CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70514 of 2022

(Arising out of Order-In-Appeal No.573-ST-APPL-LKO-2022, dated -02/09/2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Shailesh Dayal **.....Appellant**
(8-B, Jeevan Jyoti Enclave,
Dayal Bhagh, Agra, U.P. 282005)

VERSUS

Commissioner, Central GST, Agra **....Respondent**

(113/4 Sanjay Place, Agra, Uttar Pradesh, 282002)

APPEARANCE:

Shri S. P. Ojha, Consultant, &
Ms. Stuti Saggi, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70622/2025

DATE OF HEARING : 01.04.2025
DATE OF DECISION : 09.09.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the impugned Order-In-Appeal No.573-ST-APPL-LKO-2022, dated -02/09/2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow.

2. The facts of the case in brief are that the Appellant is proprietor of the firm namely M/s Refactories & Engg., 8-B, Jeevan Jyoti Dayal Bagh, Agra. The nature of the service of the Appellant is sale and promotion of the products of their foreign based clients namely M/s Blasch Precision Ceramics Inc., 580-

Broadway Albany, New York 12204. That for such sales promotion, the Appellant receives commission from the service receiver. On the basis of information for the Financial Year 2015-16, received from the Income Tax Department, under third party date exchange policy, Show Cause Notice[1] dated 09.12.2020 was issued alleging non-payment of Service Tax and proposing to demand Service Tax of Rs.7,85,313/- alongwith applicable interest and also proposing to impose penalties under various sections. The Adjudicating Authority vide the Order-In-Original dated 09.12.2021 confirmed the demand of Service Tax as proposed in the SCN and imposed penalty of equal amount under Section 78, penalty of Rs. 1,000/- each under Section 77(1)(c) & 77(1)(a) and Rs.10,000/- under Section 77(2) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017. On Appeal, learned Commissioner (Appeals) upheld the demand of Service Tax but however, set aside the penalties imposed under Section 77(1)(c) & 77(1)(a) of the Finance Act, 1994. Hence, the present appeal before the Tribunal.

3. Learned Counsels appearing on behalf of the Appellant submit that the gross receipts shown as sales value of service in the Income Tax Return for the Financial Year 2015-16 has been considered as taxable value for the purpose of levy of Service Tax. It is their submission that the total receipts of Rs.60,76,453/- was against providing the export of services wherein consultancy charges was to the tune of Rs.54,15,953/- and commission amount was to the tune of Rs.6,60,500/- which was received from the M/s Blasch Precision Ceramics Inc. situated in New York outside the taxable territory of India as defined under 65B(35) of the Finance Act, 1994 during the Financial Year 2015-16 which is not taxable as per Export of services Rules, 2005.

4. It is their submission that copy of Foreign Inward Remittance Certificate[2] was also submitted before the Lower

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[1] SCN
[2] FIRC

Authorities. They also submitted that all the transactions have been recorded in the books of accounts and the books were audited by the Chartered Accountant. They further submitted that the services provided by the Appellant is not taxable in terms of Export of Services as the condition prescribed under Rule 6A are fulfilled in the present case.

5. The learned Authorised Representative appearing for the Respondent Department justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

7. For better appreciation of the facts, Rule 6A of the Service Tax Rules, 1994 is reproduced below:-

> *"Rule 2 [6A Export of Services. – (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -*
>
> *(a) The provider of service is located in the taxable territory,*
>
> *(b) The recipient of the service is located outside India,*
>
> *(c) The service is not a service specified in the section 66D of the Act,*
>
> *(d) The place of provision of the service is outside India,*
>
> *(e) The payment for such services has been received by the provider of service in convertible foreign exchange, and*
>
> *(f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.*
>
> *(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards,*

conditions and limitations, as may be specified, by the Central Government, by notification.]"

8. I find that the amount of Rs.56,85,074.84/- (USD 87245.74) as received by the Appellant from their foreign service receiver for providing consultancy services, also includes amount of expenses to the tune of Rs.2,73,121.75/- incurred by the Appellant while providing consultancy services in the present case. Thus, after deducting the said expenses, the amount comes to the tune of Rs.54,15,953/09 which is for providing the consultancy services to the foreign based client. Further, the Appellant received USD 10,073/19 as commission from their service receiver equivalent to Rs. 6,60,724.76/- which is reflected in their ITR. In the present case, the place of provision of service is New York, USA which is outside India and the payment of consultancy service is received by the Appellant from their foreign based client in convertible foreign currency.

9. I find that the learned Commissioner (Appeals) has observed that the FIRC documents were not correlated with the invoices. In this regard, it is my considered view that production of FIRC being a procedural requirement and if the Appellant is able to establish the receipt of foreign exchange with the invoices, there is no reason to take an adverse view.

10. In view of the above discussion, the impugned order is set aside. The appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 09.09.2025)

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

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