CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70619 of 2019

(Arising out of Order-in-Appeal No.207-ST/APPL/LKO/2018 dated 13.03.2018 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri V. S. Dwivedi, ...**Appellant**
(Jalalpur Mafi, Chunar, Mirzapur, U.P.)

VERSUS

Commissioner of Customs, Central Excise & CGST, Lucknow ....**Respondent**
(Hall No.2, 8th Floor, Kendriya Bhawan,
Aliganj, Lucknow)

<u>APPEARANCE:</u>

Shri Nishant Mishra, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO<u>.- 70104/2025</u>

DATE OF HEARING : 02.01.2025
DATE OF PRONOUNCEMENT : 04.03.2025

By means of the aforesaid appeal, the Appellant has challenged Order-in-Appeal No.207-ST/APPL/LKO/2018 dated 13.03.2018 passed by Ld. Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow, by which the appeal filed by the Appellant has been partly allowed by confirming the demand of service tax of Rs.5,11,989/- along with interest and equal penalty under Section 78 of the Finance Act, 1994 but setting-aside the imposition of penalty under Section 77.

2. Facts of the case in brief are that during the period 2008-09 to 2011-12, the Appellant provided 'Manpower Recruitment and Supply Agency Services' to different units of M/s Jaypee Associates including Chunar Cement Factory, Jaypee Chunar Cement Products and Dalla Cement Factory. Since the Appellant was registered under the Finance Act, 1994, the Appellant

furnished Returns and discharged Service Tax liability on the aforesaid services.

During the course of scrutiny of records by the Audit team from 31.10.2012 to 02.11.2012, it was found that there is difference in figures of amounts reflected in ST-3 Returns *vis-à-vis* those disclosed in P & L A/c and Balance Sheet. It appears from records that on being pointed out by the Audit team, the Appellant made some payment of tax along with interest and informed the same to the Audit team.

3. Show Cause Notice[1] dated 20.09.2013 was then issued invoking extended period of limitation and alleging that the Appellant has sought registration only under the category of 'Manpower Recruitment and Supply Agency Services' but was simultaneously providing certain other services without intimating the Department and that the difference in figures disclosed in P & L A/c and Balance Sheet *vis-à-vis* ST-3 Returns represents consideration received against other services. It was also alleged that the ST-3 Return for the period from October'09 to March'10 was required to be filed by 25.04.2010 but the same was filed only on 24.05.2010. The SCN thus proposed demand and recovery of tax of Rs.9,83,348/- along with interest and proposed equal penalty under Section 78 along with penalties under Section 77.

The SCN was then replied by the Appellant on the ground that the SCN is solely based on the figures of the Balance Sheet, which is a public document and that the Appellant had provided both taxable and non-taxable services. It was also pointed out that as against total service tax liability of Rs.38,74,991/-, the Appellant has deposited Rs.39,05,046/- including the amount of Rs.4,18,259/- (including interest) vide Challan dated 16.10.2010, which is in addition to tax deposited along with ST-3 Returns. The Appellant also contested the proposed demand on the issue of limitation apart from contesting the penalties.

[1] SCN

4. The SCN dated 20.09.2013 was then adjudicated vide Order-in-Original No. (ST-133/2013) 25 of 2014 dated 19.02.2015. The Adjudicating Authority confirmed the demand by extending the benefit of cum tax value and therefore re-computed the demand to Rs.5,11,989/-. As regards payment of Rs.4,18,259/-, the Adjudicating Authority held that though the challans pertain to deposit of Rs.4,18,259/- but it could not be ascertained that the amount deposited was against compliance of audit para or towards any arrears. On the issue of extended period of limitation, the Adjudicating Authority held that since the Appellant suppressed facts and failed to disclose actual figures in ST-3 Returns, hence invocation of extended period is justified. The Order-in-Original thus confirmed demand of Rs.5,11,989/- along with interest and imposed equal penalty and also penalty of Rs.10,000/- under Section 77.

5. By the impugned Order-in-Appeal dated 13.03.2018, the appeal of the Appellant has been partly allowed by confirming the demand of service tax of Rs.5,11,989/- along with interest and equal penalty under Section 78 of the Finance Act, 1994 but deleting the imposition of penalty under Section 77.

Aggrieved with the impugned order, to the extent challenged, the Appellant has filed the present appeal.

6. Ld. counsel for the Appellant has submitted that the entire demand is based on difference in figures of Balance Sheet/P & L A/c and ST-3 Returns hence the demand is barred by limitation in view of precedents of this Tribunal, since the SCN is completely silent on the nature of services provided on which demand was proposed and the disputed period was prior to 01.07.2012, hence the demand is not sustainable in law, the consideration received against provision of non-taxable services has been subjected to tax, the payment of Rs.4,18,259/- has not been considered, the penalties have been wrongly imposed, the findings recorded are perverse and contrary to material available on record and that the Appellant has made excess payments, benefit of which has not been extended.

7. Ld. Authorized Representative for the revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

8. Heard both the sides and perused the appeal records.

9. I find from records that the allegation in the SCN is that the Appellant was registered under the category of 'Manpower Recruitment and Supply Agency Services' but was simultaneously providing certain other services without intimating the Department and the difference in figures disclosed in P & L A/c and Balance Sheet *vis-à-vis* ST-3 Returns represents consideration received against other services. Thus, the SCN nowhere specified the nature of services on which service tax was sought to be recovered. Since the period covered by the SCN was prior to 01.07.2012 and the charge of service tax under Section 66 during that period was only on services defined under various clauses of clause (105) of Section 65, hence the SCN was clearly vague and not sustainable in law. While it is correct that the nature of 'other services' were described in the adjudication order, but the SCN being completely silent on the nature of services, the deficiency in SCN cannot be removed by the adjudication order, as SCN is the foundation of the case set up by the revenue and revenue cannot be permitted to travel beyond the scope of SCN, as held in CCE vs. Shital International (2011) 1 SCC 109.

10. Apart from merits of the case, I also find that the demand is barred by limitation having been raised by invoking extended period of limitation. A perusal of the appeal records shows that the demand is worked out on the figures disclosed by the Appellant in its Balance Sheet and Profit & Loss A/c. This Tribunal in catena of cases held that demand based on figures of Balance Sheet, which is a public document, cannot be made by invoking extended period of limitation. Reference in this regard is made to **Pravesh Kumar Maurya vs. Commissioner of Central Excise and GST (2024) 19 Centax 375 (Tri-All)**, where the following has been held:-

"8. Apart from the merits of the case, I also find that the demand is barred by limitation having been raised by invoking the longer period. The Revenue picked up the figures from the Income-tax Return maintained by the Assessee. The Income-tax Return has been held to be public documents by various decisions and it stands concluded that when the income arising from various activities stand reflected in the said public documents, it cannot be said that there was any suppression or misstatement on the part of the Assessee so as to invoke the longer period of limitation. Reference can be made to Tribunal's decision in the case of C.S.T., New Delhi v. Kamal Lalwani [2017 (49) S.T.R. 552 (Tri. - Del.)], laying down that extended period is not invocable if services rendered are reflected in Balance Sheet and Income-tax Returns and no evidence stands produced that non-payment of duty was due to any mala fide intention. Reference can also be made to Hon'ble Allahabad High Court's decision in the case of Commissioner of Central Tax v. Zee Media Corporation Ltd. [2018 (18) G.S.T.L. 32 (All.)]. The Hon'ble High Court observed that the SCN itself shows that every detail was maintained by the assessee in usual course of business, the ingredients of proviso to Section 73(1) of the Finance Act, 1994, establishing any suppression of facts to evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue."

11. In view of the above, since the SCN was issued on 20.09.2013, the demand of service tax beyond the period of eighteen months from 20.09.2013 i.e. till 20.03.2012 is in any case barred by limitation. However, since the SCN lacks material particulars for raising the demand, the demand for the period 20.03.2012 to 20.09.2013 cannot be sustained. Accordingly, the demand of service tax of Rs.5,11,989/- along with interest and equal penalty under Section 78 are set-aside.

12. As regards, the submissions regarding non-consideration of payment of Rs.4,18,259/-, certain excess payment made etc., no direction can be given in absence of relevant material being placed on record and the Appellant is at liberty to take the said pleas in appropriate proceedings.

13. In view of the above discussion, the appeal is allowed with consequential relief to the Appellant.

(Order pronounced in open court on - **04.03.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS