



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6467 OF 2025

M/s. Suman Construction
Through its Partner
Mr. Kishor Nilkanth Potdar,
Age : 59 years, Occ:- Contractorship
R/at: - Swapankanksha, Near Ganesh Temple
Vidya Nagar, Parbhani, Dist: - Parbhani
Maharashtra – 431 401

-----PETITIONER

VERSUS

- 1] Union or India,
through its Secretary,
Department of Financial Services,
Ministry of Finance,
Jeevan Deep Building,
Sansad Marg, New Delhi- 110001.
- 2] The Commissioner CGST Central Excise,
N-5, Town Center, CIDCO,
Aurangabad-431003.3]
- 3] Joint Commissioner,
CGST & Central Excise, N-5,
Town Center, CIDCO,
Aurangabad-431003.
- 4] The Additional Commissioner,
CGST & CEX, Nagpur-1,
Commissionerate Nagpur.
- 5] The Assistant/Deputy Commissioner
(R & T), CGST & Central Excise,
Aurangabad.
- 6] The Superintendent,
CGST & Central Excise,
City Range-3, Aurangabad,
Urban Division.

-----RESPONDENTS

Mr. J. N. Singh, Advocate for petitioner
Mr. N. T. Tribhuwan, Central Government Counsel for respondent No. 1
Mr. P. P. Dawalkar a/w Mr. P. P. Kothari, Advocate for respondent Nos. 2 to 6

CORAM : **Smt. Vibha Kankanwadi & Hiten S. Venegavkar, JJ.**
RESERVED ON : **04th November, 2025**
PRONOUNCED ON : **14th November, 2025**

JUDGMENT (PER : Hiten S. Venegavkar, J) :-

1. The present writ petition preferred under Article 226 and 227 of the Constitution of India. The petitioner, a government-registered civil contractor, has approached this court seeking a declaration that the common order dated 20.03.2023, passed by the Additional Commissioner, CGST and Central Excise, Nagpur-1 for the financial years 2015-2016 and 2016-2017, is non-est and bad in law. The petitioner further seeks a declaration that in view of Notification No. 25/2012, dated 20.06.2012, issued by the Ministry of Finance under Section 93 of the Finance Act, 1994, (for short "**the Act**") the works of construction of roads executed for government departments are exempted from the levy of service tax. The petitioner also prays for quashing and setting aside the order dated 19.03.2025, passed by the Joint Commissioner, CGST and Central Excise, Aurangabad, rejecting his application for rectification of mistake under Section 74 of the Act.

2. The factual matrix is that the petitioner is engaged exclusively in executing civil construction contracts for various

departments of the Government of Maharashtra, primarily for the construction of roads through the Public Works Department. The petitioner asserts that, in light of the Ministry of Finance Notification No. 25/2012-ST, dated 20.06.2012, services relating to construction of roads for the Government are wholly exempt from service tax. Consequently, the petitioner has not registered under the Act for service tax purposes.

3. According to the petitioner, on 21.01.2021, the Jurisdictional Range Superintendent of Central Excise issued a letter seeking details of the petitioner's turnover for financial year 2015-16 based on data obtained from MAHAVAT records. A show-cause notice thereafter was issued, demanding service tax on the assumption that the petitioner rendered taxable services. The petitioner replied on 12.05.2022, submitting income tax returns, Form 26 AS, balance sheets and certificate issued by the Public Works Department confirming that the works executed were related to government road construction. Despite this, the Deputy Commissioner confirmed the demand by order dated 24.03.2023. The petitioner preferred an appeal under section 85 of the Act before the Commissioner (appeals), CGST and CEX, Nagpur-1, which was partly allowed by order dated 26.07.2024. The Appellate Authority confirmed a limited service tax demand of Rs 30,272/- with corresponding penalties under sections 77 and 78 of the Act.

4. The petitioner submits that notwithstanding the finality attained in respect of Financial Year 2015-2016, the Additional Commissioner again issued an order dated 20.03.2023, imposing service tax for Financial Year 2015-2016 and 2016-2017. The petitioner therefore, on 02.02.2025, moved an application before various authorities, including the Joint Commissioner, CGST, seeking rectification of the mistake under section 74 of the Act specifically in respect of 2015-16 period, which had already been adjudicated upon. The petitioner's contention is that the re-imposition of service tax for Financial Year 2015-16, after the appellate order had attained finality, is impermissible in law and violates the doctrine of merger as recognized by the Hon'ble Supreme Court in **Chandi Prasad and others vs. Jagdish Prasad and others 2004(8) SCC 724**, **Surinder Pal Soni vs. Sohan Lal (Dead) through Legal Representatives 2020 (15) SCC 771** and **V. M. Salgaocar and Bros. Pvt. Ltd. vs. Commissioner of Income Tax 2000 (5) SCC 373**. The petitioner thus asserts that the impugned order of the Joint Commissioner rejecting his rectification application is arbitrary, illegal and contrary to the principles of natural justice.

5. Per contra, the Learned Counsel appearing for the respondent authorities contains that the writ petition is not maintainable in view of the alternate statutory remedy available to the petitioner under section 85 of the Act by way of appeal before the Appellate

Tribunal. The respondents further submit that the petitioner's application for rectification of mistake under section 74 of the Act was misconceived and not maintainable in law. The said provision, according to the respondents, is limited in scope and applies only to mistakes apparent on the face of record, not to re-adjudication of factual disputes or re-assessment of liability. It is also the respondents' contention that the petitioner failed to file an appeal within the limitation period prescribed under section 85 of the Act and in order to circumvent such limitation, resorted to filing an application under section 74 of the Act. The Joint Commissioner, in the impugned order dated 19.03.2025, rightly held that he could not rectify an order passed by another authority, namely the Additional Commissioner, Nagpur-1. It is further argued that the petitioner's grievances pertain to factual issues which cannot be entertained in rectification proceedings and the writ petition being devoid of merit deserves dismissal. Having heard both the learned counsels for the parties and having perused the records, the principal question before this court is whether the application dated 02.02.2025 filed by the petitioner can be treated as one under section 74 of the Act and whether the Joint Commissioner erred in rejecting it.

6. Section 74 of the Act empowers an Adjudicating Authority to amend or rectify its order to correct a mistake apparent from the record within two years of passing the original order. The phrase "mistake

apparent from the record” has been judicially interpreted to mean a manifest, obvious or self-evident error, error that does not require elaborate reasoning or long-drawn arguments. Applying the aforesaid scope of section 74 of the Act which in our view is confined to correction of patent errors which may be clerical, arithmetical or legal and has to be noticed from the face of the record and it is not intended to reopen concluded findings or enable substitution of one view for another.

7. Upon perusal of the petitioner's application dated 02.02.2025, it is evident that the petitioner has challenged the imposition of service tax on the ground that the construction works executed for government departments are exempted under notification No. 25/2012 - service tax and that the order of the Additional Commissioner dated 20.03.2023 was passed without notice. The petitioner also asserts that the prior appellate order has set aside liability for Financial Year 2015-2016. These are substantive grounds and not clerical or patent errors. The application, therefore, is in the nature of an appeal or review/revision rather than a rectification request under section 74 of the Act.

8. Moreover, section 74 sub-clause 3 of the Act expressly provides that rectification must be undertaken by the very authority which passed the order sought to be rectified. In the present case, the

impugned order dated 20.03.2023 was passed by the Additional Commissioner, CGST and CEX, Nagpur-1. The petitioner, however, addressed the rectification application to multiple authorities and the same came to be decided by the Joint Commissioner, CGST, Aurangabad, who had no jurisdiction to rectify an order passed by another authority. The Joint Commissioner rightly observed in the last two paragraphs that he cannot modify or correct the order of the additional commissioner.

9. The argument of the petitioner invoking the doctrine of merger also cannot aid him at this stage. The appellate order dated 26.07.2024 admittedly pertained to an earlier adjudication for Financial Year 2015-16. The impugned order of 20.03.2023 covers both Financial Year 2015-16 and Financial Year 2016-17 and arises from a separate proceedings. Whether both proceedings relate to identical issues or distinct taxable services would require factual verification, which is beyond the limited scope of rectification or writ jurisdiction under Article 226 when an efficacious appellate remedy exists. It is also necessary to be noted that the Joint Commissioner, CGST, Aurangabad, while considering the application of the present petitioner has given considerable thought to Section 74 of the Act and have proceeded to decide the application even after looking into the order passed by the Appellate Authority in connection with the financial service tax imposed for Financial Year 2015-16 in the earlier round of litigation. Even after

applying his mind to the order of the Appellate Authority, he has come to a conclusion that it is not possible for him to under Section 74 of the Act to hold that though the computation of service tax is for the common period but whether the issues involved in both the orders are same or different. On this basis, he has come to a conclusion that as the order has been passed by the Additional Commissioner, CGST, he is not in a position to consider the application under Section 74 of the Act and rectify or modify the order passed by another authority.

10. This Court also finds merits in the submission of the respondent that the petitioner's appropriate remedy against the order dated 20.03.2023 lies in filing an appeal under Section 85 of the Act before the Appellate Authority. The writ jurisdiction is discretionary and cannot ordinarily be invoked when an alternate statutory remedy is available unless there is a clear violation of natural justice or lack of jurisdiction which is not established by the petitioner in the present case.

11. In view of the foregoing discussion, this Court is of the considered opinion that the petitioner's application dated 02.02.2025, was not a genuine rectification application under Section 74 of the Act but rather an attempt to reopen adjudicated issues through an improper forum. The Joint Commissioner, CGST and Central Excise, Aurangabad has rightly observed that he is not able to rectify an order passed by the

Additional Commissioner, Nagpur-1. The impugned order dated 19.03.2025 does not suffer from any illegality, perversity or violation of natural justice warranting interference under Article 226 of the Constitution of India. As far as original order dated 20.03.2023 passed by Additional Commissioner CGST and CEX Nagpur-1 is concerned, petitioner is at liberty to adopt alternate remedy as available in law.

12. Accordingly, the writ petition stands dismissed.

13. No orders as to cost.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

B. S. Joshi