IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76154 of 2024

(Arising out of Order-in-Appeal No. 66/BOL-ST/2024-25 dated 11.06.2024 passed by the Commissioner (Appeal), C.G.S.T. and C.X., Siliguri Appeal Commissionerate, G.S.T. Bhawan, H.M. Road, Hakimpara, Siliguri – 734 001)

M/s. Anindita Dutta **: Appellant**
Old Dutta Automobile Building,
Durgapur, Paschim Burdwan,
West Bengal, PIN – 713 213

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum,
West Bengal, PIN – 731 204

<u>APPEARANCE</u>:

Shri S.P. Siddhanta, Consultant, for the Appellant

Shri S.K. Dikshit, Authorized Representative, for the Respondent

<u>CORAM</u>:

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

FINAL ORDER NO. 75877 / 2026

DATE OF HEARING / DECISION: 13.07.2026

ORDER:

The present appeal is directed against the Order-in-Appeal No. 66/BOL-ST/2024-25 dated 11.06.2024, passed by the Ld. Commissioner (Appeals), C.G.S.T. & C.X., Siliguri Appeal Commissionerate, whereby the Order-in-Original No. 83/DC/ST/DGP-II/2022-23 dated 17.01.2023 passed by the adjudicating authority came to be upheld, confirming the demand of Service Tax, interest and penalties against the appellant.

2. The facts of the case are that the appellant, M/s. Anindita Dutta, is a proprietorship concern engaged in providing services as a "Commission Agent". Based upon information received from the Central Board of Direct Taxes (CBDT) pertaining to unregistered assessees, an enquiry was initiated by the Service Tax authorities to verify the tax liability of the appellant during the period from Financial Year 2015-16 to Financial Year 2017-18 (up to June, 2017). According to the Revenue, scrutiny of the Income Tax Returns and Form 26AS furnished by the appellant revealed that receipts from services had been reflected therein, while the appellant had neither obtained registration under the provisions of the Finance Act, 1994 nor discharged Service Tax on the said receipts.

3. Pursuant thereto, the appellant was called upon to furnish the relevant records including copies of the Income Tax Returns, Form 26AS, ST-3 Returns and other connected documents pertaining to the material period. It is the case of the Revenue that although the appellant furnished copies of the Income Tax Returns and Form 26AS, no satisfactory explanation regarding the nature of the services rendered or the taxability thereof was furnished during the course of investigation. Upon scrutiny of the documents so produced, it was alleged that the appellant had received aggregate consideration amounting to Rs.78,13,174/- during the relevant period towards taxable services but had failed to discharge the corresponding Service Tax liability.

4. In the aforesaid circumstances, a Show Cause Notice dated 22.04.2021 came to be issued inter alia proposing recovery of Service Tax amounting to

Rs.11,56,266/-, together with applicable interest under Section 75 of the Finance Act, 1994, by invoking the extended period of limitation under Section 73(1) thereof read with Section 174(2) of the Central Goods and Services Tax Act, 2017. The Show Cause Notice further proposed imposition of penalties under Sections 77 and 78 of the Finance Act, 1994 on the allegations that the appellant had failed to obtain Service Tax registration, had not filed the prescribed statutory returns and had suppressed material facts with an intent to evade payment of Service Tax.

4.1. The records further reveal that no reply to the Show Cause Notice was filed by the appellant and neither the appellant nor any authorised representative appeared before the adjudicating authority despite opportunities of personal hearing having been afforded. Consequently, the adjudicating authority proceeded to decide the matter *ex parte* and, vide the Order-in-Original dated 17.01.2023, confirmed the entire demand of Rs. 11,56,266/-, along with applicable interest. An equivalent penalty of Rs. 11,56,266/- was also imposed under Section 78 of the Finance Act, 1994, besides penalties of Rs.10,000/- each under Sections 77(1)(a) and 77(2) of the said Act.

4.2. Aggrieved thereby, the appellant preferred an appeal before the Ld. Commissioner (Appeals), C.G.S.T. and C.X., Siliguri inter alia contending that the receipts reflected in the Income Tax Returns represented commission earned from M/s. ICICI Lombard, an insurance company, for acting as its commission agent in procuring insurance policies for purchasers of two-wheelers. It was specifically contended that, in terms of Rule 2(1)(d)(i)(A) of the

Service Tax Rules, 1994, the liability to discharge Service Tax in respect of the said commission rested upon the insurance company under the reverse charge mechanism and not upon the appellant. In support of the said contention, reliance was placed upon various documents including a Certificate of Enlistment issued by the Durgapur Municipal Corporation describing the appellant's profession as that of a "Commission Agent", bank statements for the relevant period, financial statements, and a certificate issued by the appellant's Chartered Accountant certifying that the amounts received from M/s. ICICI Lombard represented commission earned for facilitating issuance of insurance policies to purchasers of two-wheelers. The appellant further raised the contention before the Commissioner (Appeals) that the demand could not have been sustained merely on the basis of the figures reflected in the Income Tax Returns or Form 26AS without first establishing the precise nature and taxability of the underlying transactions. The Ld. Commissioner (Appeals), however, being not satisfied with the explanations offered by the Appellant, upheld the Order-in-Original in its entirety by way of the impugned Order-in-Appeal No. 66/BOL-ST/2024-25 dated 11.06.2024.

4.3. Aggrieved by the confirmation of the above demand of Service Tax, along with interest, and imposition of penalties thereon, the appellant has filed the instant appeal.

5. The Ld. Consultant appearing on behalf of the appellant, while assailing the impugned order, inter alia, advanced the following submissions: -

(i) That the adjudicating authority has confirmed the entire demand of Rs.11,56,266/-, although the operative portion of the Order-in-Original refers only to the Financial Year 2015-16, without recording any findings in respect of the remaining period i.e., Financial Years 2016-17 and 2017-18 (up to June, 2017).

(ii) That the amounts reflected in the Income Tax Returns and Form 26AS represented commission received from M/s. ICICI Lombard for acting as a commission agent in procuring insurance policies for purchasers of two-wheelers and, in terms of Rule 2(1)(d)(i)(A) of the Service Tax Rules, 1994 read with Section 68(2) of the Finance Act, 1994, the liability to discharge Service Tax rested upon the insurance company under the reverse charge mechanism and not upon the appellant.

(iii) That documentary evidence, including the Certificate of Enlistment describing the appellant as a Commission Agent, bank statements, financial records and the certificate issued by the Chartered Accountant, clearly established the nature of the appellant's activities as well as the source of the receipts in question.

(iv) That the impugned demand has been raised merely on the basis of figures reflected in the Income Tax Returns/Form 26AS without any independent investigation or evidence establishing that the receipts constituted taxable services on which Service Tax was payable by the appellant.

(v) That the invocation of the extended period of limitation is wholly unsustainable, inasmuch as the proceedings themselves have been initiated on the basis of statutory records furnished before the Income Tax authorities and, therefore, no allegation of wilful suppression or intent to evade payment of Service Tax can be sustained.

5.1. On the basis of these submissions and by reliance on various judicial precedents, he prayed that the impugned order be set aside and the appeal be allowed.

6. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us reiterated the findings of the lower authorities. He argued that the appellant had failed to substantiate its claim by producing adequate documentary evidence before the adjudicating authority. It was further contended that the liability came to light only upon departmental enquiry and, therefore, the invocation of the extended period of limitation was fully justified. Accordingly, he prayed for rejection of the appeal.

7. Heard both sides and perused the documentary evidence placed on record.

8. In the present case, Service Tax has been sought to be levied against the appellant on the basis of information gathered from the Central Board of Direct Taxes (CBDT) vis-à-vis Form 26AS for the Financial Years 2015-16 to 2017-18 (up to June, 2017) on the premise that no valid documentary evidence has been provided by the appellant and also that they did not actively participate during the course of investigation or the adjudication proceedings before

the original authority. However, it is evident from the records that, during the appellate proceedings before the ld. first appellate authority, the appellant had in fact produced material documents explaining the true nature of the services rendered and the source of the receipts reflected in the Income Tax Returns and Form 26AS. Once such evidence had been brought on record, it became incumbent upon the Revenue to examine the same on its own merits and, if necessary, dislodge the factual assertions by leading cogent and affirmative evidence.

8.1. The main stand taken by the appellant is that the amounts reflected in the Income Tax Returns represented commission received from M/s. ICICI Lombard, which is an insurance company, for acting as its commission agent in procuring insurance policies for purchasers of two-wheelers. In support thereof, reliance has been placed upon, inter alia, the Certificate of Enlistment issued by the Durgapur Municipal Corporation describing the appellant as a "Commission Agent", the relevant bank statements maintained with the State Bank of India, Bankura for the material period, as also the certificate issued by the Chartered Accountant certifying that the amounts of Rs.31,42,106/-, Rs.38,40,256/- and Rs.8,30,812/- were received by the appellant from M/s. ICICI Lombard towards commission for procuring insurance policies for purchasers of two-wheelers during the Financial Years 2015-16 to 2017-18 (up to June, 2017). For better appreciation of the said facts, the said Chartered Accountant's Certificate dated 28.04.2023 is reproduced below: -

V.N. PUROHIT & CO.

CHARTERED ACCOUNTANTS
(AFFILIATED TO M/S VMG & AFFILIATES)

A-4, Nandalal Bithi, City Centre
Ground Floor Durgapur-713216
Mob.- 9903979180, 9433183328
E-mail : vnpdurgapur@vnpaudit.com
Website : www.vnpaudit.com

To Whom It May Concern

Mrs. Anindita Dutta, residence at Dutta Auto Mobile Building, Benachity, Durgapur-713213, has produced Certificate of Enlistment dated 01/11/2017 issued by Durgapur Municipal Corporation for the Profession of "Commission agent", Bank Statement issued by State Bank of India, Machantala, Bankura for the period from 2015-16 to 2017-18(up to June -2017) and Balance Sheet with Profit & loss A/c for the year 2015-16 to 2017-18 before the undersigned.

The undersigned has verified the above documents so furnished by Mrs. Anindita Dutta. On the basis of scrutiny and detail examination of the above documents the undersigned has found that Mrs. Dutta received amount shown in the Bank Statement from ICICI Lombard, an Insurance Company. On verification of the Bank Statement, it is seen that different amount has been paid per month and even in the same month payment for the second time has been made. Mrs Dutta has informed that she has acted as commission agent of ICICI Lombard for making policy holder of the purchases of two wheelers. For that service, she has received commission Rs. 3142106/-, Rs. 3840256/- & Rs 830812/- for the financial year 2015-16, 2016-17 & 2017-18 (up to June-17) respectively, as has been checked and verified form the Bank Statement so produce by her.

The above certificate is given on the basis of documents furnished by Mrs. Dutta and the same is true and correct so far as knowledge of the undersigned goes.

Enclose

1) Certificate of the Enlistment;
2) Bank Statement for the period 2015-16, 2016-17 & 201-18 (Up to June-17); and
3) Balance Sheet with Profit & Loss A/c for the financial year 2015-16, 2016-17 & 2017-18.

For V. N. Purohit & Co.
Chartered Accountants
Sugata Ganguly
(SUGATA GANGULY)
Partner
Membership No.-065153

Dt:- 28/4/2023.

Page 1 of 2

Head Office : Diamond Chambers, Suit. No. 4G, 4th Floor, Unit-III, 4, Chowringhee Lane, Kolkata - 700 016, Ph.: (033) 40014849, 40014850
New Delhi Office : 214 New Delhi House, 2nd Floor, 27, Barakhamba Road, New Delhi - 110 001, Ph.: (011) 5549-2627, 5530-5430, E-mail : vnpdelhi@vnpaudit.com
Secunderabad Office 5016, Emrald House, 1-7-264, Sarojini Devi Road, Secunderabad-500003, Ph.: (040) 5549-2776, Mobile : 98490 07957 (R.K.Mali), E-mail : rkmali@vnpaudit.com

8.2. Significantly, although these documents have been noticed in the impugned Order-in-Appeal, the Revenue has failed to dislodge the veracity of the same by means of any cogent or corroborative evidence. No material has been brought on record to demonstrate that the Chartered Accountant's certificate is incorrect, fabricated or otherwise unreliable, nor has any enquiry been conducted with the insurance company to disprove the appellant's categorical stand. The findings recorded by the Commissioner (Appeals), therefore, rest merely on assumptions and presumptions. In the absence of substantive evidence in support, the same cannot be sustained.

9. At this juncture, it would be apposite to refer to Rule 2(1)(d)(i)(A) of the Service Tax Rules, 1994, which defines the "person liable for paying Service Tax" in respect of the notified taxable services viz. insurance service, as under: -

> *"in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service."*

9.1. A plain reading of the said provision reveals that in the case of commission paid by an insurance company to its insurance agent, the liability to discharge Service Tax is cast upon the insurance company under the reverse charge mechanism. In the present case, once it stands established that the appellant acted merely as a commission agent of M/s. ICICI Lombard, the insurance company, the statutory liability to discharge Service Tax could not have been fastened upon the appellant.

9.2. The Ld. Commissioner (Appeals), in the impugned order, has further recorded that the appellant failed to produce evidence showing that M/s. ICICI Lombard had actually discharged the Service Tax liability under the reverse charge mechanism, for confirming the impugned Service Tax liability against the appellants. I am unable to agree with the aforesaid reasoning adopted by the ld. appellate authority in the impugned order. The obligation to establish payment of Service Tax by the insurance company cannot, by any stretch of imagination, be shifted upon the appellant. If the Revenue entertained any doubt regarding discharge of tax by the recipient of service, it was always open to the Department to verify the records of the insurance company and proceed in accordance with law. The inadequacy of the investigation cannot be fastened upon the appellant. Having established, through documentary evidence, that the receipts were commission received from the insurance company, the appellant cannot be faulted merely because the Revenue has not verified whether the recipient had discharged its corresponding tax liability.

10. Apart the above, it is also quite well settled that a demand of Service Tax cannot be confirmed merely on the basis of figures reflected in the Income Tax Returns or Form 26AS. Such information may, at best, constitute a starting point for investigation, but the demand must ultimately be supported by independent and corroborative evidence establishing the nature, taxability and exigibility of the receipts. In the present case, no such independent exercise has been undertaken by the Revenue. The aforesaid principle has also been reiterated in the case of *Anup Kumar Metya v. Commissioner of C.G.S.T. & C.X., Haldia-II [Final Order No. 75439 of 2026 dated 25.03.2026 in Service Tax Appeal No. 76374 of 2024 – CESTAT, Kolkata].* The relevant observations of the Bench in the aforesaid case are as under: -

> *"7.1. ….. it is clear that the Show Cause Notice has been issued in this case solely on the basis of comparison between the ITR / Form 26AS and the Balance Sheet and Profit & Loss figures. No independent verification has been conducted by the Department and no corroborative evidence has been adduced by the Department in support of the above demand raised either. It has been held in a catena of decisions that a demand raised solely on CBDT data without conducting any independent verification so as to establish the nature of service rendered or the taxability, if any, in respect of the such services, is not sustainable in law. In this connection, I find it relevant to refer to the decision of this Bench in the case of M/s. Nanu Shome & Co. v. Commissioner of C.G.S.T & C.Ex., Siliguri [Final Order No. 75084 of 2026 dated 20.01.2026 in Service Tax Appeal No. 76615 of 2025 – CESTAT, Kolkata], wherein the Service Tax demand raised against the appellant under similar facts and circumstances has been set aside by this Tribunal."*

10.1. Further, it is also relevant to refer to the ratio of the decision in the case of *Piyush Sharma v. Commissioner of C.G.S.T. & C.X., Patna-I [Final Order No. 77332 of 2023 dated 17.10.2023 in Service Tax Appeal No. 75856 of 2021 – CESTAT, Kolkata]*, wherein, while dealing with an identical issue, the Tribunal opined that the extended period of limitation could not be invoked. The factual matrix of the decision cited supra being similar to that of the case on hand, the above ratio is squarely applicable.

11. In view of the foregoing discussion, I find that the Revenue has failed to establish that the commission received by the appellant was exigible to Service Tax at their end. On the other hand, the documentary evidence placed on record clearly supports the appellant's stand that the liability, if any, was required to be discharged by the insurance company in terms of Rule 2(1)(d)(i)(A) of the Service Tax Rules, 1994. The contrary findings recorded in the impugned Order-in-Appeal are thus founded upon assumptions and presumptions rather than legally admissible evidence and are, therefore, not sustainable in law. Thus, I find that the demand of Service Tax along with interest confirmed in the impugned order is legally not sustainable. As the services rendered by the appellant are not liable to Service Tax, there was no need to take the Registration from the Department for the said services. Moreover, the necessary ingredients for imposition of the impugned penalties under the provisions of the Finance Act, 1994 are also found to be absent in this case. Accordingly, I also find that the penalties imposed on the appellant are liable to be set aside.

12. Consequently, the demand of Service Tax amounting to Rs.11,56,266/-, together with the consequential demand of interest and the penalties imposed under Sections 77 and 78 of the Finance Act, 1994, are set aside.

13. In the result, the impugned order stands set aside, and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd