CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70701 of 2024

(Arising out of Order in Appeal No.-NIO-EXCUS-002-APP-60-24-25, dated -17/05/2024 passed by Commissioner (Appeals) CGST, Noida)

M/s Shiv Contractor **.....Appellant**
(B-107, Sector-122 ,
Gautam Buddha Nagar, Uttar Pradesh 201301)

VERSUS

Commissioner, CGST, Noida **....Respondent**
(GST Bhawan, 4th Floor C-232A/2-A/3,
Sector-48, Gautam Budh Nagar, Noida-201305)

APPEARANCE:

Shri Vishwjit, Advocate for the Appellant
Shri Sanotsh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70605/2025

DATE OF HEARING : 30.07.2025
DATE OF DECISION : 29.08.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No. NIO-EXCUS-002-APP-60-24-25, dated -17/05/2024 passed by Commissioner (Appeals) CGST, Noida.

2. The facts of the case in brief are that the Appellant has provided the services in respect of Civil Work, Construction, Erection, Maintenance and Repair of Public Roads and Parks, Police Station, Pipe Line, Community Centers, which are used only by the general public. The Noida Authority made a total payment of Rs.7,19,74,684/- to the Appellant during the Financial Year 2016-17 in execution of said work orders. The Appellant filed the returns of the Service Tax in Form ST-3 within

the period, declaring the aforesaid payment received from the Noida Government/Local Authority claiming it as exempt from the Service Tax.

3. On the basis of the third party data received from the Income Tax Department, Demand cum Show Cause Notice[1] dated 22.10.2021 was issued proposing to demand Service Tax of Rs.1,07,96,203/- alongwith applicable interest and to impose penalty under Sections 78 & 77 of the Finance Act, 1994. After the due process of law the Adjudicating Authority passed the following order:-

ORDER

> *(i) I confirm the demand and recovery of Service Tax amounting to Rs.21,31,494/- (Twenty-One Lakhs thirty-one thousand four hundred ninety-four only) and order for recovery of the same from M/s Shiv Contractor, B-107, Sector-122, Noida, Gautam Buddh Nagar, Uttar Pradesh-201301 under Section 73(2) of the Finance Act, 1994 as discussed supra;*
>
> *(ii) I, however drop the demand of remaining amount of ₹. 86,64,708/- (Rupees Eighty-six lakh sixty-four thousand seven hundred eight only) raised against the notice by aforementioned Show cause notice as discussed supra;*
>
> *(ii) I order for payment of the interest on the amount of Service Tax mentioned at (i) above under Section 75 of the Finance Act, 1994;*
>
> *(iv) I impose penalty of Rs. 10,000/- under Section 77(1)(b) and penalty of Rs. 10,000/-under Section 77(1)(c) of the Finance Act, 1994 for not maintaining the proper records and for not providing the desired information to the department respectively;*
>
> *(v) I impose penalty of Rs.21,31,494/- (Twenty-One Lakhs thirty-one thousand four hundred ninety-four only) upon the noticee under Section 78 of the Finance Act 1994 for their failure to pay service tax & suppressing the facts with intent to evade payment of service tax.*

[1] SCN

4. Being aggrieved, the Appellant assessee filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) CGST, Noida vide the impugned Order-In-Appeal dated 17.05.2024 reduced the demand to Rs.19,68,227/- and passed the following order:-

ORDER

> *(i) I reduce the demand of Service Tax from Rs. 21,31,494/- to Rs. 19,68,227/- under Section 73(1) of Finance Act, 1994.*
>
> *(ii) I modify the demand of Interest at appropriate rates, payable on the demand of Service Tax confirmed at (i) above in terms of Section 75 of the Finance Act, 1994.*
>
> *(iii) I reduce the amount of penalty to 100% of the amount of Service Tax modified at (i) above, under Section 78 of the Finance Act, 1994.*
>
> *(iv) I uphold the penalty of Rs. 10,000/- under Section 77(1)(b) and penalty of Rs, 10,000/- under Section 77(1)(c) of the Finance Act, 1994.*

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

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

7. I find that there is no ambiguity on the fact that the Appellant is engaged in construction of original civil structure provided to the Noida Government/Local Authority meant predominantly for the general public only. That the Appellant has regularly filed ST-3 Returns wherein the payment received from the Noida Authority was declared and exemption from payment of Service Tax was claimed. The Department has not issued notice for initiation of proceedings under Section 73(1) of the Act within the normal period of limitation which expired on 30th September, 2019.

8. That Section 73 of the Finance Act, 1994 empowered the authority to issue the SCN for recovery of Service Tax within

thirty months from the relevant date in the normal circumstances, but where Service Tax has not been paid or short paid or erroneously refunded by the reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Act with intent to evade payment of Service Tax, then in that event, SCN can be issued within five years from the relevant date under proviso to Section 73(1) of the Act. But in the present case, these essential conditions are totally absent in the SCN issued to the Appellant. Hence proceeding initiated under proviso to Section 73(1) of Act is illegal, without jurisdiction, and as such liable to be quashed.

9. That in the present case, SCN dated 22.10.2021 was issued by invoking extended period under proviso to Section 73 of the Act, only on the basis of third party information received from the Income Tax Department as per figure reflected in the 26AS Form without making proper verification and investigation prior to issuing of said SCN whether said amount reflected in 26AS of the Appellant is taxable or not. SCN was issued, stating only that, as per the TDS return, the consideration of Rs.7,19,74,684/- has been received and in the ST-3 Return filed, services have been declared as exempt. The proceedings initiated only on the basis of Form 26AS was wholly erroneous and illegal as Form 26AS is not a prescribed document under the Finance Act (Service Tax Act) for initiation of proceeding by invoking the extended period of limitation under proviso to Section 73(1) of the Act.

10. That the Adjudicating Authority has examined the documents and entire work orders which covered the total payment of Rs.7,19,74,684/- received from Noida Government / Local Authority reflected in Form 26AS statement.

11. That it is a settled principle of law consistently held by the Tribunal in several cases that third party information received from the Income Tax Department in Form 26AS (Income Tax) could not be a basis for issuing of a SCN by

invoking the extended period of limitation under the proviso to Section 73(1) of the Act for levy of Service Tax. Some of the decisions are as under :-

i. M/s Rishu Enterprises Vs. Commissioner of CGST & Excise Dibrugarh (Service Tax Appeal No. 75509 of 2022 dated 08.2.2024) .

ii. M/s D.K. Construction Vs. Commissioner of Central Excise & CGST, Lucknow (Service Tax Appeal No. 70044 of 2023 dated 09.5.2025)

iii M /s Yards And Yields Infratech Pvt Ltd. Vs. Commissioner of Central Goods & Service tax (Service Tax Appeal No. 70247 of 2020 dt 26.3.2025)

12. I find that the learned Commissioner (Appeals) has held that extended period of limitation was applicable in the present case on the ground that the Appellant was required to do self-assessment and he failed in the same.

13. After hearing both the sides I note that the Appellant was under the *bona fide* belief that since he was providing civil construction services to the Noida Government/Local Authority, the services are not liable to Service Tax, particularly in terms of Serial No.12 of Mega Notification No.25 of 2012-ST dated 20.06.2012. Therefore, I hold that extended period of limitation was not available to Revenue for rasing the present demand. Since the extended period of limitation is not available, the penalty under Section 78 of the Finance Act, 1994 is also not leviable on the Appellant.

14. Reference is made to the Tribunal's decision in the case of **C.S.T., New Delhi V/s Kamal Lalwani [2017 (49) S.T.R. 552 (Tri.-Del.)]** wherein it was held that extended period is not invocable if the services rendered are reflected in the Balance Sheet and Income Tax Returns and no evidences have been produced that non-payment of duty was on account of *mala fide* intention. Reference is also made to the judgment of Hon'ble Allahabad High Court in the case of **Commissioner of Central Tax V/s Zee Media Corporation Ltd. [2018 (18)**

G.S.T.L. 32 (All.). The Hon'ble High Court observed that SCN itself shows that every detail was maintained by the Assessee in usual course of business. The relevant paragraphs are reproduced below:-

> ***"15.*** *The Tribunal held that the SCN was bad for invoking the extended period of limitation. Revenue had got all the informations from the records maintained by the respondent in the ordinary course of their business which was clear from the SCN itself and there was not even a single instance of any manipulation or suppression and/or misinformation which could be pointed out in the SCN except for bald allegation. Thus, Tribunal allowed the appeal and set aside the order passed by the Commissioner (Excise). The Tribunal did not enter into the merits of the case.*
>
> ***16.*** ************
>
> ***17.*** *SCN itself shows that every details was maintained by the respondent in their usual course of years. They had not suppressed or manipulated any fact to evade the payment of service tax or to avail Cenvat credit. When the ingredients of proviso to Section 73(1) of the Act were not present, the invocation of extended period of limitation was not correct to issue SCN.*
>
> ***18.*** *We, therefore, affirm the view taken by the Tribunal.*
>
> ***19.*** *The question of law is, therefore, answered in favour of the assessee and against the Department.*
>
> ***20.*** *The appeal is, accordingly, dismissed."*

15. In view of the above discussion the demand of Service Tax and penalty imposed under Section 78 is set aside and the appeal filed by the Appellant is allowed with consequential relief, as per law.

(pronounced in open court on 29.08.2025)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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