

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 55783 of 2023**

[Arising out of Order-in-Appeal No. 212(AK)ST/JDR/2023 dated 14.07.2023 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jodhpur]

**Anil Gaur** ...Appellant  
F-195, Azad Nagar,  
Near Mahapragya Circle,  
District: Bhilwara, Rajasthan-311001

*VERSUS*

**Commissioner of Central Excise and CGST,  
Jodhpur** ...Respondent  
G-105, New Industrial Area,  
Opp. Diesel Shed, Basni,  
Jodhpur, Rajasthan-342003

**APPEARANCE:**

Shri Raghav Rathi, Chartered Accountant for the Appellant  
Shri Rohit Issar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 24.07.2025  
DATE OF DECISION: **03.11.2025**

**FINAL ORDER NO. 51657/2025**

**DR. RACHNA GUPTA**

Present appeal is filed to assail the Order-in-Appeal No. 212/2023 dated 14.07.2023 vide which the order confirming the demand of service tax along with the interest and the appropriate penalties has been confirmed. The facts in brief which culminated in to the said order are as follows:

1.1 Shri Anil Gaur, the appellant herein, is registered for providing the taxable services under the category of Business Auxiliary Services. Department observed that during the period from April 2016 to June 2017, the appellant had received

Rs.17,53,015/- as commission for rendering the said services which are neither covered under the negative list of the services as specified in the Section 66D of the Finance Act, 1994 nor are covered in Mega Exemption Notification No. 25/2012 dated 20.06.2012. Hence, the appellant was liable to pay service tax on the said amount of commission but the appellant has not paid the same. Accordingly, vide Show Cause Notice No. 16/21/-22 dated 07.10.2021 service tax amounting to Rs.2,77,952/- was proposed to be recovered from the appellant along with the proportionate interest and the appropriate penalties. The proposal was initially confirmed vide Order-in-Original No. 01/2022-23 dated 21.04.2022. The appeal against the said order has been rejected vide the impugned Order-in-Appeal. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Raghav Rathi, learned Chartered Accountant for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has foremost objected the confirmation of demand on the ground of show cause notice being barred by time. It is submitted that the adjudicating authority has wrongly alleged delay on part of the appellant while responding the letters issued by the department at the pre show cause notice stage. It is submitted that letter dated 23.01.2018 was not replied as the appellant got the said letter in hand around after passing of 2-3 months of date of issuance of letter. Appellant being the commission agent remains on travelling for the most days of the month. Furthermore, he is a proprietor and a very small person

who manages all his affairs. In the chaos of business, it is probable to make omission. To err is human. Appellant have omitted in making submission against the said letter. However, it cannot be overseen that appellant had made submissions vide letter dated 06.04.2021. It is further submitted that appellant have made the submissions, although belatedly and therefore, has complied with his legal duties. Appellant is merely a commission agent, not an expert of tax laws. Omissions which later got rectified are wrongly alleged to be willful misrepresentation and suppression of facts for committing evasions.

3.1 It is also submitted that appellant is squarely covered by the decision of divisional bench order of this Tribunal in in the matter of **Commissioner of Central Goods and Service Tax, Delhi South Commissionerate Vs. M/s. Haamid Real Estate Private limited having service tax Appeal No. 52273 of 2018 with service tax cross no.51100 of 2018.**

3.2 While submitting on merits, Learned counsel relied upon the settled legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment as is clarified by the Central Board of Excise and Customs in its Manual for scrutiny of service tax returns. Therefore, it would not be appropriate to say that department cannot proceed for assessment in the vent of non-furnishing of details on timely basis. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative mentioned that the appellant has throughout been non-cooperative. The reply to query raised was belated. Not only this, the appellant didn't file any reply to show cause notice nor even appeared before original adjudicating authority. The amount in question is commission received for rendering Business Auxiliary Service, hence is taxable. Confirmation of demand is rightly upheld.

4.1 While submitting on plea of limitation, learned Departmental Representative mentioned that there is no dispute in the fact that the appellant had filed nil returns for the Financial Year 2016-17 and not filed ST-3 returns for the period 2017-18 (April-June,2017 which is sufficient to prove that the appellant deliberately concealed amount of consideration received during this period and has intentionally not discharged their service tax liability. That from the facts mentioned above, it is very clear that the department was never aware of the activity being carried out by the appellant in Financial Year 2016-17 and 2017-18 (up to June 2017) due to the fact that the appellant failed to provide requisite details despite being was repeatedly requested by the department. Therefore, the contention of the appellant does not hold ground. Learned Departmental Representative has relied upon the decision in the case of **Warsi Buildcon Vs. Principal Commissioner of Customs, Central Excise & Service Tax reported as (2024) 17 Centax 37 (Tri.-Del.)** and has prayed for dismissal of appeal.

5. Having heard the rival contentions and perusing the record, since the appellant has vehemently alleged, the show cause notice

to be barred by time, I foremost take up the plea of limitation. Admittedly, the letter issued by department seeking documents from appellant was responded after too much delay and thereafter appellant neither filed reply to impugned show cause notice nor appeared before original adjudicating authority. Though, it is submitted on behalf of the appellant that department could have invoked Section 72 of the Finance Act, 1994. The best judgment assessment. But the benefit of said provision is not available to the appellant due to the following facts apparent on record:

- (i) Earlier also a show cause notice bearing no. 2016/6762 dated 21.10.2016 for the period 2011-12 to 2015-16 in the similar line was served upon the appellants.
- (ii) It was adjudicated vide Order-in-Original No. 15/2019-20 dated 07.06.2019 where demand of service tax along with interest and penalty under Rule 7C of the erstwhile Service Tax Rules, 1994 was confirmed
- (iii) The matter pertaining to the period from 2011-12 to 2015-16 was finally settled for which a discharge certificate for full and final settlement of tax dues under Section 127 of the Finance (No.2) Act, 2019 read with Rule 9 of the Sabka Vishwas (Legacy Dispute Scheme, 2019 has been issued to the service provider by the designated committee on 30.06.2020.
- (iv) The period in dispute from April, 2016 to June, 2017, the jurisdictional Range Superintendent, CGST Range-XX, Bhilwara, vide letters dated 19.07.2017 and even Nos. 82 dated 08.08.2017, 297 dated 15.11.2017, 317 dated 27.11.2017, 341 dated

04.12.2017, 374 dated 19.12.2017, dated 10.01.2018, 66 dated 23.01.2018, 122 dated 15.02.2018, 201 dated 05.03.2018, 14.03.2018, 292 dated 08.05.2012, 349 dated 21.05.2018 and the summons dated 28.09.2018, dated 13.12.2018, 04.02.2019, 28.03.2019, 04.07.2019 and 12.02.2020 requested Shri Anil Gaur, The service provider to submit the details of service provided the during the period from 01.04.2016 30.06.2017.

(v) The service providers neither provided the above cited details sought nor furnished any written submissions in the matter. Letter dated 06.04.2021 provided a copy of Profit and Loss Account for the Financial Year 2016-17, 26-AS for the Financial Year 2016-17 and 26-AS for the Finance Year 2017-18.

6. The above perusal makes it clear that the appellant was aware of his tax liability still was not filing ST-3 returns and was not paying tax despite that he acknowledged his liability on the amount of commission received while rendering taxable service. He got settled the demand proposed under earlier show cause notice under Sabka Vishwas (Legacy Dispute Scheme, 2019 for immediately previous Financial Year. Subsequent non-payment and non-filing of returns is therefore held to be the definite act of suppression on part of appellant that too with clear intent to evade payment of service tax. Not only this, the act amounts to be the violation of provisions of Finance Act including Section 70 thereof. Accordingly, I hold that appellant has committed an act of suppression and that of willful misrepresentation. Hence, the department is held to have rightly invoked proviso to Section 73(1) of the Finance Act, 1944 while issuing the show cause notice for extended period. I draw my

support from the decision of Hon'ble High Court of Madras in the case titled as **Rajesh Vs. Assistant Commissioner of CGST and Central Excise, Chennai reported as (2023) 11 Centax 65 (Mad)**. It has been held that:

*"7. Admittedly, in this case, the petitioner has not been filed the returns as is contemplated under Rule 7 of the Service Tax Rules, 1994. Therefore, it is not open for the petitioner to allege that the department is not entitled to invoke proviso to Section 73 of the Finance Act, 1994, as there is a suppression of facts."*

7. This Tribunal in the case of M/s. Hakim Singh Contractor Vs. Commissioner of Central Goods and Service Tax, Customs and Central Excise, Alwar vide Final Order No. 51645/2023 dated 16.11.2023 has held that when there is no response of the assessee nor even the reply to show cause notice and no explanation for delayed response. The assessee cannot plead that show cause notice has wrongly invoked the extended period of limitation. In the decision relied upon by the learned Departmental Representative in **Warsi Buildcon (supra)**, it has been held that:

*"Invocation of extended period of limitation and imposition of penalty is justified when assessee although working under self-assessment system, not assessed correct amount of service tax and not reflected same in ST-3 Returns and therefore, willfully suppressed facts with intent to evade payment of service tax.*

*Interest of delayed payment of service was correctly imposed; Further liability to pay late fee also upheld when service tax returns were filed after due date."*

In view of the entire discussion, it is held that the extended period has rightly being invoked while issuing the impugned show cause notice. Hence, the same is denied to be barred by time.

8. While coming to the merits of the case, the appellant admittedly is rendering Business Auxiliary Services and is receiving commission in consideration thereof. The activity is not covered under Section 66D of the Finance Act, 1994 (Negative List), hence it is taxable. Appellant is liable to pay service tax on the amount of commission received. For the previous period, admittedly the appellant had already discharged the liability under settlement scheme. Appellant is held liable to pay service tax for the disputed period as well, the succeeding period. Non-filing of ST-3 returns and non-payment of tax in the given circumstances is positive act of evading tax, as already discussed above. Hence, I do not find any infirmity in the order under challenge when the demand in question is confirmed. I therefore uphold the impugned order. Consequently the present appeal is ordered to be dismissed.

[Order pronounced in the open court on **03.11.2025**]

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

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