CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 51616 OF 2017

[Arising out of the Order-in-Original No. DLI-SVTAX-003-COM-102-16-17 dated 20/06/2017 passed by The Commissioner of Service Tax, Delhi – III, New Delhi.]

Shri Ajay Mishra, Director **Appellant**
M/s Segmental Consulting &
Support Services Pvt. Ltd.
A-1B, 110A, Paschim Vihar,
New Delhi.

VERSUS

Commissioner of Service Tax, **Respondent**
Delhi – III, Commissionerate,
Bhikaji Cama Place, R.K. Puram,
New Delhi – 110 066.

WITH
SERVICE TAX APPEAL NO. 51617 OF 2017

[Arising out of the Order-in-Original No. DLI-SVTAX-003-COM-102-16-17 dated 20/06/2017 passed by The Commissioner of Service Tax, Delhi – III, New Delhi.]

M/s Segmental Consulting & **Appellant**
Support Services Pvt. Ltd.
Unit No. 419A-421, Tower B-4,
Spaze I Tech Part, Sector – 49,
Sohna Road, Gurgaon,
Gurgaon (Haryana) – 122 002.

VERSUS

Commissioner of Service Tax, **Respondent**
Delhi – III, Commissionerate,
Bhikaji Cama Place, R.K. Puram,
New Delhi – 110 066.

APPEARANCE

Shri Abhishek Rastogi and Shri Manindre N. Verma, Advocates – for the appellant.
Shri Rajeev Kapoor, Authorized Representative for the Department.

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50857-50858/2023

DATE OF HEARING : 28.03.2023.
DATE OF DECISION : 10.07.2023.

RACHNA GUPTA

Present order disposes of two appeals arising out of the same order-in-original bearing No. 003/102/16-17 dated 20 June 2017. The said order has adjudicated two separate show cause notices as were served upon the appellants. The extended period of limitation has been invoked by the Department while issuing the show cause notice. The details are as follows :-

Sl. No.	SCN No. & Date	Period	Proposed demand	Confirmed demand
1.	SCN No. 17/2015 issued under C. No. DL-III/ST/AE/Gr-V/TPD/01/2015 on 03.12.2015 (hereinafter referred to as **"SCN-I"**	2010-11 to 2013-14	Service Tax of Rs. 3,23,26,278/- Cenvat credit of Rs. 1,03,57,959/- with interest and penalty	All as proposed except that Cenvat credit demand was confirmed to the extent of Rs. 99,96,980/- with interest and penalty
2.	SCN No. 28/ST/R-60/Div.-XII/2015-16 issued under C. No. DL-III/ST/Div.-XII/R-60/SCN/SC/ & SS/88/ 2015 on 18.04.2016 (hereinafter referred to as **"SCN-II"**	2014-15	Service Tax of Rs. 93,43,404/- Cenvat credit of Rs. 22,79,422/-	Same as proposed

2. The facts, in brief, are as follows : the appellants are engaged in providing the taxable services of "Consulting Engineer Service" (CES) to their major clients for providing consultation for road, bridges, tunnels etc. to their clients namely M/s Euro Studio, Spain, M/s Euro Studio, SL, Jammu & Kashmir and M/s NHAI, M/s Getinsa Ingeneria. Based on an intelligence gathered

by the Department, the registered premises of appellant were searched, however, the premises were found to be the residential locked premises and their corporate office was found existing at Sector 49, Sohna Road Gurgaon, instead of being at their registered place in Paschim Vihar, New Delhi. The corporate office premises were also searched.

3. Based on the documents recovered during search and received from the appellants vide several letters dated 13.07.2015, 12.08.2015, 24.08.2015 and 27.08.2015, the Department formed an opinion that the Consulting Engineers Services as provided for a road in Jammu & Kashmir, in the present case, are not exempted from the levy of service tax as is mentioned by the appellant. The Department while relying upon Rule 3 and 8 of place of provision of Service Rules, 2012 formed the opinion that the service recipient of the appellants, their registered premises, location of their business establishment and their territory all fall in the taxable territory, hence, the assessee is not entitled for availing exemption rather was liable to discharge the service tax liability.

4. The Department, from the scrutiny of documents, also found the difference in the value shown for the services rendered by the appellants in balance sheets vis-à-vis ST-3 returns during the period from financial year 2010-2011 to 2013-2014. The availment of Cenvat credit was also observed to be availed on the strength of such invoices, which were not issued to the registered

premises of the appellants. Resultantly the two show cause notices, as tabled above, were served upon the appellant proposing the respected recoveries, as mentioned in the said table to be recovered from the appellants along with the interest and the appropriate penalties. The said proposal has been confirmed by the order under challenge, except for an amount as mentioned in the table above.

5. We have heard Shri Abhishek Rastogi and Shri Manindre N. Verma, learned counsel for the appellant and Shri Rajeev Kapoor, learned Authorized Representative for the Department.

6. Learned counsel for the appellant has mentioned that service tax was not paid by the appellants on two grounds :

- "Service was provided in relation to construction of road (an immovable property) in the state of J&K, a non-taxable territory.
- Service Tax Trade Notice No. 13/2004 based on the **Board's letter F. No. 137/62/ 2003-CX.4, dated 22.3.2004**, says that service tax is not applicable to services provided in the State of Jammu & Kashmir, irrespective of the service provider being from the State or otherwise."

7. In addition, it is submitted that service tax was otherwise was not payable on construction of roads made anywhere in India post 01.07.2012. Though the services, in question, were covered

under "other than negative service", but still those were exempted under the Mega Exemption Notification No. 25/2012-ST dated 20 June 2012 exempting any service provided in relation to construction of road. It is mentioned that all the allegations are apparently vague. The description of service as provided in the contract executed with the clients clearly indicate that the services were provided in relation to a road to be constructed in the State of Jammu & Kashmir. The services were held to be intangible services with no relation to immovable property, hence, are apparently wrong. The show cause notice is also alleged to be barred by time for want of any evident of record for prove alleged suppression of facts by the appellant with an intend to evade the duty. Learned counsel has relied upon on the following case laws :-

(i) **Bharat Petroleum Corporation Ltd. versus Commissioner of Service Tax, Noida [2018 (3) TMI 1428 – CESTAT ALLAHABAD], [EXHIBIT – G]**

(ii) **ENCARDIO – Rite Electronics Pvt. Ltd. versus Commissioner of Appeals, Central Excise & Service Tax, Lucknow [2020 (42) GSTL 119 (Tri. – All.)], [EXHIBIT – H]**

(iii) **Jaypee Infra Venture versus Commissioner of Service Tax, Delhi – III [2019 (21) GSTL 424 (Tri. – Del.)], [EXHIBIT – I]** and

(iv) **Quest Engineers & Consultant Pvt. Ltd. versus Commissioner, GSTL & Central Excise, Allahabad [2022 (58) G.S.T.L. 345 (Tri. – All.)], [EXHIBIT-J]**

The findings are prayed to be set aside and both the appeals are prayed to be allowed.

8. Learned Departmental Representative while submitting for the department has impressed upon the correctness of the findings in the order under challenge. It is mentioned that the agreements entered into by the appellant with their service recipient were duly considered by the Adjudicating Authority and it has rightly been held that those agreements reveal that the work undertaken by the appellant was never required to be undertaken at the site of the client. Hence there is no error committed while the services of providing Engineering Consultation are held to be those as rendered in taxable services which are intangible nature. From the invoices, it was rightly observed that addresses of the business establishment of the appellant as well as of their referred service recipient were also found existing in the taxable territory and those recipients were found registered with the service tax department on such addresses which are in taxable territory. Hence, there is no infirmity when the services of Consulting Engineering Services (CES) are denied to have been rendered in the State of Jammu & Kashmir. Hence the plea of exemption as raised by the appellant has rightly been denied. Impressing upon no infirmity in the order, both the Appeals are prayed to be dismissed.

9. After hearing both the parties at length, pursuing the documents on record the order under challenge, we observe that the questions to be decided by us are as follows :

(i) Whether the appellant is liable to pay service tax on Consulting Engineer Services rendered by the appellant;

(ii) Whether the appellants have wrongly availed the Cenvat credit without support of input documents and, as such, the same is recoverable from the appellants.

(iii) Where the extended period of limitation has wrongly been invoked while issuing the show cause notice.

First Question for adjudication :

10. To adjudicate the same, we first need to look into the definition and nature of Consulting Engineer Services. The services are defined under Section 65 (31) and is taxable under 65 (105) (g) of Finance Act, 1994, which read as follows :-

> "65 (31) "consulting engineer" means any professionally qualified engineer or [any body corporate or any other firm] who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner [to any person] in one or more disciplines of engineering" ;
>
> "65 (105) (g) to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering".

11. To understand this definition, we need to understand the scope of Consulting Engineers. Consulting Engineers either individually or in association used their expertise in the areas, such as, planning, design construction and analysis of both public and private infrastructure. They used their knowledge of Science and Mathematics to develop real world solutions. Their responsibilities include No. (1) the viability study of the project including time scales equipment and costing, study of the nature of land of the project and its surroundings. Thus studies include the preparation of land development plans/irrigation plans/ regional plans and the services may include comprehensive investigations analysis conditions and comparison between different parts/projects in addition to provide conclusion/ recommendation regarding the possibility of executing the project several factors, such as, environmental impact, risk management, sustainable development life cycle cost and other financial considerations have to be used as a base by these consultants.

12. In the present case we observe from one of the agreements with NHAI, we observe that the role and functions of the independent engineer quoted therein include all the roles, as discussed above, some specific scope of work, as observed from the said agreement is as follows :-

> "3.1 (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;

5.3 The Independent Engineer shall inspect the Construction Works and the Project Highway once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the **"Inspection Report"**) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources; and conformity of Construction Works with the Scope of the Project and the Specifications and Standards.

5.4 The Independent Engineer may inspect the Project Highway more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample tests, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the rests specified in the IRC Special Publication – 11 (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MoRTH (the "quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof".

13. The perusal of above discussed responsibilities of Consultant Engineer and the defined role in the impugned agreement makes it clear that the scope of service of appellant in the given facts and circumstances was that of a Consulting Engineer for construction of a road in the territory of State of Jammu & Kashmir. It is also clear beyond doubts that the consultant appellant had to visit the said site in non-taxable territory for providing the said services irrespective some

consultation could be possible while being in his office situated in taxable territory. Hence, we are of the opinion that the findings of the Adjudicating Authority holding that the services provided by the appellant are in intangible in nature and have no relation to the immovable property of non-taxable territory are apparently wrong and, as such, are liable to be set aside.

14. Coming to the plea of taxable territory as taken by the Adjudicating Authority we have looked into in the definition of taxable territory as taken by the Adjudicating Authority under section 65 (32) of Finance Act, 1994. It reads as follows :-

> "taxable territory means the territory to which the provisions of Chapter V of the Act apply. Section 64 of the Act speaks about the extent, commencement and application of this Chapter and according to this provision :
>
> Chapter V of the Act extends to the whole of India except the State of Jammu and Kashmir. It becomes clear from these two provisions that State of J&K, is not within the taxable territory of India. Now for further adjudication, definition of services as mentioned in Section 65 (45) of the Finance Act, 1994 acquires relevant. According to which :
>
> "service means any activity carried out by a person for another for consideration and includes a declared service". The definition excludes certain transactions not to be classified as service as mentioned in sub-clause (a) to sub-clause (c) with the respective Explanations No. 1, 2 and 3. Explanation 3 (b) is relevant for the present controversy which reads as follows :
>
> > "3 (b)An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.
> >
> > Explanation 4 further clarifies that a person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

Both these provisions make it clear that JAL, the Headquarter in Lucknow and JAL, the Branch Office in the State of J&K, are establishments of two distinct persons. If we talk of charge of Service Tax Section 66B of Finance Act, 2012 is relevant according to which there shall be levy of tax @ 12% on the value of services other than those services specified in the negative list provided or agreed to be provided in taxable territory by one person to another and collected in such manner as may be prescribed.

Section 66C of the Act now is to be looked into which reads as follows :

> **66C. Determination of place of provision of service** – (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided deemed to have been agreed to be provided.
>
> (2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory".

Along with these provisions the rules under Place of Provision of Services Rules, 2012 acquire relevance. Rule 8 thereof has been considered by the authorities below for rejecting the claim of the appellant. Perusal of these rules which came into effect from 20.06.2012 shows that the rules have been framed under Section 66C of the Finance Act, 2012 for the purpose of definition of Place of Provision of services. According to Rule 3 thereof :

> Place of provision of a service shall be the location of recipient of service provided that in case the location of service recipient is not available in the ordinary course of business that the place of provision shall be the location of the provider of service. Rule 5 is about the Place of Provision of Services relating to immovable property. Perusal of the rule makes it clear that the Place of Provision of Services provided directly in relation to an immovable property shall be the place where the immovable property is located or is intended to be located. Since the services in the present case admittedly are for road to be constructed, an immovable property in the State of J&K, according to this rule has to be the State of J&K.

15. In the light of this discussion, we hold that the appellant as well as service recipient, though both have their Head Offices in taxable territory but the provision of service was outside the taxable territory i.e. in the State of J&K. Hence the Department herein was not liable to charge the service tax *qua* the said provision of service. The adjudicating authority below is, therefore, held to have committed an error while rejecting the appeals".

16. We further observe that a service Circular bearing Notice No. 14/2004 dated 28.04.2004 has clarified about the applicability of service tax where service provider are located at the outside State of J&K but have rendered services in the State of J&K. We observe that it has been clarified that the service tax is not applicable to the services provided in the State of J&K irrespective of the service provider being from the said State or otherwise. We also observe that even Mega Notification No. 25/2012 dated 20 June, 2012, as impressed upon by the learned counsel for the appellant, also comes to the rescue of the appellant as the said notification exempts certain services from the whole of service tax leviable thereupon. In case of the services in the nature of construction Clause 13 (a) is with respect to services provided by way of construction, erection, commissioning, installation completion, fitting out, repair, maintenance, renovation or alteration of a road bridge, tunnel or terminals for road transportation for use by general public. In the present case it is an admitted fact that the services provided by

the appellants are towards the construction of a road meant for use by the general public.

17. In light of above discussion and also from the point of view as already been held that for providing the consultation services for construction of road appellant had to be on site on regular basis, we are of the opinion that the services rendered by the appellants are wrongly held as taxable. This Tribunal in the case of **Quest Engineers & Consultant Pvt. Ltd.** versus **Commissioner, CGST & C. EX., Allahabad**[1] has held that the Consulting Engineering Services provided with respect to road construction are also entitled to exemption under Sl. No. 13A of Notification No. 25/2012 for the reason that when road construction is exempted every activity relating thereto including Consulting Engineering Service stands exempted. It was held in this case that the appellant is entitled to exemption under the Notification No. 25/2012-S.T. under Sl. No. 13(a) of the said notification for providing CES for road construction. We also draw support from the ruling relied upon the appellant in **Lord Krishna Real Infra Pvt. Limited** versus **Commissioner of Customs, CE & ST, Noida**, Final Order No. 70126/2019, dated 27-12-2018 wherein this Tribunal has held that even the barricade provided on the side of highway, maintaining greenery on the side or middle of highway, construction of any facility, refreshment centre for road users, is also part of the road construction and such activity is also exempt. Even the

[1] **2022 (58) G.S.T.L. 345 (Tri. – All.)**

administrative building constructed by the concessionaire, for construction of the road or highway for administration and collection of toll etc. has been held to be the part of road, and thus eligible for similar exemption.

18. In the light of entire above discussion, we hold that the appellant is not liable to pay service tax for providing the Consulting Engineering Services as rendered to its clients for construction of road in State of J&K. First question accordingly stands decided in favour of the appellant.

Second question for adjudication :

We observe that there is no denial to the fact that the appellants have availed the Cenvat credit on the basis of invoices. However, the reason for denying the availment is that the address mentioned on these invoices was not the registered premises of the appellant. Hence, the invoice was the improper documents in terms of Cenvat Credit Rules, 2004. We find that the relevant provision for the purpose of Rule 9 of Cenvat Credit Rules, 2004, which reads as follows :

> "RULE 9. Documents and accounts. — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-
>
> (a) an invoice issued by -
>
> (i) [a manufacturer or a service provider for clearance of -]
>
> (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(iv) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

[(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; [or, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the Customs airport,]

[(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or]

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

> [(fa) a Service Tax Certificate for Transportation of goods by Rail issued by the Indian Railways; or]
>
> (g) an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994 :
>
> [Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]
>
> [(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :
>
> Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]
>
> to (11).

19. It is clear from the above provision that any of the documents, as mentioned in Clause (a) to (g) of the said rule is sufficient for availment of Cenvat credit as per Clause 9 (f) an invoice/bill or challan issued by the provider of input service is a relevant document.

20. We observe that there is no denial of the Department about the requisite price available on the invoices based whereupon the Cenvat credit has been availed by the appellant. Though the address mentioned thereupon is different from the registered address, but as apparent from show cause notice itself the appellant were found existing on the address mentioned in the invoice with explanation of the circumstances about shifting to

the different address. Hence the objection about address is nothing but simply a procedural lapse. Substantial benefit of availment of Cenvat credit cannot be denied on the grounds of procedural lapse. Resultantly we hold that Cenvat credit has been properly availed by the appellant based on the invoices. Thus the second question of adjudication also stands decided in favour of the appellant against the Department.

Third question for adjudication:

We observe that the demand under the impugned two show cause notices is for the period 2010-2011 to 2013-2014 and for the financial year 2014-2015. However, the show cause notices in both the cases are issued beyond the stipulated period for issuing the show cause notice, by invoking the extended period of limitation. We also observe that there is no denial about filing of regular ST-3 returns by the appellant. However, the Adjudicating Authority has justified invocation of extended period of limitation on the ground that information regarding non-payment of service tax and regarding wrong full availment of Cenvat credit has genesis only after investigations of the Department without which such issues could not have been detected. We, however, are of the opinion once admittedly the returns were filed regularly by the appellant the Department cannot alleged suppression against the appellant/assessee. It is mandatory for them to bring on record a positive act of the to prove the alleged suppression that too with an intent to evade tax. He relied upon the judgment of Hon’ble Apex Court in the

case of **Continental Foundation Jt. Venture versus Commissioner of Central Excise, Chandigarh** reported as **2007 (216) E.L.T. 177 (S.C.)**. Once it is not the case of suppression with an intent to evade tax and once the appellant is held not liable to pay the service tax in the given facts and circumstances, the department was not entitled to invoke the extended period of limitation. The question of imposition of penalty upon the appellants also does not at all arise.

21. The Hon'ble Supreme Court in another decision in the case of **Anand Nishikawa Co. Ltd.** versus **Commissioner of Central Excise, Meerut**[2] has held that when the facts were known to both the parties omission by one to do what he might have done not that he must have done, would not render it suppression unless and until there is some positive act from the side of assessee, willful suppression cannot be alleged. The word and words as used under Section 73 of Finance Act and Section 11AA of Central Excise Act are to be interpreted strictly because of its use with the strong words like fraud, collusion or willful default unless there is deliberate attempt to escape/evade the payment of tax. Suppression cannot be alleged in such circumstance and thus extended period cannot be invoked for issuing show cause notice. We draw our support from another decision of Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Company** versus **Collector of C. Ex.,**

[2] **2005 (188) E.L.T. 149 (S.C.)**

Bombay[3]. Thus issue No. 3 also stands decided in favour of the appellant.

22. In light of entire above discussion, on three of the issues of adjudication, which are decided in favour of the appellants, we hereby set aside the order under challenge. Consequent thereto both the appeals stand allowed.

(Order pronounced in open court on 10/07/2023.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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[3] **1995 (78) E.L.T. 401 (S.C.)**