

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75301 of 2017

(Arising out of Order-in-Original No. 119/PR.COMMR/ST-I/KOL/2016-17 dated 28.11.2016 passed by the Principal Commissioner of Service Tax-I, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Forum Riviera Constructions Private Limited : Appellant

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

VERSUS

Principal Commissioner, Service Tax-I

: Respondent

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

APPEARANCE:

Shri Tarun Chatterjee, Advocate,
Shri Raju Mondal, Advocate
For the Appellant

Shri R.K. Agarwal, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75319 / 2026

DATE OF HEARING: 25.02.2026

DATE OF DECISION: 27.02.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 119/PR.COMMR/ST-I/KOL/2016-17 dated 28.11.2016 passed by the Ld. Principal Commissioner of Service Tax-I, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107.

2. The facts of the case are that M/s. Forum Riviera Constructions Pvt. Ltd., 4/1, Red Cross Place, Kolkata – 700 001 (hereinafter referred to as the “appellant”) are engaged in providing construction services and is a registered assessee for the same under the Finance Act, 1994

3. An audit was conducted by the Revenue and on the basis of the findings of the audit officers, a Show Cause Notice dated 15.05.2015 was issued to the appellant, demanding Service Tax of Rs.2,43,01,516/- (inclusive of Cess) for the period from July 2010 to March 2014. The said Notice also proposed to impose penalty on the appellant under Section 78 of the Finance Act, 1994.

4. Upon adjudication, the Id. adjudicating authority, vide the impugned order, has dropped the demand to the extent of Rs.1,28,18,761/- and confirmed the balance demand amounting to Rs.1,14,82,755/-, along with applicable interest thereon. An amount equivalent to the above Service Tax demanded was imposed as penalty under Section 78 of the Finance Act, 1994.

4.1. Aggrieved by the confirmation of the above demands, the appellant has filed this appeal.

5. The appellant has provided a break-up of the demands confirmed under the various categories amounting to Rs.1,14,82,755/- in the impugned order, which is given below: -

- (i) Car Parking: Rs.15.11 lac
- (ii) Advance Booking (Mall): Rs.9.82 lac
- (iii) Advance Booking (Office/Shop): Rs.7.26 lac
- (iv) Nomination Charges: Rs.2.73 lac
- (v) Advance (Others): Rs.79.91 lac

5.1. Out of the above demand confirmed against them, the appellant informs that admittedly, they have already paid an amount of Service Tax of Rs.36,24,622/-, which fact has also been recorded by the Id. adjudicating authority at paragraph 5.13 of the impugned order.

6. The Ld. Counsel appearing on behalf of the appellant submits the demand which is being contested by way of the present appeal is with regard to the "Advance (others)", as reported by the appellant in their books of account, involving service tax of Rs.79,91,642/- only, pertaining to Sl. No. (v) of paragraph 5 (supra) as they have already paid Service Tax demanded in respect of the balance demand.

6.1. In respect of the aforesaid demand of Rs.79,91,642/- being contested by them, the Ld. Counsel for the appellant has submitted that they have received advances against sale of commercial space / office / shop before 01.07.2017; as per the Agreement for Sale entered into between the appellant and the buyer, the buyer can assign the rights, title and interest to third party before execution of the deed of conveyance, subject to the consent of the appellant. It is also stated that some of the buyers who entered into Agreement for Sale with the appellant during 2008-09 and 2009-10, made advance payment before 01.07.2010. These buyers have transferred their rights, title of the flats/commercial space/office/shop by execution of "Nomination Agreement". He explained that in terms of the Nomination Agreements, the transferee paid the balance amount, if any, payable by the transferor to the appellant, in terms of the Agreement for sale between the transferor and appellant. Remaining part

of the sale proceeds was paid by the Transferee to the Transferor. Thus, on Execution of the Nomination Agreements, the appellant received only the balance amount payable by the Transferor to the Appellant under the Original Agreement. However, in the impugned order, the Id. adjudicating authority has considered the date of the Nomination Agreements as the date of Agreement for Sale and considered the entire amount of consideration mentioned in the Nomination Agreement as the sale value and demanded service tax on the same. Thus, whatever advance received from the transferor prior to 01.07.2010 was ignored, which is legally not tenable.

6.1.1. The Ld. Counsel for the appellant also referred to the Table provided at paragraph 5.7 of the impugned Order-in-Original dated 28.11.2016, wherein the advances received by the appellant during the Financial years 2010-11, 2011-12, 2012-13 and 2013-14 have been summarized, in the following manner: -

F.Y.	Alleged advance received as appeared in SCN	Eligible advance received after 1.7.2010 as discussed above	Abatement (75% of the amount in previous column)	Taxable Value	Service Tax payable including cess
2010-11	26,77,75,000	(26,77,75,000 – 11,00,00,000 – 4,77,75,000/-)= 11,00,00,000/-	82500000	27500000	2832500
2011-12	13,92,75,000	(13,92,75,000 – 30,00,000/-)= 13,62,75,000/-	102206250	34068750	3509082
2012-13	34,00,000	34,00,000/-	2550000	850000	105060
2013-14	5,00,00,000	5,00,00,000/-	37500000	12500000	1545000
	46,04,50,000	29,96,75,000/-	224756250	74918750	7991642

6.2. In respect of their tax liability on the amounts received in relation to the Nomination Agreements, the appellant's submission is that the Id. adjudicating authority, while passing the impugned order, has not taken into consideration the fact that the above said amounts were received by them prior to 01.07.2010; that the entire amount received from the transferee has been taken as the sale proceeds for construction service and Service Tax has been demanded by considering the entire consideration has been received by the assessee after 01.07.2010. The appellant submits that there is no dispute that the advances received prior to 01.07.2010 are not liable to service tax. Based on these submissions, the Id. Counsel appearing on their behalf contends that the demand of Service Tax of Rs.79,91,642/- confirmed in the impugned order, along with interest and penalties, is not sustainable in law.

6.3. The Id. Counsel for the appellant has also put forth arguments on the ground of limitation; it has been pointed out that the appellant is a registered assessee and was regular in furnishing ST-3 returns and payments of tax; that the demand is made for the period from July, 2007 to March, 2014 by invoking the larger period of limitation while the Show Cause Notice was dated 15.10.2015. It is contended that in the impugned order, no plausible findings with respect to suppression have been recorded, nor any cogent evidence brought on record; that the only finding recorded is that such non-payment is detected by the audit. Thus, he contends that the extended period of limitation is not invocable in the facts and circumstances of the case.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. Accordingly, he prayed for rejection of the instant appeal.

8. Heard both sides and perused the records of the case.

9. We find that in the present case, an amount of Rs.1,14,82,755/- has been confirmed against the appellant, being the Service Tax demand payable by the appellant-company, along with interest and penalty of Rs.1,14,82,755/- under Section 78 *ibid.*; the balance demand of Rs.1,28,18,761/- proposed in the Show Cause Notice has been dropped by the Id. adjudicating authority. Out of the above demand confirmed against them, the appellant has paid Rs.36,24,622/-, as also observed by the Id. adjudicating authority in the impugned order, and contesting the balance amount of the demand, along with interest and penalty thereon, as confirmed in the impugned order.

10. We find that this amount contested by the appellant pertains to the advances received by the appellant, viz. "Advances (Others)", as reported by the appellant in their Books of Account. The main contention of the appellant is that the amount considered as taxable value for raising the demand includes receipt of payments prior to 01.07.2010, which is not legally correct; and that the Department has considered the entire sale value accruing on account of the Nomination Agreement(s) as the taxable value for the purpose of computation of the Service Tax liability ignoring the advances received prior to 01.07.2010.

11. We observe that there is no liability of service tax on the advances paid prior to 01.07.2010. This issue has been clarified by the Board vide Letter D.O.F. No. 334/3/2010-TRU dated 01.07.2010, wherein it has been clarified that payments made prior to the effective date do not fall within the purview of Service Tax. The relevant extract of the above reads as follows: -

"2. Services provided or payments made prior to the effective date:

2.1 Vide Finance Act, 2010, eight new services were added to the list of taxable services while the scopes of nine existing services were modified. As these changes become effective from 1-7-2010, activities that are covered under taxable service categories due to above additions or modifications, would start attract service tax from this date. It is however, possible that a part or full payment of the consideration for such services provided after the appointed date has already been received prior to that date, i.e. advance payments. The examples are: where a domestic air journey performed after 1st July 2010, but the ticket is issued on payment prior to such date or where a construction activity falls within the taxable service only after the said date but the payment (full or in part) has been made before this date. While legally tax is payable on such amounts received, it has been decided to specifically exempt service tax on that partial or full amount which is received by the service provider/person liable to pay the tax (and not by an agent, who in turn transfers such amount to such person after this date) before 1-7-2010, pertain to a service which has become taxable on account of the provisions of the Finance Act, 2010 and is provided on or after 1-7-2010. Any amount received after 1-7-2010 by the service provider/person liable to pay the tax would be subjected to tax. (Refer Notification No. 36/2010-Service Tax dated the 28th June 2010 as corrected vide corrigendum dated 29th July, 2010)."

12. In the present case, we find that some of the buyers who entered into Agreement for Sale with the appellant during 2008-09 and 2009-10 and made advance payment before 01.07.2010, have transferred their rights, title of the flats/commercial space/office/shop by execution of "Nomination Agreement". As per the above clarification issued by the Board, we observe that there is no Service Tax liability on the advances paid prior to 01.07.2010 and Service Tax is liable to be paid only on the amount, if any, paid after 01.07.2010.

13. From a perusal of the impugned order, we find that the Id. adjudicating authority has given a finding as to the Service Tax liability on the said Advances (Others) in paragraphs 5.5 and 5.6 of the said order, which is reproduced below for ease of reference: -

"5.5.

I have gone through the agreement dated 18.11.2010 referred by the said assessee in the above paragraph. I find it is a tripartite agreement between the transferor M/s Mridu Hari Dalmia Pariwar Trust, Transferee M/s Ever Youts Promoters Private Ltd and the said assessee. In the said agreement the said transferor agreed to irrevocably nominate the flats / properties to the transferee in its place against agreed consideration to be paid by the Transferee to the Transferor. In the "consideration nomination costs" part of the said agreement I find that the total consideration of the property is Rs. 8,33,85,900/- which is agreed to be paid by the Transferee to the Transferor. The said consideration amount includes reimbursement of Rs.6,00,00,000/- paid by the Transferor to the said assessee, Rs.76,41,000/- to be paid by the

Transferee to the noticee directly and Rs. 1,57,44,900/- as nomination cost.

5.6 The findings noted above gives a clear picture of the status of the consideration received by the said assessee from the Transferee i.e. M/s Ever Youts Promoters Pvt Ltd. What it presents that the ultimate buyer of the property entered in agreement with the said assessee after 1.7.2010 and therefore whatever adjustment of payments are made, the accountability of those considerations would fall on the final possessor of the property i.e. the Transferee. Therefore, when the consideration includes the reimbursable amounts as stated in previous paragraph, the entire consideration is also to be considered as received by the said assessee after 1.7.2010. Mere transfer of the amount by the Transferor in the name of Transferee in the present context by no stretch of imagination can be considered as money paid by the Transferee at an earlier date i.e. prior to the agreement date 18.11.2010. Moreover, the transferee has also been charged with "nomination cost". Hence the contention of the said assessee cannot be entertained under the given perspective."

13.1. On perusal of the findings supra, we find that the Ld. adjudicating authority has given his findings w.r.t. the Nomination Agreement dated 18.11.2010. We have gone through the Terms and conditions of the said Agreement. For the sake of ready reference, the consideration to be paid in terms of the said Nomination Agreement entered into between the parties, is extracted hereinbelow: -

"CONSIDERATION - NOMINATION COSTS

4.1 In consideration of the above the Transferee has agreed to pay to the Transferor an aggregate sum of Rs. 8,33,85,900/- (Rupees eight crores thirty three lacs eighty five thousand nine hundred only) (hereinafter referred to as the CONSIDERATION AMOUNT)

4.2 Out of the said Consideration Amount a sum of Rs. 76,41,000/- being the balance amount payable to Forum under the said Sale Agreement shall be paid by the Transferee directly to Forum

4.3 The said Consideration amount includes reimbursement of the said sum of Rs. 6,00,00,000/- paid by the Transferor to Forum and the balance sum of Rs. 1,57,44,900/- has been agreed to be treated as the NOMINATION COSTS"

13.2. In respect of the above agreement, we observe that the transferor has paid a sum of Rs.6,00,00,000/- to Forum (appellant), prior to 01.07.2010. Thus, there is no Service Tax liability on this amount of advance which was paid prior to 01.07.2010. As per the sale Agreement between the Transferor and Forum (Appellant), the Transferor is liable to pay only Rs.76,41,000/-, on which Service Tax is payable. As per the Nomination Agreement, the transferee has agreed to pay the amount of Rs.76,41,000/-, to Forum (appellant). We observe that the amount of Rs.1,57,44,900/- (Nomination Costs) is the profit earned by the appellant in the transaction, on which no Service Tax is payable, as this amount was received by the transferor from the Transferee and this transaction has nothing to do with the amount payable to Forum under the said Sale Agreement. However, we observe that the Id. adjudicating authority has taken the entire amount of

Rs.8,33,85,900/- as the transaction value for the sale and considered the entire value as received after 01.07.2010, which is not legally correct. Thus, we are of the view that Rs.6,00,00,000/- has already been paid by the transferor to the appellant, prior to 01.07.2010 and hence no Service Tax was payable. Service tax is liable to be paid only on the balance amount of Rs.76,41,000/- which been paid by the transferee to the appellant in respect of the above said Sale Agreement. Hence, we do not agree with the method adopted by the Department for arriving at the Service Tax liability of the appellant on the entire value declared in the Nomination Agreement.

13.3. The above findings are applicable in principle to all the other Nomination Agreements entered into by the appellant during the period under consideration in this case.

13.4. Thus, we hold that the method adopted by the Department for demanding Service Tax on the above amounts received by the appellant is legally unsustainable. Accordingly, we hold that the demand of Service Tax to the extent of Rs.79,91,642/- is not sustainable.

14. As regards the remaining amount of Service Tax confirmed vide the impugned order, other than the amount contested by the appellant as above, we find that the appellant has submitted that they have already discharged their Service Tax liability to that extent, amounting to Rs.36,24,622/-. In fact, it can be seen that the above payment/s made by the assessee have been admitted and acknowledged by the Id. adjudicating authority at paragraph 5.13 of the impugned order, but the same have not been taken into consideration and appropriated in the impugned

order, on the ground that the said payments had not been 'actually declared' in the statutory ST-3 Returns filed by the appellant towards discharge of Service Tax. The relevant findings of the Id. adjudicating authority in the impugned order on the above are reproduced below: -

*"5.13 From the above findings and discussion it may be seen that almost in all issues the said assessee has actually admitted the tax liability and discharged service tax but disputed on its taxable amounts only. Further I find that entire payment, reported by the said assessee, was done on 24.2.2016 and 25.2.2016 i.e. at a much later period after issue of show cause notice except challan no. 907 dated 5.8.2014. **I find that the said assessee admittedly paid an amount of service tax of Rs. 36,24,622/- and copies of challans of these payments are submitted. At the same time, I do not find any record in hand that all these payments are actually declared in the statutory ST-3 returns towards discharge of service tax as contended in their reply.** I consider that deposition of amount would not ensure payment of duty as long as such amounts were used in discharging the duty liabilities in the respective periodic returns. In absence of statutory returns the adjudicating authority has no option to check the status of such declaration. Thus in view of the given fact, discussions vis-à-vis the consistent judicial interpretation on the issue of limitations in recent times and considering the evidence of suppression as apparent on records of the case at hand, I hold that longer period limitation has been rightly invoked in this case for the noticee's deliberate acts in defiance to law leading to suppression of material fact by way of misstatement in their statutory returns and contravention of the various provisions of law with sole intent to evade payment of Service Tax."*

[Emphasis supplied]

14.1. The appellant has specifically submitted before us that the above payment of Rs.36,24,622/- pertains to the demand of Rs.1,14,82,755/- confirmed against them in the impugned order. The above portion of the demand, as above, has already been paid by the appellant, which has also been accepted in the impugned order, along with interest. Therefore, we uphold the demand of Service Tax to this extent, along with interest, as already paid by the appellant.

15. Further, as suppression of facts with the intention to evade tax on the part of the appellant has not been established in this case by means of substantive evidence, we hold that no penalty is imposable under Section 78 of the Act, in the facts and circumstances of the case. Accordingly, the imposition of penalty under Section 78 *ibid.* stands set aside.

16. In the result, we pass the following order: -

- (i) The demand of Service Tax to the extent of Rs.79,91,642/-, as confirmed in the impugned order, is set aside.
- (ii) The balance portion of the demand out of the total demand of Rs.1,14,82,755/-, which has already been paid by the appellant, along with interest, is upheld.
- (iii) No penalty is imposable on the appellant, in the facts and circumstances of the case.

17. The appeal is disposed of on the above terms.

(Order pronounced in the open court on **27.02.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd