CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70724 of 2024

(Arising out of Order-in-Appeal No.1347/ST/Alld/2023 dated 10/10/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad)

M/s Alok Construction Company, ...Appellant

(24, Station Road, Head Post Office,
Sadar, Ghazipur-233001)

VERSUS

Commissioner of Central Excise &

Service Tax, Allahabad ....Respondent

(38, M.G. Marg, Civil Lines, Allahabad)

APPEARANCE:

Shri Suyash Agarwal, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70637/2025

DATE OF HEARING : 03 September, 2025
DATE OF DECISION : 03 September, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.1347/ST/Alld/2023 dated 10/10/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad. By the impugned order following has been held:-

> *"5. In view of the above, I modify the impugned Order as under:*
>
> *(i) Confirmation of demand of Service Tax (including Cesses) is reduced to Rs. Rs.7,16,176/ under proviso to Section 73 (2) of the Act along with interest under Section 75 of the Act.*
>
> *(ii) Penalty imposed upon the appellant, under Section 78 of the Act, is reduced to Rs.7,16,176/-.*

(iii) The penalty imposed under Section 77(1)(c)(i) & 77(1)(c)(ii), 77(1)(c)(iii) and 77(2) of the Act shall remain unchanged."

2.1 Information was received from the Income Tax Authorities that appellant having Pan No.AAOFM8742K is engaged in providing services and received the amount from service recipients during the Financial Year 2016-17.

2.2 Appellant had rendered services without getting registration with the Service Tax Department and without payment of any service tax in respect of the services so provided against which they have received huge consideration.

2.3 Investigation/inquiry was initiated against the appellant to ascertain the proper service tax liability and appellant was requested to provide documents vide letter dated 01.07.2021 and 14.09.2021. Thereafter summons was issued on 24.09.2021 asking the appellant to appear along with the documents and they did not appear nor rendered the documents.

2.4 On the basis of information received, it was observed that appellant had evaded payment of service tax as indicated in table below:-

	Amount in Rs
Financial year	2016-17
Gross amount received as sale of service as per ITR	18285783
Service Tax Payable @ 15%	2742867.45
Service Tax Paid	0
Service Tax Short Paid	2742867.45

2.5 Show cause notice dated 17.10.2021 was issued to the appellant asking them to show cause as to why-

(i) Service Tax (including applicable cesses) amounting to Rs. 2742867.45/- (Rupees Twenty Seven Lakh Forty Two Thousand Eight Hundred Sixty Seven Paise Forty Five Only) not paid during the said period should not be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 along with applicable interest under Section 75 of the said Act ibid.

(ii) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 as amended for suppression of facts with intent to evade the payment of Service Tax.

(iii) Penalty should not be imposed upon them under Section 77(1)(a) of the Act ibid for contravention of Section 69 of the Act read with the provisions of Rule 4 of the Rules ibid.

(iv) Penalty should not be imposed upon them under Section 77(1)(c)(i) and Section 77(1)(c)(ii) of Chapter V of the Finance Act, 1994 for not furnishing information and not producing documents.

(v) Penalty should not be imposed upon them under the provisions of Section 77(1)(c)(iii) of the Act ibid for non-compliance of Summons.

(vi) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for violation of Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 by not filing the ST-3 Returns to the department."

2.6 Reply of the appellant was received to Adjudicating Authority on 24.11.2021. Appellant did not attended the personal hearings fixed on 06.12.2022, 13.12.2022 & 20.12.2022. On the basis of submissions made in their written reply, the said show cause notice was adjudicated as per the Order-in-Original No.325/ST/DIV/AZH/2022-23 dated 29.12.2022 wherein following has been held:-

"ORDER

(i) I, confirm the demand of Service Tax amounting to Rs. 777804/- (Rupees Seven Lakh Seventy Seven Thousand Eight Hundred Four Only) (including applicable cesses) against M/s ALOK CONSTRUCTION COMPANY, 24/STATION ROAD/HEAD POST OFFICE/SADAR., GHAZIPUR-233001, (U.P) and order for recovery of the same under the provisions of proviso to Sub-Section (1) of Section 73 read with Section 73 (2) of Chapter V of the Finance Act, 1994 along with interest af appropriate rate under Section 75 of the Act

(ii) I also impose a penalty of Rs. 10000/- (Rupees Ten Thousand only) under the provisions of Section 77(1) (c)(i)

& 77(1)(c)(i) of the Finance Act 1994 for non- submission of records

(iii) I also impose a penalty of Rs. 10000/- (Rupees Ten Thousand only) upon them under the provisions of Section 77(1) (c) (iii) of the Act ibid for non-compliance of summons

(iv) I also impose a penalty of Rs. 10000/- (Rupees Ten Thousand only) under the provisions of Section 77(2) of the Finance Act, 1994, for contravention of Section 70 read with Rule 7 of the Service Tax Rules 1994

(v) *I also impose a penalty of Rs. 777804/- (Rupees Seven Lakh Seventy Seven Thousand Eight Hundred Four Only) upon them under the provisions of Section 78 of the Finance Act, 1994 for suppression of facts with intent to evade payment of service tax provided that if the service tax as confirmed and interest at applicable rate is paid within a period of 30 days of the date of receipt of this order penalty payable shall be twenty five percent of the service tax as confirmed. The benefit of reduced penalty shall be available only if the amount of penalty so determined is also paid within the period of 30 days of receipt of this order."*

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Suyash Agarwal learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing 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:-

"4.4 It is observed that the main issue involved in the case is to ascertain whether the appellant has received payments of Rs.51,85,359/- from Dy. Director(Construction), Mandi Parishad, Jaunpur during the period 2016-17 on account of providing exempted nature of services or not?

4.5 In order to ascertain the nature of services and tax liability in respect of receipt of Rs.51,85,359/- from Dy. Director(Construction), Mandi Parishad, Jaunpur, the documents related to the services provided by the appellant to them are required to be examined. The appellant had provided work contracts of PWD only and did not provide any document of Rajya Krishi Utpadan Mandi Parishad, Jaunpur to the adjudicating authority. Here at this stage, the appellant had provided some copies of Contract Bonds/Work orders of Rajya Krishi Utpadan Mandi Parishad, Jaunpur, Form 26AS of FY 2016-17, Copy ITR & P&L A/c for the FY 2016-17, payment certificate pertaining to period 2016-17 of Rajya Krishi Utpadan Mandi Parishad, Jaunpur.

4.6 On going through the Form 26AS, it is observed that the appellant has received Rs.51,85,359/- from Dy. Director(Construction), Mandi Parishad, Jaunpur during the period 2016-17. Further on going through the work contracts i.r.o Mandi Parishad, Jaunpur, it is seen that they have provided the four work contracts No.116 DDC dated 08.02.2013, 264 dated 20.12.2013, 265 DDC dated 20.12.2013, 263 dated 19.12.2013 totally amounting to Rs.1,87,84,171/-. It is observed that all these work contracts pertains to construction of CC road and drain and the same is exempted in terms of S. No.13 of Notification No.25/2012-ST dated 20.06.2012 which provides as under:

**S. No.13. Services provided by way of construchon, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public,"

4.7 In order to ascertain the tax liability, it has to ascertained whether the payments received from Rajya Krishi Utpadan Mandi Parishad, Jaunpur during 2016-17 pertains to these exempted nature or works. In order to ascertain the payments reconciliation of the payments *received against different work contracts, an email dated 20.06.2023 was sent to them. In response of the same the appellant has provided a reconciliation chart which provides payments received against these work orders as under:*

S. No.	*Service Recipient*	*Work order No./date*	*Payment received during 2016-17*
1.	*Dy. Director KUMS, Jaunpur*	*116 DDC*	*30720*
2.	*Dy. Director KUMS, Jaunpur*	*116 DDC*	*46840*
3.	*Dy. Director KUMS, Jaunpur*	*116 DDC*	*39032*
4.	*Dy. Director KUMS, Jaunpur*	*264 DDC*	*32852*
5.	*Dy. Director KUMS, Jaunpur*	*265 DDC*	*122053*
6.	*Dy. Director KUMS, Jaunpur*	*263 DDC*	*139350*
		Total	***410847***

4.8 It is seen that appellant has received Rs.4,10,847/ only against these work of Rs.51,85,359/- from Dy.. contracts out of the total receipts Director Construction), Mandi Parishad, Jaunpur during the period 2016-17. It is observed that the appellant has received Rs.4,10,847/- only against the exempted nature of work contracts and they could not provide any documentary evidence to substantiate its claim to show that remaining amount Rs.47,74,512/- received by them as per Form 26AS pertains to exempted nature of works in terms of S. No. 13 of Notification No.25/2012-ST dated 20.06.2012.

4.9 In view of the above, the balance amount of Rs.47,74,512/- received from KUMS, Jaunpur under section 194C being contractual receipt is on account services under Section 65B(44) of the Act and therefore S. Tax amounting to Rs.7,16,176/-(@15%) involved in the balance payment of Rs.47,74,512/ is liable for payment by the appellant for the period 2016-17. Since the appellant has not discharged their liabilities of service tax within the due time as per the Act, they are also liable for payment of interest under Section 75 of the Act alongwith service tax.

4.10 It is observed that under the self-assessment procedure specified in the statute, appellant was required to assess & pay their Service Tax liability correctly, on their own. The appellant has suppressed the receipt of payment for taxable services by not obtaining the service

> *tax registration and furnishing the amount in their statutory returns. The non-payment of service tax could be detected only during the course of enquiry conducted by the Department. Thus, it is a clear case of suppression of facts and contravention of the statutory provisions, with intent to evade payment of Service Tax. Thus, I find that extended period of limitation has been rightly invoked in this case under proviso to Section 73(1) of the Act and penalty under Section 78 of the Act.*
>
> *4.11 I further hold that contravention of non-submission of records/documents, non-compliance of summons and non-furnishing of statutory ST-3 return during the impugned period is apparent as per details/documents available and therefore, penalties under Section 77(1)(c)(i) & 77(1)(c)(ii), 77(1)(c)(iii) and 77(2) of the Act have been rightly imposed in the impugned order."*

4.3 From the facts as stated above, it is observed that appellant had been repeatedly being asked to provide documents in respect of work orders on the services provided. Appellant had before Commissioner (Appeals) produced certain documents and the benefit of exemption in terms of Sl.No.13 of Notification No.25/2012-ST dated 20.06.2012 has been extended to the appellant and against the receipts for which no work order was produced, benefit of said exemption has been denied.

4.4 It is also observed that appellant has failed to produce these work orders in respect of the remaining receipts against which demands has been confirmed even at the time of filing of this appeal or today when the appeal was heard. In absence of any work orders, I do not find any merits in the claim of the appellant that the services provided by them are exempted in terms of Sl.No.13 of Notification No.25/2012-ST dated 20.06.2012.

4.5 Hon'ble Supreme Court in the case of Dilip Kumar & Company [2018 (361) ELT 577 (SC)] has observed as follows:

> ***"52.*** *To sum up, we answer the reference holding as under -*

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

4.6 I also find that appellant during the relevant period was not registered with the department and was not filing any service tax return neither have produced any documents in relation to services provided even when called far, as indicated above in para-2.3 and also did not appear on being summon in terms of Section 14 of Central Excise Act read with Section 83 of Finance Act, 1994. Appellant has willfully suppressed the relevant facts with intend to evade payment of tax. Impugned order discussed with regards to invocation of extended period and penalties imposed under para-4.10 & 4.11, I do not find any reason to differ with the said findings of the First Appellate Authority.

4.7 Accordingly, appeal lacks merit.

5.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Akp