CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70672 of 2024

(Arising out of Order-In-Appeal No.NOI-EXCUS-002-APP-301-23-24, dated - 04/10/2023 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s DKS Infratech India Pvt. Ltd. **.....Appellant**
(875 Main GT Road Near Chapraula Police Chowki
Gautam Budh Nagar, Uttar Pradesh 201009)

VERSUS

Commissioner, CGST, Noida **....Respondent**
(GST Bhawan, IRCON Building, Plot No.-C-232, A/2-A/3,
Sector-48, Gautam Budh Nagar, Noida-201301)

APPEARANCE:

Shri Rajesh Chibber, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70636/2025

DATE OF HEARING : 29.08.2025
DATE OF DECISION : 10.09.2025

P. K. CHOUDHARY:

The present appeal is arising out of impugned Order-In-Appeal No.NOI-EXCUS-002-APP-301-23-24, dated - 04/10/2023 passed by Commissioner (Appeals) CGST & Central Excise, Noida

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

3. The only dispute before me is regarding confirmation of demand of Rs.3,53,041/- for the Financial Year 2016-17 in respect of construction of Police Chowki at four locations in Sector -63, 63A Noida.

	NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY			
SR. NO.	NATURE OF DOCUMENT	DOCUMENT NO. & DATE	DESCRIPTION OF WORK DONE	AMOUNT IN INR
1	Contract Bond	89/C.E.(C)/PE-(W.C.-4)/2016-17 dated 17.06.2016	Construction of Police Choki at four location in Sector-63, 63A Noida	1,09,86,740/-
		TOTAL		1,09,86,740/-

4. In the impugned order, the learned Commissioner (Appeals) has observed that the services are covered by Entry No.12A of the Notification No.25/2012-ST. However, the same is not liable to exemption from payment of service tax as the contract was awarded after 01.03.2015. The relevant paras are reproduced as under:-

> *"18. I find that the services are covered vide entry No. 12A of the Notification No.25/2012-ST, however, the same is not liable to exemption from payment of service tax as the contract was awarded after 1st March 2015 as is evident from copy of Contract Bond furnished by the appellant. Accordingly, the services so provided under the subject contract do not qualify the tests of conditions laid down under entry No. 12A of the Notification No.25/2012-ST. The taxable value of such supply of services will be Rs.26,36,042/- i.e., 40% of the gross amount charged (Rs. 65,90,105/-) in accordance with the Notification No. 30/2012 dated 20.06.2012, as amended by the Notification No. 07/2015 dated 01.03.2015. The appellant is liable to pay service tax @ 15% which comes to Rs.3,95,406/- under section 73(1) of the Act along with applicable interest u/s 75 of the Act and equal amount of penalty under section 78 of the Act."*

5. It is the submission of the Appellant that they were filing their Service Tax Returns regularly and being a Private Limited Company, their accounts are subject to audit and their details are available both on the portal of Ministry of Corporate Affairs and Income Tax Department.

6. In fact the entire proceedings were initiated on the basis of data received from the Income Tax Department under third party data exchange policy. Further, it is also the submission of the Appellant Company that since they were providing services of civil construction, they were under the *bona fide* belief that they are not liable to pay any Service Tax in consideration received from the various Government Departments and local authorities since all these constructions were of use by the general public. It is also submitted that the demand is barred by limitation since the Show Cause Notice[1] was issued only on 20.10.2021 and the period of limitation expired on 25.10.2019. On going through the submissions made by the learned Advocate and on perusal of the appeal records, I do not find any ingredient of willful misstatement or fraud or collusion or suppression of facts with an intent to evade payment of Service Tax. The Appellant-Company was under a *bona fide* belief that since they are providing services to the Government Department and /or local authority, they are not liable to pay Service Tax. In fact the SCN dated 20.10.2021, was issued proposing to demand Service Tax of Rs.61,56,391/- and subsequently the Adjudicating Authority after considering the submissions of the Assessee, dropped the demand of Service Tax amounting to Rs.51,03,949/- and confirmed the demand of Rs.10,52,949/-. Subsequently, the learned Commissioner (Appeals) vide impugned Order-In-Appeal further modified the demand and reduced it to Rs.3,53,041/- which is only in respect of construction of Police Chowki at four locations in Sector -63, 63A Noida.

7. I find that Revenue has raised the demand on the basis of Form 26AS statement. I note that Revenue cannot raise the demand on the basis of Form 26AS statement only without establishing that the entire amount as reflected in Form 26As being consideration for the services provided and without further examining whether any exemption or abatement was available

[1] SCN

to the Assessee. I further find that the Appellant-Assessee is a Private Limited Company and their accounts are subject to audit and they are filing the statutory returns both with the Ministry of Corporate Affairs and Income Tax Department. Further, the construction undertaken by the Appellant-Assessee was in respect of construction of Police Chowki at four locations in Noida. The demand is barred by limitation since the SCN was issued only on 20.10.2021 and the period of limitation expired on 25.10.2019.

8. In view of the above discussion, the demand of Rs.3,53,041/- is set aside being barred by limitation. Consequently the demand of interest and penalty imposed is also set aside. Appeal filed by the Appellant is allowed with consequential relief as per law.

(Pronounced in open court on 10.09.2025)

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

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