CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70547 of 2024

(Arising out of Order in Appeal - 134-ST-ALLD-2024, dated -28/02/2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Dilip Kumar Singh **.....Appellant**
(Khutahan Mewalli
Mirzapur, Uttar Pradesh 231001)

VERSUS

Commissioner, CGST & Central Excise, Varanasi
....Respondent
(9 Maqbool Alam Road, Near Zila Kutchehari
Varanasi, Uttar Pradesh 221002)

APPEARANCE:

Shri Ramji Khare, Advocate &
Shri A. K. Gupta, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70601/2025

DATE OF HEARING : 30.07.2025
DATE OF DECISION : 30.07.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No. 134-ST-ALLD-2024, dated - 28/02/2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. The facts of the case in brief are that on the basis of third party data received from the Income Tax Department, it was observed that the Appellant/Assessee rendered services under pre GST regime during the Financial Year 2016-17 without having Service Tax Registration under Section 69 of the

erstwhile Finance Act, 1994 read with Rule 4 of the erstwhile Service Tax Rules, 1994. Accordingly, Demand cum Show Cause Notice dated 08.10.2021 was issued proposing to demand Service Tax of Rs.42,88,656/- calculated at the rate of 15% on the taxable value of Rs.2,85,51,037/- alongwith applicable interest and to impose penalty under Sections 78 & 77(1) and 77(2) of the Finance Act, 1994. The Adjudicating Authority vide the Order-In-Original dated 27.03.2023 observed as under:-

"6.1 I have carefully gone through the Show Cause Notice dated 08.10.2021, written submission of the party, averments made at the time of personal hearing and all other documents available on record.

6.2 On going through the written submission of the party and copy of Work Orders/Extracts of Bond produced by them, I observe that the details of Construction Work Services provided by the party to PWD Mirzapur & Zila Panchayat, Mirzapur and U.P. Projects Corporation limited, Varanasi are as under:

Sl No.	Service receipt department	Name of work done/bond Extract/Work Orders	Amount received (In Rs.)	Entry No. n Notification No.25/2012 -ST dated 20.06.2012
1	PWD Mirzapur	C.B. No.19/SE/16-17 dt. 15.07.2016,Construction of link road C.B. No.24/SF-MzP/16/dt. 19.07.2016, Road construction C.B. No.26/EE/A iv/2016-17 dt. 14.6.2016 Road construction	12883041/-	13(a)
2	Zila Panchayat Mirzapur	Work order No.60/2016-17 dtd.27.12.2016, 117/Zila Pan/2016-17 dt. 27.12.2016, 118/Zila Pan/2016-17, all related to construction of road/interlocking of road	1847000/-	13(a)
3	UP Projects Corporation Limited(Govt . of U.P. Undertaking)	05/T-14/Araziline/2013/PCL/G.M./Zone -1/Allahabad/Maternity Wing dated 26.02.2014	11651500/-	12A(b)(ii)
		Total	**26381541/-**	

From the above chart, I find that the party had received Rs. 26381541/- from the Govt Departments/ Governmental Authority which is exempted from payment of service tax under the provisions of Notification No. 25/2012-ST dated 20.06.2012, as amended. However, the party has failed to produce documentary evidence in respect of differential Amount Rs. 2169496/- received from other service recipients. Therefore, the party's claim for exemption from *payment of service tax on this amount is not acceptable and they are liable to pay service tax Rs.325424/- (including applicable Cesses) [15% of 2169496/-] along with applicable interest and penalty.*

6.3 From the forgoing, I find that as per Income Tax Data the party received gross amount of Rs.28551037/- during the year 2016-17 as per CBDT data under the Income Tax Act, 1961 which pertains to payment to contractor or a sub-contractor. The party is liable to pay service tax Rs. 325424/- on differential Amount Rs. 2169496/-. This amount falls under the taxable category of services as defined under section 65B of the Finance Act, 1994, as amended.

SECTION 65B. Interpretations:

(51) "taxable service" means any service on which service tax is leviable under section 66B:

SECTION 66B. Charge of service tax on and after Finance Act, 2012:

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

6.4 Thus, I find that the some of the activity carried out by the party were taxable during the relevant period on which the party were required to pay service tax Rs. 325424/-. The party is not liable for any exemption/abatement on the taxable value and service tax is liable to be computed on the differential amount Rs.2169496/- as reflected in Income Tax records (TDS statement). Thus, I find that the service tax liability of the party for the impugned period has been rightly ascertained to Rs. 325424/- (Rupees Three Lac Twenty Five Thousand Four Hundred Twenty Four only) which the party did not pay."

And accordingly passed the following order:-

ORDER

"(i) I confirm the Service Tax (including applicable Cess) demand of Rs. 325424/-(Rupees Three Lac Twenty Five Thousand Four Hundred Twenty Four only) under section 73(2) read with section 73(1) of the Finance Act, 1994.
ii) I order for recovery of interest under Section 75 of the Finance Act, 1994 at appropriate rate on the confirmed amount of service tax as mentioned at (i) above.

(iii) I impose a penalty of Rs. 325424/- (Rupees Three Lac Twenty Five Thousand Four Hundred Twenty Four only) upon

the party under Section 78 of the Finance Act, 1994. The party shall be eligible for reduced penalty specified in second and third proviso to Section 78 of the Act, subject to fulfillment of conditions specified therein as mentioned in para 6.6 above.

(iv) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only), upon the party under Section 77(1) of the Finance Act, 1994 for contravention of provisions of Section 69 of the Act read with Rule 4 of the Rules.

(v) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only), upon the party under Section 77(2) of the Finance Act, 1994 for contravention of provisions of Section 70 of Act read with Rule 7 of the Rules."

3. Being aggrieved, the Appellant/Assessee filed appeal before the First Appellate Authority and the learned Principal Commissioner (Appeals), vide the impugned Order-In-Appeal, has rejected the appeal filed before him. Hence, the present appeal before the Tribunal.

4. Heard both the sides and perused the appeal records.

5. It is the case of the Appellant/Assessee that they had provided mainly Road Construction Services to Public Works Department, Mirzapur & Zila Panchayat, Mirzapur, construction of maternity wing in PHC Arazi Line, Varanasi, miscellaneous works to Divisional Forest Officer, Mirzapur, Canal Division Mirzapur etc. Copies of work orders were submitted in support of their submissions.

6. The Appellant/Assessee in their grounds of appeal have contested that the demand of Rs.3,25,424/- involving taxable value of Rs.21,69,496/- has been confirmed on the ground that the Appellant/Assessee failed to produce necessary documents in support of the fact that the same relates to exempted services.

7. I find that both the Lower Authorities have observed that the Appellant/Assessee failed to produce necessary documents to establish that the nature of work done by him is covered under Notification No.25/2012-ST dated 20.06.2012 and the payment

received by him is against these works which are covered by the exemption notifications. It is the case of the Appellant/Assessee that the amount of Rs.3,50,432/- relates to construction of road to be used by the general public and therefore, exempt under Entry No. 13(a) of Mega Exemption Notification No.25/2012-ST. It is also submitted that copy of Contract Bond No.23/EE dated 14.03.2016 issued by Uttar Pradesh Public Works Department, Mirzapur for construction of road (Semi Dense Bituminous Concrete (SDBC), from Tehsil Chauraha GIC to Ghirdhar Chauraha Pan Dariba Marg was produced before the lower authotities.

8. In view of the above discussion, I find it appropriate to remand the matter to the Original Adjudicating Authority for passing a *de novo* order after considering the claim of the Appellant/Assessee and verifying all the documents produced by them in support of their claim. The Appellant/Assessee is directed to cooperate in the *de novo* proceedings and produce all the documents in support of their claim. The Appellant should cooperate in the de-novo proceedings before the Original Adjudicating Authority and should not seek unnecessary adjournments.

9. The appeal filed by the Appellant/Assessee is allowed by way of remand to the Original Adjudicating Authority.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Nihal