CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70515 of 2024

(Arising out of Order-in-Appeal No.444-ST/APPL/LKO/2022 dated 25.07.2022 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

M/s Mobile Dot Com, **.....Appellant**
(110 & 111, Shri Ram Tower,
13 Ashok Marg, Hazratganj, Lucknow)

VERSUS

Commissioner of Central Excise &
CGST, Lucknow **....Respondent**
(7A Ashok Marg, Lucknow)

APPEARANCE:

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

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

FINAL ORDER NO.- 70758/2025

DATE OF HEARING : 29.10.2025
DATE OF DECISION : 29.10.2025

The present appeal is filed by the Appellant assailing the Order-in-Appeal No.444-ST/APPL/LKO/2022 dated 25.07.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow.

2. Briefly stated the facts of the case are that the Appellant M/s Mobile Dot Com is a proprietary concern of Shri Anand Johri and is engaged in providing services under the category of 'Maintenance or Repair Service' and are registered with the Service Tax Department with effect from 11.12.2004.

3. On the basis of the data received from the third party sharing with the Income Tax Authorities for the financial year 2012-13, it appeared to the Department that the services provided by the Appellant are taxable as per the provisions of Section 66B of the Finance Act, 1994. Relevant documents were

solicited both from the Income Tax Authority as well as the assessee, however, both failed to provide the same. Accordingly, a Show Cause Notice[1] dated 16.04.2019 was issued for the period of five years i.e. from financial year 2012-13 to 2016-17. The SCN proposed as under:-

(i) *The Service Tax amounting to Rs.26,38,413/- (Rs. Twenty Six Lacs Thirty Eight Thousand Four Hundred and Thirteen only) including various cess as applicable should not be demanded and recovered from them under proviso to Section 73(1) of the Act, 1994 read with Section 174 of the CGST Act, 2017 and the amount of Service Tax Rs.6,84,566/- (Rs. Six Lacs Eighty Four Thousand Five Hundred and Sixty Six only) deposited by the party should not be appropriated against this demand.*

(ii) *The due interest on the amount of Service Tax Rs.19,53,847/- (Rs.2638413 – Rs.684566) should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*

(iii) *The interest amounting to Rs.66,765/- (Rs. Sixty Six Thousand Seven Hundred and Sixty Five only) short paid in ST-3 returns for the FY 2013-14 to 2016-17 should not be recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*

(iv) *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 for suppressing the facts and value of taxable service with intent to evade payment of service tax.*

(v) *Penalty should not be imposed upon them under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 for not furnishing the information called by an Central Excise Officer.*

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[1] SCN

(vi) Late fee amounting to Rs.19,900/- (Rs. Nineteen Thousand Nine Hundred only) short paid in ST-3 returns for the FY 2013-14 to 2016-17 should not be recovered under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

(vii) Late fee should not be recovered for non-filing/late filing of ST-3 returns for the period April'13 and April'17 to June'17, under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017."

4. Reply to the SCN was filed on 13.06.2019, the Adjudicating Authority vide the Order-in-Original dated 30.03.2021 passed the following order:-

"ORDER

i. I confirm the demand of Rs.6,60,007/- including various cess as applicable and order for recovery of same under proviso to Section 73(2) of the Act, 1994 read with Section 174 of the CGST Act, 2017.

ii. I drop the demand of Rs.6,84,566/- under Section 73(2) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

iii. I confirm the demand of interest on the amount of service tax of Rs.6,60,007/- (Rs.1344573 – Rs.684566) and order for recovery of same under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

iv. I order for recovery of interest amounting to Rs.66,765/- short paid in ST-3 returns for the FY 2013-14 to 2016-17 under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

v. I impose penalty of Rs.6,60,007 under Section 78 of the Finance Act, 1994 read with Section 174 of the

CGST Act, 2017 for suppressing the facts and value of taxable service with intent to evade payment of service tax.

vi. I impose penalty of Rs.10,000/- under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 for not furnishing the information called by an Central Excise Officer.

vii. I order for recovery of late fee amounting to Rs.19,900/- short paid in ST-3 returns for the FY 2013-14 to 2016-17 under Rule 7C of service tax Rules 1994 read with Section 70 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

viii. I confirm the demand of late fee amounting to Rs.40,000/- for non-filing/late filing ST-3 returns for the period April'13 to Sept'13 and April'17 to June'17, under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 readwith Section 174 of the CGST Act, 2017."

5. Being aggrieved, the assessee filed appeal before the first Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-in-Appeal observed as under:-

*"**5. DISCUSSION & FINDINGS:***

I have carefully gone through the case records. By the impugned order, demand of Service Tax amounting to Rs.6,60,007/- was confirmed along with interest against the Appellant and penalties were also imposed upon them.

The Appellant has submitted that the demand on the basis of the ITR of the Appellant is not sustainable as the value shown in their ITR for the disputed period also includes sales of mobile i.e. VAT component. They also had submitted the sale ledger and sales invoices copies for the F.Y. 2016-17 and challan dated 29.11.2021 for payment of amount of Rs.5,32,076/- alongwith reconciliation chart.

I find that the Adjudicating Authority had confirmed the demand of Rs.6,60,007/- in the following manner:-

F.Y.	*Revenue from operations/gross receipts*	*Rate of Service Tax*	*Service Tax payable*	*Service Tax deposited*	*Net Service Tax payable*
2013-14	*1899272*	*12.36%*	*234750*	*20847*	*213903*
2014-15	*1910830*	*12.36%*	*236179*	*220446*	*15733*
2015-16	*948915*	*14.50%*	*137593*	*130801*	*6792*
2016-17	*3382003*	*15.00%*	*507300*	*312472*	*194828*
2017-18	*1525004*	*15.00%*	*228751*	*0*	*228751*
Total	***9666024***		***1344573***	***684566***	***660007***

I also find that the Appellant had accepted their service tax liability of Rs.4,65,311/- for the disputed period except for the F.Y. 2016-17 wherein they had claimed that out of the total turnover of Rs.33,82,003/-, the amount of taxable service is Rs.20,84,034/- only and the remaining amount is related to VAT i.e. Rs.12,97,969/-. The contention of the Appellant is sustainable in this regard as it is evident from sale ledger and sale invoice copies for the F.Y. 2016-17 that the VAT sale amounts to Rs.12,97,969/- in the said period. Thus, the demand of service tax amounting to Rs.4,65,311/- is sustainable and the same is recoverable alongwith interest and mandatory equal penalty under Section 75 and 78 of the Act. I also find that the Appellant had deposited the amount of Rs.5,32,076/- (ST:-Rs.4,65,311/- + Intt. Rs.66,765/-) against the said demand vide challan having CIN 20211129133155151787 dated 29.11.2021. Thus, the amount of Rs.4,65,311/- is appropriated against the said demand of service tax.

In respect of recovery of interest amounting to Rs.66,765/- short paid in ST-3 returns for the F.Y. 2013-14 to 2016-17, I find that the Appellant had deposited the said interest liability of Rs.66,765/- vide the above cited Challan dated 29.11.2021.

In respect of late fee amounting to Rs.19,900/- for short paid in ST-3 returns for the F.Y. 2013-14 to 2016-17 and late fee amounting to Rs.40,000/- for non-filing /late filing of ST-3 returns for the period April 2013 to

September 2013 and April 2017 to June 2017, taking the lenient view in the matter I reduce the total late fee from Rs.59,900/- to Rs.20,000/-. I also drop the penalty imposed under Section 77 (1)(c) of the Act.

The appeal is disposed of in the above manner."

Hence, the present appeal before the Tribunal.

6. The learned Advocate appearing on behalf of the Appellant submits that they are not contesting the demand anymore and have deposited the entire Service Tax demand alongwith applicable interest. This fact has also been recorded by the learned Commissioner (Appeals) in para 5 of the impugned order. The only grievance of the Appellant before the Tribunal is regarding the penalty imposed under Section 78 and the amount of Rs.20,000/- (upheld against the late fee of Rs.19,900/- for short paid in ST-3 returns for the F.Y. 2013-14 to 2016-17 and late fee amounting to Rs.40,000/- for non-filing /late filing of ST-3 returns for the period April 2013 to September 2013 and April 2017 to June 2017).

7. It is his submission that all the ST-3 returns were filed within the stipulated time period and since the Appellant assessee had deposited the Service Tax liability alongwith interest and all compliances were made from time to time, the penalty of Rs.20,000/- may be set aside.

8. Learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the assessee, being devoid of any merits, may be dismissed.

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

10. I find that the issues for deciding before me are :-

i. Whether the Adjudicating Authority was correct in imposing penalty under Section 78 of the Finance Act, 1994;

ii. Whether late fee amounting to Rs.19,900/- for short paid in ST-3 returns for the F.Y. 2013-14 to 2016-17 and late fee amounting to Rs.40,000/- for non-filing /late filing of ST-3 returns for the period April 2013 to September

2013 and April 2017 to June 2017, reduced to Rs.20,000/- by the First Appellate Authority.

11. Regarding the imposition of penalty under Section 78 of the Finance Act, 1994, I find that the Appellant had filed all the Service Tax returns and had deposited the Service Tax liability alongwith applicable interest. I do not find any ingredients of willful misstatement, fraud, collusion etc., with an intent to evade payment of Service Tax. Hence, I deem it fit to set aside the penalty imposed under Section 78 *ibid* by invoking the provisions of Section 80 *ibid* and accordingly the impugned order is modified to this extent and this ground of the appeal stands allowed. Regarding the confirmation of late fee of Rs.20,000/- by the learned Commissioner (Appeals), it is my considered view that sufficient relief has already been given by the First Appellate Authority and I do not find it appropriate to interfere in the findings of the learned Commissioner (Appeals) in this respect.

12. In view of the above discussion, the impugned order is modified to the extent of setting aside of the penalty imposed under Section 78 of the Finance Act, 1994. The appeal filed by the Appellant is partly allowed in the above terms.

(Dictated and pronounced in open court)

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

LKS