

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

E-Hearing
REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70344 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-292-24-25 dated 18.12.2024 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Vijay Kumar Bhalla & Co.,

.....Appellant

(A-46, 1st Floor, Sector-67, Noida, U.P.)

VERSUS

**Commissioner of Central Excise &
CGST, Noida**

....Respondent

(Commissionerate, Noida)

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70645/2025

DATE OF HEARING : 11.09.2025
DATE OF DECISION : 11.09.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-001-APP-292-24-25 dated 18.12.2024 passed by Commissioner (Appeals) CGST & Central Excise, Noida.

2. The facts of the case in brief are that the Appellant M/s Vijay Kumar Bhalla & Co., is a partnership firm of Chartered Accountants and they are registered with the Service Tax Department. On the basis of third party information received from the Income Tax Department, it was observed that for the financial year 2015-16, the assessee had shown gross receipts of Rs.31,60,549/- in their ST-3 Returns, whereas the gross receipts shown in their ITR is Rs.39,09,800/-. Show Cause Notice¹ dated 30.03.2021 was issued to the assessee to explain the reasons

¹ SCN

for the difference. It also proposed to demand Service Tax amounting to Rs.1,08,641/- on the differential value alongwith applicable interest and to impose penalties under various Sections. The Adjudicating Authority vide the Order-in-Original dated 22.03.2024 confirmed the demand as proposed in the SCN under Section 73(1) of the Finance Act, 1994 read with Section 142, 173 and Section 174 of the CGST Act, 2017 and imposed penalty of equal amount under Section 78 of Finance Act, 1994 read with Section 174 of CGST Act, 2017 and also imposed penalty of Rs.10,000/- under Section 77 Finance Act, 1994 read with Section 174 of CGST Act, 2017. On appeal before the first Appellate Authority, the learned Commissioner (Appeals) Noida reduced the demand of service tax from Rs.1,08,641/- to Rs.85,659/-. The penalty under Section 78 was also reduced to Rs.85,659/- and penalty of Rs.10,000/- imposed under Section 77 is upheld. Being aggrieved, the Appellant is in appeal before the Tribunal.

3. The learned Chartered Accountant appearing on behalf of the Appellant submits that the Appellant firm is a Chartered Accountant firm and they have been regularly filing their ST-3 returns. It is his submission that the demand of Rs.5,74,751/- + Rs.16,000/-, totaling to Rs.5,90,751/- has been confirmed and the demand of service tax of Rs.22,982/- has been dropped. Regarding Rs.16,000/-, it is his submission that the services were provided to educational institutions and they are no more contesting this demand on merits. Regarding demand of Rs.5,74,571/- , it is his submission that service tax on the same was paid in June, 2016 on receipt of the payment. He further submitted that as per Rule 6(1)(ii) of the Service Tax Rules, 1994, the Appellant had an option of payment of service tax on receipt basis provided the turnover in the previous year i.e. financial year 2014-15 was less than Rs.50 lakhs. He further showed their financial year statements and Profit and Loss account of financial year 2014-15 which shows total receipts of Rs.24,38,792/-. He further submitted that the entire demand is barred by limitation since the SCN was issued only on

30.03.2021 whereas the period of limitation expired on 25.09.2018. I find that there is no dispute that the Appellant have been regularly 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.

4. 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 assesseees 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:

*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."

5. 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.”

6. 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.85,659/- could not have been raised by invoking extended period of limitation. As the demand itself is being set aside, penalties under Section 78 as well as Section 77 are also set aside.

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

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS