CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70766 of 2024

(Arising out of Order-in-Appeal No.606-ST/APPL/LKO/2023 dated 22/08/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Adarsh Electricals, **....Appellant**

(628, Mahmand Haddaf, Shahjahanpur-242001)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow **....Respondent**

(3/194, Vishal Khand-3, Gomti Nagar, Lucknow-226010)

APPEARANCE:

Shri Nagendra Krishna, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70671/2025

DATE OF HEARING : 12 August, 2025
DATE OF DECISION : 12 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.606-ST/APPL/LKO/2023 dated 22/08/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order, Commissioner (Appeals) has modified the Order-in-Original No.199/AC/ST/STP/2022 dated 12.09.2022 wherein following has been held to extent of setting aside the penalties imposed under various sub sections of Section 77 of Finance Act, 1994:-

"ORDER

(i) I confirm the demand of Service tax of Rs.5,46,222/ (Rupees Five Lacs Forty Six Thousand Two hundred and Twenty two Only) including various cess as

applicable demanded from the party Funder proviso to Section 73(1) of the Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(ii) I confirmed the demand of due interest on the amount of Service Tax mentioned at (i) above demanded and order to be deposited by the party under Section 75 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.

(iii) I impose an equal amount of penalty as confirmed under 73(1) of the Act under Section 78 of the Finance Act 1994 read with Section 142, Section 173 and Section 174 of CGST Act. 2017 for failure to pay service tax & suppressing the facts and value of taxable service with intent to evade payment of service tax) The penalty so imposed shall be reduced to 25%. II the payment of the dues is made within 30 days of receipt of this letter.

(iv) I impose penalty of, Rs.10000/- (Rupees Ten Thousand Only) upon them under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for not maintaining the proper records.

(v) I do not impose any penalty upon them under Section 77(1)(c) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act. 2017 for not furnishing documents for the reasons stated as supra.

(vi) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for not depositing the short paid/due Service Tax electronically.

(vii) *I impose Late fee of Rs.20,000/-(Rupees Twenty Thousand Only) upon them under Section 70 of the Finance Act 1994 read with Rule 7C of Service Tax Rules 1994 read with Section 174(2) of CGST Act 2017 for not filing the ST-3 returns for the period FY 2016-17.*

(viii) *I imposed penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under Section 77(2) of the Finance Act, 1994 read with Section 70 Section of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 Read with Section 142, 173 and 174 of the CGST Act, 2017 in as much as they failed to file periodical returns assessing the due tax on services provided by the prescribed date."*

2.1 Appellant is registered with the Service Tax Department vide Registration No.AAZFA4836FSD001.

2.2 During the scrutiny of information received from the Income tax department it was observed that appellant had not paid service tax amounting to Rs.5,46,222/- against the receipt of considerations during the Financial Year 2016-17.

2.3 A Demand cum Show cause notice dated 20.10.2021 was issued to the appellant, asking them to show cause as to why-

"a. Service Tax amounting to Rs.546222 should not be demanded and recovered from the Party under proviso to Section 73/1) of the Finance Act. 1994 read with section 142, 173 and 174 of the CGST Act, 2017.

b. Interest due thereon at the applicable rate should not be demanded and recovered from them on the amount of Service Tax short paid under Section 75 of the Finance Act. 1994 read with Section 142, 173 and 174 of CGST Act, 2017.

c. Penalty should not be imposed on them under Section 78 of the Finance Act. 1994 read with section 142 173 and 174 of the CGST Act. 2017 for non-payment of due Service Tax by Suppressing the value of taxable services with *intent to evade the payment of Service Tax from the department.*

d. Penalty should not be imposed on them under Section 77(1)(b) of the France Act 1994 read with sections 142.173 and 174 of the CGST Act. 2017 for failing to keep maintain or retain books of account and other documents as required in accordance with the provisions of the Chapter V of the Finance Act 1994 of the rules made thereunder.

e Penalty should not be imposed on them under Section 77[1] (c) of the Act read with section 70, 142, 173 and 174 of the CGST Act, 2017 for failing to furnish information called by the officer in accordance with the provisions of the Chapter V of Finance Act. 1994 or the rules made thereunder.

f. Penalty should not be imposed on them under Section 77(1)(d) of the Act read with Section 68 of the Act read with Rule 6 of the Rules read with section 142. 173 and 174 of the CGST Act, 2017 for not depositing Service Tax by 5th day of month immediately following the quarter in which the service is deemed to be provided.

g Penalty should not be imposed on them under Section 77(2) of the Finance Act, 1994 read with Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules 1994 read with section 142, 173 and 174 of the CGST Act, 2017 inasmuch as they failed to file periodical Returns assessing the que tax on services provided by the prescribed date.

h. Late fee should not be imposed on them under Section 70 of Finance Act. 1994 read with Rule 7(c) of Service Tax Rules, 1994 read with section 142 173 and 174 of the CGSI Act, 2017 for not filling of returns within prescribed time."

2.4 The said show cause notice was adjudicated as per the Order-in-Original dated 12.09.2022 referred in para 1 above.

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) who has modified the Order-in-Original by the impugned order referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Nagendra Krishna learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorised 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:-

> *"06. I find that in the present case, the party has claimed that their entire receipts have come from two of their clients-one is M/s IL & FS Engineering and Construction Company Ltd. and the other one is Nagar Nigam Shahjahanpur. They have contended that they have carried out the work related to labour supply for IL & FS while miscellaneous works like repair replacement of underground cables with reference to some unspecified building, quarters etc. were done for Nagar Nigam Shahjahanpur. They have claimed that all these works are exempt in terms of Notfn. No. 25/2012-ST dated 20.06.2012 without mentioning anything as to how these work qualify to be termed as exempt and which serial number of the Notin. No. 25/2012-ST dated 20.06.2012 covers the said activities performed by them? Their assertion is therefore not clearly borne out in their appeal.*
>
> *07. Further, the copy of the contract dated 16.12.2015 between IL & FS and the appellant (submitted by the appellant with the appeal) is a contract for facilitation of work where the details as mentioned in Para C clearly reveal that the appellant (sub-contractor) "shall execute the work....and complete the same in all respects". Further Para 3 of the contract stipulates that the "subcontractor shall submit a detailed construction program". The*

assertion of the appellant that the work performed by them actually was labour supply is not proved.

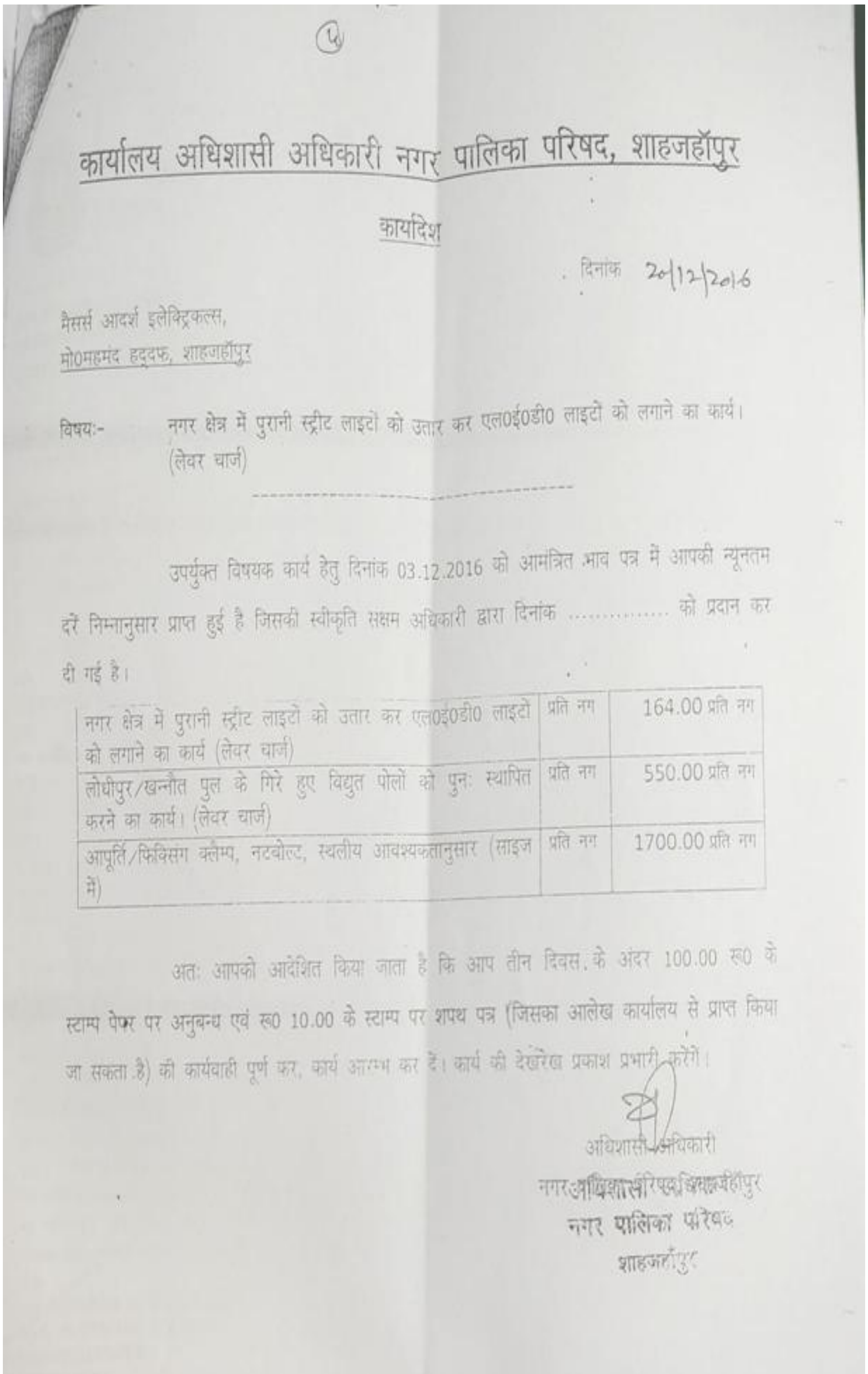
08. A further examination of the work orders issued by the Nagar Nigam Shahjahanpur to the appellant (as submitted by them), reveals that they have carried out two types of works supply of manpower and installation and commissioning of high mast lights. These works are completely different from the works mentioned in their grounds of appeal. However, keeping in view the principles of natural justice I proceed to examine the taxability of the two activities mentioned in the work orders. As regards supply of manpower, the reverse charge mechanism (RCM) applies only in cases where service provider is inter alia a proprietorship or partnership firm while the recipient is a body corporate. Since the appellant is a partnership firm and recipient is a governmental authority (not a body corporate), RCM will not be applicable and liability in all such cases where they have supplied manpower to Nagar Nigam will lie with the appellant. As regards work related to installation and commissioning of high mast lights, no specific clause for exemption has been claimed by the appellant which is mandatory as Notín. No. 25/2012-ST is a lengthy notification and has more than 60 serial numbers dealing with different services and activities. Under such circumstances, it is not possible to extend the benefit of this notification unless a specific serial number is mentioned and a detailed description of services (as to how they qualify for exemption) is given. In view of this I confirm the demand of Service tax amounting to Rs. 5,46,222/- along with interest under Sections 73 & 75, respectively of the Act. As regards the penalty under Section 78, needless to mention that the penalty under Section 78 is a statutory penalty imposable against the appellant keeping in mind overall facts and circumstances of case. However, various penalties under Section 77 are *not warranted since a penalty equal to tax due has been imposed on the appellant.*

09. In view of the above, I set aside all the penalties imposed on the appellant under various sub-sections of Section 77 and with that I am not inclined to interfere with the impugned order. The impugned order stands modified to this extent.”

4.3 I find that the issue involved in the present case is in respect of services provided to M/s IL & FS Engineering and Construction Company Ltd. and Nagar Nigam Shahjahanpur.

4.4 Impugned order records the findings that Nagar Nigam Shahjahanpur is a government authority and hence the benefit of reverse charge mechanism would not be available to the appellant. With regards to admissibility of exemption under Notification No.25/2012 impugned order records that the notification is a lengthy notification and without specifying under which entry exemption is claimed the benefit cannot be extended. I find that Order-in-Original categorically records the submissions of the appellant whereby it has been stated that the services provided are exempt from payment of service tax in terms of Sl. No.12, 12A or 13 of the said notification. Order-in-Original records findings that the payment certificate issued by Nagar Nigam does not specify the nature of work.

4.5 Appellant has produced the copy of work orders against which they have received these payments, one of them is reproduced below:-



(5)

कार्यालय अधिशासी अधिकारी नगर पालिका परिषद, शाहजहाँपुर

कार्यादेश

दिनांक 20/12/2016

मैसर्स आदर्श इलेक्ट्रिकल्स,
मो0महमंद हद्दफ, शाहजहाँपुर

विषयः- नगर क्षेत्र में पुरानी स्ट्रीट लाइटों को उतार कर एल0ई0डी0 लाइटों को लगाने का कार्य। (लेवर चार्ज)

उपर्युक्त विषयक कार्य हेतु दिनांक 03.12.2016 को आमंत्रित भाव पत्र में आपकी न्यूनतम दरें निम्नानुसार प्राप्त हुई है जिसकी स्वीकृति सक्षम अधिकारी द्वारा दिनांक .... को प्रदान कर दी गई है।

नगर क्षेत्र में पुरानी स्ट्रीट लाइटों को उतार कर एल0ई0डी0 लाइटों को लगाने का कार्य (लेवर चार्ज)	प्रति नग	164.00 प्रति नग
लोधीपुर/खन्नौत पुल के गिरे हुए विद्युत पोलों को पुनः स्थापित करने का कार्य। (लेवर चार्ज)	प्रति नग	550.00 प्रति नग
आपूर्ति/फिक्सिंग क्लैम्प, नटबोल्ट, स्थलीय आवश्यकतानुसार (साइज में)	प्रति नग	1700.00 प्रति नग

अतः आपको आदेशित किया जाता है कि आप तीन दिवस के अंदर 100.00 रू0 के स्टाम्प पेपर पर अनुबन्ध एवं रू0 10.00 के स्टाम्प पर शपथ पत्र (जिसका आलेख कार्यालय से प्राप्त किया जा सकता है) की कार्यवाही पूर्ण कर, कार्य आरम्भ कर दें। कार्य की देखरेख प्रकाश प्रभारी करेंगे।

अधिशासी अधिकारी
नगर पालिका परिषद, शाहजहाँपुर
अधिशासी अधिकारी
नगर पालिका परिषद
शाहजहाँपुर

4.6 In the above work order, the nature of work is clearly specified as for repair of existing streetlights, poles etc. Thus, I do not find any merits in the findings recorded in the impugned order with regards to nature of work undertaken. The services of repair and maintenance provided to government authorities are exempt under Sl. No.13 of Notification No.25/2012.

4.7 In respect of serviced provided to M/s IL & FS Engineering and Construction Company Ltd., I find that the भुगतान प्रमाण पत्र dated 18.12.2017 reproduced below, provide that it is in respect of labour provided.

M/S IL&FS Engineering & Construction Company Lt.d
SArali Infi Park,DNo:8-2-120/113/4F Road No-2 Banjara heals,
Haidrabad-500033,AP, INDIA

भुगतान प्रमाण पत्र

पत्रांक सं0–D.प्र/129/2016–17

दिनांक– 18/12/2017

प्रमाणित किया जाता है कि सर्वश्री आदर्श इलेक्ट्रीकल्स 628 महमंद हद्दफ शाहजहॉपुर मेरे कम्पनी के द्वारा सब ठेकेदार के रूप में वर्ष 2016–17 अनुबंध सं0–RGGBY-II SPN/Erectian/WO/00 Date-16-12-2015 के अन्तर्गत लेबर का कार्य कराया गया था। जिसमें मेरे द्वारा विद्युत कार्य से सम्बन्धित सारा मटेरियल उपलब्ध कराया गया था। इसमें सर्विस टैक्स में मद में कोई भुगतान नही किया गया है जिसका विवरण निम्न प्रकार है:–

भुगतान वर्ष–2016–2017

क्र0सं0	अनुबन्ध सं0	भुगतान	आयकर	लेबर सेस	कार्य	टोटल
1	RGGBY-II SPN/Erectian/WO/00 Date-16-12-2015	1651590.00	66063.00	16515.00	लेबर वर्क	1734168.00

IL & FS Engineering & Construction Company Limited
Project : Reproject RGGVY Phase-II Shahjahanpur

Product Manager/Authorized Signatory
Project :Reproject-Rggvy Phase-ii
Shahjahanpur

Thus, it cannot be said that the services provided were not in respect of supply of labour as has been held in para-7 of the impugned order. For the Manpower Supply Services, the service tax liability to the extent of 100% is on the service recipient as per Notification No.30/2012 as amended. Hence, the demand made in respect of these services from the appellant cannot be upheld.

4.8 I also find that entire show cause notice has been issued to the appellant on the basis of information received from the Income Tax Department for the year 2016-17. The show cause notice has been issued on 20.10.2021. As observed the issue involved in the present case is in respect of interpretation of notifications and the contracts between the service provider and the service recipient. The demand could not have been made by invoking the extended period of limitation.

4.9 Hon'ble Madras High Court has in the case of Micro Chem Products (India) Pvt. Ltd. [2017 (355) E.L.T. 45 (Mad)] observed as follows:

> *"13. Therefore, what emanates from the facts obtaining in the present case is that, there was a non-disclosure of information by the Assessee. The Assessee has taken a stand that, since, it was always below the monetary limit fixed for clearances qua SSI Units, it never had an occasion to make any disclosure via a classification list.*
>
> *13.1 In our view, this cannot be construed as suppression of fact, within the meaning of Section 11A(1) of the 1944 Act. Mere non-disclosure of facts, in such like circumstances, cannot constitute suppression of facts. Given the way the Section is framed, the expression "suppression of fact", appears in the company of words and expressions, such as, fraud, collusion, wilful misstatement. Therefore, the expression "suppression of facts", has to take colour from the words whose company, it appears in. A mere non-disclosure of information, when there is no obligation in law to furnish the same, will not amount to, in our opinion, fraud or collusion or even, wilful misstatement and, hence, trigger the extended period of limitation [See Collector of Central Excise, Hyderabad v. M/s. Chemphar Drugs and Liniments, Hyderabad - 1989 (40) E.L.T. 276 (S.C.); Padmini Products v. Collector of C. Ex. - 1989 (43) E.L.T. 195 (S.C.) and Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay - 1995 (78) E.L.T. 401 (S.C.)]."*

4.10 In case of Cochin Minerals & Rutiles Ltd. [2010 (259) ELT 182 (Ker)] Hon'ble Kerala High Court observed as under:

> ***"11.*** *An examination of the above three judgments makes it abundantly clear that it is not in every case where there is short levy or short payment or non levy, etc. that the extended period of limitation is made available to the department for recovery of the amount of tax which*

escaped assessment. It is only in those cases where there is wilful and deliberate suppression of the fact, such extended period of limitation is available to the department. An 'element of deception or malpractice' is a necessary concomitant of wilful and deliberate suppression of fact. The Supreme Court also opined that in order to invoke the extended period of limitation under the proviso to Section 11A(1) of the Act, there must be some positive act other than mere inaction or failure on the part of the manufacturer.

12. *In the instant case, we do not see any such wilful or deliberate suppression of the fact. We are of the opinion that whether the respondent is entitled for the benefit of the exemption notification or not depends on the interpretation of the exemption notification*. …"

4.11 In view of the above, I do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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