CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70668 of 2019

(Arising out of Order-in-Appeal No.120/ST/ALLD/2019 dated 17/05/2019 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

M/s Pankaj, **.....Appellant**
(19/103, Patkapur, Kanpur-208001)

VERSUS

Commissioner of Central Excise &

Service Tax, Kanpur **....Respondent**

(117/7, Sarvodaya Nagar,
CGST Commissionerate, Kanpur-208005)

APPEARANCE:

Shri Prakhar Gupta, Chartered Accountant for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70624/2025

DATE OF HEARING & DECISION : 24 June, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.120/ST/ALLD/2019 dated 17/05/2019 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No.48/ST/ACK-II/2018 dated 21.12.2018 on merits and remanded the matter to the Original Authority for re-quantification of the demand for normal period. He also upheld the penalties imposed under Section 77 (2) of the Act and the late fee imposed for delay in filing the ST-3 return.

1.2 By the Order-in-Original dated 21.12.2018 Original Authority has held as follows:-

"ORDER

(i) *I confirm the demand amounting to Rs. 10,81,091.00 (Rupees ten lacs eighty-one thousand and ninty one only) including education cess and secondary and higher education cess under the category of "Works Contract Service" and under "Other than negative list" service under proviso to Section 73(2) of the Finance Act, 1994 (as amended from time to time) for the reasons detailed here-in-above along with interest as provided under the provisions of Section 75 of chapter V of the Finance Act, 1994 read with the provisions of Section 174 of the CGST Act, 2017;*

(ii) *I impose a penalty of Rs. 10,81,091.00 (Rupees ten lacs eighty-one thousand and ninty one only) upon them under Section 78 of the Finance Act 1994, for suppressing the value of taxable services provided by them before the department and contravention of the provisions of the Finance Act, 1994, with intent to evade payment of service tax;*

(iii) *I also impose a penalty of Rs. 10,000.00 (Rupees Ten thousand only) upon them under Section 77(2) of the Finance Act, 1994 for the failure to self-assess the correct taxable value; and*

(iv) *I also order for payment of late Fees as prescribed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delay in filing the ST-3 returns for the period 2014-15 to 2017-18."*

2.1 Appellant is registered with the department for providing work contract services.

2.2 On the basis of information gathered that various service recipients had deducted TDS from the party under Section 194C of the Income Tax Act and appellant has not paid any service tax in respect of these amounts against which TDS was deducted under Section 194C. Inquiries were made against the appellant for the period 2009-10 to 2013-14 wherein it was observed that appellant had not paid service tax during the relevant period. A show cause notice dated 20.10.2014 was issued to the appellant.

2.3 Appellant for subsequent period did not submit the information in respect of the value of services provided along with the copy of other financial records. Inquiries were again initiated against the appellant and appellant vide letter dated 22.09.2017 & 28.09.2017 submitted copies of Form 26AS for FY 2014-15, VAT Annual Return for 2014-15, ST-3s for 2014-15,Form 26 AS for FY 2015-16, ST-3s for 2015-16, Form 26 AS for FY 2016-17, ST-3s for 2016-17 & 2017-18, Form 26 AS for FY 2017-18, ST-3s for 2017-18 and sample copies of work orders. However, the party did not submit documents viz. purchase bills, contract bills, rate analysis as per CPWD schedule rate.

2.4 Investigations concluded that appellant have not discharged service tax as detailed in table below:-

Financial Year	Value of service provided as per 26 AS (in Rs.)	Net Taxable Value as per ST-3 return	Service Tax			
			Rate %	payable	paid	Short Paid
2014-15	1968151	75392	12.36	243263	0	243263
2015-16	1311107	169530	14.50	190111	0	190111
2016-17	3886634	210847	15	582995	0	582995
Apr-Jun 17	431483	107840	15	64722	0	64722
TOTAL	7597375				0	1081091

2.7 Show cause notice dated 12.10.2017 was issued to the appellant asking them to show as to why-

> *"(i) the amount of Rs. 75,97,375/- charged and received by them should not be treated as taxable value under the category of under "Other than negative list" service for the F.Y.2014-15 to 2017-18. (Upto June) and accordingly Service Tax short paid (including Education Cess and Higher Education Cess) amounting to Rs.10,81,091/-which have been evaded should not be demanded and recovered from them under proviso to Section 73(1) of the Finance*

Act, 1994 (as amended from time to time) for the reasons detailed here-in-above;

(ii) Interest should not be demanded / recovered from them on the amounts demanded in Para 15(1) above under the provisions of Section 75 of chapter V of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act 1994, for the failure to make the payment of Service Tax in prescribed time limit;

(iv) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for the failure to self-assess the correct taxable value;

(v) Late Fees as prescribed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delay in filing the ST-3 returns for the period Oct, 14 to March, 15 and Oct, 15 to March, 16."

(vi) Penalty should not be imposed upon them under Section 78 of the Finance Act. 1994 for suppressing the value of taxable services provided by them before the department and contravention of the provisions of the Finance Act, 1994, with intent to evade payment of service tax."

2.8 This show cause notice was adjudicated as per the Order-in-Original dated 21.12.2018 referred in para-1 above.

2.9 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order.

2.10 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Prakhar Gupta, Chartered Accountant for the appellant and Shri Santosh Kumar Authorized Representative for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the findings as follows:-

"(i) It is observed that Show Cause Notice dated 12.10.2017, for the period 2014-15 to 2017-18 (upto June, 2017), has been issued in continuation of the Show Cause Notice dated 20.10.2014 (for the earlier period from 2009-10 to 2013-14) and thus,

ii) demand raised in this Show Cause Notice dated 12.10.2017, is recurring in nature. During the impugned period, the appellant had executed the following work orders:

Details of Work Order	*Details of the Service Recipient*	*Nature of Work*
1692/02.01.001/2015-16 dated 31.12.2015	*Assistant Manager, Estate Department, RBI, Kanpur*	*Development of Executive Area for Central Board Meeting- Making an enclosure for MIC at MOB*
49/02.04.011/2014-15 dated 03.07.2015	*Assistant Manager, Estate Department, RBI, Kanpur*	*Renovation of Washroom/ Toilets, Maintenance & repainting of Staff-Room.*
1211/02.04.011/2016-17 dated 15.11.2016	*Assistant Manager, Department, RBI, Kanpur Estate*	*Provision of drinking water area inside of Estate Department, MOB, RBI, Kanpur*
1026/02.04.011/2016-17 dated 14.10.2016	*Assistant Manager, Department, RBI, Kanpur Estate*	*Road repairing work at the front side Department, MOB, RBI, Kanpur*
771/02.01.001/2016-17 dated 19.09.2016	*Assistant Manager, Department, RBI, Kanpur*	*of the Office Premises, gate Wardrobe, Dressing Mirror & cabinet for"Ante Room" in Executive Area*
NCZO/Engg/ZOpaint/DJ/2 016-17Works/2014-15 dated 16.04.2014	*Chief Engineer, LIC, Kanpur*	*Painting of FIH/CBO-1/CBO-2/kothi No.123,40 under Celebration of Jublee of Corporation in 2016-17*

(iii) The appellant during the adjudication proceedings, had submitted for the benefits of the Notification No.30/2012-ST dated 20.06.2012 and of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. However, the same was not accepted on the ground that one of the work orders submitted by the appellant, showed that the same was inclusive of Service Tax and also, no documentary evidence to substantiate their claim, was submitted by the appellant. Further, the benefit of the Service Tax already paid by the appellant, during the impugned period, was also not extended, on the grounds that they did not submit any challans and the same were not available in the database; and

(iv) The appellant in their appeal, have submitted again for extending the benefits of the Notification No.30/2012-ST dated 20.06.2012 & of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 and the Service Tax paid by them.

4.2 Thus, I find that the appellant during the impugned period, had provided works contract service to the RBI & the LIC and had executed the works of maintenance or repair or renovation which are not covered under the definition of "original works" given under the Explanationl(a) of the Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006.

4.3 Regarding the submission of the appellant for the benefit of the partial reverse charge mechanism notified under the Notification No. 30/2012-ST dated 20.06.2012, it is observed that under this notification issued under Section 68(2) of the Act, the taxable services provided by way of service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, were notified for the purposes of partial reverse charge mechanism. Further, as per Sl. No. 9 of the Table in Para II of this notification, the extent of Service Tax payable by the person who provided the service is 50%.

4.3.1 Though the appellant were proprietorship firm, they had not provided works contract service to business entity registered as body corporate, during the impugned period, as the RBI has been established under Section 3 of the Reserve Bank of India Act, 1934 and the LIC has been set up und under Section of the aurance Corporation Act, 1956 and both the RBI & the LIC are not registered as body corporate. Thus, I do not find any merit in this submission of the appellant.

4.4 As regards to the submission of the appellant for the benefit of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006, it is observed that this submission of the appellant has been rejected by the Adjudicating Authority on the ground that one of the work orders submitted by the appellant, showed that it was inclusive of the Service Tax and the appellant did not submit any documentary evidence to show that it included the value of goods. Thus, I find that this submission of the appellant has been rejected, without any verification and on illogical finding that the one of the work orders showed that it was inclusive of the Service Tax (as such finding has no relation whatsoever with the value of service portion in the execution of works contract). Thus, demand of Service Tax has been confirmed, without taking into consideration the settled law that the onus to prove Service Tax liability is on the Department and it is the responsibility of the Department to prove it with contract and other documents as held in the following judicial pronouncements:

i) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of S. Tax, Delhi 2016 (42) S.T.R. 696 (Tri.-Del.);

ii) Coca Cola India Inc. vs. Commissioner of S. Tax Delhi 2016 (42) S.T.R. 42 (Tri. - Del.)

iii) Metro & Metro vs. Commissioner of C.Ex. & S.T., Kanpur 2015 (39) S.T.R. 263 (Tri.-Del.)

iv) Commissioner of S. Tax, Ahmedabad vs. Purni Ads. Pvt. Ltd. 2010 (19) S.T.R. 242 (Tri. - Ahmd.)

v) SN. Uppar & Co us. CCE, Belgaum 2008 (2011) STR. 34 (Tri Bang.). This decision was approved by the Hon'ble Supreme Court as reported in 2016 (45) S.T.R. J215 (S.C.).

4.4.1 Since there is nothing in the Show Cause Notice dated 12.10.2017 as well as in the impugned Order which shows that the appellant had executed works which did not involve supply of goods (i.e., the value of work orders only *reflected the value of service portion in the execution of work orders), 1, thus, find the appellant were eligible for the benefit of the Rule 2A(ii)(B) of the Service Tax (Determination of Value) Rules, 2006 inasmuch as they were required to pay Service Tax on seventy percent of the total amount charged for the work orders (as they had executed the works of repair, maintenance or renovation).*

4.5 As regards to the confirmation of demand of Service Tax after invoking extended period of limitation and the imposition of penalty under Section 78 of the Act, it is observed that the Show Cause Notice dated 20.10.2014 for the earlier period 2009-10 to 2013-14, had already been issued to the appellant and the Adjudicating Authority, without considering this fact and the various judicial pronouncements, has confirmed the demand after invoking extended period of limitation and has imposed penalty under Section 78 of the Act, which requires the presence of ingredients specified under Section 78 of the Act or under the proviso to Section 73(1) of the Act, such as, fraud, collusion, willful mis- statement, suppression of facts or contravention of any of the provisions of the Act of the rules made thereunder with intent to evade payment of Service Tax.

4.5.1 I find that the Hon'ble Supreme Court in the case of Nizam Sugar Factory vs Collector of Central Excise, A.P. 2006 (197) E.LT. 465 (S.C.), held, as under first show cause notice issued Demand Limitation Suppression of facts All relevant facts in knowledge of authorities when While issuing second and third show cause notices same/similar facts could not be taken as suppression of facts on part of assessee as these facts already in knowledge of authorities- No suppression of facts on part of assessee as these facts already in penalty dropped Sections 11A and 11AC of Central Excise Act, 1944.

4.5.2 Similarly, the Hon'ble Supreme Court in the case of Commissioner of Customs va M.M.K. Jewellers 2008 (225) E.LT. 3 (SC), held at Paras 43 to 46, as under

> *43. Reliance has been placed upon P & B Pharmaceuticals (P) Ltd. u. Collector of Central Excise (2003) 3 SC.C. 599 e thus case, the question was whether the extended period of limitation could be invoked where the Department has earlier issued show-cause notices in respect of the same subject matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or misstatement and that, therefore, the extended period under Section 11-A could not be invoked.*
>
> *44. This case was followed in the subsequent judgment of this court in ECE Industries Ltd. Commissioner of Central Excise, New Delhi (2004) 13 S.C.C. 719. In this case, this court again held that as there is no suppression, penalty cannot be imposed.*
>
> *45 This court relied on these judgments in the case of Nizam Sugar Factory v. Collector of Central Excise, A.P. (2006) 11 SCC. 573. In this case, this court again reiterated the legal position and held that when there is no suppression of facts, the department would not be justified in invoking the extended period of limitation.*
>
> *46 In view of the clear legal position crystallized by a series of judgments that in case where the assessees are not guilty of suppression of facts, collusion or willful misstatement of facts, therefore, the extended period of limitation cannot be invoked under proviso to Section 28(1) of the Customs Act, 1962 in the instant appeal and the other connected appeals. Consequently, this appeal and other*

connected appeals filed by the appellant have to be dismissed being time barred

4.5.3 Thus, I find that invocation of extended period of limitation and the imposition of penalty under Section 78 of the Act, in this case, were unjustified, as the activities of the appellant were in the knowledge of Department. Thus, I hold that no penalty under Section 78 of the Act, is imposable and the Adjudicating Authority is required to quantify the amount of Service Tax for the normal period of limitation, under Section 73(2A) of the Act. Further, the amount of Service Tax deposited by the appellant for the normal period of limitation, shall be adjusted subject to verification by the Adjudicating Authority, against the Service Tax liability of the appellant.

4.6 Regarding the penalty of Rs. 10,000/- imposed under Section 77(2) of the Act, I find that the same is justified, as the appellant had contravened various statutory provisions. Further, the payment of late fee as ordered by the Adjudicating Authority, is also justified, as for the offence of not filing/ delay in filing ST-3 returns, payment of late fee is mandatorily required in terms of Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Act."

4.3 From the impugned order, I find that the Appellate Authority has clearly remanded the matter for re-quantification of demand for the normal period and also has extended the benefit of Rule 2A (ii) (B) of the Service Tax (Determination of Value) Rules, 2006 inasmuch as they were required to pay service tax on seventy percent of the total amount charged for the work orders. The impugned order clearly records that show cause notice or the order in original have failed to show that the work orders against which the appellant had provided the services were without the supply of goods. Thus in terms of decision of the Hon'ble Supreme Court in case of L & T [2015 (39) S.T.R. 913 (S.C.)] observing as follows, all the services provided under these work orders qualified as "Work Contract Services."

"24. *A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.*

25. *In fact, by way of contrast, Section 67 post amendment (by the Finance Act, 2006) for the first time prescribes, in cases like the present, where the provision of service is for a consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner.*

26. *We have already seen that Rule 2(A) framed pursuant to this power has followed the second Gannon Dunkerley case in segregating the 'service' component of a works contract from the 'goods' component. It begins by* *working downwards from the gross amount charged for the entire works contract and minusing from it the value of the property in goods transferred in the execution of such works contract. This is done by adopting the value that is adopted for the purpose of payment of VAT. The rule goes on to say that the service component of the works contract is to include the eight elements laid down in the second Gannon Dunkerley case including apportionment of the cost of establishment, other expenses and profit earned by the service provider as is relatable only to supply of labour and services. And, where value is not determined having regard to the aforesaid parameters, (namely, in those cases where the books of account of the contractor are not looked into for any reason) by determining in different works contracts how much shall be the percentage of the total amount charged for the works contract, attributable to the service element in such contracts. It is this scheme and this scheme alone which complies with constitutional requirements in that it bifurcates a composite indivisible works contract and takes care to see that no element attributable to the property in goods transferred pursuant to such contract, enters into computation of service tax."*

4.4 Appellant have filed this appeal only for claiming the benefit of exemption Notification No.30/2012-ST dated 20.06.2012 as per which in case of work contract service, appellant was liable to pay service tax of 50% of total tax due. It is the claim of appellant that service recipient has in fact deducted 50% of total tax due and deposited. They have also claimed that the RBI and LIC should be treated as government organization for extending benefit of Sl. No.12A and Notification No.30/2012-ST dated 20.06.2012.

4.5 I find that the organizations to be services provided do qualify as a company under Section 3 of Companies Act, for which they claimed that the benefit of Notification No.30/2012-

ST should be allowed to them. Further I find Section 3 of Reserve Bank of India Act, 1934 provides as follows:

> ***3. Establishment and incorporation of Reserve Bank.—***
>
> *(1) A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the [2][Central Government] and of carrying on the business of banking in accordance with the provisions of this Act.*
>
> *(2)* ***The Bank shall be a body corporate by the name of the Reserve Bank of India****, having perpetual succession and a common seal, and shall by the said name sue and be sued.*

4.6 I also find that Section 3 of The Life Insurance Corporation Act, 1956 reads as follows:

> ***"3. Establishment and incorporation of Life Insurance Corporation of India.—***
>
> *(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India.*
>
> *(2)* ***The Corporation shall be a body corporate having perpetual succession*** *and a common seal with power subject to the provisions of this Act, to acquire, hold and dispose of property, and may by its name sue and be sued."*

4.7 I find force in the submissions made by the appellant, these organizations are corporate bodies and in terms of Notification No.30/2012-ST in respect of work contract services, the tax liability on the services provided is limited to 50%, to this extent the impugned order needs to be modified. Explaining the concept of partial reverse mechanism Education Guide 2012 clarifies as follows:-

"10.1 Partial Reverse Charge

With effect from 1.7.2012 a new scheme of taxation is being brought into effect whereby the liability of payment of service tax shall be both on the service provider and the service recipient. Usually such liability is affixed either on the service provider or the service recipient, but in specified services and in specified conditions, such liability shall be on both the service provider and the service recipient. The enabling provision has been provided by insertion of proviso to section 68 in the Finance Act, 2012 as per which Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of Chapter V shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. Under this clause the Central government has issued notification no. 30/ 2012 dated 20.6.2012 notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification. The manner of operation of the reverse charge mechanism has been explained in this point.

10.1.1 What are the services on which such partial reverse change mechanism shall be applicable?

In terms of serial nos. 7(b), 8 and 9 of the table in notification no. 30/2012 dated 20.6.12, the new partial reverse charge mechanism is applicable to services provided or agreed to be provided by way of

(a) ….., or

(b) ….., or

(c) ***service portion in execution of a works contract;***

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate located in the taxable territory. Thus the nature of the service and the status of both the service provider and service receiver are important to determine the applicability of partial reverse charge provisions."

4.6 I do not find any merits in the submissions made by the appellant vis-à-vis exemption Notification No.25/2012, as I find that both the service recipients are Corporate Entity as per the acts constituting them, and hence will not qualify as Government Authority.

4.7 Appeal is partially allowed to the extent that benefit of Notification No.30/2012-ST should be allowed to the appellant in the remand proceedings as per the impugned order.

5.1 Appeal is partially allowed to the extent indicated in para 4.7 above.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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