

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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75611 of 2017

(Arising out of Order-in-Original No. 06/COMMR/STA/KOL/16 dated 19.01.2017 passed by the Commissioner of Service Tax Audit, Kolkata, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Forum Projects Private Limited

: Appellant

4/1, Red Cross Place,
Kolkata – 700 001

VERSUS

Commissioner of Service Tax Audit

: Respondent

Kendriya Utpad Shulk Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Tarun Chatterjee, Advocate,
Assisted by Ms. Sneha Das, Consultant,
For the Appellant

Shri Sameer Chitkara, Authorized Representative,
Shri S.K. Jha, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 77576 / 2025

DATE OF HEARING: 17.10.2025

DATE OF DECISION: 28.10.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 06/COMMR/STA/KOL/16 dated 19.01.2017 passed by the Ld. Commissioner of Service Tax Audit, Kolkata, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs.2,41,78,784/- for the period 2010-11 to 2013-14, along with interest and penalties.

2. The facts of the case are that M/s. Forum Projects Private Limited, 4/1, Red Cross Place, Kolkata – 700 001 (hereinafter referred as the “appellant”) are engaged in providing construction of Commercial Complex services. The appellant has taken registration in respect of the said service from the Department.

2.1. Scrutiny of records of the appellant revealed that the appellant has not paid appropriate service tax on the advances received by them as well as on the import of services received by them on reverse charge mechanism (RCM) basis.

2.2. On the basis of these observations, a Show Cause Notice dated 16.10.2015 was issued to the appellant demanding Service Tax totally amounting to Rs.2,41,78,784/- for the period 2010-11 to 2013-14.

2.3. After due process, the said notice was adjudicated vide the impugned order dated 19.01.2017 and the demands of Service Tax raised therein have been confirmed, along with interest and penalties.

2.4. Aggrieved by the confirmation of demands of Service Tax, along with interest and penalty thereon, the appellant filed this appeal.

3. The Ld. Counsel appearing on behalf of the appellant states that they have taken refundable loan from various parties including from its director and relatives of the director. He submits that the loans taken from the parties other than its director and relatives of the director are interest bearing loans; it is submitted that all such loans are short terms loans and recognised in Books of Accounts as current liabilities under the heading ‘advance’; that the

appellant paid interest on such loans and deducted and deposited TDS on interest amount as per the provision of the Income Tax Act. However, he points out that in the impugned order, the Ld. Adjudicating authority has confirmed the demand of Service Tax amounting to Rs.2,22,51,053/- on refundable loan amount, by considering the loans received as 'advances received' for provision of the service. In this regard, the appellant have submitted a Chartered Accountant's (CA) certificate certifying the loans taken by them during the period 2010-11 to 2012-13, year-wise statement of loans, TDS Certificates, bank statement regarding receipt and payment of the loans and loan agreements. The Ld. Counsel for the appellant submits that from such documents it is evident that the amount recorded in the 'Advance Ledger' are refundable loans and not advances against provision of any taxable service. Accordingly, the it is the contention of the appellant on this score that the Ld. Adjudicating Authority has erred in holding such refundable advances as 'advances received towards provision of the service' for confirmation of the demand against them. Thus, the appellant prayed for setting aside the demand of Service Tax confirmed on this issue.

4. Regarding the demand of Service Tax amounting to Rs.16,44,878/- under Reverse Charge Mechanism on import of service, it is submitted by the Ld. Counsel for the appellant that the whole exercise is revenue neutral. He argues that even if the appellant pays service tax on RCM amounting to Rs.16,44,878/- the same amount is available as CENVAT Credit on the very same day and therefore, it is a revenue neutral situation. It is further submitted by the Ld. Counsel for the appellant on this count that

the issue is settled in favour of the appellant by this Bench in appellants own case vide *Final Order No.75630 of 2024 dated 02.04.2024*. Accordingly, it is their submission that the demand confirmed on this issue is liable to be set aside as well.

5. The appellant has also contested the demand on the ground of limitation. It is mentioned that the whole demand has been raised and confirmed by invoking the larger period of limitation. The Ld. Counsel for the appellant submitted that the demand has been raised and confirmed for the period 2010-11 to 2012-13 while the Show Cause Notice was issued on 16.10.2015; that the normal period of limitation is 18 months from the relevant date i.e. from 25.04.2013 and the period of 18 months end on 25.10.2014, whereas the Show Cause Notice was issued 16.10.2015. Thus, the appellant points out that the entire demand has been raised and confirmed beyond the normal period of limitation.

5.1. In this context, the appellant has made the submission that they were regular in furnishing the returns and payment of tax; furthermore, on the basis of scrutiny of returns and records, two Show Cause Notices being C. Nos. V (15)56/ST/Adjn/D-I/Kol/11, dated 30.11.2012 and V (15)264/ST-ADJN/COMMR/12/37168, dated 07-01-14 were issued and culminated into Order-in-Original No. 30/COMM/ST/KOL/2014-15, dated 17-06-2014 and Order-in -Original No. 04/COMMR/ST-1/KOL/2015-16, dated 31-07-2015. Therefore, the appellant has taken the stand that their activity is well within the knowledge of the Department and therefore the third Show Cause Notice which is culminated into the impugned order under challenge cannot be issued by

invoking the larger period of limitation. The appellant have argued that the issue is covered by the decisions of the Hon'ble Supreme Court in *Nizam Sugar Factory Versus Collector of Central Excise, AP [2006 (197) E.L.T. 465 (S.C)]* wherein the Hon'ble Supreme Court held that the allegation of suppression and invocation of larger period cannot be sustained when the first and second show cause notices were issued on the same issue and all relevant facts were well within the knowledge of the authorities. Thus , the appellant contends that the whole demand is barred by limitation and hence not sustainable. Furthermore, it is also their contention that this issue is settled in favour of the appellant by this Bench in appellants own group company's case by Final Order No.77044-77045 of 2024, dated 23.09.2024; it is further submitted that the demand of Service tax amounting to Rs.16,44,878/- confirmed under RCM on import of service is only a revenue neutral exercise; that demands cannot be raised by invoking extended period on revenue neutral situations. In view of these submissions, the appellant has argued that the demand confirmed is liable to be set aside on the ground of limitation also.

6. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings of the adjudicating authority.

7. Heard both sides and perused the appeal records.

8. We observe that service tax demand totally amounting to Rs.2,41,78,784/- has been confirmed in the impugned order, for the period from 2010-11 to 2013-14. Out of this demand, an amount of Service Tax of Rs.2,22,51,053/- has been confirmed on the

'advance received' for provision of the service and Service tax amounting to Rs.16,44,878/- has been confirmed under reverse charge mechanism (RCM) on import of service.

8.1. Regarding the service tax demand of Rs.2,22,51,053/- confirmed against the 'advance received', we find that the appellant submission is that the same were not 'advances' received for provision of any taxable service, but refundable loan amounts received from various parties including its director and relatives of the director. It has been explained that the loans taken from the parties other than its director and relatives of the director were interest bearing loans. The appellant has also submitted that all such loans were short terms loans and recognised in Books of Accounts as current liabilities under the heading 'advance'. We find that the appellant paid interest on such loans and deducted and deposited TDS on interest amount as per the provisions of the Income Tax Act. It is seen from the records that the appellant has submitted a Chartered Accountant's certificate certifying the loan taken by them during the period 2010-11 to 2012-13, year-wise statement of loans, TDS Certificates, bank statement regarding receipt and payment of the loans and loan agreements. For ready reference, copy of the said CA Certificate is extracted below:



A. K. RAY & CO.
Chartered Accountants

Certificate No.: 015/25-26
Date: 10.09.2025

TO WHOM IT MAY CONCERN

This is to certify that based on the verification of Books of Account, other records and information and explanations given to us, by **M/s. Forum Projects Pvt. Ltd** (hereinafter referred as **the Company**), having Service Tax Registration No. AADCS7575EST001 having office and place of business at 4/1, Red Cross Place, 3rd floor, Kolkata 700001, we certify that the amount of Loan and Interest free loan and interest paid during the Financial year 2010-11 to 2012-2013 are mention as below:

Period	Loan Amount during the Financial year	Interest during the Financial year	Interest free Loan during the year	Total	TDS on Interest
2010-11	25,00,00,000	3,80,07,418	6,25,00,000	35,05,07,418	42,23,048
2011-12	-----	1,44,72,031	26,79,96,845	28,24,68,876	1,60,8,006
2012-13	2,40,00,000	1,42,64,289	15,43,54,275	19,26,18,564	15,84,921
TOTAL	27,40,00,000	3,25,43,738	48,48,51,120	82,55,94,858	74,15,975

We further certify that interest in terms of loan agreement has been paid to the lenders and on interest amount appropriate TDS has been made and deposited.

For a k ray & co
Firm Registration No. 0303003E
Chartered Accountants

Jitendra Prasad
(Jitendra Prasad)
Partner M No 064483
UDIN : 25064483BMLGLK5259



8.2. It is evident from the documents submitted by the appellant that the said amount has been recorded in the 'Advance Ledger' as refundable loan and not advances received against provision of any taxable service. Accordingly, we hold that the Ld. Adjudicating Authority has erred in holding such refundable advance as 'advance towards provision of the service' for confirming the said demand. Consequently, we set aside the demand of Service Tax confirmed on this issue.

9. Regarding the demand of Service Tax of Rs.16,44,878/- under Revers Charge Mechanism on import of service, we observe that the whole exercise is revenue neutral. We agree with the submission made by the appellant that even if the appellant pays service tax on RCM amounting to Rs.16,44,878/- the same amount is available as CENVAT Credit on the very same day. Accordingly, we find merit in the argument of the appellant that it is a revenue neutral situation. We further observe that the issue is settled in favour of the appellant by this Tribunal in the appellant's own case vide *Final Order No. 75630 of 2024 dated 02.04.2024 in Service Tax Appeal No. 75943 of 2015*. The relevant observation of this Bench in Paragraph 7 of the said order is reproduced below for ready reference:

"7. We find that in this case, although the appellant is liable to pay Service Tax under reverse charge mechanism, the appellant is also entitled to avail CENVAT Credit of the same, immediately. In these circumstances, we find that it is a revenue neutral situation. The Show Cause Notice in the present case has been issued to the appellant by invoking the extended period of limitation. However, we note that the extended period of limitation is not invocable in a case of revenue neutrality as held by the Hon'ble Supreme Court in the case of M/s. Jet Airways (India) Ltd. (supra). Hence, following the decision of the Hon'ble Supreme Court in the case of M/s. Jet Airways (India) Ltd. (supra), we hold that being a revenue neutral situation, in the facts and circumstances of the case, the extended period of limitation is not invocable. Accordingly, we hold that the whole of the demand is barred by limitation and the demand of Service Tax is not sustainable against the appellant."

9.1. Thus, we hold that demand of Service Tax of Rs.16,44,878/- confirmed under Reverse Charge Mechanism on import of service, in the impugned order, is not sustainable and hence we set aside the same.

10. We have also examined the appellant's contentions on the ground of limitation. We find that on the basis of scrutiny of returns and records of the appellant, two Show Cause Notices being C. Nos. V (15)56/ST/Adjn/D-I/Kol/11, dated 30-11-2012 and V (15)264/ST-ADJN/COMMR/12/37168, dated 07-01-14 were issued which culminated into Order-in-Original No. 30/COMM/ST/KOL/2014-15, dated 17.06.2014 and Order-in-Original No. 04/COMMR/ST-1/KOL/2015-16, dated 31.07.2015. Therefore, we observe that the activity of the appellant was well within the knowledge of the Department and accordingly, we are of the view that the third Show Cause Notice on the same issue cannot be issued by invoking the larger period of limitation, in terms of the judgement of the Hon'ble Supreme Court in the case of *Nizam Sugar Factory Versus Collector of Central Excise, AP [2006 (197) E.L.T. 465 (S.C)]* wherein it has been held that the allegation of suppression and invocation of larger period cannot be sustained when the first and second show cause notices were issued on the same issue and all relevant fact were well within the knowledge of the authorities. Considering the above, we hold that the whole demand is barred by limitation and hence not sustainable. Accordingly, we set aside the demands confirmed in the impugned order on the ground of limitation also.

11. As the demands of Service Tax against the appellant do not survive, we do not find any reason to sustain the demands of interest and imposition of penalties under Sections 77 and 78 of the Finance Act, 1994. Accordingly, the same are set aside.

11.1. In the instant case, it is observed that although the appellant has filed S.T.-3 Returns, they have filed the same belatedly. Accordingly, we do not find any reason to interfere with the imposition of Late Fee of Rs.21,700/- under Section 7(C) of the Act in the impugned order. We find that the appellant has already paid an amount of Rs.7,900/- towards the Late Fee imposed, which has also been appropriated by the Ld. Adjudicating Authority in the impugned order. Thus, we hold that the appellant is liable to pay the remaining amount of Late Fee, as confirmed against them in the impugned order.

12. In view of the above findings, we pass the following order: -

- (i) The demands of Service Tax of Rs.2,22,51,053/- and Rs.16,44,878/-, along with interest, confirmed against the appellant vide the impugned order are set aside.
- (ii) The penalties imposed on the appellant under Sections 77 and 78 of the Finance Act, 1994 are set aside.
- (iii) The imposition of Late Fee under Section 7(C) of the Act is upheld.

13. The appeal is disposed of in the above manner.

(Order pronounced in the open court on **28.10.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)