CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70721 of 2024

(Arising out of Order-in-Appeal No.1153/ST/ALLD/2023 dated 17.07.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s A. K. Construction, **.....Appellant**
(Mungardih, Mungra Badshahpur,
Jaunpur-222202)

VERSUS

Commissioner of Central Excise &
CGST, Allahabad **....Respondent**
(38, M.G. Marg, Civil Lines, Allahabad-211001)

APPEARANCE:

Shri Vinod Kumar Upadhyay, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70670/2025

DATE OF HEARING : 16.07.2025
DATE OF PRONOUNCEMENT : 22.09.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.1153/ST/ALLD/2023 dated 17.07.2023 passed by the Commissioner (Appeals) CGST & Central Excise, Allahabad, whereby he reduced the demand of Service Tax from Rs.6,73,460/- to Rs.83,098/-.

2. Briefly stated, the facts of the case that the Appellant is engaged in providing services for Road Construction to the Uttar Pradesh Public Works Department[1]. On the basis of information for the financial year 2016-17 received from the Income Tax Department under third party data sharing, Show Cause Notice[2] dated 18.10.2021 was issued invoking extended period stating therein that the amount shown in the financial documents

[1] UPPWD
[2] SCN

"26AS" appeared to be receipts of Rs.44,89,734/- against providing taxable services covered under Finance Act, 1994. It is also mentioned in the SCN that the Appellant should have taken registration under Section 69 of the Finance Act, 1994 and Service Tax of Rs.6,73,460/- should have been paid by them as per the provisions of Section 68 of the Finance Act, 1994 and accordingly, they should have filed ST-3 Returns as laid down under the provisions of Section 70 of the Act, ibid. Vide the Order-in-Original dated 23.03.2023, the demand of Service Tax to the tune of Rs.6,73,460/- was confirmed alongwith applicable interest and penalties were imposed under Section 78, under Sections 77(1)(a), 77(2) and 77(1)(c) of the Finance Act, 1994. On appeal, the learned Commissioner (Appeals) modified the demand to Rs.83,098/-. Aggrieved with the impugned order to the extent of demand of Service Tax confirmed and penalties under Sections 78, 77(1)(a), 77(2) and 77(1)(c) of the Finance Act, 1994 imposed, the Appellant has filed the present appeal.

3. Learned Counsel for the Appellant has submitted that during the financial year 2016-17, the Appellant carried out construction work of road for the UPPWD by way of supplying Gitty and Tarkol and this service is covered under the Negative List of service tax vide Notification No.25/2012-ST dated 20.06.2012. The learned Commissioner (Appeals) in the impugned Order-in-Appeal has observed as under:-

> *"4.3 It is observed that the appellant has filed the appeal on the ground that they were engaged in construction of road which is exempted from service tax under Notification No.25/2012-ST dated 20.06.2012, however, the adjudicating authority has confirmed the demand of service tax without relevant considerations.*
>
> *4.4 It is further observed that the adjudicating authority has found that appellant has received Rs.44,89,734/- during the financial year 2016-17 and has declared the same as sale of service in the ITR filed by them for the period 2016-17. However, the appellant has not provided the requisite documents during the adjudication proceedings and therefore in absence of complete documentary evidence, the adjudicating authority could not determine the exact nature of services provided by the appellant and consequently confirmed the demand of*

service tax of Rs.6,73,460/- on consideration of Rs.44,89,734/- during the financial year 2016-17.

4.5 I find that here at the appellant stage the appellant has submitted copies of the contract bonds amounting to Rs.37,78,192/- issued to them for construction of roads. The details of these contract bonds are as under:-

Sr. No.	**Name of the Service Receiver**	**Contract Bond No. & Date**	**Bond Amount**	**Nature of Work**
1.	*Executive Engineer, CD, PWD, Jaunpur*	*102/EE/16-17 dated 02.12.2016*	*13,01,660.00*	*Construction of Road*
2.	*Executive Engineer, CD, PWD, Jaunpur*	*99/EE/16-17 dated 02.12.2016*	*24,76,532.00*	*Construction of Road*
Total			***37,78,192.00***	

4.6 It is further observed that the appellant has provided copies of Form 26 AS for the financial year 2016-17 which reflects that appellant has received total Rs.39,35,745/- during the period 2016-17 from Construction Division & provincial Division – PWD Jaunpur which appears to be against the contract bond allotted to them during the period 2016-17 for Rs.37,78,192/-.

4.7 The details of amount received by the appellant vis-à-vis Form 26AS submitted by the appellant are as under:-

Sr. No.	**Name of the Service Receiver**	**Contract No.**	**Payment received in the financial year as per 26AS statement:**
			FY 2016-17
1.	*Executive Engineer, CD, PWD, Jaunpur*	*102/EE/16-17 dated 02.12.2016*	*39,35,745.00*
2.	*Executive Engineer, CD, PWD, Jaunpur*	*99/EE/16-17 dated 02.12.2016*	
Total		***Payment As per 26AS***	***39,35,745.00***

4.8 On perusal of the Form 26 AS, it is evident that all the payments to the appellant have been received from Public Works Department of Uttar Pradesh Government and are *also directly co-relatable to the Contract Bonds listed in para 4.5.*

4.9 On perusal of the copy of contract bonds, it is observed that these contracts have been awarded to the appellant from Government Departments of Uttar Pradesh ***for construction road*** *which are covered under Sl. No.13 (a) of the exemption Notification No.25/2012-ST dated 20.06.2012 and the payment against these contract bonds have been received to the appellant during the period 2016-17 which is clearly evident from the form 26AS submitted by the appellant. Thus, it is found that the amount of Rs.39,35,745/- received by the appellant from Public Works Department actually pertains to exempted category of work under Sl. No.13 (a) of Notification No.25/2012-ST dated 20.06.2012 and hence no service tax is leviable on receipt of Rs.39,35,745/-.*

4.10 It is further observed that the appellant has received Rs.44,89,734/- during the period 2016-17 however, they have produced documents for Rs.39,35,745/- only at this stage and for remaining amount of Rs.5,53,989/- (Rs.44,89,734/- - Rs.39,35,745/-) the appellant has failed to adduce any documentary evidence to show that this amount also pertains to non taxable services, hence in absence of any documentary evidences at this stage, the same cannot be construed to be non taxable amount.

4.11 Further, the statutory provisions of the Act relevant to this case, w.e.f 01.07.2012 are, as under:

Section 65B(44): "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(51) "taxable service" means any service on which service tax is leviable under section 66B;

Section66B: There shall be levied a tax (hereinafter referred to as the service tax) at the specified rate on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

In view of the above, w.e.f 01.07.2012 all 'services' including declared services under Section 66E of the Act *but excluding those specified in negative list under section 66D of the Act, are leviable to service tax unless exempted by a Notification issued under the Act.*

4.12 Thus, the appellant is liable for service tax of Rs.83,098/- under Section 73(1) of the Act along with the interest under Section 75 of the Act on consideration of Rs.5,53,989/- received by them during the period 2016-17.

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.83,098/- under proviso to Section 73 (1) 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.83,098/-.
(iii) The penalties imposed under Section 77(1)(a), 77(1)(c) & 77 (2) of the Act shall remain unchanged."

4. Learned Departmental Authorized Representative for the Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal filed by the Appellant, being devoid of any merits.

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

6. I find from the records that SCN has been issued on information for the financial year 2016-17 received from Income Tax Department/26AS under third party data exchange. Since, the Appellant has not taken Service Tax registration and ST-3 returns were not filed, SCN has been issued on the basis of ITR/26AS. I have gone through the work order given by PWD Department regarding construction of roads for UPPWD.

7. I have carefully gone through the record of the case and submissions made. On perusal of the SCN, I note that the entire SCN is based on the data received from the Income Tax Department in Form 26AS. Revenue has not examined the data received by them to know whether any service was rendered by the Appellant which attracted service tax. When the exemptions

were claimed by the Appellant before the Original Authority, he has simply ignored the submissions and confirmed the entire demand as raised in the SCN. Therefore, both SCN and Order-in-Original put together have solely relied on the information received in Form 26AS which is the amount received by the Appellant. This Tribunal in the case of Umesh Tilak Yadav [2023 (11) TMI 473 (CESTAT-Mumbai)] in para 4 has stated as follows:-

> *"4. We have carefully gone through the record of the case and submissions made. The demand was raised invoking the provisions of sub-section (1) of Section 73 of Finance Act, 1994. The said provision of Finance Act empowers Revenue for recovery of service tax which has not been levied or which has not been paid or which has not been short levied or which has not been short paid or which has been erroneously refunded. Therefore, the first step for Revenue is to establish that a specific amount to be demanded through show cause notice by invoking the said provision is service tax either not paid or short paid or not levied or short levied. Therefore, it is essential to establish that the value on which such service tax is calculated is the value under Section 67 and the same is derived from the consideration received by the appellant out of the activity which has to satisfy definition of service under sub-section (44) of Section 65B of Finance Act, 1994. Such type of examination of the facts and arriving at the prima facie view that the appellant had received the consideration by providing service is missing in the show cause notice. We, therefore, hold that the said show cause notice dated 26.06.2020 is not sustainable in law."*

8. Further, this Tribunal in para 19 of its decision in the case of Maa Kalika Transport Pvt. Ltd. [2023 (79) G.S.T.L. 263 (Tri.-Kol.)] has held as follows:-

"19. The next issue raised by the Appellant is that the demand has been confirmed on the basis of the data received from Income Tax department. No effort was made by the department to ascertain whether the amount received by the Appellant was on account of rendering of any taxable service on which the Appellant was liable to pay service tax. There is no finding in the impugned order to this effect. We observe that there is no new material evidence brought on record for raising the demand of service tax on the value mentioned in the records received from the Income Tax department. The demand cannot be raised merely on the basis of the data received from the Income Tax Department, without any corroborating evidence to substantiate that the value received were in connection with taxable service rendered by the Appellant. This view has been supported by the following judgments:-

(i) Larsen & Toubro Ltd., Vs. ACST Reported in (2023) 2 Centax 327 (Cal.);

(ii) CST Vs. Hindustan Cables Ltd., reported in 2022 (382) ELT 188 (Cal.)."

9. As also in the case of Go Bindas Entertainment Pvt. Ltd. [2019 (27) G.S.T.L. 397 (Tri.-All.)], this Tribunal in para 4 has held as follows:-

"4. After hearing both the sides duly represented by learned Advocate Shri Kamal Jeet Singh for appellant and learned A.R. Shri Sandeep Kumar Singh, Deputy Commissioner for revenue, we note that the entire case of revenue is based upon the comparison of figures, as pointed out in the balance sheet with the figures reflected in the ST-3 returns. The appellant has explained that such difference has occurred on account of the accounting system as per the Income Tax Law, which explanation, in principle, stands accepted by the lower authorities. Even

then the lower authorities have gone ahead and confirmed the demand.

In any case and in view of the declaration, we note that it is well settled law that no demand can be confirmed by comparing the ST-3 return figures with balance sheet figures, in the absence of any evidence to the contrary that income in the balance sheet, if excess, reflects the providing of taxable services. It is the revenue who is making the allegations and as such, the onus to prove said allegation lies very heavily upon the revenue. Inasmuch as, the same has not been done and in view of the foregoing discussions, we find no merits in the revenue's stand."

10. Further, I reproduce below para 5.7 and 5.8 of Final Order of this Tribunal in the case of Reynolds Petro Chem Ltd. [2023 (68) G.S.T.L. 292 (Tri.-All.)]:-

"5.7 We also find that in the present matter for confirmation of service tax demand revenue also relied upon the TDS /26ASStatement. The said statement under provisions of Income Tax Act, 1961 is an Annual Consolidated tax statement. Income tax and service tax are two different/ separate and independent special Act and their provisions operate in two different fields. Therefore by relying the 26AS /TDS Statement under the Service Tax Act, demand of service tax cannot be made. We also find the support from the decision of M/s Ved Security Vs. CCE, Rachi -III 2019(6) TMI 383 CESTAT, Kolkata wherein it was held that the value of taxable services cannot be arrived at merely on the basis of the TDS statements filed by the clients inasmuch as even if the payments are not made by the client, the expenditure are booked based on which the form 26AS is filed, which cannot be considered as value of taxable services for the purpose of demand of Service tax.

5.8 In the matter of Synergy Audio Visual Workshop Pvt. Ltd. Vs. Commr. of S.T. Bangalore 2008 (10) S.T.R. 578 (Tri. - Bang.), the Tribunal observed as under :

The other ground is for confirming demands is that the appellants had shown certain amounts due from the parties in their Income Tax returns and Revenue has proceeded to demand Service Tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has settled the issue that amounts shown in the Income Tax returns or Balance Sheet are not liable for Service Tax. In view of these judgments, the appellant succeed on this ground also. The impugned order is set aside and the appeal is allowed.

In the matter of Commissioner of C.Ex.Jaipur-I Vs. Tahal Consulting Engineers Ltd. – 2016(44) S.T.R. 671 (Tri. Del) the Tribunal also observed as under

2. The brief facts of the case are that respondents are engaged in providing taxable service. Certain proceedings were initiated against them for not paying the Service Tax mainly on the basis of income-tax return filed by them at Jaipur. It is the case of the Revenue that the respondent failed to discharge the Service Tax on full taxable value as reflected in the income-tax returns. Accordingly, the original authority, after due process, confirmed the Service Tax of Rs. 8,25,789/- under the category of 'Consulting Engineer service'. He also imposed penalties under various sections on the respondent. On appeal by the respondent, the learned Commissioner (Appeals) vide impugned order set aside the Order-in-Original and allowed the appeal. Aggrieved by this, Revenue is in appeal.

3. The main grounds of appeal is that respondent could not produce documentary evidence about Service Tax payment properly for the impugned period at Chandigarh and Lucknow. The ST-3 return filed at Chandigarh and Lucknow did not tally with income-tax return filed in Jaipur office.

4. We have heard the AR who reiterated the grounds of appeal. None represented the respondent.

5. We find that Commissioner (Appeals) examined the respondents appeal against confirmation of demand and allowed the same mainly on the ground that income-tax return cannot be the basis for demanding Service Tax. Further, the respondent's contention that they have rendered services outside the jurisdiction of Rajasthan and have discharged the Service Tax in Chandigarh and Lucknow, could have been verified with the concerned jurisdictional Chandigarh Commissionerate office. Departmental authority at Jaipur have no jurisdiction to proceed against the respondent for demanding Service Tax without any evidence of taxable service being provided within their jurisdiction. We find that there is nothing in the grounds of appeal which makes us to interfere with the finding of the learned Commissioner (Appeals). The appeal did not advert to any assertion as to how the Service Tax demand can be made when there is no evidence to any taxable service having been rendered in the Jurisdiction of Rajasthan. No inquiries have been conducted by the Revenue to support their case. As such, we find that present appeal is without merit and accordingly, the same is dismissed.

In the matter of Calvin Wooding Consulting Ltd. Vs. Commissioner of C.Ex. Indore 2007 (7) S.T.R. 411 (Tri. - Del.) also Tribunal observed as under :

21. The liability of the recipient cannot arise merely from the fact that, the income-tax was deducted at source, which was the requirement of the Income-tax Act, on the recipient who made payment to the foreign supplier. Such a statutory requirement, as exists under the Income-tax law on the person making the payment to deduct tax at source, as a tax collecting agency of the Revenue, does not exist under the provisions of the Service Tax law, and *no obligation was cast upon the recipient of the service to make any deduction from the amounts payable by way of consideration, under the statutory provisions. Authorization to pay Service tax under a contractual arrangement which obliged the recipient to pay the tax and file return, was a matter distinct and different from a statutory obligation to make tax deduction as a collecting agency, as envisaged under the Income-tax law. The Commissioner (Appeals) has, therefore, rightly set aside the orders-in-original insofar as respondent of Service Tax Appeals Nos. 170, 171 and 173 of 2005 was concerned.*

As per the above settled legal position, we hold that the demand of service tax is not sustainable on the basis of TDS /26AS statements."

11. On perusal of the above stated findings of this Tribunal in various cases, I note that the issue is no more *res integra* and it has been decided that only on the basis of data in Form 26AS, Revenue cannot issue SCN demanding Service Tax. Here, I note that charging Section 66B of Finance Act, 1994 provides for levy of Service Tax at a specific percentage on the value of service. Section 67 of Finance Act, 1994 provides that where Service Tax is chargeable on a taxable service with reference to its value, then such value shall be the consideration in money charged by the service provider. Therefore, it is primarily important to determine the value on which service tax shall be levied at a specific percentage and such value should be the value of taxable service. Clause (44) of Section 65B of Finance Act, 1994 has provided for definition of service and it has elaborately dealt with a list of activities which shall not be included in such definition. Further, Section 66D of Finance Act, 1994 has provided for negative list of services where the activities covered by such negative list do not qualify to be a taxable service. Therefore, it is clear that while determining value of taxable service under Section 67 *ibid*, such aspect as to the activities

which are covered by negative list and which are mentioned in the definition of service as those which are not covered by such definition become important. Therefore, I come to a conclusion that for arriving at amount of Service Tax not paid or not levied arriving at correct value of taxable service which has not suffered service tax needs to be determined as the first step. Further, there are services where entire or part of Service Tax is to be paid by service recipient. Further, through Mega Notification No.25/2012-ST dated 20.06.2012, large numbers of services are exempted from levy of service tax. From any data, unless scrutiny in respect of all the above stated aspects is not done, then such data cannot be taken as such as value for calculation of service tax. Precisely this exercise has not been carried out in the present Order-in-Original.

12. In the matter at hand, road construction work was done for Government and no Service Tax was mentioned in work orders, therefore, the Appellant's argument on bona fide belief is accepted. The penalty imposed under Section 78 is, therefore, set aside.

13. In view of the above discussion, I set aside the demand of Service Tax amounting to Rs.83,089/-. The penalty of Rs.83,089/- imposed under Section 78 is set aside. The penalties of Rs.10,000/- each imposed under Sections 77(1)(a), 77(2) and 77(1)(c) are also set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on- **22.09.2025**)

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

LKS