CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. II

Service Tax Appeal No.70396 of 2024

(Arising out of Order-in-Appeal No.236-ST/APPL/LKO/2023 dated 05/04/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Suman Buildcon, **....Appellant**

(217, Devri Road, Defence Estate, Phase-II,
Bundu Katra, Agra-282001)

VERSUS

Commissioner of Central Excise &

CGST, Agra **....Respondent**

(113/4 Sanjay Complex, Agra-282002)

APPEARANCE:

Request for adjournment, for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70298/2025

DATE OF HEARING : 19 May, 2025
DATE OF DECISION : 19 May, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.236-ST/APPL/LKO/2023 dated 05/04/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow.

2.0 Appellant has filed a request for adjournment. I have heard Smt Chitra Srivastava learned Authorized Representative appearing for the revenue.

3.1 I have considered the impugned order along with the submissions made in appeal.

3.2 I find impugned order records as follows:

"I find that the adjudicating authority had discussed the issue in detail in their discussion & findings of the impugned order dated 23.05.2022. The appellant had contended that they have rendered services to Government Department which is exempt from the net of Service Tax. In this regard, I find that the appellant had provided the various work contract services to M/s. BSNL and the said works were neither exempted Under Section 66D of the Act nor exempted vide notification No.25/2012-ST dated 20.06.2012. I find that the adjudicating authority had verified that the appellant had received Rs.5,18,635/- as work contract service under maintenance and repair services and remaining amount of Rs.13,80,333/- as work contract service under original works during the F.Y.2014-15 in respect of BSNL Agra and extended the benefit of Notification No.33/2012-ST dated 20.06.2012 to the appellant. Accordingly the service tax amounting to Rs.22,222/- is liable to be recovered from the appellant for the F.Y.2014-15 in respect of BSNL, Agra as they had provided the original work contract services and they were required to pay Service tax on 40% of the amount charged for the said 'Works Contract Services' provided to BSNL after extending the benefit of notification no.30/2012-ST dated 20.06.2012 and Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006. Therefore, the adjudicating authority had rightly quantified their service tax liability for the remaining disputed period after extending the benefit of Notification No.30/2012-ST dated 20.06.2012 and Rule 2 A (ii) of the Service Tax(Determination of Value) Rules, 2006.Therefore, the appellant is required to deposit the service tax amounting to Rs.56,295/- under Section 73(2) of the Act along with interest and equal mandatory penalty under Section 75 & 78 of the Act respectively.

I also find the appellant had not provided any supporting documents in support of legal expenses and repair and *maintenance expenses. Therefore, the service tax amounting to Rs.9,992/- as quantified by the adjudicating authority is sustainable. I also find that the appellant is required to deposit the interest of Rs.1,495/- under Section 75 of the Act for delay in payment of service tax for the period from F.Y.2014-15 to 2016-17 as shown in their ST-3 returns.*

The appeal is disposed of in the above cited manner."

3.3 Appellant has in the appeal memo, at Sl No 13 (i) himself disclosed that the total amount of demand for tax involved in the present appeal is "Rs 66,287/- (Rs 56,295/- + Rs 9,992/-)". As per Sr No 13 (iv) of the Appeal Memo, appellant has declared penalty amount to be "Rs 82,954/- under Section 78". At Sl No 17 of the appeal memo, following is declared:

17	Subject matter of dispute in order of priority. (Please choose two items from the list below)	
(i)	Taxablity – Sl No of Negative List	
(ii)	Classification of Service	
(iii)	Applicablity of Exemption Notification – Notification No	
(iv)	Export of Services	
(v)	Import of Services	
(vi)	Point of Taxation	
(vii)	CENVAT	
(viii)	Refund	
(ix)	Valuation	
(x)	Others	Demand of service tax has been created against appellant on the difference of value as declared by them in their ST-3 vis a vis sd shown in ITR/ Form 26AS during the relevant, invoking extended period and imposition of penalty. Since the service tax paid on receipt basis but ITR/ Form 26AS is shown to be on accrual basis, hence in such demand is not sustainable.

3.4 Second proviso to Section 35 B (1) reads as follows:

35B. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

…………..

Provided further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) *in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or*

(ii) *the amount of fine or penalty determined by such order, does not exceed two lakh rupees.*

3.5 Section 86 (7) of the Finance Act, 1994 reads as follows:

"(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944)."

3.6 Total amount of service involved in the present appeal as per the appellant himself is Rs.66,287/-. As per the appellant penalty is also Rs 82,954/-. As the total amount involved in the present appeal is less than Rs.2 lakhs, and as per the appellant own declaration on appeal memo issue involved is other than question relating to rate of tax or valuation, I do not find that appeal need be admitted by tribunal or to be maintainable before this Tribunal in terms of second proviso to Section 35B (1) of Central Excise ACT, 1944 read with Section 86 (7) of the Finance Act, 1994 . Moreover there is no issue of rate of taxation or valuation of services involved in the present case. In case of Roots Multiclean Ltd [2016 (336) E.L.T. 25 (Mad)] Hon'ble Madras High Court has held as follows:

"4.3 A perusal of Section 35B of the Act would go to show that sub-section (i) specifies orders against which appeal lies to the Appellate Tribunal and the proviso to sub-section (i) stipulates three clauses of cases, which have to be

decided by the Central Government, in Revision, under Section 35EE of the Act. Under the second proviso to Section 35B of the Act, the Appellate Tribunal is vested with discretion to refuse to admit an appeal, in respect of the order referred to in clause (b) or clause (c) or clause (d), where,

(i) in any disputed case, other than a case, where the determination of any question having a relation to the rate of duty of the excise or to the value of goods for the purpose of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved or

(ii) the amount of fine or penalty determined by such order does not exceed two lakhs rupees.

4.4 The CESTAT may, at its discretion, refuse to admit an appeal, if the (a) duty involved or (b) difference of duty involved or (c) penalty involved is less than Rupees two lakhs. However, such appeal cannot be refused if the issue pertains to valuation or rate of duty. Originally the limit was rupees fifty thousand which has been enhanced to Rupees two lakhs, by Finance Act (No. 2), 2014, with effect from 6-8-2014.

4.5 Further, in the case of J.K. Sharma v. Government of India, 1993 (66) E.L.T. 66 (Mad.), it has been held that the minimum monetary limit prescribed under Section 131B of the Customs Act, 1962, as per the proviso applies to each clause separately and not cummulatively and that under each clause, referring duty, differential duty, penalty or fine, the limit will be separately applicable (analogus to Second Proviso to Section 35B(i) of the Customs Act, 1962).

4.6 The Tribunal has a power to refuse to admit an appeal, at its discretion, if the amount involved (duty or fine or penalty) is not more than Rupees two lakhs. But, this would not be applicable, if the dispute is pertaining to cases other than duty or rate of duty or valuation of goods. Whether the *disputed issue before the Tribunal was pertaining to cases other than duty, rate of duty or valuation of goods, and if that be so, whether the Tribunal is justified in dismissing the appeal under Section 35B of the Act is the issue to be decided."*

4.0 Appeal is dismissed as not admitted.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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