CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70299 of 2024

(Arising out of Order-in-Appeal No.555-ST/APPL/LKO/2023 dated 13.07.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

M/s Samriddhi Infrabuild, **.....Appellant**
(149/271, Hari Nagar,
Rajendra Nagar, Dugawan, U.P.-226004)

VERSUS

Commissioner of Central Excise &
CGST, Lucknow **....Respondent**
(7A, Ashok Marg, GST Bhawan,
Lucknow, U.P.-226001)

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.- 70700/2025

DATE OF HEARING : 03.07.2025
DATE OF PRONOUNCEMENT : 30.09.2025

The present appeal is directed against the Order-in-Appeal No.555-ST/APPL/LKO/2023 dated 13.07.2023 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow whereby the Commissioner has confirmed the demand of Service Tax amounting to Rs.15,91,208/- under Section 73(2) of the Finance Act, 1994, alongwith equal penalty under Section 78 of the Finance Act, 1994.

2. Briefly stated, the facts of the case are that the Appellant have been engaged by M/s UP Rajkiya Nirman Nigam Ltd[1]. and other body corporates for 'Works Contract Services' for construction of various Government buildings mostly for non-commercial use prior to 01.03.2015. The Commissioner

[1] UPRNNL

(Appeals) found that the amount of Rs.1,87,54,719/- received from UPRNNL for the contracts made before 01.03.2025 is not sustainable but tax liability on 'Works Contract Services' provided to other body corporates such as M/s UPAL Developers Pvt. Ltd. & M/s Arohi Construction Pvt. Ltd. etc, has been confirmed on the ground that the Appellant has not provided the relevant documents.

3. The Ld. Counsel for the Appellant has submitted that copy of the work orders pertaining to body corporates other than UPRNNL were duly submitted before the Commissioner (Appeals) which have not been properly examined by the Commissioner (Appeals). The Appellant is entitled for abatement under works contract services alongwith benefit of partial reverse charge for providing 'Works Contract Services' to body corporates.

4. The Ld. Counsel has further stated that the Appellant has also filed Miscellaneous Application dated 13.06.2025 in continuation of the present Appeal in which he has *inter alia* highlighted that present appeal is barred by limitation as the same relates to subsequent Show Cause Notice[2] dated 12.04.2022 for the subsequent period for 2016-17 issued on similar grounds. He further states that the Department has issued two SCNs for different periods as detailed here-in-below:-

(a) That **SCN No.119/AC/CGST/R-VI/TP-15-16/LKO-II/2020 dated 27.12.2020** issued by the Assistant Commissioner, Lucknow Division-II for Rs.30,94,781/- for the period 2015-16.

(b) **SCN No.01/DC/C-1/LKO/2022-23 dated 12.04.2022** issued by the Deputy Commissioner, Audit Commissionerate Lucknow for Rs.35,60,453/- for the period 2016-17 and 2017-18 (upto June 2017).

5. The learned Consultant also submitted that the present Appeal pertaining to the subsequent period 2016-17 and 2017-

[2] SCN

18 (upto June 2017) has been issued on identical and similar grounds on the basis of information provided by the Income Tax Department. The Ld. Counsel also contended that the subsequent SCN was issued by the Dy. Commissioner, Audit Commissionerate Lucknow who might have also examined the records of the Appellant including the earlier SCN dated 27.12.2020. The Appellant have regularly been filing ST-3 Returns and discharging their tax liability and thus extended period of limitation is not applicable on this ground also. In support of his submissions, he relied upon the following decisions :-

(i) Caprihans India Ltd. Vs. Commissioner of Central Excise, Surat reported in 2015 (324) E.L.T. 8(SC).

(ii) D&M Building Product Pvt. Ltd. Vs. Commissioner of Customs Bangalore reported in 2019 (370) E.L.T. 1183 (Tri-Bang).

(iii) Commissioner of Central Excise, VAPI Vs. Kolety Gum Industries 2016 (335) E.L.T. 581 (SC).

(iv) Assistant Commissioner of GST & Central Excise, Chennai Vs. Shriram Value Services Pvt. Ltd., 2019 (368) E.L.T. 928 (Mad.).

(v) Synergy Engineers Group Pvt. Ltd. Vs. Principal Commissioner, Customs, Central Excise and Service Tax, Bhopal (2023) 5 Centax 158 (Tri.-Del).

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 denied the

benefit of exemption / abatement for services provided to the corporate bodies other than UPRNNL. The Appellant has also raised the issue of limitation by way of submission of Miscellaneous Application dated 13.06.2025 wherein it has been emphasized that the SCN dated 12.04.2022 issued subsequent to the SCN dated 27.12.2020 is barred by limitation.

9. I find it appropriate to take up the issue of limitation agitated by the Appellant vide Miscellaneous Application dated 13.06.2025. I further find that the subsequent SCN dated 12.04.2022 for the period 2016-17 and 2017-18 (upto June 2017) has been issued by the Dy. Commissioner, Audit Circle-I, Lucknow on ground of suppression of material facts from the Department by way of misstatement of correct value of taxable services. I also find that the subsequent SCN dated 12.04.2022 was issued as a result of Service Tax Audit EA-2000 after issuing legacy audit report dated 06.04.2022 and the data has been compiled by the Audit on the basis of Form-26AS i.e. information provided by Income Tax Department.

10. It has been a consistent view of the Courts that if a SCN has been issued invoking extended period of limitation, then the subsequent SCN cannot be issued invoking the extended period based on the same set of facts. It is quite obvious that once the Department becomes aware of certain facts, the same facts cannot be suppressed subsequently. The Hon'ble Supreme Court in the case of **PNB Pharmaceuticals Vs. Collector of Central Excise (2003) SSC 599** has taken a view that in a case in which a SCN has been issued for the earlier period on certain set of facts, then on the same set of facts another other SCN invoking extended period of limitation on the plea of suppression of facts cannot be issued.

11. Further, Hon'ble Supreme Court in the case of **'Nizam Sugar Factory Vs. Collector of Central Excise, Andhra Pradesh reported in 2006 (197) E.L.T. 456 (SC)'** has held that demand is not sustainable when all the relevant facts were in the knowledge of authority when the first SCN was issued. I find that the Appellant have been filing ST-3 Returns and both

the SCN's have been issued mechanically on the basis of third party data provided by the Income Tax Department, hence no *mala-fide* is a attributable to the Appellant. The extended period of limitation is applicable only when there is conscious act of either fraud, collusion, suppression etc., with an intent to evade payment of tax. In the instant case, when the authorities issued the second SCN, the similar facts were taken as suppression of facts on the part of assessee and these facts were already in the knowledge of Department. I find that there was no evidence of suppression of facts on the part of the Appellant and as such larger period of limitation is not invokable. The Appellant were regularly filling ST-3 Returns and all the facts were in the knowledge of the Department. Hence, the impugned order is not sustainable and the same is set aside.

12. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on - **30.09.2025**)

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

LKS