CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.875 of 2012

(Arising out of Order-in-Appeal No. 50/ST/ALLD/2012 dated 16.03.2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s United Construction, ...**Appellant**
(JR-252, Hindalco Colony, Renukoot, Sonbhadra-231217)

VERSUS

Commissioner of Central Excise, Allahabad ....**Respondent**

(38, M.G. Marg, Civil Lines, Allahabad-211001)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO. 70117/2025

DATE OF HEARING : 15 October, 2024
DATE OF PRONOUNCEMENT : 06 March, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.50/ST/ALLD/2012 dated 16.03.2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No.(ST-139/2010) 132 of 2011 dated 20.07.2011, wherein following has been held:-

"ORDER

1. *I hereby confirm the demand of The service tax amounting to Rs.11,91,312/-(Rs. 11,59,995/- Service Tax + Rs. 23,201/-Education Cess + Rs. 8,116/-H. S. Ed Cess)as service tax under the provision of section 73(2) of the Finance Act, 1994 against the party*

alongwith interest under the provisions of section 75 of the Finance act, 1994 as amended from time to time. This amount is held to be recoverable from the party. I also appropriate Rs.8,41,552/-1 already deposited by the party as per verification report by the Division. Further balance amount Rs.3,49,760/- is liable to be recoverable from the party.

2. I impose penalty of Rs.5,000/- u/s 77 of the Act for violation of Section 70 readwith Rule 7 of the Rules.

3. I impose penalty Rs.3,49,760/- under Section 78 of the Finance Act, 1994. However, penalty imposed under this Section shall stand reduced to 25% of the Service Tax amount if the entire dues including Service Tax, Interest and penalties imposed as above are paid within 30 days from receipt of this order."

2.1 Appellant is registered as service provider, providing services mainly to M/s Hindalco Industries Ltd., Renukoot, Sonbhadra.

2.2 On scrutiny of records of M/s Hindalco Industries Ltd. as service recipient, it was observed that appellant was providing taxable services under the category of Maintenance & Repair Service, Manpower Recruitment Agency Service to the service recipient. However, they have not discharged the service tax due in respect of these services.

2.3 After completion of investigation and inquiry, a show cause notice dated 11.10.2010 was issued to the appellant asking them to show cause as to why:-

"1. The service tax amounting to Rs. 13,02,420/- (Service Tax Rs.12,68,925/-+Education Cess Rs.25,379/- + Secondary & Higher Education Cess Rs.8,116/-) should not be demanded and recovered from them along with appropriate interest under the proviso to Section 73(1) of the Act r/w Section 75 of the Act.

2. Penalty should not be imposed upon them under the erstwhile Section 75A read with Section 77 of the Act for violation of Section 69 of the Act/ rule 4 of the Rules.

3. Penalty should not be imposed upon them under Section 77 of the Act for violation of Section 70 read with rule 7 of the Rules, in case of each default.

4. Penalty should not be imposed upon them under section 76 of the Act for violation Section 68 of the Act read with Rule 6 of the Rules.

5. Penalty should not be imposed upon them under Section 78 of the Act."

2.4 This show cause notice was adjudicated as per the Order-in-Original referred in para 1 above. Aggrieved appellant filed appeal before Commissioner (Appeals), which has been dismissed as per the impugned order.

2.5 Hence this appeal.

3.1 We have heard Shri Atul Gupta learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Interestingly, appellant in the present case even before the Original Authority also did not contested anything in the show cause notice except for certain computations. Relevant paragraphs of the order of Original Authority are reproduced bellow:-

"The party submitted defence reply on 13.05.201 land also appeared for personal hearing on 13.07.2011. The contention of the party was also verified by the Assistant Commissioner, Central Excise, Division, Mirzapur on 16.06.2011. The party stated that they do not wish to contest the show cause notice on merit except on the ground of quantification of demand in as much as the gross payments received include the amount of service tax, amount pertaining to a particular service not taxable prior to a particular date, benefit of threshold limit exemption, service amounting to manufacture and material handling within the plant not falling under the

purview of service tax. Calculation chart provided by the party is as under:-

Summary of calculation for tax liability of M/s United Construction, JR-252, Hindalco Colony, Renukoot, Sonebhadra		
Details	*Amount*	*Amount*
Gross Turnover as per SCN		*1,13,39,820.00*
Less PF included in gross turnover	*374,784.00*	
Less service prior to 16.06.2005	*269,037.00*	
Less service tax paid by Hindalco	*405,878.24*	*23,58,224.51*
Net taxable turnover		*89,81,595.49*
Service Tax		*12,71,608.20*
Less tax already paid as Annexure-5		*8,41,552.00*
Net tax payable		***4,30,056.00***

That the party submitted that he is a petty contractor who is not having enough knowledge about the complex provisions of service tax and at the same time there is no help available in the form of outside consultants/experts in the subject from whom proper guidelines could have been obtained.

That the party has taken registration on its own and has been depositing tax and return thereafter on regular basis.

That the party is ready to deposit the service tax, duc as per the chart for calculation of tax submitted with the reply, along with interest

In view of the submissions party prays for waiver of penalty

At the time of personal hearing Shri Damodar Ojha, Consultant of the party appeared before me on 13.07.2011 and stated that they are willing to deposit the tax as per calculation chart. They were innocent and ready to pay the tax due upon them. They are regularly paying the service tax after obtaining the service tax registration and furnishing the returns to the department. Further, they pleaded that now being ready to pay the due tax upon them and being innocent, penalty may please be dropped."

4.3 After considering the submissions made, Original Authority has determined the tax due from the appellant to be less than the amount claimed to be payable by the appellant as per the calculation chart submitted by the appellant, and paid by them. Having noted so he went on to invoke the extended period of limitation, demanded interest and also imposed penalties under Section 77 and 78 of the Act. The order in original only shows non application of the mind by the adjudicating authority. It seems that adjudicating authority has recorded all the finding in the matter just to justify imposition of penalty.

4.4 In the impugned order, First Appellate Authority has observed as follows:-

> *"3. Aggrieved with the aforesaid order the appellants have filed the present appeal on the following grounds:*
>
> - *PF contribution was not the part of taxable value for charging of service tax. there was duplication of PF amount as a separate show cause notice is under adjudication,*
> - *Quantification of deductions allowed was wrong as the portion of amount which was paid as service tax by Hindalco to appellants and deposited by the appellants, was not liable to be included in the gross value,*
> - *Entire demand was revenue neutral. If the appellant were to pay any service tax, the said tax was admissible as credit to Hindalco.*
> - *No interest can be imposed on them as charging of interest was not sustainable since the service tax itself was not payable*
> - *Extended period of limitation was applicable only if any of the ingredients specified therein exist.*
> - *Mere non-registration or non-filling of returns does not amount to Penalty was not sustainable since the service tax itself was not suppression.*
> - *Penalty was not sustainable since the service tax itself was not payable.*

- *In terms of section 80 of the Act, penalties were not imposable under section 77 the Act as the issue involves bonafide interpretation of law.*

3.1 The appellants also filed separate application under Section 35 F requesting waiver of pre deposit. However, I proceed to dispose off the appeal finally and therefore, no pre deposit is insisted.

4. Personal Hearing was held on 28.02.2012 when Sri Rajeev Kumar Srivastava, Authorized Representative of the appellants appeared and filed written submissions. He reiterated contents of appeal as well as the written submissions. None appeared from the department for personal hearing

5. The appellants in their written submissions filed during personal hearing, have further contended that-

- *The appellant was not very conversant and was lacking with the stringent provisions of law and to interpret the same in the legal framework, They should be given rellef under the provision of Section 80 of the Act;*
- *They had deposited entire service tax against the demand raised by the department along with interest theron. Copy of challan was enclosed,*
- *Since the due taxes had been paid in full, a lenient view should be taken.*

6 I have gone through the case records. The department has alleged that the appellants suppressed the gross value of taxable services provided to M/s Hindalco Ind. Ltd by not disclosing the full receipts and not declaring full valve is ST-3 returns and they short paid service tax amounting to Rs.13,02,420/-. The thrust of the appes is that (1) PF contribution is not part of taxable value (2) while allowing deduction of service tax to the extent of Rs 1,11,108/-

relating to (a) Rs.2,26,153/-claimed to be pertaining to non taxable services as provided prior to 16.6 2005 and (b) Rs.8,63,147/-as service tax paid by M/s Hindaico Indus. Ltd the service tax had been calculated at flat rate of 10.2% whereas, the amounts were received in different years having different rates of service tax. (3) entire exercise is revenue neutral as the said tax paid by the appellants, was admissible to Hindalco as credit of such tax and (4) the demand for interest and imposition of penalty was not sustainable as the services were not taxable (5) Extended period clause was not invokable.

7. I have gone through the facts of the case and the material available on record as also the submissions of the appellants with reference to the impugned Order-in-Original dated 27.07.2011. It is an admitted fact that the appellants did not contest the Show Cause Notice dated 11.10.2010 on merit before the adjudicating authority. There is no dispute regarding providing of services and receipt of value of taxable service. There is nothing in the show cause notice dated 11.10.2010 to indicate if the department has issued any demand on PF amount. There is nothing in the appeal to Indicate if the so called PF amount actually relates to PF. The plea of duplication of demand is therefore not only baseless, it is also misleading."

4.6 From the computation made by the appellant and submitted before the original authority, it is evident that after claiming all the deductions, they admit that the service tax short paid by them was Rs 4,30,056.00. Against the appellants own claim the adjudicating authority has confirmed the demand of service tax as indicated below:

"On considering these facts, the service tax amount wrongly calculated in the SCN on the value of non taxable services (prior to 16.06.2005) Rs 2,26,15/- and amount of service atx collected by service provider from M/s Hindalco Rs 8,63,147/- on which Service Tax + Education Cess comes to Rs 1,11,108 (Rs

1,08,930 Service Tax + 2.178/- Eduaction Cess) thus remaining liability on the aprt comes to Rs 11,91,312/- (Rs 13,02,420/- - Rs. 1,11,108/-)

S No	Particulars	Amt	Service Tax (10%)	Edu Cess (2%)	H S Ed Cess	Total
1	Service tax paid by M/s Hindalco Indus Ltd	8,63,147.00	86,315.00	1,726.00	-	88,041.00
2	Amt received prior/ upto 16.06.2005	2,26,153.00	22,615.00	452.00	-	23,067
		10,89,300.00	1,08,930.00	2,178.00	-	1,11,108.00

Thus the amount of rs 11,91,312/- (Rs 11,59,995/- Service Tax + Rs 23,201/- Education Cess + Rs 8,116/-. H S Ed Cess) is liable to be confirmed against the amount as demadned in SCN.

……..

However I observe that the party has deposited the amount of Rs. 8,41,552/- sup motto before the issuance of Show Cause Notice.

Rs 8,41,552/- deposited by the party against his liability is liable to be appropriated towards the Government Exchequer.

On the basis of above discussions, I hold that an amount of Service (including the Service tax payable on the amount for PF/ Bonus) of Rs 11,91,312/- (Rs 11,59,995/- Service Tax + Rs 23,201/- Education Cess + Rs 8,116/-. H S Ed Cess) is liable to be confirmed and recovered from the party."

After making observations as above adjudicating authority confirmed the demand of Rs 11,91,312/- and ordered for recovery of Rs 3,49,760/- as service tax short paid, against admitted short payment of Rs 4,30,056/-. However there is no challenge to the order of adjudicating authority by the revenue either before the Commissioner (Appeal) or before us.

4.7 Both the authorities below have misdirected themselves as there was no contest by the appellant to the invocation of the extended period or the demand of service tax. Appellant has suo motto computed the service tax due. He made the submission to this effect before the original authority and also before the appellate authority. He also pleaded his lack of knowledge and status as petty contractor not having means to understand the complexity of taxation of services. Both the authority agreed to these submissions and have still gone on to impose penalties under Section 77 and 78 of the Finance Act, 1994.

Undisputedly appellant is a petty contractor whose total turnover during the entire period of dispute i.e. from 16.06.2005 to 31.03.2010 was meager Rs 1,13,39,820/-. Taking note of undisputed findings with regards to status of appellant and his compliance/ intention to comply even before the adjudication/ appellate proceeding has been concluded we do not find any justification for not having considered extending the benefit of Section 80 of the Finance Act, 1994 and waiving of all the penalties imposable on the appellant.

4.8 In view of the discussions as above, we do not find any merits in the impugned order to the extent it is in relation to the penalties imposed on the appellant. This is a fit case where penalties imposable under Section 77 and 78 should have been waived in terms of provisions of Section 80 of the Finance Act, 1994

5.1 Appeal is partly allowed to the extent of setting aside the penalties imposed on the appellant.

(Order pronounced in open court on- 06 March, 2025)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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