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

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70091 of 2022

(Arising out of Order-in-Appeal No.344/ST/Alld/2021 dated 18/11/2021 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

M/s Bhavani Deen, **.....Appellant**

(Vill.-Kaleha & Post-NTPC, Unchahaer, Raebareli)

VERSUS

Commissioner of Central Excise &

CGST, Allahabad **....Respondent**

(38, MG Marg, Civil Lines, Allahabad-211001)

<u>APPEARANCE:</u>

Absent on call, for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70133/2025

DATE OF HEARING : 17 March, 2025
DATE OF DECISION : 17 March, 2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.344/ST/Alld/2021 dated 18/11/2021 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad. By the impugned order, order in original dated 22.12.2020 holding as follows has been upheld:-

"***<u>Order</u>***

1. I confirm the demand of Service Tax including Education Cess and Secondary & Higher Education Cess amounting to Rs.94,850/- (Rs. Ninety Four Thousand Eight Hundred Fifty Only) under "Repair and Maintenance Service" against M/s

Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli under Section 73(2) of the Finance Act, 1994.

2. I order the recovery of Interest on the Service Tax amount of Rs. 94,850/- (Rs. Ninety Four Thousand Eight Hundred Fifty Only), under Section 75 of the Finance Act, 1994 from M/s Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli

3. I impose penalty of Rs. 94,850/- (Rs. Ninety Four Thousand Eight Hundred Fifty Only) on M/s Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli under Section 78 of the Finance Act 1994.

4. I impose a penalty of Rs. 500/- (Rs. Five Hundred Only) on M/s Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli under Section 77 (1) (a) of Finance Act 1994.

5. I impose a penalty of Rs. 500/-/- (Rs. Five Hundred Only) on M/s Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli under Section 77 (1)(b) of Finance Act 1994.

6. I impose a penalty of Rs. 500/-/- (Rs. Five Hundred Only) on M/s Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli under Section 77 (1) (c) of Finance Act 1994.

7. I order to recover Late fee of Rs. 7100/-/- (Rs. Seven Thousand One Hundred Only) from M/s Bhawani Deen, Vill.-Kaleha, PO-NTPC Unchahar, Distt.-Raebareli under Rule 7C of Service Tax Rules, 1994, read with Section 70(1) of Finance Act, 1994."

2.1 This matter had been listed for hearing on 18.11.2024, 01.01.2025, 14.02.2025 and for today, appellant has never been attended any of the hearing nor have responded any of notices issued to him for hearing and never made any request for adjournment. As three adjournments have been granted to the appellant, the matter could not have been adjourned any further in view of the proviso to Section 35C (1A) of the Central Excise Act, 1944 provides as follows-

> **"35C. Orders of Appellate Tribunal.-**
>
> *(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*
>
> ***Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."***
>
> **RULE 20 of CESTAT Procedure Rules, 1982 provide as follows:-**
>
> *Action on appeal for appellant's default. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :*
>
> *Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal.*

3.1 I have heard Smt Chitra Srivastava Authorized Representative appearing for the revenue.

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

4.2 The issue involved in the present appeal is only vis-à-vis invocation of extended period of limitation. In the impugned order Commissioner (Appeals) have observed as follows:-

"4.1 I have gone through the facts of the case, the averments made at the time of personal hearing and all other material/ documents available on records.

4.2 The appellant has contested that the impugned order was issued without giving opportunity to the appellant in violation of natural justice. I observe that the adjudicating authority has extended opportunity of personal hearing on 26.11.2019, 06.12.2019, 21.05.2020, 07.07.2020, and 24.11.2020 but the appellant was neither appeared for personal hearing on aforementioned dates nor seek any adjournment Thus, I find no force in the contention of the appellant that the impugned order was issued without giving opportunity to the appellant in violation of natural justice.

4.3 The appellant has further contested that the department has already issued SCN dated 24.10.2017 on the similar issue by invoking extended period of limitation, therefore, impugned SCN dated 21.10.2019 can not be issued by invoking extended period attended. I observe that the department has issued SCN No. 16/AC/RBL/ST /2017-18 dated 24.10.2017 for the period 2012-13 on the basis of third party information provided by the Income Tax Department. The department has requested vide letter dated 09.12.2014, 11.02.2015, 26.03.2015, 10.09.2015 and summons dated 21.08.2017 to provide copy of Balance Sheet, FORM 26AS, Work Order, ST-3 returns for the period 2012-13 to 2015-16 but the appellant has not provided any information/documents to the department. Therefore, first show cause notice was issued on 24.10.2017 for the period 2012-13 only on the basis of FORM 26AS provided by the Income Tax Department. Later on it was again come to the notice of the department that the appellant was not discharging service tax liability properly. Since, the appellant has not provided any information/documents, therefore, the Income Tax

Department was requested to provide copy of FORM 26AS for the FY 2014-15 to 2016-17. After, getting 26AS details for the F.Y 2014-15 to 2016-17 from the Income Tax Department, it was noticed that the appellant has suppressed gross value in their ST-3 returns during the period 2014-15 to 2016-17. Thus, impugned show cause notice dated 21.10.2019 was issued against the appellant for short payment of service tax amounting to Rs. 11,46,212/- by invoking extended period of limitation. Since, it is on record that the appellant has suppressed gross amount in their ST-3 returns, therefore, I find no force in the contention of the appellant that the impugned SCN could not be issued by invoking extended period of limitation.

4.4 The appellant has not contested the demand on merit neither in appeal memorandum nor during the course of personal hearing conducted on 27.10.2021. However, the appellant was given opportunity vide letter dated 11.11.2021 to provide additional submission/evidence, if any, by 15.11.2021 to decide the case on merit, but till date no response has been received from the appellant. Therefore, I am of the considered opinion that the appellant has nothing to say in their defence. Thus, I confirm demand of service tax amounting to Rs. 11,46,212/- along with interest.

4.5 I observe that under the self-assessment procedure specified in the statute, the appellant was required to assess & pay their Service Tax liability correctly, on their own. The appellant has not shown correct taxable value in the ST-3 returns. The short- payment of Service Tax could be detected only during the course of enquiry conducted by the Department. Thus, it is a clear case of suppression of facts and contravention of the statutory provisions, with intent to evade payment of Service Tax. Thus, I find that extended period of limitation has been rightly invoked in *this case and appellant is liable for penalty of Rs. 11,46,212/- under Section 78 of the Act.*

4.6 Further, I also observe that the appellant has failed to maintain books & accounts correctly and failed to produce information/documents called for by the department, thus penalties imposed by the adjudicating authority under Sections 77 & 77(1)(c) of the Act are justified."

4.3 The fact remains that appellant has not provided information in the returns filed by them for the disputed period i.e. 2014-15 and 2016-17. On comparison of the information received from Income Tax Authorities, it was observed that they have suppressed the value of taxable services provided by them. The details on comparison of the information as per ST-3 return and the Income tax return, Form 26AS following is observed:-

SI. No	Period	Income as per ST-3	Income as per "26 AS details"	Tax rate	Service tax liability	Service tax paid as per GAR-7 Challan	Service tax recoverable
1	2014-15	0	1673305	12.36%	206820	0	206820
2	2015-16	216028	1778657	14.5%	257905	59744	198161
3	2016-17	351207	5062749	15%	759412	18181	741231
Total		**5,67,235**	**85,14,711**	-	**12,24,137**	**85,039**	**11,46,212**

4.4 No explanation is coming forth for not declaring the said value, appellant also do not dispute with regards to levibility of tax on merits. In the absence of any such explanation with regards to the differential taxable value, intention to evade payment of service tax is quite clear and visible by suppressing the provisions of Section 73 (1) for invoking the provisions of extended period have been invoked for demanding this service tax. The fact that appellant was filing ST-3 return do not leave him from the responsibility to declare the correct value of taxable services provided. The mis-declaration has come to the knowledge only on the basis of information provided from Income Tax authorities for comparison with ST-3 returns. I do not find any merits in the submission made in the appeal that extended period should not have been invoked. The demand for service tax by invoking extended period is upheld.

4.5 As I uphold the demand by invoking the extended period, penalty imposed under Section 78 is also upheld in view of the Hon’ble Supreme Court decision in the case of M/s Rajasthan Spinning and Weaving Mills 2009 (238) E.L.T. 3 (S.C.).

5.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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