already been issued by invoking the extended period, the Department was fully aware of the facts, and therefore, the element of suppression cannot be alleged for subsequent periods.

Accordingly, penalty under Section 78 has been dropped for the said period.

(xi) Having accepted that there was no suppression of facts, the Department cannot simultaneously sustain the demand by invoking the extended period of limitation for the same period. The very foundation for invoking extended limitation and for imposing penalty under Section 78 is identical, namely the existence of suppression, fraud or wilful misstatement with intent to evade tax. Once this foundational requirement is held to be absent, the extended period itself cannot be invoked as settled in *Nizam Sugar Factory.*

(xii) In the present case, the Ld. Adjudicating Authority has already accepted that there was no suppression for the period 2010 to June 2017. Therefore, the invocation of extended period for raising the demand for the said period is legally unsustainable. The Department cannot adopt a contradictory position by dropping the penalty for absence of suppression while simultaneously confirming the demand by invoking the extended limitation.

(xiii) In light of the above, it is evident that the invocation of extended limitation in the impugned SCNs is wholly without jurisdiction and contrary to law. Since the demands for the relevant periods have been raised beyond the normal limitation period and are sought to be sustained only by invoking the extended period, the entire demand is liable to be set aside as time-barred.

ADDITIONAL SUBMISSION: THE PRESENT MATTER DESERVES TO BE SET ASIDE IN TOTO

(i) In view of the above submissions, the impugned Order in Original are liable to be quashed in their entirety, along with consequential relief of setting aside the demands of service tax, interest and penalties. As is evident from the relied-upon judgements, the appropriate relief in the instant matter is the setting aside of the impugned Order in Original as they suffer from incurable defects. Hon’ble Courts have consistently held that in matters involving incurable defects, no fruitful purpose will be served by adjudicating the matter afresh. If a levy lacks the authority of law, it must be struck down. Hon’ble Supreme Court in case of *MAHENDRA PRASAD AGARWAL vs ARVIND KUMAR SINGH & ORS. In SLP (C) NO. 17141 OF 2025*has held that when legal rights are established, substantive relief should be granted instead of deferring to administrative reconsideration.

(ii) It is further respectfully submitted that, having regard to the peculiar facts and circumstances of the present case, the present proceedings ought to be set aside in entirety. The dispute pertains to periods commencing as far back as 2005–06 and extending up to June 2017, and the earliest transactions forming the subject matter of the present proceedings are now more than two decades old. The Appellant had, at the relevant point of time, duly cooperated with the Department and produced its books of accounts, audited financial statements and other financial records before the audit team during the detailed audit. The very fact that the first SCN dated 21.04.2011 was issued by comparing the Appellant's audited financial statements, Income Tax Returns, Form 26AS and service tax challans clearly establishes that the relevant records were produced by the Appellant and were available with and examined by the Department. The conduct of the Appellant in producing its records during audit and regularly discharging service tax liability also demonstrates its bona fide approach and completely negates any suggestion that the Appellant had withheld material documents or deliberately prevented the Department from determining the correct tax liability.

(iii) In the present case, a fresh adjudication would place an impossible and highly prejudicial burden upon the Appellant to once again retrieve and produce transaction-level records pertaining to periods beginning from 2005–06. Owing to the extraordinary passage of time and practical limitations associated with preservation and retrieval of decades-old business records, the Appellant cannot reasonably be expected to reconstruct the entire documentary record which had already been produced before and examined by the Department at the relevant time. The Department cannot be permitted to derive an advantage from its own failure to correctly appreciate the records produced during audit and from the inordinate delay of more than a decade in concluding the adjudication proceedings, by being afforded yet another opportunity to reopen the entire proceedings and call upon the Appellant to reproduce the same records after such an extraordinary lapse of time.

(iv) In the present case, the Department had sufficient opportunity to examine the Appellant's records during audit, issue properly quantified notices and adjudicate the proceedings within the statutory and reasonable period contemplated under the Finance Act, 1994. The Department should not be provided an opportunity to cure their defects after nearly two decades at the behest of the Appellant. Fresh adjudication in the present case would neither advance the cause of justice nor result in any fruitful exercise; rather, it would re-start the proceedings which have already remained pending for an unconscionably long period and would cause irreparable prejudice to the appellant.

16.1. Basing on the above submissions, the Ld. Counsel for the appellant contended that the impugned demands are vitiated by fundamental legal defects, including unlawful invocation of the extended period of limitation, arbitrary best judgment assessment, non-consideration of audited financial records and taxes already discharged, absence of proper investigation. Accordingly, it is prayed that the impugned order and the demands confirmed thereunder be set aside in toto.

17. The Ld. Authorized Representative appearing for the Revenue, while reiterating the findings recorded in the impugned order, opposed the appeal and supported the demands, interest and penalties confirmed therein. The principal submissions advanced on behalf of the Revenue, as noticed from the records and the course of hearing, inter alia, may be summarised as under: -

(i) That the appellant was engaged in providing Security Agency Services, falling within the taxable category under the Finance Act, 1994, and was accordingly liable to discharge service tax on the consideration received in respect of such services.

(ii) That, during the course of audit and subsequent verification, discrepancies were noticed between the income reflected in the appellant's financial records and the service tax discharged by it. According to the Revenue, the appellant had not correctly discharged the service tax liability on the taxable receipts reflected under the head "Security & Professional Charges".

(iii) That the appellant had not furnished the prescribed ST-3 returns for substantial periods and had also failed to furnish the requisite financial statements, ledgers, supporting documents and other records despite repeated requisitions by the Department. The Revenue accordingly submitted that the authorities were justified, wherever applicable, in resorting to the best-judgment assessment under Section 72 of the Finance Act, 1994.

(iv) That, for the subsequent periods, the taxable value was determined on the basis of the material available with the Department and, in the absence of reliable disclosures from the appellant, by adopting the prescribed best-judgment/pro-rata methodology, including the basis of the preceding year's taxable value and the assumed growth therein, as recorded in the respective proceedings.

(v) That the appellant had claimed exemptions in respect of services allegedly provided to SEZ units/export of services, but had failed to substantiate such claims by producing the requisite invoices, agreements or other documentary evidence. The Revenue therefore submitted that the exemptions claimed were liable to be disallowed to the extent they remained unsubstantiated.

(vi) That, similarly, the appellant had claimed and/or utilised CENVAT credit without producing the underlying statutory records and invoices necessary to establish the admissibility of such credit. The Revenue therefore supported the recovery of the allegedly inadmissible credit, along with applicable interest and penalty.

(vii) That the appellant had, at different stages, furnished particulars regarding CENVAT credit, exempted services and other aspects of its business which, according to the Revenue, were either inconsistent with the material subsequently produced or remained unsupported by contemporaneous records. The Revenue relied upon such discrepancies as indicative of non-disclosure of the material particulars relevant to determination of the appellant's service tax liability.

(viii) That the appellant had maintained several offices/branches and was carrying on its security-service operations from various locations, whereas its service tax registration particulars did not, according to the Department, correspond to the entire operational structure disclosed during verification. The Revenue submitted that the appellant had thereby failed to comply with the applicable statutory requirements.

(ix) That the appellant's failure to furnish returns and relevant records, coupled with the alleged non-disclosure of taxable receipts, unsupported exemption claims and discrepancies in the particulars of CENVAT credit, justified the Department's invocation of the extended period of limitation, wherever applicable, on the ground of suppression of material facts with intent to evade payment of service tax.

(x) That the subsequent proceedings were not founded upon any fresh or extraneous basis but flowed from the same underlying taxable activity and the material available with the Department, with the respective demands being quantified for the individual periods in accordance with the statutory provisions then applicable.

(xi) That, in respect of the proceedings pertaining to Financial Year 2016-17, the Revenue had also obtained relevant financial and transactional material from the DGGSTI, pursuant to correspondence exchanged between the two formations, and the demand was thereafter quantified on the basis of the material so received.

(xii) That, for the transitional period April 2017 to June 2017, in the absence of ST-3 returns and reliable financial particulars for the relevant period, the Department was justified in invoking Section 72 and determining the taxable value on a best-judgment basis by reference to the figures pertaining to Financial Year 2016-17 and the methodology adopted in the Statement of Demand.

(xiii) That the failure to discharge the admitted/determined service tax liability within the prescribed time attracted interest under Section 75, and the various contraventions relied upon by the Department rendered the appellant liable to the penalties imposed under Sections 76, 77 and 78 of the Finance Act, 1994, as applicable to the respective periods. In relation to the CENVAT credit dispute, the Revenue also supported the penalty imposed under Rule 15 of the CENVAT Credit Rules, 2004.

(xiv) That the mere assertion of having cooperated with the Department or having furnished documents before another investigating formation could not, by itself, absolve the appellant of its statutory obligation to furnish the relevant records to the jurisdictional authority or establish the correctness of the exemptions, CENVAT credit and taxable turnover disclosed by it.

17.1. In view of the aforesaid submissions, it is the contention of the Ld. Authorized Representative of the Revenue that the demands confirmed in the adjudication proceedings, along with applicable interest and penalties, are legally sustainable and do not warrant interference in appeal.

18. Heard both the sides and perused the records available before us.

19. At the outset, we deem it appropriate to take note, in brief, of the factual matrix giving rise to the present proceedings and the nature of the eight Show Cause Notices which constitute the subject matter of the appeals. The proceedings have their genesis in the audit conducted by the Department for the period Financial Years 2005-06 to 2009-10, which culminated in the issuance of Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011 (hereinafter referred to as "SCN-I") proposing recovery of Service Tax amounting to Rs.8,04,16,915/-, inclusive of the applicable cesses. The subsequent proceedings comprised Show Cause Notice No. 152/Div-I/2011-12 dated 20.10.2011 (hereinafter, "SCN-II") for Financial Year 2010-11, involving a proposed demand of Rs.6,23,51,828/-; Show Cause Notice No. 263/Div-I/2012-13 dated 23.10.2012 (hereinafter, "SCN-III") for Financial Year 2011-12, involving Rs.9,35,27,741/-; and Show Cause Notice No. 183/Div-I/2014-15 dated 22.05.2014 (hereinafter, "SCN-IV") for Financial Year 2012-13, involving Rs.16,83,49,934/-, all inclusive of applicable cesses.

19.1. The proceedings thereafter extended to Demand-cum-Show Cause Notice No. 13/Div-VIII/2016-17 dated 28.04.2016 (hereinafter, "SCN-V") covering Financial Years 2013-14 and 2014-15, proposing an aggregate demand of Rs.1,68,14,271/-; Statement of Demand No. 15/2018 dated 02.04.2018 (hereinafter, "SCN-VI") for Financial Year 2015-16, involving Rs.19,74,97,900/-; Statement of Demand No. 23/2018-19 dated 12.04.2019 (hereinafter, "SCN-VII") for Financial Year 2016-17, involving Rs.1,27,40,568/-; and, finally, Statement of Demand No. 40/2019-20 dated 13.02.2020 (hereinafter, "SCN-VIII") for the transitional period April 2017 to June 2017, involving a proposed demand of Rs.45,21,625/-. Thus, the controversy before us traverses the entire period from Financial Year 2005-06 through June 2017, spanning eight Show Cause/Demand Notices in total.

20. The case of the Revenue, in substance, is that the appellant, being engaged in the provision of Security Agency Services, had failed to correctly discharge its service tax liability on the taxable receipts arising from such activities; that the particulars disclosed by it in its financial records, ST-3 returns and other documents did not, according to the Department, satisfactorily account for the taxable turnover; and that the appellant had either failed to furnish the requisite statutory returns and records or had not substantiated the exemptions and CENVAT credit claimed by it. In respect of the relevant periods, the Department consequently proceeded to determine the alleged liability on the basis of the material available on record and, in the later years, by resorting to the best-judgment assessment contemplated under Section 72 of the Finance Act, 1994. The Revenue has further sought to sustain the demands on the footing that the appellant's conduct disclosed suppression or non-disclosure of material particulars, thereby justifying the invocation of the extended period,

wherever so invoked, and has consequently supported the consequential levy of interest and penalties.

21. The appellant, on the other hand, has assailed the very edifice upon which the aforesaid proceedings rest. The principal grievance of the appellant is that the demands have been raised in a mechanical and largely presumptive manner, without a proper appreciation or verification of the underlying financial and transactional material. It has questioned, inter alia, the manner in which the taxable value has been determined; the resort to best-judgment assessment without satisfying the statutory preconditions or undertaking a reasoned assessment based upon relevant material; the rejection of exemptions without adequate examination of the transactions to which they pertain; and the denial and recovery of CENVAT credit without proper appreciation of the documents and records relevant thereto. The appellant has further challenged the invocation of the extended period of limitation and the consequential penalties, contending that the requisite ingredients of suppression, wilful misstatement or intent to evade payment of tax have neither been established nor can they be presumed merely from the alleged deficiencies in compliance. The appellant has also raised objections concerning the overlapping nature of the proceedings, the material gathered from parallel departmental investigations, and the manner in which such material has been utilised for quantification of the alleged liability.

22. The dispute before us, therefore, is not confined merely to the arithmetical correctness of the demands raised for the several periods. It extends to the jurisdictional and foundational validity of the

assessments themselves, the evidentiary basis upon which the taxable value has been arrived at, the propriety of rejecting the appellant's claims without adequate verification, the statutory requirements governing best-judgment assessment, the sustainability of the invocation of the extended period of limitation and, consequentially, the justification for the interest and penal liabilities imposed upon the appellant. In our considered view, these questions cannot appropriately be answered by treating without individually examining the factual substratum, nature of the allegations, material relied upon and methodology adopted by the Department in the different Show Cause Notices issued for the corresponding periods under dispute.

23. We shall accordingly examine the matter seriatim, by taking up each of the eight Show Cause Notices separately, noticing the allegations and basis of the demand contained therein, the defence and counter-submissions advanced by the appellant in relation thereto, and the manner in which the same have been dealt with in adjudication. Upon such examination, the appropriate directions shall follow in respect of each proceeding.

Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011 – (SCN-I) – Financial Years 2005-06 to 2009-10

24. We now take up Show Cause Notice No. 25/Audit/2011-12 dated 21.04.2011, issued for the period Financial Years 2005-06 to 2009-10, proposing recovery of service tax amounting to Rs.8,04,16,915/-, inclusive of the applicable cesses.

25. Having carefully considered the allegations contained in the notice, the material placed on record, the submissions advanced by the appellant and the findings recorded in adjudication, we find that the demand suffers from various infirmities, for the reasons as set out hereunder.

1. Arbitrary Rejection of Exempted, Non-Taxable Services and Reimbursable Expenses

26. The fundamental difficulty which confronts us at the very threshold is the manner in which the impugned demand has been quantified. The demand proceeds substantially by rejecting the appellant's claims towards exempted / non-taxable and receipt figures without adducing any evidence, and treating the gross value of services for the said period as the value of taxable services for the purposes of levy of service tax. Such an approach, in our considered view, cannot, by itself, constitute a legally sustainable determination of taxable liability.

26.1. Thus, the appellant's claims relating to exempted services, non-taxable services and reimbursable expenses are required to be examined in their proper perspective. The appellant has specifically contended that substantial amounts aggregating to Rs.46,04,41,792.87 were liable to be excluded from the taxable value on account of the nature of the underlying transactions. We find that these claims have not been subjected to any meaningful independent verification before being discarded.

26.2. The adjudicating authority, rather than examining the individual components and determining their precise character, has proceeded essentially on the basis that the appellant failed to furnish sufficient documentary material in support thereof. Such rejection, in our considered opinion, could not substitute for an investigation into the underlying transactions. Where a substantial portion of the proposed taxable turnover is disputed on the ground that it comprises exempted or otherwise non-taxable receipts, the adjudicating authority is required to examine the nature of those receipts and record a reasoned finding as to their taxability.

26.3. We may observe, in this context, that amounts which are genuinely attributable to exempted or non-taxable services cannot, merely by reason of their reflection in the books of account, be brought within the taxable value of a service tax levy. To include receipts which are outside the statutory charging provision would be to travel beyond the four corners of the taxing statute. Such an approach would, in our view, be antithetical to the settled principle that a taxing liability must have clear statutory foundation.

26.4. The appellant has also contested the inclusion of reimbursable expenses, contending that such amounts represent mere recovery of costs incurred on behalf of the service recipient and do not constitute consideration for the taxable service itself. This contention assumes particular significance in view of the period involved in SCN-I.

26.5. The legal position concerning reimbursable expenses, as it stood during the relevant period, came to be authoritatively considered by the Hon'ble Supreme Court in *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (10) G.S.T.L. 401 (S.C.)].,* wherein it was held that the value of taxable service could not, during the period prior to the statutory amendment, be enlarged so as to include amounts which were merely reimbursed expenses and did not represent consideration for the service provided. The said position continued to hold the field until the amendment which came into effect on 14.05.2015. The entire period covered by SCN-I is anterior thereto. Consequently, to the extent the amounts in question are demonstrated, upon verification, to constitute genuine reimbursable expenses and not consideration for the taxable service, the same could not have been mechanically included in the taxable turnover.

26.6. We are, therefore, unable to approve an approach adopted by the Revenue in this regard. The Revenue was required to undertake a proper verification of the constituent elements of the receipts and thereafter determine the taxable value in accordance with law. In the absence of such exercise and without considering the reconciliation statements furnished by the appellant in this regard, the computation forming the very foundation of SCN-I suffers from a fundamental infirmity and requires reconsideration.

26.7. We are therefore of the considered view that the appellant's claims in respect of exempted services, non-taxable services and reimbursable expenses could not have been rejected en bloc without a proper examination of the underlying records and transactions. These aspects necessarily require verification and a fresh determination by the adjudicating authority.

<u>2. CENVAT Credit — Erroneous Denial and Selective Appreciation of the Financial Records</u>

27. We next turn to the question of CENVAT credit. The appellant has contended that an amount of Rs.4,46,64,196.11 was legitimately available and had already been adjusted/utilised towards discharge of its service tax liability, but that the same was not given due credit while determining the demand.

27.1. The Revenue's approach, as emerging from the proceedings, appears to have proceeded substantially on the premise that the appellant had not incurred expenditure on sub-contracting and that its expenditure was predominantly in the nature of salary payments, on which CENVAT credit would ordinarily not be available. We find this approach to be unduly restrictive and, more importantly, not borne out by a comprehensive examination of the appellant's audited financial records.

27.2. The appellant has placed reliance upon its audited books to demonstrate that, apart from employee-related expenditure, it had incurred substantial “Administrative and Other Office Expenses” amounting to Rs.12,57,71,148.92 during the relevant period in the course of carrying on its taxable business. These expenses, according to the appellant, were incurred in connection with the provision of its output services and constitute an important part of the factual matrix relevant to the question of CENVAT Credit. For better appreciation of the facts, the year wise bifurcation of the said expenses is as below: -

Period	Administrative and Other Office expenses (Rs.)
2005-06	18,15,43,07.56/-
2006-07	2,31,43,335.07/-
2007-08	3,22,12,471.78/-
2008-09	4,57,44,448.60/-
2009-10	4,76,86,585.91/-
Total	**12,57,71,148.92/-**

27.3. Further, the appellant has submitted that the Service Tax payments made by them insofar as the period from 2005-06 to 2009-10 is concerned, involved payments through both cash as well as CENVAT Credit. The details thereof have been furnished, as under: -

Period	Service Tax paid in cash	Service Tax paid through CENVAT credit
2005-06	49,35,959.00	41,34,339.11
2006-07	62,10,241.00	58,37,984.00
2007-08	48,35,955.00	87,00,486.00
2008-09	1,41,70,378.00	1,21,25,955.00
2009-10	2,01,88,115.00	1,38,65,432.00
Total	**5,03,40,648.00**	**4,46,64,196.11**

27.4. What is particularly striking is that, while the Department has relied upon selected entries in the financial records to question the appellant's entitlement to CENVAT credit, the corresponding expenditure reflected under the head "Administrative and Other Office Expenses" has not received commensurate consideration. Selective reliance upon one part of the financial record, while completely overlooking another material component thereof, cannot furnish a sound basis for determination of tax liability.

27.5. At the same time, we notice an inherent incongruity in the Department's approach. The allegations concerning exemption and CENVAT credit are directed towards particular components of the appellant's transactions; yet, instead of restricting the demand to such specific components after appropriate verification and quantification, the Department has proceeded to recompute the appellant's entire turnover as reflected in Table F of the impugned SCN. No satisfactory nexus has been demonstrated between the particular alleged irregularities and the wholesale re-computation of the turnover adopted for raising the demand.

27.6. In our view, if the Department's case was that particular exemptions were inadmissible or particular credits were irregular, the proper course was to identify the precise transactions, examine the supporting material, determine their admissibility and quantify the resulting liability. A wholesale substitution of the appellant's actual financial data by a reworked turnover figure, without establishing the necessary evidentiary nexus, cannot be countenanced.

27.7. Further, the material placed before us demonstrates that the appellant necessarily incurred various administrative and operational expenses in the course of rendering its taxable services. The mere fact that the appellant incurred substantial expenditure towards salaries cannot lead to the converse inference that no other expenditure was incurred in rendering the taxable output services or that the appellant could not have availed eligible CENVAT credit.

27.8. We accordingly find merit in the submission of the appellant that the rejection of their plea towards adjustment through CENVAT credit was not warranted. The audited records disclose substantial administrative and office expenditure, and the Revenue has not placed sufficient material before us to establish that the entire credit claimed/adjusted was inadmissible. We also note that the period of dispute being quite old, and the investigation having been lacking, the appellant cannot be faulted for procedural lapses in this regard. The substantive benefit of CENVAT Credit, in the facts and circumstances of the case, must therefore be allowed to the appellant.

27.9. We therefore hold that the CENVAT credit adjustment towards the service tax liability for the period covered by SCN-I cannot be denied. Therefore, by allowing the benefit of adjustment of Service Tax dues during the period in question through availment of CENVAT Credit, we hold that the demand necessarily requires to be reworked after giving due effect to the eligible CENVAT credit adjustment so done the appellant, in accordance with law.

3. Extended Period of Limitation under Section 73(1) of the Finance Act, 1994: -

28. We now come to the question of limitation, which goes to the very maintainability of a substantial part of the demand. SCN-I invokes the proviso to Section 73(1) of the Finance Act, 1994 on the allegation of wilful suppression of facts and intent to evade payment of service tax.

28.1. The extended period of limitation is not available to the Department as a matter of course. Its invocation is conditioned upon the existence of the statutory ingredients, namely fraud, collusion, wilful misstatement, suppression of facts or contravention of the statutory provisions with intent to evade payment of tax. These are substantive requirements and cannot be presumed merely because the Department subsequently takes a different view of the taxability of particular receipts or because the assessee may not have complied with a procedural requirement.

28.2. In the present case, there is a further circumstance which militates against the invocation of the extended period. The very figures utilised by the Department for raising the demand have been substantially drawn from the appellant's audited financial statements, Profit & Loss Accounts, Balance Sheets and other statutory records maintained in the ordinary course of business. Such records were not clandestine documents discovered by the Department through an independent investigation; rather, they constituted the very source from which the impugned computation was made.

28.3. The financial records of the appellant were statutorily maintained and audited, and the relevant financial particulars were available in the ordinary course before the competent statutory authorities. In such circumstances, the mere circumstance that the appellant had not filed ST-3 returns cannot, without more, be elevated into a finding of deliberate suppression of material facts with intent to evade service tax.

28.4. Non-filing of returns may attract the consequences specifically provided by law. However, a procedural lapse cannot, by an automatic process of reasoning, be converted into suppression of facts or a deliberate intention to evade tax. The Department must establish the additional ingredients necessary for invoking the exceptional period of limitation. Here, the foundational material for the computation was itself available in the appellant's disclosed financial records. There is no adequate independent evidence placed before us demonstrating that the appellant had consciously concealed taxable receipts or deliberately withheld material facts with the requisite intent to evade payment of service tax.

28.5. In the case of *Umesh Tilak Yadav v. Commissioner of Central Excise, (2024) reported in 159 taxmann.com 336 the Hon'ble CESTAT, Mumbai*, while setting aside the impugned order, the Tribunal has held as under: -

> *"4. We have carefully gone through the record of the case and submissions made. The demand was raised invoking the provisions of sub-section (1) of Section 73 of Finance Act, 1994. The said provision of Finance Act empowers Revenue for recovery of service tax which has not been levied or which has*

> *not been paid or which has not been short levied or which has not been short paid or which has been erroneously refunded. Therefore, the first step for Revenue is to establish that a specific amount to be demanded through show cause notice by invoking the said provision is service tax either not paid or short paid or not levied or short levied. Therefore, it is essential to establish that the value on which such service tax is calculated is the value under section 67 and the same is derived from the consideration received by the appellant out of the activity which has to satisfy definition of service under sub-section (44) of Section 65B of Finance Act, 1994. Such type of examination of the facts and arriving at the prima facie view that the appellant had received the consideration by providing service is missing in the show cause notice. We, therefore, hold that the said show cause notice dated 26-6-2020 is not sustainable in law.*
>
> *5. We, therefore, set aside the impugned order and allow the appeal."*

28.5.1. The law concerning the invocation of the extended period of limitation is well established. The Hon'ble Supreme Court in *Pushpam Pharmaceuticals Company v. CCE [1995 (78) E.L.T. 401 (S.C.)]* observed that "suppression of facts" cannot be equated with a mere omission or failure to disclose; it must be a wilful act executed with a specific intent to evade duty.

28.5.2. This settled principle was recently reaffirmed by the Hon'ble Apex Court in *M/s. Stemcyte India Therapeutics Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Ahmedabad – III [2025 (7) TMI 1007],* which explicitly held that the Department cannot invoke the extended limitation period without proving an active, deliberate act by the assessee to evade tax. Consequently, mere non-payment of tax, absent a clear element of intent or wilful suppression, is legally insufficient to attract the extended period.

28.6. In these circumstances, we find that the extended period invoked in SCN-I cannot be sustained. The demand, if otherwise found payable upon re-computation, can survive only for the normal period of limitation prescribed under the statute. The portion of the demand which is founded solely upon the extended period is consequently liable to be excluded.

<u>4. Demand Beyond the Statutory Five-Year Boundary — Ab Initio Unsustainable</u>

30. There is yet another, and wholly independent, limitation infirmity which requires notice. SCN-I came to be issued on 21.04.2011 and purports to invoke the extended period of limitation. Even assuming, for the sake of argument, that the extended period were otherwise available, the statutory outer limit cannot be stretched beyond the maximum period prescribed by law. Consequently, any demand pertaining to a period falling beyond the permissible five-year period preceding the date of the Show Cause Notice would be ex facie barred by limitation and beyond the jurisdiction conferred by the charging and recovery provisions.

30.1. In particular, the demand relatable to the period April 2005 to September 2005 falls beyond the permissible five-year look-back period reckoned with reference to the date of issuance of SCN-I. Such portion of the demand, therefore, cannot be revived by invoking the extended period and is ab initio unsustainable. We accordingly hold that the portion of the demand pertaining to the period beyond the statutory outer limit is liable to be set aside, being clearly beyond the four corners of the statutory scheme.

31. From the foregoing discussion in respect of SCN-I, we are of the considered view that the original determination suffers from deficiencies both in quantification and appreciation of the material, and that several substantive issues raised by the appellant—particularly the treatment of exempted/non-taxable services, reimbursable expenses and CENVAT credit—have not received the requisite examination. Equally, the invocation of the extended period has not been shown to satisfy the statutory threshold, while the portion of the demand falling beyond the absolute five-year outer limit is ex facie barred.

32. We therefore deem it appropriate, in the interests of a proper and legally sustainable determination, to remand the matter to the adjudicating authority for the limited purpose of re-quantification and consequential determination, subject to the following directions:

(i) The adjudicating authority shall re-examine the receipts forming part of the disputed turnover and shall exclude, upon verification, the amounts relatable to exempted services, non-taxable services and genuine reimbursable expenses, insofar as the same fall outside the taxable value in accordance with the law applicable to the relevant period. In particular, the claim relating to reimbursable expenses shall be examined in the light of the law prevailing prior to 14.05.2015, including the ratio of *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. (supra);*

(ii) The CENVAT credit adjustment claimed by the appellant for the relevant period shall not be denied and shall, in the facts and circumstances of the case, be allowed to the appellant. The eligible credit shall be duly taken into account and allowed towards adjustment of the appellant's service tax liability, for re-computation of the Service Tax liability payable by the assessee, if any, in accordance with law;

(iii) The extended period of limitation under the proviso to Section 73(1) is not invokable in the facts and circumstances of the case. The surviving demand, if any, shall consequently be restricted to the normal period of limitation;

(iv) Any portion of the demand falling beyond the statutory five-year outer limit, including the portion relatable to April 2005 to September 2005, shall stand set aside ab initio and shall not form part of the demand to be re-determined;

32.1. It is clarified that the remand herein is confined to the aforesaid re-determination and consequential matters, and shall be undertaken strictly in accordance with the findings and directions recorded above. The consequential interest and penal liability, if any, shall abide by the fresh determination and also the findings recorded herein.

Show Cause Notice No. 152/Div-I/2011-12 dated 20.10.2011 – (SCN-II) – Financial Year 2010-11

Show Cause Notice No. 263/Div-I/2012-13 dated 23.10.2012 – (SCN-III) – Financial Year 2011-12

Show Cause Notice No. 183/Div-I/2014-15 dated 22.05.2014 – (SCN-IV) – Financial Year 2012-13

Statement of Demand No. 15/2018 dated 02.04.2018 – (SCN-VI) – Financial Year 2015-16

Statement of Demand No. 40/2019-20 dated 13.02.2020 – (SCN-VIII) – Financial Year 2017-18 (April 2017 to June 2017)

33. It would be appropriate to note that, insofar as the aforesaid Show Cause Notices/Statements of Demand are concerned, the principal plank of the submissions advanced on behalf of the appellant is that the entire exercise undertaken by the Department proceeds upon an erroneous and mechanically applied invocation of the best-judgment assessment contemplated under Section 72 of the Finance Act, 1994. It has been vehemently contended that the said provision, being in the nature of an exceptional machinery provision, cannot be invoked as a matter of course merely because the Department considers the returns or information furnished by an assessee to be inadequate or incomplete. According to the appellant, the Department was admittedly in possession of its audited financial statements, Profit & Loss Accounts, balance sheets, statutory records, returns and other material, and could not, in the teeth of such material, discard the actual figures and

substitute them with figures arrived at by applying arbitrary percentage increases, pro-rata calculations or the highest turnover of an earlier period.

33.1. It has further been submitted that the very foundation of the best-judgment assessments is rendered infirm by the contradictory stand adopted in the impugned order, wherein, on the one hand, the Adjudicating Authority acknowledges the existence and submission of the Appellant's audited financial records, while, on the other, proceeds on the premise that no such financial records were furnished. The Appellant has also disputed the allegation that statutory returns were wholly absent for the periods in question and has contended that the Department itself had access to the returns and statutory challans. It is thus urged that the exceptional jurisdiction under Section 72 could not have been exercised in the facts and circumstances of the present case.

33.2. We find considerable force in the aforesaid contention. The question, therefore, which falls for our consideration at the threshold is whether the resort to best-judgment assessment under Section 72 of the Finance Act, 1994, in the peculiar facts of the present case, was legally sustainable. This issue, in our considered view, must necessarily precede an examination of the consequential questions concerning deductions, exemptions and CENVAT credit.

<u>1. Sustainability of Best-Judgment Assessment under Section 72 of the Act</u>

34. Section 72 of the Finance Act, 1994 embodies a machinery for best-judgment assessment in circumstances where the statutory conditions for its

invocation stand satisfied. It is, however, not a charter for the Department to abandon the primary material available on record and proceed upon conjecture or estimation merely for administrative convenience. The expression "best judgment" cannot, in law, be equated with best guess. In the present case, the impugned demands for the respective periods have been arrived at by resorting to methodologies which include, inter alia, applying an assumed percentage increase over the preceding year's taxable value and, in another instance, adopting the highest taxable value of the preceding years as the basis for determination of the liability. Such methodology, in our considered view, requires much greater scrutiny before it can constitute a legally sustainable best-judgment assessment. An assessment, even when made to the best judgment of the assessing authority, must bear a reasonable nexus with the material available on record and cannot rest upon figures which are merely hypothetical or arbitrarily extrapolated.

34.1. More importantly, the impugned Order-in-Original itself records, at various places, that the appellant had furnished audited financial statements and other financial records. The Appellant has specifically drawn our attention to paragraphs 48.4, 48.5, 48.6 and 49.1.9 of the impugned order, wherein such records have been acknowledged. Yet, while confirming the demands under Section 72, the Adjudicating Authority proceeds, as noticed by the appellant, on the premise recorded in paragraph 58.2 that no such financial records had been submitted. Such mutually inconsistent findings cannot be brushed aside as a mere irregularity. They go to the very foundation of the assessment and disclose an apparent non-application of mind to the material forming part of the adjudication record.

34.2. The matter is further compounded by the allegation that the appellant had not filed statutory returns. The impugned order itself, according to the submissions placed before us, records filing of statutory returns for certain periods, including the periods from 2005-06 to 2009-10 and 2011-12 to 2014-15. In such circumstances, the allegation of complete absence of returns cannot be accepted in an unqualified manner without reconciling the same with the Department's own records. Even where a return may not be traceable in a particular form or period, the Department was not thereby absolved of examining the other contemporaneous records admittedly available to it.

34.3. Section 72 empowers the Department to make an assessment to the best of its judgment where the statutory conditions prescribed therein are fulfilled. However, such power is circumscribed by the material available and the requirement of a rational determination. It cannot be employed to replace actual financial data with an artificial mathematical projection without first demonstrating why the primary records were incapable of being relied upon or verified. In the facts before us, we find that the Department had access to, or was admittedly aware of, substantial financial and statutory material pertaining to the Appellant. The impugned order does not, in our considered view, satisfactorily explain why such material could not be examined and reconciled before resorting to an estimated determination of taxable value. The adoption of an assumed growth rate or the adoption of a peak figure from an earlier period, without establishing a rational nexus between such figure and the actual taxable services rendered during the relevant period, cannot, by itself, constitute a legally satisfactory best-judgment assessment.

34.4. The settled principle that an assessment cannot be founded upon conjecture, surmise or arbitrary estimation, particularly when relevant primary records are available or capable of verification, assumes significance in the present case. It has been submitted before us that in the present case the appellant had submitted all the financial statements audited by a Chartered Accountant which were required by the Department for arriving at actual value of taxable services, however, despite these submissions and knowledge of the appellant's financials, the Department still resorted to Best Judgement Assessment under Section 72 of the Act. The exercise undertaken by the Department, therefore, cannot be sustained in its present form.

34.5. The Hon'ble Delhi High Court in the case of The *Commissioner of Central Tax, CGST Delhi South Versus The Indure (P) Limited reported in 2025 (8) TMI 1348*has held as under: -

> *"In addition, we note that the demand for the period 2012-13, was based on Best Judgment method. It has been submitted by the Ld. Counsel that the demand based on Best Judgment is incorrect as the appellant had submitted all details and documents to the department. It has been further submitted that vide their letter dated 21.04.2014 (RUD to Show Cause Notice dated 22.05.2014) wherein turnover pertaining to Works Contract Services was duly informed to the Department. Further, the Department has submitted that the demand for the*

> *period 2012-13 was arrived at by jacking up the turnover of WCT of previous year 2011-12 to the extent of 150% by resorting to Section 72 of the Finance Act, 1994, as the appellant had failed to provide the information sought by the department."*

34.5.1. This view has also been reiterated by this Tribunal in case of *Dhillon Aviation Pvt. Ltd. Versus Commissioner of central excise, Delhi-II reported in 2020 (37) G.S.T.L. 434*, wherein at paragraph 6.5, it has been observed as under –

> *"It is admitted in the impugned order that the department obtained total receipt value for the preceding years from the appellant. There is no reason that the department could not get the actual receipts details for the year 2013-14 also. This Tribunal in the case of Shubham Electricals v. Commissioner of C. Ex. & S.T., Rohtak - 2015 (40) S.T.R. 1034 (Tri. - Del.) has held that a best judgment assessment should be based on material and data on record. It is not a tool in the hands of the Adjudicating Authority to punish the assessee. The estimation should be fair and reasonable, and not a wild guess work.*
>
> *The said judgment was confirmed by the Hon'ble Delhi High Court vide 2016 (42) S.T.R. J312 (Del.). The ratio of the above judgment is applicable to the case in hand. The appellant has submitted all calculations of admitted tax liabilities, and deposit of Tax, duly certified by a Chartered Account with the appeal.*
>
> *7. In view of the above it is clear that the impugned order suffers from infirmities as explained and is not sustainable under the law. Therefore, the impugned order is set aside and the appeal is allowed."*

34.6. We accordingly hold that, in the facts and circumstances of the present case, resort to best-judgment assessment under Section 72 was unwarranted and cannot be sustained in the manner in which it has been undertaken. The demands for the concerned periods consequently require reconsideration on the basis of the actual and verifiable material on record.

2. Exempted, Non-taxable and Reimbursable Receipts — Taxability Cannot Be Presumed

35. The appellant has, in addition, contended that while arriving at the taxable value, the Department has failed to account for receipts relating to exempted services, non-taxable services and reimbursable expenses, despite specific claims having been raised in this regard.

35.1. We have already examined this aspect in some detail while considering SCN-I. The same principle would equally govern the present proceedings. The mere reflection of a receipt in the books of account cannot, by itself, render such receipt exigible to service tax. What is required to be determined is the true and legal character of the receipt and whether the same falls within the taxable value of the taxable service in terms of the statutory scheme applicable to the relevant period. Thus, receipts pertaining to services which are demonstrably exempt or otherwise outside the ambit of the levy cannot be brought to tax merely by incorporating them mechanically into the taxable turnover. The same applies to amounts claimed as reimbursement of expenses. As already noticed supra, the Supreme Court in *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. (supra)* held that, during the relevant period, the value of taxable service could not be enlarged by including reimbursable expenses which did not constitute consideration for the service itself. The said legal position continued until the relevant statutory amendment with effect from 14.05.2015.

35.2. We also deem it appropriate to take note of the fact that the periods covered by the present batch of Show Cause Notices span both sides of the statutory amendment brought about with effect from 14.05.2015. The decision of the Hon'ble Supreme Court in *Intercontinental Consultants and Technocrats Pvt. Ltd. (supra)*would apply to the law as it stood prior to 14.05.2015, Pursuant to the subsequent amendment to Section 67 by the Finance Act, 2015, with effect from 14.05.2015, the statutory definition of "consideration" was enlarged so as to include reimbursement of expenditure or cost incurred by the service provider in the course of providing or agreeing to provide the taxable service. Accordingly, while in respect of the periods 2010-11, 2011-12 and 2012-13, the legal position prevailing prior to 14.05.2015, as elucidated by the Hon'ble Supreme Court in *Intercontinental Consultants and Technocrats (supra)* shall prevail, insofar as the periods falling on or after 14.05.2015, including the relevant periods covered by SCN-VI and SCN-VIII, the amended statutory position shall necessarily govern. The question, therefore, would not be merely whether the amounts were described as "reimbursements", but whether, having regard to the amended law, the Appellant satisfies the requirements for exclusion of such amounts as expenditure incurred as a "pure agent" under Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. The adjudicating authority shall accordingly examine the relevant agreements, invoices, third-party bills, ledger accounts and other supporting material and determine, item-wise and period-wise, whether the statutory conditions prescribed for a pure agent are fulfilled, for the period post 14.05.2015. It goes without saying that the mere nomenclature of an amount as reimbursement shall not, by itself, either render it taxable or entitle it to exclusion; the determination must necessarily follow from the statutory requirements applicable to the relevant period.

35.2. Accordingly, insofar as the relevant periods covered by the present SCNs are concerned, the Appellant's claims in respect of exempted services, non-taxable receipts and reimbursable expenses cannot be rejected merely by adopting the gross figures reflected in the financial statements. The nature and eligibility of such deductions require proper verification with reference to the underlying documents, agreements, invoices and other relevant records.

35.3. We therefore are of the view that these claims are to be examined independently and to be exclude from the taxable value if such receipts are as such found, upon verification, to be exempt, non-taxable or otherwise outside the taxable value in accordance with law.

3. CENVAT Credit Cannot Be Denied

36. The appellant has further submitted that the service tax liability for the concerned periods was discharged partly in cash and partly through CENVAT credit, and that the credit so availed and utilised has been denied without any cogent or legally sustainable basis.

36.1. We have already considered the corresponding issue in the context of SCN-I and have held that the claim of CENVAT credit cannot be rejected merely on assumptions, particularly when the Appellant has placed on record material evidencing the incurrence of administrative, operational and other expenses in the course of rendering taxable services.

36.2. The substantive character of the CENVAT credit mechanism cannot be lost sight of. Once the Appellant claims that a part of its service tax liability stood discharged through CENVAT credit, the Department is required to verify the eligibility and utilisation of such credit with reference to the relevant statutory records, rather than reject the adjustment on a generalized premise that the Appellant had not incurred expenditure capable of yielding credit.

36.3. The material placed before us, including the audited financial records, indicates that the appellant had incurred substantial administrative and operational expenditure in the course of its business. We have already observed supra that the mere fact that salary expenditure may not qualify for CENVAT credit does not justify the sweeping conclusion that the Appellant incurred no other expenditure in providing its taxable output services.

36.4. In the present proceedings also, we do not find sufficient cogent evidence on record to justify the denial of the CENVAT credit adjustment claimed by the appellant. The Department must necessarily undertake a proper verification of the credit actually availed and utilised and determine its admissibility in accordance with the CENVAT Credit Rules, 2004.

36.5. We therefore hold that eligible CENVAT credit cannot be denied merely on assumptions or generalized findings. Therefore, in the circumstances, we hold that CENVAT Credit shall be allowed towards discharge of the corresponding service tax liability.

4. Invocation of Extended Period of Limitation

37. The appellant has also assailed the invocation of the extended period of limitation in respect of the impugned proceedings in respect of the above said Show Cause Notices as well, contending that the necessary ingredients of suppression of facts, wilful misstatement or intent to evade payment of service tax are conspicuously absent. It is submitted that the Department had itself conducted a detailed audit of the appellant for the earlier period, i.e. 2005-06 to 2009-10, and had thereby examined the Appellant's records, financial affairs and manner of discharge of service tax liability. In such circumstances, the Department cannot, for the subsequent periods, repeatedly invoke the extended period on the very same set of facts as though the relevant circumstances were beyond its knowledge.

37.1. We find considerable force in the aforesaid submission. As noticed hereinabove, the very basis of the subsequent proceedings rests upon the financial and statutory records of the appellant and the nature of its activities, which were not matters concealed from the Department. More significantly, the Department had already undertaken an audit for the earlier period and was thus in possession of material concerning the appellant's business activities, financial records and manner of discharge of its service tax liability. The subsequent Show Cause

Notices pertain to successive periods and substantially the same set of allegations and factual circumstances.

37.2. The law on the subject is no longer res integra. The Hon'ble Supreme Court in *Nizam Sugar Factory v. Collector of C.Ex., A.P. [2006 (197) E.L.T. 465 (S.C.)]*, while setting aside the proceedings, categorically held that where the Department was already aware of the relevant facts, the extended period could not thereafter be invoked for subsequent demands on the same issue. The principle underlying the said decision is of particular relevance in the present case, where the Department, having undertaken an audit for the earlier period, proceeded to issue successive proceedings for the subsequent periods on substantially the same factual foundation.

37.3. In the facts as obtaining before us, we do not find material sufficient to establish the requisite element of suppression of facts with intent to evade payment of service tax so as to justify recourse to the extended period. Mere non-filing or delayed filing of returns, without something more demonstrating deliberate concealment or a positive act of suppression, cannot, in the circumstances of the present case, furnish an automatic foundation for invoking the extended period.

37.4. We are, therefore, of the considered view that the extended period of limitation, wherever invoked in respect of SCN-II, SCN-III, SCN-IV, SCN-VI and SCN-VIII, is not invokable. The demands, if otherwise sustainable upon fresh determination, shall consequently be confined to the period legally permissible under the normal period of limitation.

38. In view of the foregoing discussion, we are of the considered view that the demands raised under SCN-II, SCN-III, SCN-IV, SCN-VI and SCN-VIII, cannot be sustained and require re-computation. The fundamental defect lies in the manner in which the taxable value itself has been determined, coupled with the failure to properly examine the appellant's specific claims concerning deductions and CENVAT credit.The mattersare, accordingly, remanded to the adjudicating authority for fresh determination, subject to the following specific directions:

(i) The adjudicating authority shall reconsider the demands on the basis of the actual and verifiable financial and statutory records available on record. In the facts and circumstances of the present case, best-judgment assessment under Section 72, as mechanically resorted to in the impugned proceedings, is held to be unwarranted and unsustainable. The taxable value shall not be determined merely by applying arbitrary percentage growth, pro-rata enhancement or adopting the highest turnover of an earlier period, without establishing a rational nexus with the actual taxable services rendered and consideration received.

(ii) The claims of the appellant in respect of exempted services, non-taxable receipts and reimbursable expenses shall be independently examined with reference to the underlying records. Such amounts shall be excluded from the taxable value wherever, upon verification, they are found to be exempt, non-taxable or otherwise outside the ambit of the levy in accordance with the law applicable to the respective period.The claim relating to reimbursable expenses shall be examined period-wise, keeping in view the distinct legal position prevailing before and with effect from 14.05.2015; for the post-14.05.2015 period, in terms of our observations supra.

(iii) The CENVAT credit shall be allowed towards adjustment of the Service Tax liability for the respective periods and shall not be denied merely on the basis of assumptions or generalized findings unsupported by cogent evidence.

(iv) The extended period of limitation, wherever invoked in respect of the aforesaid Show Cause Notices/Statements of Demand, having been held to be not invokable, the adjudicating authority shall restrict any service tax liability found otherwise sustainable to the normal period of limitation prescribed under the applicable statutory provisions.

38.1. After undertaking the aforesaid exercise, the adjudicating authority shall recompute the actual service tax liability, if any, separately for each relevant financial year, after granting a reasonable and effective opportunity to produce the relevant records and advance its submissions, and thereafter, the adjudicating authority shall pass a fresh, reasoned and speaking order in accordance with law, without being influenced by the findings in the impugned order which stand contrary to the observations recorded herein.The consequential interest and penal liability, if any, shall abide by the fresh determination and also the findings recorded herein.

<u>Demand Cum Show Cause Notice No. 13/Div-VIII/2016-17 issued vide C. No. DL-II/ST/DIV VIII/R-40/TFG/36/2015/5542 to 5545 dated 28.04.2016 – (SCN-V) – Financial Years 2013-14 and 2014-15</u>

39. We now turn to Demand Cum Show Cause Notice No. 13/Div-VIII/2016-17 dated 28.04.2016, covering the Financial Years 2013-14 and 2014-15. The said proceedings were initiated principally on the allegation that the appellant had wrongly availed exemptions in respect of services claimed to have been provided by way of export of services and/or to units located in Special Economic Zones, and had further wrongly availed and utilised CENVAT Credit, on the ground that the Appellant had failed to furnish supporting documents despite repeated requisitions by the Department.

39.1. The Department proceeded on the premise that, in the absence of supporting documentation being produced pursuant to the several letters and summons issued during investigation, the exemptions reflected in the ST-3 returns could not be accepted and the corresponding amounts were liable to be brought within the taxable value. On a similar footing, the CENVAT credit reflected in the returns was treated as inadmissible for want of production of the underlying invoices and supporting records. Consequently, a service tax demand of Rs.1,23,97,840/-, inclusive of applicable cesses, was proposed in respect of the alleged wrongful availment of exemptions, together with a further demand of ₹44,16,431/- in respect of CENVAT credit, besides interest and penalties under the relevant provisions.

39.2. The Revenue's case in respect of the said Show Cause Notice, therefore, is essentially that the claims made by the appellant could not be accepted in the absence of supporting documentary evidence. The controversy before us is consequently not merely one of computation, but concerns the legal sustainability of rejecting the appellant's claims without undertaking an independent verification of the underlying transactions and records. We proceed to examine the matter accordingly.

1. Exemption in respect of Export/SEZ Services — Rejection Cannot Rest Merely on Non-production of Documents

40. The principal grievance of the Appellant is that a substantial demand of Rs.1,23,97,840/- has been confirmed merely on the premise that supporting documents in respect of the exemptions claimed for export of services and services provided to SEZ units were not produced before the Department. According to the Appellant, such an approach effectively reverses the statutory burden and permits a substantial tax demand to be sustained merely upon an allegation of non-production of documents, without the Department first establishing that the transactions in question were, in fact, taxable.

40.1. We find considerable force in the submission. Where an assessee claims the benefit of an exemption or exclusion from the taxable value, the Department is certainly entitled to examine the eligibility of such claim and to call for the supporting documents necessary for such determination. However, the rejection of such claim cannot be founded upon presumption alone. The Department is required to examine the underlying factual position and arrive at a reasoned conclusion as to why the particular transaction does not satisfy the statutory requirements.

40.2. The present controversy concerns transactions claimed to constitute export of services and/or services provided to SEZ units. These are matters which are ordinarily capable of verification from contemporaneous and objective material, including agreements with the recipients, invoices, details of the nature and place of provision of services, remittance records, banking documents, statutory records and other transactional evidence. In such circumstances, the mere circumstance that certain documents were not produced pursuant to departmental correspondence cannot, by itself, be elevated into substantive evidence that the exemption was wrongly claimed.

40.3. We are of the considered view that, before rejecting the claim and confirming a demand of such magnitude, the Department ought to have undertaken proper and meaningful verification of the underlying transactions. In particular, where the controversy concerns export of services or supplies to SEZ entities, the Department could have examined the relevant contracts, invoices, details of the recipients, remittance particulars and other contemporaneous records, or undertaken such independent verification as may have been considered necessary.

40.4. The Adjudicating Authority, however, has proceeded substantially upon the non-production of documents, without demonstrating that the transactions themselves were examined and found not to satisfy the statutory requirements. Such an approach, in our view, is insufficient to sustain the demand.

40.5. We accordingly hold that the appellant's claim cannot be rejected solely on the basis of an absence of documents before the adjudicating authority without proper verification of the underlying transactions. The issue requires to be re-examined by the adjudicating authority on the basis of the relevant records and applicable statutory provisions.

<u>2. Exempted, Non-taxable and Reimbursable Receipts — Taxability Cannot Be Presumed</u>

41. The appellant has also reiterated its contention that, while determining the taxable value, the Department has failed to exclude exempted services, non-taxable receipts and reimbursable expenses.

41.1. We have already dealt with this aspect in detail while considering the previous Show Cause Notices. The principles enunciated therein apply mutatis mutandis to the present proceedings. A receipt cannot be subjected to service tax merely because it finds reflection in the books of account. What is material is its true legal character and its nexus, if any, with the consideration for a taxable service.Accordingly, where the appellant establishes, upon verification, that any particular receipt represents an exempted or non-taxable service, or constitutes a mere reimbursement of expenses which does not form part of the consideration for the taxable service in terms of the decision in *Intercontinental Consultants and Technocrats (supra)*, the same cannot be included in the taxable value contrary to the statutory scheme.

41.2. The adjudicating authority shall, therefore, undertake a transaction-wise verification of the claims raised by the appellant and allow such deductions as are found legally admissible. The matter cannot be resolved merely by rejecting the claims for want of a general documentary correlation without examining the underlying records.

3. Eligibility towards CENVAT Credit

42. The appellant has further contested the demand of Rs.44,16,431/- towards alleged wrongful availment and utilisation of CENVAT credit. According to the Appellant, the Revenue has proceeded upon the erroneous assumption that its expenditure substantially comprised salary payments and that no meaningful input services were utilised in rendering the taxable output services. The Revenue on the other hand, claims that the said denial and recovery of CENVAT Credit is attributable towards non-furnishing of documentary proof by the appellant in this regard.

42.1. On this score, the appellant has specifically drawn attention to its audited records showing Finance Costs of Rs.1,31,05,475/- and Administrative and Other Office Expenses of Rs.1,69,01,505/- during the relevant period. These figures, at the very least, demonstrate that the financial affairs of the appellant could not have been reduced to salary expenditure alone.

42.2. The Department was therefore required to examine the nature of the expenditure and determine, with reference to the relevant provisions of the CENVAT Credit Rules, 2004, whether the credit availed was attributable to eligible input services. A wholesale denial of credit without examining the underlying ledgers, invoices and nature of services does not, in our view, constitute a legally satisfactory determination of admissibility.

42.3. As already observed supra, CENVAT credit is a substantive statutory benefit and cannot be denied merely on assumptions or generalized conclusions unsupported by cogent evidence. The admissibility of the credit must necessarily be determined upon proper verification of the underlying records.

42.4. We therefore direct that the CENVAT credit claim of the appellant is required to be re-examined. The appellant shall co-operate with the adjudicating authority and furnish all documentary proof in support of its claim of eligibility towards the above amount of CENVAT Credit. If the said credit found to be admissible, then the same is to be allowed to the assessee, in accordance with law shall be allowed to the appellant or given due adjustment against its service tax liability, as prayed for.

<u>4. Invocation of Extended Period of Limitation under Section 73 of the Finance Act, 1994 is not sustainable</u>

43. The appellant has also challenged the invocation of the extended period of limitation. Going by the submission that the extended period provision has been invoked, we have already examined the question of limitation in the context of the other Show Cause Notices and, for the reasons recorded therein, do not propose to reiterate the entire discussion.

43.1. Suffice it to observe that the present proceedings arise in the backdrop of the Department's prior audit and successive proceedings concerning substantially the same business activities and factual circumstances. The requisite ingredients of deliberate suppression of material facts with intent to evade payment of service tax are not established merely by alleging non-production of documents or by relying upon the appellant's claims in its statutory records. Therefore, in terms of the principle enunciated by the Hon'ble Supreme Court in *Nizam Sugar Factory (supra)*, we accordingly hold that the extended period of limitation is not invokable in respect of SCN-V, if at all invoked, and any liability that may ultimately survive upon fresh adjudication shall be confined to the period otherwise permissible under the normal limitation prescribed by law.

44. In view of the foregoing discussion, we are of the considered opinion that the demand confirmed under SCN-V cannot be sustained and requires re-examination, particularly in the light of the claims of entitlement towards exemption and eligibility towards CENVAT credit made by the appellant. The Department has proceeded without adequate verification of the underlying material. The matter is, accordingly, remanded to the adjudicating authority with the following specific directions:

(i) The adjudicating authority shall undertake a proper and independent verification of the appellant's claims concerning export of services and services provided to SEZ units, with reference to the relevant agreements, invoices, remittance records, statutory documents and such other contemporaneous evidence as may be produced or otherwise available. The claims shall not be rejected merely on the ground of non-production of documents before the Department without examining the underlying transactions. The benefit shall be extended wherever the appellant is found, upon verification, to satisfy the applicable statutory conditions.

(ii) The claims relating to exempted services, non-taxable receipts and reimbursable expenses shall be independently examined and such amounts shall be excluded from the taxable value wherever, upon verification, they are found to fall outside the ambit of service tax in accordance with the law applicable to the relevant period.

(iii) The claim of CENVAT credit of Rs.44,16,431/- shall be re-examined with reference to the relevant records, invoices, ledgers or other supporting evidence as produced by the assessee. Thereafter, the eligible CENVAT credit shall be allowed and/or given due adjustment against the service tax liability if so claimed by them, and shall not be denied merely on the basis of assumptions concerning the nature of the appellant's expenditure. The appellant is also directed to co-operate with the adjudicating authority and be expedient in providing all documentary proof in support of its above claim.

(iv) The extended period of limitation, if invoked in the present Show Cause Notice, is held to be not invokable in. Consequently, any demand found otherwise sustainable after the aforesaid exercise shall be restricted to the normal period of limitation.

44.1. Upon completion of the aforesaid verification, the adjudicating authority shall recompute the service tax liability, if any, after granting all legally admissible exemptions, deductions and CENVAT credit adjustments, and shall pass a fresh, reasoned and speaking order after affording the appellant an effective opportunity of producing the relevant records and making its submissions. The consequential interest and penal liability, if any, shall abide by the fresh determination and also the findings recorded herein.

Statement of Demand No. 23/2018-19 issued vide C. No. DL-II/ST/DIV-VIII/R-40/TFG/36/2015/29 dated 12.04.2019 – (SCN-VII) – Financial Year 2016-17

45. We now proceed to examine Statement of Demand No. 23/2018-19 dated 12.04.2019, pertaining to the Financial Year 2016-17. The said proceedings were initiated on the basis of the allegations that the appellant had failed to furnish the requisite information and had not filed the prescribed ST-3 returns for the relevant period. The Department, therefore, proceeded to determine the alleged service tax liability on the basis of material obtained from the Directorate General of GST Intelligence (DGGSTI), R.K. Puram, New Delhi, and raised a demand of Rs.1,27,40,568/- including applicable cess.

45.1. It is the appellant's specific case in respect of these proceedings that they had specifically informed the Department that the DGGSTI, R.K. Puram, New Delhi was already conducting an investigation concerning the Appellant for the period 2012-13 to 2016-17, and that the relevant books of account, financial statements and other documents had already been furnished before the said investigating agency. The appellant had, accordingly, questioned the necessity and propriety of requiring the same records afresh in a parallel proceeding. They have also raised various other grounds, which the Revenue seeks to dispute.

45.2. Having considered the rival contentions, we find that the issue before us in respect of the above Notice encompasses aspects such as the effect of the parallel investigation already undertaken by the DGGSTI, the treatment of exempted/non-taxable and reimbursable receipts, the adjustment of CENVAT credit, and the invocation of the extended period of limitation. We proceed to examine these aspects seriatim.

<u>1. Parallel Investigation by DGGSTI — Possibility of Duplication Requires Examination</u>

46. The primary contention advanced by the appellant in this connection, which assumes significance, is that the DGGSTI, R.K. Puram, New Delhi was already seized of an investigation concerning the appellant for the period 2012-13 to 2016-17, which included the very period covered by the present Statement of Demand.

46.1. The appellant had, during the proceedings, specifically informed the Department of the said investigation and stated that it had already furnished its financial statements, books of account and other relevant records before the DGGSTI. The Department thereafter addressed communications to the DGGSTI seeking confirmation as to whether any Show Cause Notice had been issued for the relevant period, and received certain documents/details in response.

46.2. The appellant's grievance is that, notwithstanding the pendency of the said investigation, the present proceedings were pursued independently, thereby giving rise to a possibility of overlapping or duplicative determination of the very same tax liability.

46.3. We are of the view that this aspect cannot be brushed aside. While the mere existence of a parallel investigation may not, in every circumstance, by itself invalidate a proceeding, the Department is nevertheless required to ensure that the same taxable transactions are not subjected to duplicated demands or parallel adjudication resulting in recovery of the same tax liability twice over. Such a consequence would plainly be impermissible and contrary to the fundamental principles governing fiscal adjudication.

46.4. The adjudicating authority shall, therefore, verify from the records of the DGGSTI investigation the precise period, transactions, taxable value and issues covered therein and whether any demand has been proposed, adjudicated or otherwise dealt with in respect of the same period and subject matter. If any part of the present demand is found to overlap with a demand already raised or determined by the competent authority, the same shall necessarily be excluded so as to obviate any possibility of duplication or double recovery.

<u>2. Exempted, Non-taxable and Reimbursable Receipts — Taxability Cannot Be Presumed</u>

47. The appellant has also reiterated that the gross figures relied upon by the Department contain receipts attributable to exempted services, non-taxable services and reimbursable expenses, which cannot mechanically be brought within the taxable value.

47.1. We have already considered this issue in detail in the preceding Show Cause/Demand Notices for the previous periods in question. We accordingly reiterate that the mere fact that a receipt finds place in the audited financial statements does not ipso facto render the same exigible to Service Tax. The true character of each receipt and its nexus with the taxable service have to be ascertained.

47.2. With respect to the appellant's claim of reimbursable expenditure, the amended statutory scheme specifically brought reimbursable expenditure or costs within the concept of consideration shall have to be examined, subject to the statutory exclusion applicable where the service provider acts as a "pure agent" in terms of Rule 5(2) ibid. in the light of the documents/submissions offered in this regard. In particular, where the appellant establishes that a particular receipt represents an exempted or non-taxable service, or is merely a reimbursement of expenses incurred on behalf of the recipient as a pure agent and does not constitute consideration for the taxable service, the same cannot be included in the taxable value contrary to the statutory scheme applicable to the relevant period.

47.3. We accordingly direct that these claims be verified with reference to the relevant agreements, invoices, ledgers, recipient-wise details and other supporting records, and that amounts which are found, upon such verification, to be exempt, non-taxable or otherwise excludible from the taxable value shall be duly deducted.

3. CENVAT Credit Adjustment — To Be Allowed Upon Verification

48. The appellant has also raised the issue of adjustment of its Service Tax liability through CENVAT credit.

48.1. In view of our observations recorded in respect of the preceding Show Cause Notices, the Appellant's claim for adjustment through CENVAT credit, if claimed in respect of the present period, shall be duly examined with reference to the relevant CENVAT records.

48.2. Any credit found admissible in accordance with law shall be allowed and the Service Tax liability, if any, shall be computed only after giving due adjustment for the CENVAT credit legitimately utilised towards discharge of the service tax liability.

4. Extended Period of Limitation, If invoked, — Not Sustainable:

49. The appellant has also contended that the extended period of limitation has been invoked in respect of SCN-VII.

49.1. We find that the aspect of sustainability of the invocation of extended period, when the relevant facts were already within the knowledge of the Department, has already been considered by us in respect of the preceding Show Cause Notices. In the facts obtaining herein, we do not find the requisite material establishing suppression of facts or deliberate withholding of information with intent to evade payment of service tax.

Further, as already observed hereinbefore, the Department had already undertaken investigation/audit proceedings concerning the appellant's activities and financial records, and the present proceedings substantially arise from the same factual matrix. The principle enunciated by the Hon'ble Supreme Court in *Nizam Sugar Factory (supra)* therefore, assumes significance.

49.2. Accordingly, the extended period of limitation, if invoked in respect of SCN-VII, is held to be not sustainable. Any liability which may survive upon fresh determination shall be confined to the period otherwise permissible under the normal limitation prescribed by law.

50. In view of the foregoing discussion, we are of the considered view that the demand confirmed under SCN-VII cannot be sustained and suffers from various infirmities, which requires to be examined afresh on the basis of the actual records and transactions rather than upon an unverified adoption of gross financial figures. The matter is accordingly remanded to the adjudicating authority with the following directions:

(i) The adjudicating authority shall examine the records/details obtained from the DGGSTI, R.K. Puram, New Delhi, and ascertain the precise scope of the investigation and any demand, determination or adjudication already undertaken for the relevant period. No amount shall be demanded or recovered twice in respect of the same transaction or taxable value. Any overlap shall necessarily be excluded from the present computation.

(ii) The appellant's claims relating to exempted services, non-taxable receipts and reimbursable expenses shall be duly verified from the relevant records and shall be excluded from the taxable value wherever found legally admissible, in accordance with the observations recorded supra. In regard to reimbursable expenditure, the post-14.05.2015 statutory regime and the appellant's claim that they had acted as a "pure agent" shall have to be examined.

(iii) If the appellant has claimed CENVAT credit adjustment towards discharge of service tax liability for the relevant period, the same shall be verified and allowed to the extent admissible, and the final service tax liability, if any, shall be computed after giving due adjustment for such credit.

(iv) The extended period of limitation, if invoked in SCN-VII, is held to be not invokable. Consequently, any demand found otherwise sustainable upon fresh adjudication shall be confined to the normal period of limitation.

50.1. After undertaking the aforesaid exercise and affording the appellant adequate opportunity to place all relevant documents and submissions on record, the adjudicating authority shall recompute the liability, if any, and pass a fresh, reasoned and speaking order in accordance with law. The consequential interest and penal liability, if any, shall abide by the fresh determination and also the findings recorded herein.

Conclusion:

51. The foregoing discussion in respect of the individual Show Cause Notices has brought to light several material aspects which, in our considered view, required a proper examination at the adjudication stage. The claims of the Appellant relating to exempted services, non-taxable receipts and reimbursable expenses, which cannot be subjected to service tax merely by reason of their inclusion in the gross financial figures, etc., require verification with reference to the underlying records, in terms of the detailed discussions in the preceding paragraphs of this order.

51.1. We have further held, in respect of the Show Cause Notices where best judgment assessment under Section 72 was resorted to, that such an exceptional statutory mechanism could not be employed in a manner divorced from the material actually available with the Department. The power of best judgment assessment is not a licence to proceed upon conjecture or arbitrary estimation, particularly where the Department itself had access to the Appellant's financial records and other relevant material. The taxable liability, if any, must therefore, be ascertained on the basis of the facts, records and and the consideration attributable thereto.

51.2. Similarly, insofar as the extended period of limitation has been invoked in the respective Show Cause Notices, we have recorded our finding that, in the facts and circumstances of the case, the necessary ingredients for invoking the extended period have not been established. The Department had, at different stages, access to the appellant's records and had undertaken audit/investigative exercises in respect of its activities. In such circumstances, and having regard to the ratio of the Hon'ble Supreme Court in *Nizam Sugar Factory (supra)* repeated invocation of the extended period on the same factual foundation cannot be sustained. The demands, wherever otherwise found legally sustainable, would therefore have to be confined to the normal period of limitation.

51.3. Thus, the adjudication, in our view, cannot rest upon an approach whereby material contentions having a direct bearing upon the assessable value and ultimate tax liability are left unverified. In these circumstances, the impugned order having failed to appropriately consider and adjudicate upon the aforesaid material aspects, cannot be sustained on merits. The ends of justice would be met by setting aside the impugned order and remanding the entire matter for a fresh and comprehensive examination.

52. Accordingly, the impugned Order-in-Original is set aside and the matter is remanded to the adjudicating authority for de novo adjudication in respect of all the eight Show Cause Notices under dispute, subject, however, to and in the light of the observations and findings recorded by us in respect of each of the Show Cause Notices in paragraphs 24 to 50.1 of this Order. While undertaking the fresh adjudication, the adjudicating authority shall, inter alia, ensure that the service tax liability, if any, is determined only after giving due consideration to the deductions, exemptions, non-taxable receipts and reimbursable expenses to which the appellant may be legally entitled, after allowing admissible CENVAT credit adjustments towards the Service Tax liability, and after restricting the demand to the normal period of limitation in respect of the Show Cause Notices

wherein the extended period has been invoked, in terms of the findings recorded hereinabove and the directions contained in paragraphs 32, 38, 44 and 50 of this Order. The authority shall also ensure that no amount already subjected to tax or otherwise determined in proceedings undertaken by another competent authority is subjected to duplicative demand or recovery.

53. It goes without saying that the adjudicating authority shall adhere scrupulously to the principles of natural justice and shall afford the appellant reasonable and sufficient opportunity of being heard and of placing all relevant material on record. The Appellant, on its part, shall extend due cooperation in the de novo proceedings and shall furnish all relevant documentary evidence and supporting records upon which it seeks to rely in support of its claims.

54. Upon completion of the aforesaid exercise, the adjudicating authority shall pass a fresh, reasoned and speaking order, dealing with each of the issues and claims raised by the appellant, strictly in accordance with law and uninfluenced by any observation in the impugned order which has been set aside herein.

55. In these terms, the impugned order is set aside and the appeal stands disposed of by way of remand.

(Order pronounced in the open court on **20.08.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd