CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD
E-Hearing
REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70596 of 2024

(Arising out of Order-in-Appeal No.68/ST/ALLD/2024 dated 24.01.2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s U. P. State Construction & Infrastructure Development & Corporation Ltd., **.....Appellant**
(H. No.127/25, New Colony, Behind Gurudwara, Deoria-274001)

VERSUS

Commissioner of Central Excise & CGST, Allahabad **....Respondent**
(38, M.G. Marg, Civil Lines, Allahabad-211001)

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70618/2025

DATE OF HEARING : 17.07.2025
DATE OF PRONOUNCEMENT : 04.09.2025

This appeal has been filed by U.P. State Construction & Infrastructure Development & Corporation Ltd., against Order-in-Appeal No.68/ST/ALLD/2024 dated 24.01.2024 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Allahabad.

2. The facts of the case in brief are that the Appellant is a State Government Company registered under the Companies Act, 1956; they are engaged in construction of Government Buildings, Road etc. the work orders are allotted by various departments of State Government. Until 31.03.2015, Appellant's activity of construction of Government buildings remained exempted from payment of service tax under entry 12(a) of Notification No.25/2012-ST dated 20.06.2012. However, on

omission of entry 12(a), Appellant became liable for payment of service tax w.e.f. 01.04.2015. It therefore, obtained Service Tax Registration for its various units; started paying service tax and filed ST-3 Returns regularly. Consequent to the audit of service tax records of the Appellant for the period from April, 2015 to June, 2017, a Show Cause Notice[1] dated 12.10.2020 was issued proposing to demand service tax amounting to Rs.3,10,762/- on various grounds and utilization of Cenvat credit Rs.68,749/-. It also invoked extended period of limitation under proviso to Section 73(1) of Finance Act, 1994. The Assistant Commissioner confirmed the said demand and imposed penalty under Section 77(2) as well as Section 78 of Finance Act, 1994. On appeal, the learned Commissioner (Appeals) reduced the demand to Rs.2,82,202/- and upheld the penalty under Section 77(2) as well as Section 78 of Finance Act, 1994. By way of this appeal, Appellant have challenged following demands:-

(i)	Short payment of Service Tax	Rs.1,50,771/-
(ii)	Short payment on Works Contract Service	Rs.62,682/-
(iii)	Cenvat Credit excess taken	Rs.68,749/-
	Total =	**Rs.2,82,202/-**
Penalty under Section 78		Rs.2,82,202/-
Penalty under Section 77		Rs.10,000/-

3. The learned Chartered Accountant, Shri Kapil Vaish appeared on behalf of the Appellant and submitted a synopsis/written submission. His submissions would be considered hereunder while dealing with various issues.

4. The learned Departmental Representative supports the impugned order and prays that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

6. Following issues are arising for decision in this appeal :–

(a) Whether demand of service tax of Rs.1,50,771/- is maintainable (Issue No.1).

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[1] SCN

(b) Whether Appellant have short paid service tax of Rs.62,682/- on works contract service (Issue No.2).

(c) Whether Appellants have taken excess Cenvat credit of Rs.68,749/- (Issue No.3).

(d) Whether extended period of limitation can be invoked in the Appellant's case (Issue No. 4).

(e) Whether penalty under Section 77(2) and Section 78 of Finance Act, 1994 are imposable on the Appellant (Issue No.5).

Demand of service tax Rs.1,50,771/- (Issue No.1).

(i) The learned Chartered Accountant submitted that during the period from October, 2015 to March, 2016, they received payments towards construction of Ashram Padyati Vidyalaya. The said contract was awarded on 12.09.2011 (page 183 of MOA) i.e. prior to 01.03.2015. He submitted that in view of entry 12A of Notification No.25/2012 dated 20.06.2012, the Appellant was not liable for payment of service tax but it had wrongly paid service tax amounting to Rs.1,33,197/-.

(ii) He further submitted that during February, 2016, the Appellant had paid excess service tax of Rs.17,350/-. They had received an amount of Rs.53,14,500/- towards construction of Girl's Hostel on which service tax was paid @ 14.5% on 40% value. Later on, Appellant realized that the amount received being the gross amount, it was eligible for deduction under Section 67(2). Therefore, the excess amount paid worked out to Rs.39,064/-.

(iii) Out of the aforesaid amount of Rs.1,33,197/- + Rs.39,064/- = Rs.1,72,261/-, they adjusted the amount of Rs.1,50,771/- while filing the subsequent Returns.

(iv) The learned Chartered Accountant submits that in view of Rule 6 (4A) of Service Tax Rules, 1994, they were eligible to adjust the amount of excess service tax paid in the subsequent Return.

(v) I find that the learned Commissioner in para 4.2.6 upheld the demand of Rs.1,50,771/- after observing that as per provisions of Service Tax Rules, the Appellant were required to claim refund in all such cases instead of *suo moto* adjustment of excess paid tax amount.

(vi) I find that the learned Commissioner (Appeals) has not disputed the Appellant's contention that the tax amount of Rs.1,50,771/- had been paid in excess during September, 2015 to March, 2016. His only objection is that the Appellant should have claimed its refund instead of *suo-moto* adjustment of excess tax paid. Moreover, Rule 6(4A) of Service Tax Rules, 1994, provides that if an assessee has paid in excess of the amount required to be paid towards service tax liability, the assessee may adjust the amount so excess paid against the service tax liability for the subsequent period. I am of the view that claiming the refund and payment of tax at the time of filing ST-3 Return is only a revenue neutral exercise. I therefore, hold that the demand of Rs.1,50,771/- is not maintainable and the same is hereby set aside.

Short payment of service tax of Rs.62,682/- on Works Contract Service (Issue No.2)

(i) The impugned order observes that during the period from September, 2015 to June, 2017, Appellant had provided works contract service of Rs.175.93 lakhs but had declared works contract service of Rs.165.49 lakhs resulting in short declaration of works contract service of Rs.10.44 lakhs. After granting the benefit of abatement of 60%, the demand of Rs.62,682/- has been confirmed.

(ii) The Appellant have submitted that in certain cases, Appellant have been receiving gross amount and service tax was not being charged/received separately. Accordingly, Appellants have been declaring the gross amount of services after availing benefit of Section 67(2). This has resulted in difference of Rs.10,44,705/-. Appellant had taken this plea even before the Lower Authorities but they had not given any finding on this issue.

(iii) I have gone through the provisions of Section 67(2) of Finance Act, 1994, which provides that where the gross amount charged by a service provider for the services provided, is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(iv) In view of the provisions of Section 67(2) of Finance Act, 1994, the Appellant was correct in declaring the assessable value after adjusting the amount of service tax payable. I therefore, hold that demand of Rs.62,682/- is not maintainable and the same is liable to be set aside.

Excess Cenvat credit Rs.68,749/- (Issue No. 3)

(i) The SCN alleged that during the period from October, 2015 to March, 2016, Appellant had taken Cenvat credit Rs.1,41,067/- whereas they were eligible for credit of Rs.72,318/- only. It resulted in excess availment of Cenvat credit amounting to Rs.68,749/-. The impugned order confirmed the said demand.

(ii) The learned Chartered Accountant submits that during the period from October, 2015 to March, 2016, Appellant had taken credit of Rs.1,41,067/- pertaining to the service tax paid on reverse charge basis during the period from April, 2015 to March, 2016 as per details given below :–

Head	**April to September 2015 (Rs.)**	**October to March, 2016 (Rs.)**	**Total (Rs.)**
Manpower Supply	68,934	68,915	1,37,849
Legal Service	1,400	-	1,400
GTA	1,953	679	2,632
Total	**72,287**	**69,594**	**1,41,881**

(iii) I find that during the period April, 2015 to March, 2016, Appellant had paid service tax of Rs.1,41,881/- on reverse charge basis and they were eligible to avail its credit. I further find that during the period from April to September 2015, Appellant had not taken or utilized Cenvat credit. Entire tax of Rs.1,87,798/- for the period April – September 2015 had been paid in cash. I therefore, hold that the Appellant had correctly availed Cenvat credit Rs.1,41,067/- and the demand of Rs.68,749/- is not maintainable and the same is liable to be set aside.

Invocation of extended period of limitation (Issue No. 4).

(i) For demanding service tax for the period from April, 2015 to June, 2017, the SCN has been issued on 12.10.2020. The entire demand is beyond the normal period of limitation. The learned Chartered Accountant submitted that the Appellant is a State Government undertaking; it has regularly been filing ST-3 Returns and have been paying service tax regularly. He relied upon the Final Order No.51088/2023 dated 21.08.2023 passed by the Tribunal in the case of G. D. Goenka Pvt. Ltd., wherein it has been held that the extended period of limitation cannot be invoked in cases where assessee has regularly been filing ST-3 Returns. Even otherwise, it is a dispute on interpretation of service tax law for which extended period of limitation cannot be invoked. He also relied upon various other decisions on limitation. He therefore, prayed to allow the appeal by setting aside the aforesaid demands and corresponding penalties.

(ii) The learned Commissioner (Appeals) has not given any finding on invocation of extended period of limitation. However, the demands have been confirmed under proviso to Section 73(1) of Finance Act, 1994.

(iii) There is no dispute that Appellants have regularly been filing ST-3 returns. A similar matter of limitation had come up for consideration before the Division Bench of this Tribunal in the case of G. D. Goenka Pvt. Ltd., (Final Order No.51088/2023 dated 21.08.2023). In the said case also, the demand had been raised consequent to the audit. The extended period of limitation was invoked on the ground that under self assessment, the Appellant assessee was required to assess its own tax due on the services provided by it and file returns under Section 70. By claiming the wrong Cenvat credit, the Appellant willfully and deliberately suppressed the facts from the Department.

(iv) In the said case, the Division Bench referred to the decision of the Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company Vs. CCE, Mumbai 1995 (78) E.L.T. 401 (S.C.) and made detailed observation for holding that extended period of limitation could not have been invoked. Para 16,19,20,21 and 22 of the said order reads as under :–

"16. Another ground for invoking extended period of limitation given in the impugned order is that the Appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns. ***If some tax escapes assessment, Section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self-assessment itself is held to establish wilful suppression with an intent to evade****. To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.*

19. It has also been pointed out that but for the audit, the allegedly irregularly availed CENVAT credit would not have come to light. It is incorrect to say that but for the audit, the alleged irregular availment of CENVAT credit would not have come to light. It is undisputed that the Appellant has been self-assessing service tax and filing ST-3 Returns. ***Unlike the officers, the assessee is not an expert in taxation and can only be expected to pay service tax and file returns as per its understanding of the law. The remedy against any potential wrong assessment of service tax by the assessee is the scrutiny of the Return and best judgment assessment by the Central Excise Officer under Section 72. This Section reads as follows:-***

> ***"72. Best judgment assessment. If any person, liable to pay service tax,—***

(a) fails to furnish the return under Section 70;

(b) having made a return, ***fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer****, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered,* ***shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment*** *and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment."*

20. Thus, 'the central excise officer' has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. ***For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and***

has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible CENVAT credit would not have come to light. It would have come to light if the central excise officer had discharged his responsibility under Section 72".

21. This legal position that the primary responsibility for ***ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs*** *in its Manual for Scrutiny of Service Tax Returns the relevant portion of which is as follows:*

> *"1.2.1A The importance of scrutiny of returns was also highlighted by Dr. Kelkar in his report on Indirect Taxation. The observation made in the context of Central Excise but also found to be relevant to Service Tax is reproduced below:*
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> > *It is the view that assessment should be the primary function of the Central Excise Officers.* ***Self-assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play,***

***but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers**.*

(emphasis supplied)

22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have come to light is neither legally correct nor is it consistent with the CBEC's own instructions to its officers."

7. Finally, the Division Bench allowed the appeal on limitation by summing up its observation in para 25 as under :–

"To sum up:

a) The Appellant assessee was required to file the ST 3 Returns which it did. Unless the Central Excise officer calls for documents, etc., it is not required to provide them or disclose anything else.

b) It is the responsibility of the Central Excise Officer with whom the Returns are filed to scrutinise them and if necessary, make the best judgment assessment under Section 72 and issue an SCN under Section 73 within the time limit. If the officer does not do so, and any tax escapes assessment, the responsibility for it rests on the officer.

c) Although the Central Excise Officer is empowered to scrutinise all the Returns call for records and if necessary, make the best judgment assessment, if, as per the instructions of CBIC, the officer does not conduct a detailed scrutiny of same Returns and as a result is unable to discover any short payment of tax within the period of limitation, neither the assessee nor the officer is *responsible for such loss of revenue. Such a loss of Revenue is the risk taken by the Board as a matter of policy.*

d)Extended period of limitation cannot be invoked unless there is evidence of fraud or collusion or wilful misstatement or suppression of facts or violation of the provisions of Act or Rules with an intent.

e)Intentional and wilful suppression of facts cannot be presumed because (a) the Appellant was operating under self-assessment or (b) because the Appellant did not agree with the audit and claimed that CENVAT credit was admissible; or (c) because the Appellant did not seek any clarification from the Revenue; or (d) because the officer did not conduct a detailed scrutiny of the Returns and the availment of CENVAT credit which is alleged to be inadmissible and was discovered only during audit."

(vi) I find that Appellant's case on limitation is squarely covered by aforesaid order of the Tribunal in the case of G. D. Goenka Pvt. Ltd. I hold that the demand of service tax amounting to Rs.2,82,202/- could not have been raised by invoking extended period of limitation. As the demands itself are being set aside, penalties under Section 78 as well as Section 77(2) are also set aside.

8. In the light of above discussions, the appeal filed by the Appellant is allowed on merits as well as on limitation, with consequential relief, as per law.

(Order pronounced in open court on - **04.09.2025**)

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

LKS