CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70177 of 2024

(Arising out of Order-in-Original No.14/PC/ST/LKO/2023-24 dated 20.10.2023 passed by Principal Commissioner CGST & Central Excise, Lucknow)

Shri Shrikant Mohan Sharma, Proprietor .....Appellant
(2nd Floor, Kasmanda House, Park Road-2,
Above Jansandesh Office, Lucknow-226001)

VERSUS

Principal Commissioner of Central Excise &
CGST, Lucknow ....Respondent
(7A Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Arun Srivastava, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70603/2025

DATE OF HEARING : 30.07.2025
DATE OF DECISION : 30.07.2025

The present appeal has been filed by the Appellant assailing the Order-in-Original No.14/PC/ST/LKO/2023-24 dated 20.10.2023 passed by Principal Commissioner CGST & Central Excise, Lucknow.

2. The facts of the case in brief are that on the basis of third party Data provided by the Income Tax Department for the financial year 2016-17, it was observed that the gross receipts for the financial year 2016-17 as per Form-26AS is Rs.23,59,27,727/-. Show Cause Notice[1] dated 12.10.2021 was issued proposing to demand service tax of Rs.3,53,89,159/- alongwith applicable interest and imposition of penalties under

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[1] SCN

various Sections. The Adjudicating Authority vide the impugned Order-in-Original has observed as under:-

"5.10 In view of discussion made in foregoing paras I find as under:-

Sr. No.	*Amount in Rs.*	*Remarks*	*Service Tax liability*
1.	*12,22,18,886/-*	*Pertains to supply/sale of material to M/s Central Electronics Ltd.(CEL)*	*No service tax liability being supply/sale amount*
2.	*1,35,79,875/-*	*Charges for installation, testing & commissioning of equipment to M/s Central Electronics Ltd. (CEL)*	*Service Tax of Rs.17,71,288/- @ 15% is payable on taxable value of Rs.1,18,08,588/- by the party, which is charged by the party as per invoices but the party has not deposited the same and the party has accepted the said liability in their written submission.*
3.	*4,31,75,805/-*	*Pertains to supply/sale of material to various parties other than CEL*	*No service tax liability being supply/sale amount*
4.	*3,80,32,192/-*	*Work of construction of road done for LDA*	*Exempted from service vide Entry No.13(a) of Notification No.25/2012-ST dated 20.06.2012*
5.	*95,98,187/-*	*Work of construction of road done for PWD*	*Exempted from service vide Entry No.13(a) of Notification No.25/2012-ST dated 20.06.2012*
6.	*22,66,04,945/-*	*Total of Sr. 1 to 5*	

I find from the above table that the total of amount mentioned from Sr. No.1 to 5 is Rs.22,66,04,945/- however the disputed amount as per the SCN issued is Rs.23,59,27,727/-, therefore, there is difference in value of Rs.93,22,782/- (235927727 – 226604945) for which party has neither submitted any clarification nor any supporting documents regarding no service tax applicability on the same. In the absence of the same, the party is liable to discharge service tax liability on Rs.93,22,782/- @ 15% i.e. Rs.13,98,417/-.

5.11 In view of the foregoing paras, I hold that the party has not paid Service Tax amounting to Rs.31,69,705/- (Rs.17,71,288/- plus Rs.13,98,417/-) including all cesses of on taxable value of Rs.2,11,31,370/- (Rs.1,18,08,588/- plus Rs.93,22,782/-) and the same is liable to be recovered from them under proviso to Section 73(1) of the Finance Act, 1994 alongwith appropriate interest under Section 75 of Act ibid read with Section 142 & 174 of CGST Act, 2017."

Accordingly pass the following order as under:-

"ORDER

(i) I confirm the demand of Service Tax amounting with all cesses to Rs.31,69,705/- (Rs. Thirty One lakh Sixty Nine Thousand Seven Hundred Five only) and order to recover the same from them under proviso to Section 73(1) of the Finance Act, 1994 alongwith appropriate interest under Section 75 of Act ibid read with Section 142, 173 & 174 of CGST Act, 2017.

(ii) I impose penalty of Rs.31,69,705/- (Rs. Thirty One lakh Sixty Nine Thousand Seven Hundred Five only) under Section 78 of the Finance Act, 1994 read with Section 142, 173 & 174 of CGST Act, 2017. However, an option is being given to the party under the proviso(1)(ii) of Section 78 of the Finance Act, 1994 that if the service tax alongwith interest is paid with the period of 30 days from the receipt of this Order-in-Original issued under the proviso to sub section (1) of Section 73 of the Finance Act, 1994, the penalty shall be twenty five percent of such service tax and proceeding in respect of Service Tax, interest and penalty shall be deemed to be concluded.

(iii) I impose penalty of Rs.10,000/- each under Section 77(1)(b), 77(1)(c), 77(1)(d) and 77(2) respectively of

the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017."

Being aggrieved the Appellant has filed the present appeal before the Tribunal.

3. The learned Advocate appearing on behalf of the Appellant submits that against the total demand of Rs.31,69,705/- an amount of Rs.17,71,288/- has been deposited alongwith interest of Rs.18,59,852/- and penalty of Rs.4,82,822/- i.e. @25%, totaling Rs.41,13,962/- on 30.11.2023. A copy of the E-receipt has been submitted alongwith appeal paper book i.e. tax + interest and 25% of the penalty imposed. However, in the present appeal the Appellant is contesting the demand of Rs.13,98,417/-. It is the submission of the learned Advocate that service tax demand cannot be confirmed on the basis of figures appearing in Form-26AS unless it has been established that it represents services provided by the Appellant and the same are liable to service tax. In support of his submissions he relied upon the following decisions:-

(i) Synergy Audio Visual Workshop Pvt. Ltd. vs. Commissioner of Service Tax Bangalore [2008 (10) S.T.R. 578];

(ii) CCE Ludhiana vs. Deluxe Enterprises [2011 (22) S.T.R. 203];

(iii) Alpa Management Consultants Pvt. Ltd. vs. Commissioner Service Tax, Bangalore [2007-TIOL-388-CESTAT-BANG];

(iv) Amrish Ramesh Chandra Shah vs. Union of India [2021-TIOL-583-HC-BOM];

(v) Kush Constructions vs. CGST NACIN [2019 (24) G.S.T.L. 606 (Tri-All.)].

4. Further it is also the submission of the learned Advocate that in respect of one client i.e. Central Electronics Ltd[2]., an amount of Rs.19,16,43,282/- appearing in Form-26AS statement is not correct and this is due to some inadvertent error on the part of the CEL at the time of reporting and filing their TDS returns. A letter in this regard was written to the CEL by the Appellant. Further CEL has also issued a certificate regarding the

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[2] CEL

bills raised by the Appellant on CEL during the period under dispute. It is the submission of the learned Advocate that on account of this error the figures as appearing in Form-26AS got exaggerated and the Department has computed service tax liability on such exaggerated figures which is not in consonance of the law laid down by the Superior Courts. A certificate issued by the Chartered Accountant dated 28.07.2025 has been submitted which is as under:-

MARKS & ASSOCIATES
CHARTERED ACCOUNTANTS
CA INDIA
Flat No. 4, Greenwood Apartments
22 Gokhale Marg, Lucknow - 226001.
Phone No. - 9415022216, 8933877153
Email: gmkca1993@gmail.com

CA CERTIFICATE

This is to certify on the basis of available records, books of accounts and relevant information of M/S INDELIBLE TECHNOLOGY (Prop SHRIKANT MOHAN SHARMA) having its office at 320 b, 2nd Floor, f block, Kasmanda apartment, Hazratganj, Lucknow we hereby certify the following:

FILED IN COURT ON 30 JUL 2025 CESTAT ALLAHABAD

1. During the financial year 2016-2017, the firm had worked for Central Electronics Limited (TAN : DELC00124F) having its office at 4 Industrial Area, Sahibabad, Ghaziabad.

2. The company was deducting TDS @2% u/c 194C (contractors/ sub contractor) of the Income Tax Act, on the total Amount paid amount of work allotted to M/S Indelible Technology.

3. It appears that there were some errors in the amount paid that corresponded to the TDS deducted in certain entries during the 2016–17 fiscal year which has been intimated to the company also for rectification. The detail is as under.

S. No.	In 26AS	Actual Paid	TDS Deducted	TDS Rate as per 26AS	TDS As per Actual
1	60,44,900.00	30,22,450.00	60,449.00	1.00%	2.00%
2	1,13,78,600.00	56,89,300.00	1,13,786.00	1.00%	2.00%
3	1,19,61,700.00	59,80,850.00	1,19,617.00	1.00%	2.00%
4	4,86,06,000.00	2,43,03,000.00	4,86,060.00	1.00%	2.00%
5	1,43,22,400.00	71,61,200.00	1,43,224.00	1.00%	2.00%
6	1,86,98,200.00	93,49,100.00	1,86,982.00	1.00%	2.00%
7	42,19,700.00	21,09,850.00	42,197.00	1.00%	2.00%
8	75,33,839.83	75,33,839.83	1,50,676.80	2.00%	2.00%
9	64,39,225.11	64,39,225.11	1,28,784.50	2.00%	2.00%
10	60,65,737.07	60,65,737.07	1,21,314.74	2.00%	2.00%
11	60,22,971.25	60,22,971.25	1,20,459.43	2.00%	2.00%
12	1,71,08,940.66	1,71,08,940.66	3,42,178.81	2.00%	2.00%
13	62,97,868.25	62,97,868.25	1,25,957.37	2.00%	2.00%
14	64,99,831.69	64,99,831.69	1,29,996.63	2.00%	2.00%
15	73,47,738.31	73,47,738.31	1,46,954.77	2.00%	2.00%
16	1,30,95,630.00	1,30,95,630.00	2,61,912.60	2.00%	2.00%
Total	**19,16,43,282.17**	**13,40,27,532.17**	**26,80,550.65**		

Marks & Associates Chartered Accountants

4. As per above table at point no 1 to 7 due to clerical mistake the amount paid was wrongly mentioned double of the actual amount paid. Considering the above correction the total of 26AS comes as under :

Name of Party	Amount
CENTRAL ELECTRONICS LIMITED	134,027,532.17
NATIONAL BANK STAFF COLLEGE	614,853.00
EXECUTIVE ENGINEER (MAINTENECE)	8,027,115.00
ELECTICAL MAINTANANCE DIVISON -1 PWD LUCKNOW	534,510.00
LKO. DEVELOPMENT AUTHORITY	34,573,644.00
TOTAL	177,777,654.17

5. That the balance sheet for the FY 2016-17 has been prepared on the basis of Bill raised during the FY 2016-17 to various parties in due course of business. Summary of the turnover is as under :

Name of Party	Amount
CENTRAL ELECTRONICS LIMITED	123,720,335.60
NATIONAL BANK STAFF COLLEGE	591,916.18
EXECUTIVE ENGINEER (MAINTENECE)	9,598,187.50
LKO. DEVELOPMENT AUTHORITY	38,032,192.00
OTHER PARTIES SUPPLY BILLS	40,606,597.65
TOTAL	212,549,228.93

For MARKS & ASSOCIATES

Chartered Accountants

(Sachin Agarwal)
Partner
M.No.-414906
Dated 28.07.2025
UDIN: 25414906BMJFVN9346

5. On the basis of the above certificate, I find that the service tax demand has been computed in excess of Rs.13,98,417/-. Further the demand of service tax is governed by Point of Taxation Rules which are based upon certain criteria i.e. the point when an invoice is raised by the assessee. The figures as reflected in Form-26AS statement usually show the payments that are made by the customers in a particular financial year. It is the case of the Appellant assessee that certain invoices were raised in the previous financial year i.e. 2015-16 and the payment of those invoices have been received in the financial

year 2016-17. Hence, such receipts of payment cannot be the basis for determining the service tax liability.

6. I find that Revenue has taken the gross receipts as shown in Form-26AS, the basis for confirming the demand of service tax. I note that without further examining the reasons, revenue has raised the demand. It is my considered view that revenue cannot raise the demand on the basis of Form-26AS statement without examining the reasons and without establishing that the entire amount received by the Appellant as reflected in Form-26AS is consideration for services provided and without examining whether any exemption or abatement is available. It is not legal to presume that the entire amount was on account of consideration for providing services. Accordingly, I set aside the demand of Rs.13,98,417/- and also the proportionate penalty imposed under Section 78 of the Finance Act, 1994 read with Sections 142, 173 & 174 of CGST Act, 2017.

7. The impugned order is modified to the extent of setting aside of the demand of Rs.13,98,417/- and setting aside of proportionate penalty and the rest of the order is upheld. The appeal filed by the Appellant is partly allowed in the above terms.

(Operative part of the Order pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS