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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70269 of 2021

(Arising out of Order-in-Appeal No.34/ST/Alld/2021 dated 05.02.2021 passed by Commissioner (Appeals), CGST & Central Excise Appeal Commissionerate, Allahabad.)

M/s. V.K. & Company
(Prop.- Vinay Kumar Singh)

.....Appellant

(Salarpur, Sahadatganj, Distt.-Faizabad (U.P.)-224001.)

VERSUS

Commissioner, CGST & CX, Allahabad

....Respondent

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

<u>APPEARANCE:</u>

Shri S.K. Vishwakarma, Advocate for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70322/2025

DATE OF HEARING : 25.04.2025
DATE OF DECISION : 23.05.2025

<u>PER-RAJEEV TANDON:</u>

The present appeal has been filed by the appellant aggrieved by the Order-in-Appeal No.34/ST/Alld/2021 dated 05.02.2021.

2. The facts of the case are that the appellant a registered unit under Section 69 of the Finance Act, 1994 provided taxable services of manpower recruitment/supply agency services. The Revenue authorities initiated certain enquiries in the matter A

show cause notice dated 23.10.2018 was issued as a result thereof seeking recovery of Service Tax for an amount of Rs.32,07,286/- along with interest. It is noted in Para 2.2 of the Commissioner (Appeals)'s order that despite as many as four notices of personal hearing, the appellant neither appeared for personal hearing nor submitted any detail/documents in pursuance of the said show cause notice. The same was therefore adjudicated ex parte on the basis of available records and the demand confirmed along with other consequential action as per law.

3. It is the submission of the appellant that show cause notice dated 10.11.2017 for the period 2009-10 to 2013-14 invoking extended period was issued to them demanding a total Service Tax of Rs.16,89,810/- (including value of original work of Rs.13,84,810/- and value of GTA service to the tune of Rs.3,05,000/-). The said show cause notice is not on record. However, the ld.Counsel submits that the same was dropped in terms of Notification No.30/2012-ST dated 20.06.2012. It is his contention that rest of the demand after allowing 60% abatement, 50% of the demand fastened on the appellant which had been complied to by the party.

4. The ld.Counsel submits that subsequently another show cause notice dated 23.10.2018 (impugned show cause notice) has been issued on the same set of facts for the period 2013-14 to 2017-18 (upto June 2018) invoking extended period. It is the contention of the ld.Advocate that the entire information was available with the department and extended period was not invokable in the matter. In this regard he refers to the Order-in-Original dated 18.04.2018/20.04.2018.

5. We have heard the ld.AR for the department in the matter, who reiterates the findings of the lower authorities and supports the impugned order-in-appeal.

6. From the case records, as also the specific recording in the impugned order passed by the ld.Commissioner(Appeals), remanding the matter to the lower authority, it is evident that the Commissioner(Appeals) has only attempted to provide the appellant a fair chance and all measures of natural justice in support of their submissions and hence remanded the matter to the lower authority. As for the appellant's submission of time bar, the ld.Commissioner (Appeals) has also noted in his order that the departmental authorities had written several letters and issued summons to the appellant who did not co-operate and did not submit any document to the department. Relevant paras 5.1 and 5.2 of the Commissioner (Appeals)'s order reads as under: -

> **5.1** As regards to the appellant's submission that the second SCN was time barred, I observe that the department has written several letters & issued summons as well to the appellant, as discussed in Para 2 above but the appellant has not submitted any documents to the department to ascertain there service tax liability for the further period of 2013-14 to 2017-18 (Upto June'2017). The second SCN was issued to the appellant only after details received from the Income Tax department. Therefore, I find no force in the submission made by the appellant on the time bar issue.
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> **5.2** I further observe that in this case, demand of Service Tax has been confirmed, without ascertaining the exact nature of activities carried out by the appellant under the work order/ contract executed by them during the impugned period, and without applying the statutory provisions to these activities of the appellant due to non submission reply /documents by them. Since, this cannot be done at the appellate stage in the absence of complete details i.e. all work orders/contracts/invoices. Further the veracity of the amount deposited by the appellant cannot be checked at this stage too. I, therefore, have no other option, but to remand the matter to the original adjudicating authority in the light of Section 85(4) of the Act. In this regard, I place reliance on the following case laws, wherein it has been held under the Act, the Commissioner (Appeals) has the power to remand the proceedings;

7. The ld. Counsel in his submission also mentioned that the appellant suo motu calculated tax liability and paid the same along with interest and penalty as applicable by way of a protective measure. He also draws our attention to the recent judgment of the Principal Bench in the case of **Shri Tarun Gupta v. Commissioner, Central Excise, Customs in Service Tax Appeal No.50544 of 2017 [Final Order No.59773-59774/2024 dated 04.12.2024** in support of his contention.

8. We, however, note that there is no specific finding in the impugned order-in-appeal before us. The ld.Commissioner (Appeals) has only remanded the matter to the lower authority in view of the fact that the order appealed against before him was an ex parte order. We do not find anything illegal in the aforesaid action of the ld.Commissioner(Appeals) as for the facts of the case. For comparison's sake with the relied upon decision, it is imperative that there is an express finding in the matter. Since there is no such finding by the ld.Commissioner (Appeals) on the merits of the case and the ld.adjudicating authority's order is also ex parte, it is apt that the appellant is given a proper and effective chance to state their submissions before the authority because facts of each case have to be determined, analyzed and assessed and then only can a speaking order be passed.

9. Under the circumstances, we do not find any illegality in the order of the lower authority remanding the matter for a *de novo* consideration by the adjudicating authority directing the appellants to submit all agreements/work orders/ contracts/ invoices/bank statements/deposit challan etc. We further direct that the adjudicating authority shall afford all opportunities of natural justice to the appellant. The appellant is directed to co-operate in the adjudication proceedings initiated and shall be free to raise all arguments in support of his case before the original authority, who is directed to dispose of the matter within four months of the communication of this order.

10. The order of Commissioner (Appeals) remanding the matter to the original authority is maintained and the appeal filed is dismissed.

(Pronounced in open court on 23.05.2025)

Sd/-	**Sd/-**
(RAJEEV TANDON) **MEMBER (TECHNICAL)**	**(P. K. CHOUDHARY)** **MEMBER (JUDICIAL)**

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