CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70044 of 2023

(Arising out of Order-in-Appeal No.952-ST/APPL/LKO/2022 dated 03.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

M/s D. K. Construction, **.....Appellant**
(Proprietor-Dheeraj Kumar, Bangla No.3,
H/o Neeraj Kumar Rana, Rouser Kothi,
Shahjahapur-242001)

VERSUS

Commissioner of Central Excise &
CGST, Lucknow **....Respondent**
(3/194, Vishal Khand, Gomti Nagar,
Lucknow-226010)

APPEARANCE:

Shri Prakhar Shukla, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70259/2025

DATE OF HEARING : 07.05.2025
DATE OF PRONOUNCEMENT : 09.05.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.952-ST/APPL/LKO/2022 dated 03.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow, by which order the appeal filed by the Appellant before him was partly allowed.

2. The facts of the case in brief are that the demand was raised on the basis of third party information i.e. data revealed from ITR/Form-26AS from the Income Tax Department. On this basis, Show Cause Notice[1] dated 22.12.2020 was issued alleging that during the Financial Year 2015-16, the Appellant had shown Rs.24,83,181/- as the taxable value in the ST-3 returns.

[1] SCN

However, Form-26AS shows gross receipts of Rs.2,84,61,686/- which has also been shown as gross receipts from labour supply in the Profit & Loss Account for the year ended on 31.03.2016 i.e. Financial Year 2015-16. It is not understood that from where the imaginary figures Rs.3,00,38,480/- has been taken by the Lower Authority. SCN was adjudicated vide Order-in-Original No.99/AC/ST/STP/2021 dated 31.12.2021 by which order the demand as proposed in the SCN was confirmed and penalties imposed under Sections 78, 77(1)(b), 77(1)(c) & 77(1)(d) and also late fee of Rs.20,000/- under Section 70. On appeal, the learned Commissioner (Appeals) confirmed the Order-in-Original however, he partly allowed the appeal by setting aside the penalties imposed under Sections 77(1)(b), 77(1)(c) & 77(1)(d) of the Finance Act, 1994. Hence the present appeal before the Tribunal.

3. The learned Advocate appearing on behalf of the Appellant submits that the Appellant was engaged in supply of manpower/labourers to various Corporate entities as evident from Form-26AS and Profit & Loss Account for the Financial Year 2015-16 and corresponding work orders. That the manpower supplied by the Appellant worked for his clients mainly for insulation work of their plant and machinery. That as per Notification No.30/2012-ST dated 20.06.2012, the service recipient of manpower supply service, who were corporate entities, were liable to pay service tax under Reverse Charge Mechanism[2], since the service provider (the Appellant) is a proprietary concern. It is the case of the Appellant that service recipient of manpower supply service, have duly paid the service tax under RCM and this fact could have been verified. Further as per Form-26AS for the Financial Year, 2015-16, the gross receipts of Rs.2,84,61,686/- tallies with the figures shown in Profit & Loss Account and the taxable value as proposed in the SCN amounting to Rs.3,00,38,480/- is not correct.

4. It is also the case of the Appellant that the period covered in the SCN i.e. from April, 2015 to September, 2015 is beyond

[2] RCM

the period of five years from the date of dispatch/service of the SCN. It is further submitted that service tax is liable to be paid on the value of taxable services arrived at in terms of Section 67 of the Finance Act, 1994 read with Point of Taxation Rules, 2011, demand made on the basis of Form-26AS is not sustainable.

5. The learned departmental Authorized Representative appearing for the Revenue reiterated the findings given by the learned Commissioner (Appeals) and submitted that the service tax demanded is to be paid by the Appellant. He further submitted that the appeal filed by the Appellant being devoid of any merits may be dismissed.

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

7. I find from the records that the service recipient being corporate entities have discharged the service tax liability under RCM. I, therefore, find that if the service tax is once again demanded, then it will amount to double taxation. This Tribunal in the case of Navyug Alloys Pvt. Ltd. vs. Commissioner of Central Excise & Customs, Vadodara-II reported as 2009 (13) S.T.R. 421 (Tri.-Ahmd.) held that once tax is already paid on the basis of service, it was not open to the Department to confirm the same again in respect of the same service, since after accepting the said tax from the service recipient, Revenue did not refund the same.

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. Revenue picked up the figures from the Form-26AS. Further the Income Tax Returns have been held to be a public document by various decisions and it stands concluded that when the income arising from various activities are 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 is made to the Tribunal's decision in the case of C.S.T., New Delhi vs. Kamal Lalwani 2017 (49) S.T.R. 552 (Tri.-Del.), laying down that extended period is not invocable if services rendered are reflected in the Balance sheet and Income Tax Returns and no

evidence stands produced that non-payment of duty was due to any *mala fide* intention. Reference is also made to the judgement of Hon'ble Allahabad High Court in the case of Commissioner of Central Tax vs. 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 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.

9. In view of the above discussions, the demand of Service Tax and penalty imposed under Section 78 is set aside and the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on - **09.05.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS