

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70411 of 2024

(Arising out of Order-in-Appeal No.51-ST/APPL/LKO/2024 dated 29.01.2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Momin Husain,

(391/8-Kha, Chote Sahb Alam Road,
Saadatganj, Luckno-226003)

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Lucknow**

(7A, Ashok Marg, Lucknow)

....Respondent

APPEARANCE:

Shri Dushyant Kumar, Consultant for the Appellant

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

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

FINAL ORDER NO.- 70659/2025

DATE OF HEARING : 24.06.2025
DATE OF PRONOUNCEMENT : 16.09.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.51-ST/APPL/LKO/2024 dated 29.01.2024 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow whereby the Commissioner has confirmed the demand of Service Tax Rs.3,63,648/- under Section 73(1) of the Finance Act, 1994, alongwith equal penalty under Section 78 of the Finance Act, 1994.

2. The facts of the case in brief are that the Appellant is engaged in 'Embroidery Work' of fabrics which has been provided to the customers as per the demand made by the customers and also on Job Work basis.

3. The Revenue has demanded Service Tax on the basis of income shown in the ITR for the year 2015-16. The demand was subsequently confirmed by the Adjudicating Authority who also imposed penalties under Section 77 and 78 of the Act. The Appellant challenged the said order of the Adjudicating Authority before the Commissioner (Appeals), who confirmed the demand but waived penalty under Section 77 of the Act.

4. The Ld. Counsel for the Appellant has submitted that the impugned order and Order-in-Appeal have been passed without properly appreciating the facts and the relevant provisions of law and their findings are based on assumption and conjecture. The Ld. Counsel also submitted that the activity of Embroidery Work is out of ambit of Service Tax net as the embroidery work amounts to manufacture and is duly covered under Chapter Heading No.5810 of Central Excise Tariff Act¹ and manufacturing activity is covered under the Negative List i.e. Clause (f) of Section 66D of the Finance Act, 1994.

5. The Ld. Counsel vehemently argued on the following issues raised by the Commissioner (Appeals) in the Impugned Order:-

- (a) That the Ld. Commissioner (Appeals) has also observed that no documentary evidence has been brought on record to establish that appropriate excise duty has been paid on which the Appellant claims to have performed the job work and entitled for exemption under Negative List. The Counsel has submitted that SSI exemption was available to small unit under Notification No.08/2003 dated 01.03.2003, under which they were not required to pay excise duty upto the turnover of Rs.1.5 Crores. The turnover of Appellant during the period 2014-15 to 2015-16 is only Rs.43.20 lakhs which is far below the exemption limit. Hence, there was no requirement for any excise compliance.

¹ CETA

- (b) That the Ld. Commissioner has entertained doubt without making any inquiry and without verifying the facts. He has simply observed that the Appellant, Momin Husain and M/s Chand Art (name under which bills are issued) are not one and the same person as address of the both indicate some difference in address. The consultant clarified that Momin Husain is proprietor of M/s Chand Art, Lucknow and that there is a minor difference in writing the address of the firm's name 'Chand Art' which has been followed from the days of his forefathers and has not been changed/amended.
- (c) He also submitted that the Appellant was not registered with the service tax Department under the *bona fide* belief that he is not liable to pay service tax as his activities were manufacturing activities and covered under Central Excise Tariff Act.

6. The learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

8. I now proceed to take up the issues raised by the Appellant. I find that the Commissioner (Appeals) has apprehended that the addresses of the Appellant (Momin Husain) and his firm (M/s Chand Art Lucknow) are different and hence they are not one and the same person. I find that the address of both Momin Husain and M/s Chand Art as shown in the bills and ITR etc., bear the same house number and same area (Mohalla) of Lucknow but indicate a different name of connecting lane i.e. Chhote Sahb Alam Road, and Noor Bari as under:-

- (a) Mr. Momin Husain, 391/8-Kha, Chote Sahb Alam Road, Saadatganj, Lucknow.
- (b) M/s Chand Art, 391/8-Kha/1, Noor Bari, Saadatganj, Lucknow.

9. In this connection the Balance Sheet, Ledger Account and ITR indicate address as under:-

- (i) Balance Sheet – Chand Art, Proprietor Mr. Momin Husain, 391/8-Kha, Chote Sahab Alam Road, Saadatganj, Lucknow.
- (ii) Ledger Account – Chand Art, Proprietor Mr. Momin Husain, 391/8-Kha, Chote Sahab Alam Road, Saadatganj, Lucknow.
- (iii) ITR – Momin Husain, 391/8-Kha, Chote Sahb Alam Road, Saadatganj, Lucknow.

10. Hence, I find both Mr. Momin Husain and M/s Chand Art are one and the same person and there is no scope to doubt that the Appellant Momin Husain is different than that of Momin Husain of M/s Chand Art. Mr. Momin Husain is also Proprietor of M/s Chand Art, hence the minor difference in individual's address and firm's address need not be confused with.

11. I further find that the Ld. Commissioner (Appeals) has also observed that no documentary evidence has been brought on record to establish that appropriate excise duty has been paid on the goods on which the Appellant claims to have performed job work and hence benefit of clause (f) of Section 66D of the Negative list of Finance Act would not be available.

12. I find that activity of embroidery carried out by the Appellant has been held to be manufacturing activity by CBIC vide letter dated 15.07.2011. The said letter clarifies that embroidery work done on job work basis amounts to manufacture and does not fall within the purview of the then 'Business Auxiliary Service'. The Central Board of Excise and Customs have clarified vide Letter Dy. No.2305/COMMR(ST)/2011 dated 15.07.2011 that:-

"Embroidery work is a manufacturing activity falling under Chapter heading 5810 of the Central Excise Tariff Act. Once the activity is a

manufacturing activity of goods specified under Central Excise Tariff Act, the said activity is not covered in the purview of BAS. When the activity is not a taxable service, the provisions of Notification No.8/2005-S.T., dated 1-3-2005 cannot be applied. The said notification can be applicable only in cases where the activity of the service provider does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944)".

13. I also find that the process of carrying out embroidery on plain cloth/fabric amounts to manufacture i.e. the distinctly new commercial product comes into existence and this work is duly covered under Chapter Heading 1810 of CETA.

Chapter Heading	Description of Goods	Rate of CE Duty
5810	Embroidery in the piece, in strips or in motifs	12%
5810 10 00	– Embroidery without visible ground	12%
5810 91 00	- Other embroidery	12%
5810 92	--Of cotton	12%
5810 1092 10	-- Of man-made fibers:	
5810 92 90	-Embroidered badges, motifs and the like	
5810 99 00	-other....	
	Of other textile material	

Once the activity is clearly discernible as manufacturing activity of goods as specified under CETA, the said activity would go out of the purview of service tax. I also find that the Appellant has issued bills for his embroidery work to miscellaneous customers mentioning work of embroidery therein.

14. In view of the above, it is my considered view that the demand of Service Tax cannot be sustained and is set aside. The penalty imposed under Section 78 is also set aside. The appeal

filed by the Appellant is allowed with consequential relief, if any,
as per law.

(Order pronounced in open court on - **16.09.2025**)

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

LKS