

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI  
WEST BLOCK NO. 2, R.K.PURAM, NEW DELHI - 110066  
SERVICE TAX APPEAL BRANCH**

Dated: 27/05/2025

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. FO/ST/A/50767-50768/2025-ST[DB] dated 2025-05-26

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Deputy/Asstt. Registrar (SERVICE TAX Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/51736/2018	<b>AGRAWAL BUILDERS AND COLONIZERS</b> THE SAGAR, E-2/+4, ARERA COLONY, HABIBGANJ ROAD BHOPAL, M.P -462016

2	ST/51739/2018	<b>AGRAWAL BUILDERS</b> E-2/4, ARERA COLONY, HABIBGANJ ROAD BHOPAL, M.P- 462016
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Name and Address of  
Respondent

3		<b>COMMISSIONER OF CGST &amp; CENTRAL EXCISE- BHOPAL</b> 35-C GST BHAWAN ADMINISTRATIVE AREA. ARERA HILLS. JAIL ROAD, BHOPAL MADHYA PRADESH-462015
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Other Appellants and Respondents as per Annexure

**Copy To**4 Advocate(s) / Consultant(s):

✓ **Bipin Garg, Adv**  
B-1/1289, A - Vasant Kunj,  
New Delhi-110070

5 Additional Party's Name &amp; Address :

6. Office Copy

7. Guard File

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

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09/06/25

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**New Delhi**

PRINCIPAL BENCH – COURT NO. 3

**Service Tax Appeal No. 51736 Of 2018**

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-210 to 213-17-18 dated 12.09.2017 passed by the Commissioner (Appeals) of Customs, Central Excise and Service Tax, Bhopal]

**Agrawal Builders and Colonizers**

**: Appellant**

(Partnership firm)

The Sagar, E-24, Arera Colony  
Habibganj Road, Bhopal-462016

Vs

**Commissioner of Central Goods, Service  
Tax, Central Excise and Customs, Bhopal**

**: Respondent**

178, Bhagya Bhavan, M. P. Nagar  
Zone-II, Bhopal, Madhya Pradesh

with

**Service Tax Appeal No. 51739 Of 2018**

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-210 to 213-17-18 dated 12.09.2017 passed by the Commissioner (Appeals) of Customs, Central Excise and Service Tax, Bhopal]

**Agrawal Builders**

**: Appellant**

E-24, Arera Colony  
Habibganj Road, Bhopal-462016

Vs

**Commissioner of Central Goods, Service  
Tax, Central Excise and Customs, Bhopal**

**: Respondent**

178, Bhagya Bhavan, M. P. Nagar  
Zone-II, Bhopal, Madhya Pradesh

**APPEARANCE:**

Ms. J. Kainaat, Advocate for the Appellant

Shri Aejaaz Ahmad, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**FINAL ORDER No. 50767-50768/2025**

Date of Hearing: 07.05.2025

Date of Decision: 26.05.2025



**HEMAMBIKA R. PRIYA**

These present two appeals have been filed against the Order-in-Appeal No. BHO-EXCUS-001-APP-210 to 213-17-18 dated 12.09.2017<sup>1</sup> wherein the Commissioner (Appeals) confirmed the demand of service tax amounting to Rs. 32,83,125/- along with interest and penalty on M/s Agarwal Builders & Colonizers<sup>2</sup> and on M/s Agarwal Builders<sup>3</sup>.

2. The brief facts of the case are that the appellant No. 1 & 2 are engaged in the business of construction and sale of residential complexes. Mr. Sudhir Kumar Agrawal is a Partner in aforesaid firms and Mr. Dinesh Sabharwal is Sr. Manager Finance and Accounts. During the course of audit of M/s Agrawal Builders & Colonizers for the period 2011-12, the audit party observed that the amount of Rs 1.25 crores for Agrawal Builders and Colonizers was shown in profit and loss account. Thereafter, summons were issued to M/s Agrawal builders and the statement of Shri Dinesh Sabbarwal and Shri Sudhir Agrawal, partner of the firm, were recorded under Section 14 of the Central Excise Act, 1944. Relevant documents were produced before the investigating authorities. On completion of investigations, show cause notice dated 09.09.2016 was issued to the appellants for demanding service tax of Rs. 1,31,32,500/- along with interest and penalty. The said show cause notice was adjudicated, and the original adjudicating authority granted partial relief in the form of abatement under Notification number 1/2006- ST dated 01.03.2006. The demand of Rs. 32,83,125/- along with interest was confirmed and penalties on the

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1 The impugned order  
2 Appellant No. 1  
3 Appellant No. 2



appellants was imposed. Aggrieved by the said order, the appellant (No. 1 & 2) filed appeals before the Commissioner (Appeals), who rejected their appeals by upholding the order of the lower authorities. Hence, the appellants filed the present appeals.

3. We have heard the learned counsel for the appellant and the learned Authorized Representative for the Department. Both of them agree that the instant issue stands covered by the decision of this Tribunal in the case of **Commissioner of Central Goods, Service Tax and Central Excise, Jaipur vs. M/s Lotus Cons Build Technocrate Private Limited**<sup>4</sup>.

4. As submitted by the learned counsel, the issue related in the said two appeals is no more res-integra as the same stand covered by Tribunal's decision in the following cases:-

- (i) Shree Kankeshwari Enterprise versus Commissioner of Central Excise & Service Tax, Bhavnagar<sup>5</sup>
- (ii) J. P. Ispat Private Limited vs. Commissioner of Central Excise, Ahmedabad-I<sup>6</sup>
- (iii) Goyal and Co Construction Private Limited vs. Commissioner of Central Excise and Service Tax<sup>7</sup>
- (iv) Commissioner of Central Goods and Service Tax, Central Excise, Jaipur vs. M/s Lotus Cons Build Technocrate Private Limited

5. A perusal of the records indicates that the present demand was proposed based on the statement of the director wherein had stated

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4 2025 (1) TMI 788-CESTAT NEW DELHI  
5 (2023) 9 Centax 77 (Tri-Ahmd.)  
6 2022 (63) GSTL 64 (Tri.-Ahmd.)  
7 2022 (4) TMI 735-CESTAT AHMEDABAD

that amount disclosed before the Income Tax department was received from construction services. We note that the respondent was providing various taxable services, and the statement cannot be sole evidence of provision of services untill corroborated by other documentary evidence. We note that the department has not produced any evidence to establish that the respondent had generated said income / amount so disclosed to Income Tax Department on account of providing taxable services. The proposal of demand of service tax on the income declared under survey to Income Tax Department cannot be sustained. We further draw support from the decision of Hon'ble Supreme Court in the case titled as **K.T.M.S. Mohd. & Others Vs Union of India**<sup>8</sup> wherein it was held as follows: -

*"g. Determination of tax under the Income-tax Act cannot be made, as it not incumbent on the income-tax authorities to take into consideration only the materials made available by the Central Excise Department, but the authorities are bound to make an independent enquiry, before passing any order, which enquiry has not happened in the present case. There is no provision to simply incorporate the demand made in the show cause notice issued under the Central Excise Laws for the purpose of computation of tax under the Income Tax Laws. The provisions under the two laws, viz., the Central Excise Act and the Income-tax Act, operate in two different fields. Without there being an independent enquiry by the concerned taxing authorities the demand made under the provisions of Central Excise Act cannot be incorporated as such, more so when the notice of demand has been modified by the adjudicating authority.*

*In the case of Kipps Education Centre, Bathinda v. CCE, Chandigarh reported in 2009(13) S.T.R. 422 (Tri. Del.), it was*



*held by this Tribunal that income voluntarily disclosed before the income tax authorities could not be added to the taxable value unless there is evidence to prove the same. In this case also, there is no evidence to show that the income disclosed is the part of taxable service. Hence I do not find any infirmity in the impugned order. Accordingly, stay application as well as the appeal are rejected."*

6. This Tribunal also followed the said decision in the case of **Commissioner of Income tax Trichy vs. Amman Steel and Allied Industries<sup>9</sup>**. In an another decision in the case of **Deltax Enterprises Vs. Commissioner of Central Excise -Delhi<sup>10</sup>** the Tribunal held as follows: -

*"4 Admittedly, the appellant did not maintain detailed accounts for all the transactions undertaken by them. They have availed the provision of Section 44AD of Income-tax Act for filing returns. This formed basis for service tax demand as the income shown is much higher than the declared consideration for taxable service. We note that the appellants categorically asserted that they did not provide any other service other than those, the details of which have been submitted to the lower authorities. The Revenue also could not print out excess receipt on these contracts or the taxable service which gave them the consideration escaping the tax. In the absence of specific allegation with reference to the nature of service or the service recipient it is not tenable to hold an income of the appellant even if it is admitted to be an actual income, as consideration for a taxable service. **The minimum requirement to tax an assessee for service tax is to identify the nature of their taxable service along with the recipient of such service. In the present case all identified contracts for the identified service recipients have been examined and***

9 2015 (330) ELT 130 (Madras)

10 2018 (10) G.S.T.L. 392 (Tri. - Del.)

**concluded by the lower authority. No service tax liability can be fastened on unidentified service for unidentified service recipient. There is no provision for such summary assumption even under Section 72 of the Finance Act, 1994.** Admittedly, the said section provides for arriving at the taxable value to be based on the Assessing Officer's best judgment in case where the appellant fails to furnish return under Section 70 or fails to assess the tax in accordance with Finance Act, 1994. In the present case the appellants did file returns under Section 70 and also made available all the contracts on which service tax liability will arise for them. As such, we find application of Section 72 cannot be extended based solely on the income tax return without identifying the specific taxable service or service recipient."

7. By following the ratio of the aforesaid judgements, we set-aside the impugned order and allow the appeals filed by the appellants.

(Order pronounced in the open Court on 26.05.2025)

(BINU TAMTA)  
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)  
MEMBER (TECHNICAL)

G.Y.

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उप पंजीकार/महायक पंजीकार  
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