

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

E-Hearing
REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70575 of 2024

(Arising out of Order-in-Appeal No.DDN-EXCUS-000-APP-184-2023-24 dated 15.01.2024 passed by Commissioner (Appeals) CGST, Dehradun)

M/s V. K. Industries (Prop. Vinod Kumar)Appellant
(6, Rampur Baman Herri, Muzaffarnagar
U.P.-251001)

VERSUS

Commissioner of CGST, DehradunRespondent
(Mangal Pandey Nagar, Meerut, U.P.-250001)

APPEARANCE:

Shri Bipin Garg, Advocate, Ms. Stuti Saggi, Advocate, Ms. Jawaria Kainat, Advocate & Ms. Sangeeta for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70555/2025

DATE OF HEARING : 24.07.2025
DATE OF PRONOUNCEMENT : 07.08.2025

The present appeal has been filed assailing the Order-in-Appeal No. DDN-EXCUS/000/APPL/184/2023-24 dated 15.01.2024 passed by the Commissioner, CGST, (Appeals), Dehradun.

2. Briefly stated, the facts of the case are that the Appellant was registered with the Department vide Service Tax registration No. AMTPK1018MSD001. On receipt of data/information from Income Tax Department under the third party data exchange policy of Government of India through Anti-evasion branch, Central GST Commissionerate Meerut on 12.02.2021 for the financial year 2016-17, it was revealed that the amount of

consideration received against 'Sale of Service' during the said period was to the tune of Rs.33,99,888/- whereas on such consideration no service tax was discharged. The Department asked the party to deposit the service tax on the said amount. It was alleged that under the head 'Sale of Service (ITR)' amount of Rs.33,99,888/- was reflected, whereas under the head 'value for TDS in 194C' amount of Rs.13,70,268/- was reflected. Since the party did not come forward with facts, figures and documents, hence taken the figures on higher side i.e. Rs.33,99,888/- for the purpose of computing liability of service tax for the F/Y 2016-17. During the financial year 2016-17, it is seen that there existed two rates of service tax alongwith cesses i.e. 14.5% for the period April to May 2016 (Service Tax 14% and Swatch Bharat Cess 0.5%) and 15% for the period June 2016 onwards (Service Tax 14%, Swatch Bharat Cess 0.5% and Krishi Kalyan Cess 0.5%). As the party did not furnish period wise breakup of the amount of consideration received, to compute the liability of service tax @ of 15% on the whole amount of consideration so being taken into account hence the party is liable to pay service tax amounting to Rs.5,09,983/-. Extended period was invoked with the allegation of suppression of fact etc., with intent to evade payment of service tax invoking the provisions of proviso to sub Section (1) of Section 73. The party is liable for payment of interest on such delayed payment of service tax in terms of provisions of Section 75 of the Finance Act. Section 78 is invocable for imposing penalty. The party also

contravened the provision of Section 77 (1)(C) hence liable for penal action.

3. It was proposed in the Show Cause Notice¹ as to why service tax amounting to Rs.5,09,983/- be not demanded and recovered under the proviso to Section 73(1); Interest on the above amount of service tax be not demanded and recovered under the provisions to Section 75; Penalty be not imposed under Section 77(1)(C); and penalty be not imposed under the provisions Section 78 of the Finance Act.

4. The Original Authority observed that neither reply was filed nor appeared for personal hearing, held that the party did not provide any sufficient documentary evidence in favour of amount of Rs.33,99,888/-. He confirmed the service tax of Rs.5,09,983/- along with interest. He imposed equal amount of penalty under Section 78 and penalty of Rs.10,000/- under Section 77 (1)(C).

5. Being aggrieved with the above order, the Appellant filed appeal before the Commissioner (Appeals), who vide the impugned Order-in-Appeal partly dismissed the appeal of the Appellant. The Commissioner (Appeals) agreed with the submissions of the Appellant that the turnover from CWC Rs.13,70,268/- is exempted from service tax and demand of service tax reduced amounting to Rs.2,05,540/- and confirmed demand of Rs.3,04,443/- on the value of Rs.20,29,620/- and accordingly reduced the penalty to Rs.3,04,443/- under Section 78, and Penalty of Rs.10,000/- under Section 77 (1)(C). The present appeal is against the impugned order-in-appeal.

¹ SCN

6. On behalf of the Appellant, learned Counsel Shri Bipin Garg along with Jawaria Kainaat and Stuti Saggi, Advocates appeared and argued the case. Counsel submitted that the impugned SCN was issued by taking the data from Income Tax Department under the third party exchange policy of the Government of India, without investigating the activities of the Appellant. Total amount shown in the computation submitted with Income Tax Return was Rs.33,99,888/-, out of which Rs.13,70,268/- was turnover from Central Warehousing Company and the Commissioner (Appeals) dropped such demand being exempted. As far as the remaining amount of Rs.20,29,620/-, is the value of turnover from Milk Supply, in fact it was not the turnover from Milk Supply. The said amount was credited in the bank account and the bank account clearly shows the credit entry in the bank statement as detailed below:-

DATE	PARTICULARS	AMOUNT
04-04-2016	Subey Singh (Father in law)- amount paid on 28.10.2015, received back	500000
02-09-	FD Account Closed	925044
21-10-	DD Canceled	98910
07-12-	ICICI Policy Matured	72607.94
09-03-2017	Lucknow CWC (by mistake not taken in CWC account)	276555
	Difference of certificate issued by CWC	156503
	LKO & Food Corporation DDN	
		2029620

The Appellant submitted copy of bank statement also, hence the value of Rs.20,29,620/- is not related to turnover of milk supply. He submitted that the Appellant was supplying milk not regularly and getting the money in cash. It was further submitted that even if it is treated turnover of milk supply it is not a service but

trading of milk. It is important to submit that in whole of the SCN, it was not mentioned that for which service the demand is raised by the Department, hence on this ground SCN is not maintainable. It was further submitted that calculation of service tax amount is not correct and vague. Admittedly there was different Tariff Rate of tax for certain period however on the basis of presumption higher rate of tax is calculated for total turnover.

7. The Appellant submitted that whole of the demand is barred by limitation. Period in dispute is 2016-17 and SCN is dated 30.09.2021. The Department has taken the figure from the Income Tax Return which is a public document hence the allegation of suppression is not sustainable.

8. It was submitted by the Appellant that the demand confirmed is not sustainable and is to be set aside.

9. As regards penalty, he submits that once it is established that the demand is not sustainable penalty is not sustainable. He further submits once it is established that there is no fraud, collusion, willful misstatement or suppression of facts, invocation of Section 78 is unwarranted. Penalty under Section 77(1)(C) is also not sustainable.

10. Learned Authorized Representative of the Department Shri Santosh Kumar reiterated the observations made in the impugned Order-in-Appeal.

11. I have carefully heard the submissions of both the sides and perused the appeal records.

12. I find that the whole case of demand was built up merely on the basis of figures shown in ITR/ Form 26AS statement. As far as demand on the value of Rs.13,70,268/-, which was taken from Form 26AS has already been dropped by the Commissioner (Appeals). For the demand of Rs.3,04,443/- confirmed by the Commissioner (Appeals) is also on the basis of computation attached with the ITR and submitted before him is not sustainable.

13. Neither in the SCN nor the Adjudicating officer or the Appellate Authority has tried to find out nature of services rendered by the Appellant. In the impugned Order-in-Appeal, Learned Commissioner (Appeals), has categorically mentioned, that demand was determined on the basis of figures shown in Computation attached with the ITR, which is without support of any other documents. I find that the said observation is not legally correct. Onus lies on the Department to give specific finding on taxability of action of the assessee. The submission of the Appellant that even if it is turnover of milk supply, it cannot be held that it is a service. Further nowhere it is mentioned in the SCN that the demand is for which service. Even if computation shows Supply of milk, it cannot be held that it is a service. Supply of milk is a trading activity and not the service hence demand of service tax is not sustainable.

14. I also agree with the submissions of the Appellant that there is no suppression on his part and the demand is barred by limitation. The Department has booked the case on the basis of ITR/26AS which is a public document and it cannot be alleged

that the assessee has suppressed any fact from the Department.
Hence, I hold that demand is fully time barred.

15. As far as the demand of interest and penalty is concerned, when the demand of tax itself is not sustainable, the demand of interest and imposition of penalty does not survive.

16. In view of the above discussions, the impugned cannot be sustained and the same is set-aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on - **07.08.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS