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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70303 of 2024

(Arising out of Order-in-Appeal No.1450/ST/Alld/2023 dated 09/11/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad)

Mr. Santosh Kumar Dubey, **.....Appellant**
(Shankerpur, Jalaun, Orai)

VERSUS

Commissioner of Central Excise &

CGST, Kanpur **....Respondent**

(117/7 Sarvodaya Nagar, Kanpur-208005)

<u>APPEARANCE:</u>

Smt Stuti Saggi, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70342/2025

DATE OF HEARING : 21 May, 2025
DATE OF DECISION : 21 May, 2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.1450/ST/Alld/2023 dated 09/11/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad. By the impugned order following has been held:-

> *"4.5 Since, the instant appeals have been filed on 30.06.2023, after 06.08.2014, i.e., the date from which the amended Section 35F of the Act came into effect, without complying with the statutory requirement of pre-deposit, when the Commissioner (Appeals) had no jurisdiction to entertain or admit the appeals, I, therefore, find that this appeal is not maintainable in terms of Section*

35F of the Act and in the light of the aforementioned judicial pronouncements.

5. In view of the above, I hold that the present appeal filed by the appellant is not maintainable and as such, the same is rejected."

2.1 On the basis of information received from the Income Tax Department that the amount of service tax paid by the appellant alleging short payment of service tax as detailed in table below:-

Total Sale of Service (ITR) Value shown in ITR	Value taken for determination of service tax,	Rate of Service Tax	Service Tax Payable
1	2	3	4
4495215.98	4495216	15%	674282

2.2 On the basis of above information show cause notice dated 18.10.2021 was issued to the appellant asking them to show cause as to why-

"(i) An amount of Rs.4495216/-(Rupees Forty four lac Ninety Five Thousand Two Hundred Sixteen Only) should not be treated as the value of taxable services provided by them during the Financial Years 2016-17, and accordingly Service Tax amounting to Rs.674282/- (Rupees Six Lakh Seventy Four Thousand Two Hundred Eighty two Only) as detailed in Table-A not paid /short paid including Education Cess, Secondary & Higher Education Cess and Swachh Bharat Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 as amended read with Section 174 of the CGST Act, 2017;

(ii) Interest at the appropriate rate should not be charged and recovered from the 'Noticee' in respect of amount of service tax mentioned at S.N. (i) above under Section 75 of the 'Act' read with Section 174 of CGST Act, 2017;

(iii) Penalty should not be imposed upon them in respect of amount of service tax mentioned at S.N. (1) above under Section 78 of the 'Act' read with Section 174 of CGST Act, 2017.

(iv) Penalty under Section 77(1)(a), 77(1)(c), 77(1)(d) and 77(2) of Finance Act, 1994 read with Section 174 of CGST Act, 2017 should not be imposed upon them for their various acts of omission and commission as discussed above;

(v) the late fee/amount under Section 70 of Finance Act, 1994 read with Rule 7(C) of ibid and read with Section 174 of CGST Act, 2017should not be imposed upon them for their various acts of omission and commission as discussed above;"

2.3 The said show cause notice was adjudicated as per the Order-in-Original dated 31.03.2023 by holding as follows:-

"ORDER

i. I partially confirm the amount of Rs.1,68,191/- (Rupees One Lakh Fifty Eight Thousand One Hundred and Ninety One Only) received during the F.Y. 2016-17 as taxable value under Section 67 of the Finance Act, 1994 and accordingly confirm the demand of service tax to the extent of Rs. 23,629/- (Rupees Twenty Three Thousand Six Hundred and Twenty Nine Only) and order to recover the same from the party under proviso to Section 73(1) of the Finance Act, 1994 as amended read with Section 174 of the CGST Act, 2017. Further, I drop the remaining demand of Service Tax to the extent of Rs. 6,50,553/-.

ii. I order to recover interest at the applicable rates on said confirmed amount of service fax from the party under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

iii. I impose a penalty of Rs. 23,629/- (Rupees Twenty Three Thousand Six Hundred and Twenty Nine Only) upon the party under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

iv. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon the party under Section 77(1)(a) *of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.*

v. *I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon the party under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

vi. *I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(1)(d) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 upon The party as discussed above.*

vii. *I impose a penalty of Rs.10,000/- (Rupees Ten Thousands only) upon The party under Section 77(2) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.*

viii. *I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) upon The party under Section 70 of the Finance Act, 1994 read with Rule 7(C) of Service Tax Rules, 1994 read with Section 174 of CGST Act, 2017 as discussed above."*

2.4 In compliance of Order-in-Original, appellant deposited the service tax alongwith interest and penalties imposed under Section 78 of the Act by Challan dated 20.06.2023 for Rs.67,075/- before filing the appeal before Commissioner (Appeals). Commissioner (Appeals) has dismissed the appeal for non-compliance of mandatory pre-deposit as per the impugned order referred in para 1 above.

2.5 Aggrieved appellant have filed this appeal.

3.1 I have heard Smt Stuti Saggi learned Counsel appearing for the appellants and Smt Chitra Srivastava learned Authorized Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that appeal has been dismissed for non-compliance with the conditions of mandatory pre-deposit for filing appeal before Commissioner (Appeals). However, they have now deposited 10% of the amount to file this appeal before the Tribunal as per condition of Section 35F are fulfilled the appeal be decided accordingly.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 I find that appellant had deposited the entire amount of service tax demanded alongwith interest and equal penalty imposed under Section 78 before filing of the appeal. Commissioner (Appeals) should have taken into consideration the deposit so made while considering compliance with Section 35F of the Act. Commissioner (Appeals) should have treated that 7.5% of penalty imposed under Section 77(1)(a), 77(1)(c), 77(1)(d), 77(2) and Section 70 of the Finance Act, 1994 read with Rule 7(C) of the Service Tax Rules, 1994 towards compliance of Section 35F of the Act. This approach is not adopted as provided by the Section, at least he should have noted that Section 35F has provided that where penalty is in dispute then 7.5% of total penalty under all the provisions of Finance Act, 1994 calculated as 7.5% of [Rs.50,000+23,629/-]=Rs.5,523/- and appellant had deposited more than Rs.23,000/- towards penalty the same should taken as pre-deposit for hearing the appeal.

4.3 I find once appellant has deposited the entire amount along with penalties imposed under Section 78 of the Act, insistence of pre-deposit for penalties under Section 77(1) and 77(2) is not justified. Taking note of the compliance made, the penalties should be set aside, late fees of Rs.10,000/- imposed under Section 70 read with Rule 7 is reduced to Rs.5,000/- which has already been deposited by the appellant for making the pre-deposit, and the same should be adjusted as late fee.

5.1 Appeal is partially allowed as indicated in para-4.3.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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