

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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70573 of 2024

(Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL-MRT/177/2023-24 dated 10/01/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun)

M/s Shubham Construction Company,Appellant
(109, Sona Enclave, Modinagar, Ghaziabad-201204)
VERSUS

**Commissioner of Central Excise &
CGST, Ghaziabad**Respondent
(CGO Complex II, Kamla Nehru Nagar, Ghaziabad)

APPEARANCE:

Shri Nitin Kumar Kesharwani, Counsel for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70583/2025

DATE OF HEARING : 23 June, 2025
DATE OF DECISION : 23 June, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.DDN/EXCUS/000/APPL-MRT/177/2023-24 dated 10/01/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun. By the impugned order, Order-in-Original No.136/AC/CGST/GZB-II/22-23 dated 28/12/2022 has been upheld wherein following has been held:-

"ORDER

(i) I confirm the demand and recovery of service tax (including E.Cess and SBC) total amounting to Rs. 3,43,839/- (Rs. Three lakh Forty Three thousand Eight hundred Thirty Nine only), under proviso to Section 73(1)

of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017, and drop the demand of service tax demanded in excess of above confirmed service tax amount as proposed in the impugned notices No. 05/2020-21 and 12/2020-21.

(ii) I confirm the demand and recovery of interest, at the appropriate rate, on the said confirmed amount of demand and recovery of service tax under Section 75 of the Finance Act, 1994 read with Section 142 and Section 174 of the CGST Act, 2017.

(iii) I impose a penalty of Rs. 3,43,839/ (Rs. Three lakh Forty Three thousand Eight hundred Thirty Nine only), upon the said party under the provisions of Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act 2017. However, in view of clause (ii) of the second proviso to Section 78(1), if the amount of Service Tax confirmed and interest thereon is paid within thirty days from the date of receipt of this order, the penalty shall be twenty-five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

(iv) I impose a penalty of Rs.20,000/- [Rupees Forty thousand only] for non filing of a ST-3 return under Section 77(2) of the Finance Act, 1994 and rules made and Section 174 of the CGST Act, 2017."

2.1 On the basis of information received from the Income Tax Department for the Financial Year 2015-16, appellant was issued with a show cause notice asking them to show cause as to why:-

"(i) The amount of Service Tax Rs 8,00,725/- (including, SBC) should not be demanded and recovered from them under proviso to section 73(1) of Finance Act, 1994 read with Section 142(8) and Section 174 of the CGST Act 2017,

(ii) Interest on the above amount should not be demanded and recovered from them under Section 75 of the Finance

Act, 1994 read with Section 142(8) and Section 174 of the CGST Act 2017.

(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 142(8) and Section 174 of the CGST Act 2017 as they have not disclosed true detail of services provided by them to the department with intent to evade payment of service tax as discussed supra.

(iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 read with Section 142(8) and Section 174 of the CGST Act 2017 as they have not filed statutory returns/not shown true details of services provided and deposit particulars in any document as discussed supra."

2.2 The said show cause notice was adjudicated as per the Order-in-Original dated 28.12.2022 referred in para 1 above.

2.3 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.4 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Nitin Kesarwani, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

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

4.2 Impugned order records findings as follows:-

"5.1 I have carefully considered the case papers on records, ground of Appeal and the averments made by the appellant during Personal Hearing. Further, from the documents tendered, I find that the appeal has been filed within the specified time and evidence of pre-deposit is also available on record.

5.2 The crux of the matter in this case is that while the applicant agrees with the quantification of the duty liability as arrived at by the adjudicating authority in the Order, he has contented that the impugned Order has not taken two

Challans into consideration vide which, as per the appellant, the differential tax that has been confirmed in the Order has actually been discharged by the applicant. These two Challans are mentioned below at serial number 1 & 2.

<i>Sl. No.</i>	<i>Details of Challan</i>	<i>Service tax</i>	<i>Interest</i>
<i>1</i>	<i>50496 dated 08.03.17</i>	<i>49159</i>	<i>9217</i>
<i>2</i>	<i>510247 dated 08.03.17</i>	<i>324665</i>	<i>48700</i>
	<i>TOTAL</i>	<i>3,73,824</i>	<i>57,917</i>

5.3 I find from facts of the case that the party has filed its service tax return for the period April to September 2015 on 03.01.18. However, for the remaining second half of the financial year in question, the party has not filed the service tax return till date. This was once again asked during the course of the hearing held today, and the applicant agreed that it has not been filed till date. The applicant argued that these two Challans in question vide which total tax of Rs 3,73,824/- was paid, have not been considered or used for payment of any duties in the subsequent financial years. Therefore as per them, these have discharged duty liability only for the financial year 2015-16.

5.4 I find this argument hard to accept, and in fact, untenable for the simple reason that till date, it is not understood as to what prevented them from filing the Service tax return for the second half of 15-16, i.e. the period to which these two Challans pertain to. Had they done that and had that been checked by the assessing officer i.e. the concerned range/division officer, then there would have been no doubt about the correctness of the contention if at all true.

5.4 Accordingly, in view of the above, I do not find any reason to interfere in the impugned order passed by AA.”

4.3 From the above, I find that there is no dispute with regards to calculation of service tax due. Before the Adjudicating Authority and the Appellate Authority appellant have produced

the challans evidencing the payment of tax which needs to be adjusted against the demand. These challans evidencing payment of tax along with interest have not been accepted for the reason that appellant had not filed service tax return for the second half of 2015-16. The challans are not in dispute.

4.4 I do not find any reason recorded in the impugned order why these challans could not have been taken towards the service tax liability due from appellants. Both challans are dated much prior to the issuance of show cause notice which is dated 13.04.2021.

4.5 As taking into consideration the payment made by the above challans, I do not find any merits in confirming the demand for the same amount against the appellant for which these challans are there, in case appellant is asked to pay this amount again, it will amounts double taxation which goes contrary to the Article 265 of the Constitution.

4.6 As appellant has deposited the due service tax much prior to the issuance of the show cause notice along with due interest, I do not find any merit in the penalty imposed under Section 78 of the Act.

4.7 I also note that the findings that appellant had not filed service tax return for the second half of the Financial Year 2015-16 is not in dispute for none filing of delay in filing of the return. Penalty under Section 77(2) has been imposed which is contravention of the various provisions in this regard. I am in agreement that such penalties should have been imposed as these penalties are not dependent on the tax delinquency but are for contravention of the procedural aspects in this regard. Hon'ble Supreme Court in the case of M/s Gujarat Travancore Agency 1989 (42) ELT 350 (SC) have held as follows:-

"4. Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under Section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the

proceedings by way of penalty under Section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under Section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing

in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023 :

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

Thus, I uphold the penalties imposed under Section 77(2) of the Act.

4.8 In view of the above, demand alongwith penalty under Section 78 is set aside and penalty under Section 77(2) is upheld.

5.1 Appeal is partially allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp