CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

(E-Hearing)

Service Tax Appeal No.70756 of 2024

(Arising out of Order in Appeal No.DDN-EXCUS-000-APPL-304-2023-24, dated -28/02/2024 passed by Commissioner (Appeals) CGST, Dehradun)

M/s H M Gupta **.....Appellant**
(K-K/76 Kavi Nagar
Ghaziabad, Uttar Pradesh 201002)

VERSUS

Commissioner, Service Tax, Ghaziabad **....Respondent**

(C.G.O. Complex-II, Kamla Nehru Nagar, Near Hapur Chungi
Ghaziabad, Uttar Pradesh 201002)

APPEARANCE:

Shri Anurag Singhal, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70775/2025

DATE OF HEARING : 30.10.2025
DATE OF DECISION : 06.11.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order in Appeal No.DDN-EXCUS-000-APPL-304-2023-24, dated -28/02/2024 passed by Commissioner (Appeals) CGST, Dehradun.

2. Briefly stated, the facts of the case are that based on third party information received from the Income Tax Department, the Department entertained a view that there was discrepancy between the figures shown in the ITR vis a vis ST-3 returns, submitted by the Appellant-Assessee in the F.Y. 2015-16.

Clarification was sought for and in the absence of any satisfactory reply, the Show Cause Notice[1] dated 28.04.2021 was issued proposing as under:-

(i) Service Tax amounting to Rs.2,86,859/- (Incl. Ed.Cess& H.& S. Ed. Cess) (Rupees Two Lakhs Eighty Six Thousand Eight Hundred Fifty Nine Only), so deliberatively and willfully short paid by them during the period from April, 2015 to March, 2016, should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994;

(ii) Interest, on the above amount of Service Tax, should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of Finance Act 1994;

(iv) Penalty should not be imposed upon them under Section 77(1)(c) of Finance Act 1994.

(v) Penalty should not be imposed upon them under Section 77(2) of Finance Act 1994.

3. The SCN was adjudicated vide Order-In-Original dated 22.03.2023 and the demand as proposed in the SCN was confirmed alongwith due interest and imposition of penalties under Sections 78 & 77 of the Finance Act, 1994. Being aggrieved, Appellant filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) after allowing cum tax benefit, recomputed the Service Tax demand and passed following order:-

"5.10 In view of the above, I find that the Order in Original cannot be Interfered with. However, I note that the benefit of cum-tax value is applicable to the party, in view of the statutory provisions and also from the fact that the party

---

[1] SCN

did not charge service tax or collect it separately from the insurance companies in question. Hence, the value received by it has to be treated as Inclusive of service tax. Accordingly, the Service tax demand is recalculated as per the table below.

Calculation Table

SI. No	Cum-tax value @ 14.5%	Assessable value	Service Tax @ 14.5%
1.	19,78,339/-	17,27,806/-	2,50,532/-

Accordingly, I pass the following order:

ORDER

1. I confirm the demand of Service tax amounting to Rs 2,50,532/-under Proviso to section 73(1) of the Finance Act-1994.

2. I also confirm the demand of interest in terms of section 75 of the Finance, 1995.

3. I impose and equal penalty of Rs 2,50,532/- as the tax payable under section 78 of the act abid.

4. of section 77(1)(c) and sec I do not interfere with the penalties of ₹10,000 each imposed by the Adjudicating Authority are in terms 77(2) of the Finance Act-1994."

Hence, the present appeal before the Tribunal.

4. The learned Advocate appearing on behalf of the Appellant submitted that the Appellant-Assessee is an Insurance-Loss Surveyor for four wheeler automobiles and works for four major insurance companies, all of them being Government of India undertaking. The job of the surveyor is to visit the site of the vehicle, generally automobile workshops, assess the loss due to theft/accident or otherwise, take few photos as evidence an in support of his final opinion. He then makes a report, submits it to the insurance company, and raises his invoices for the

services provided. These services were earlier covered under the Service Tax since 1994 until 2012, then such services were made under reverse charge mechanism and later on were completely exempted and notified under negative list.

5. Learned counsel further submitted that the Govt. Of India made an amendment in its Notification No.25/2012 dated 20.06.2012 vide its Notification No. 10/2017 dated 08.09.2017, wherein the Insurance sector was completely exempted from the service tax. That vide this Notification dated 08.09.2017, all the insurance companies stopped their Reverse Charge mechanism and also told all its insurance loss assessment surveyors not to charge Service Tax anymore. Hence, the Appellant also did not charge the service tax from the Insurance companies. The Appellant has neither charged any service tax nor received any service tax from the insurance companies and the impugned order has incorrectly applied extended period of limitation while conforming the demand.

6. The learned Departmental Representative for the Revenue has 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 find that the impugned SCN was issued solely on the basis of the information obtained from the Income Tax authority in Form 26AS for the Financial Year 2015-16. For the sake of ready reference Para 2 of the SCN is reproduced below:-

> *"Whereas, as per the third party data received from Income Tax Department for the Financial Year 2015-16, so received from the Anti Evasion Branch of the CGST Commissionerate vide their e-mail dated 11.02.2021 (RUD-1), difference has been observed between the Total Value of Services from ITR and Gross Value of Service Provided Service Tax Returns (STR Data). The details of the said difference in respect the said party, as received above, are as hereunder:*

Period	Total Value for TDS (including Under 194C, 194H, 194I, 194J)	Total Gross Value provided (Service Tax Return)	Sale of Services (Income Tax Return)	Value Difference in ITR & STR	Value Differenc e in TDS & STR	Higher Value (Value Difference in ITR & STR) or (Value Difference in TDS & STR)
						(Value in Rupees)
2015-16	1884663	0	1978339	0	0	1978339

From the afore tabulated data it becomes apparent that the said party had received an excess amount of Rs.19,78,339/- against the taxable service provided by them during the Financial Year 2015-16, but the Service Tax on this amount was not discharged by them as the total value of services provided by the said party so depicted in their ST-3 returns had been suppressed by the said amount i.e. the same had not been included by them in their ST-3 returns for computation and payment of service tax.

9. I also note that there were no other record of the Appellant which were taken into consideration for entertaining a prima facie view that the Appellant was required to pay the Service tax amounting to Rs.2,86,859/- for the said period from the information that was available in the Form 26AS.

10 It was held by this Tribunal in the case of **Sharma Fabricators & Erectors Pvt. Ltd. V/s C.C.E., Allahabad reported at 2017 (5) G.S.T.L. 96 (Tri.All.)** as under:-

"3. *Heard the ld. Counsel for M/s. Sharma he has basically argued that the said Show Cause Notices were not issued by examining the books of account maintained by M/s. Sharma. The Show Cause Notices were based on the presumptions and third party information. He has argued that even when the payments were not made by the clients but the clients booked the expenditure in their books of account they were required to pay the related tax deducted at source to the exchequer and issue a certificate of TDS and incorporate the same in the return called 26AS filed with the Income Tax Authorities and such information cannot be the basis for arrival of the consideration received* *by the service provider. He has submitted that both the Show Cause Notices were issued without examining the books of account maintained by M/s. Sharma and were issued on the basis of presumptions about the consideration received by M/s. Sharma. The considerations taken into account for issue of Show Cause Notices was in no way near to the actual consideration received by M/s. Sharma during the relevant period which should be the basis for arriving at the assessable value. He has stated that they had elaborated before the Original Authority various reasons for discrepancies in the figures arrived at presuming the considerations received by M/s. Sharma on the basis of such TDS Certificates and the figures in the returns. He has further relied upon this Tribunal's Final Order in the case of Alpa Management Consultants P. Ltd. v. Commissioner of Service Tax, Bangalore reported in 2007 (6) S.T.R. 181 (Tri. - Bangalore). He submitted that this Tribunal in the said case has held that demands, solely based on the income-tax returns for liability of Service Tax under Finance Act, 1994 is not sustainable. In respect of appeal filed by Revenue ld. counsel for M/s. Sharma has contended that the grounds of appeal are travelling beyond the Show Cause Notice and therefore that is not sustainable. He has further elaborated that cargo handling was brought in as ground by Revenue in the appeal filed by Revenue whereas that issue was not at all dealt with in the Show Cause Notices dated 20-4-2009 & 13-10-2009.*

4. *Heard the ld. DR, who has presented the grounds of appeal in appeal filed by Revenue.*

5. *Having considered the rival contentions and on perusal of record, we find that in the cases of both the Show Cause Notices dated 20-4-2009 & 13-10-2009 there is no whisper of examination of books of account maintained by M/s. Sharma to arrive at the value of consideration received by them. Surprisingly the draft audit report was the relied upon* *document. It may be worth mentioning here that the purpose of audit report is to point out any discrepancy to the notice for examination by the executive and it is the duty of executive to examine the records and examine the objection raised with reference to the records and facts of the case and take a view whether there is a sustainable case for issue of Show Cause Notice. Such vital aspects of framing of charges have been missing in the present case. The charges in the Show Cause Notice have to be on the basis of books of account and records maintained by the assessee and other admissible evidence. The books of account maintained by M/s. Sharma were not looked into for issue of abovestated two Show Cause Notices. Therefore, the transactions recorded in the books of account cannot be held to be contrary to the facts. Therefore, we hold that the said Show Cause Notices are not sustainable. Since the said Show Cause Notices are not sustainable, appeal bearing No. ST/890/2010 filed by M/s. Sharma is allowed and appeal bearing No. ST/949/2010 filed by Revenue is dismissed. Miscellaneous Applications also stand disposed of. Cross Objection also disposed of."*

11. I find that the decision of the Tribunal in the case of Sharma Fabricators & Erectors Pvt. Ltd. (Supra) has been upheld by the Hon'ble High Court of Allahabad reported at **2019 (22) G.S.T.L. J166 (All.)** by observing as under:-

"There is no dispute on facts. The show cause notice which was issued by the department was presumably issued on the basis of the notion that the assessee was liable to tax on the amount so received by it. On the other hand, the relevant rule i.e. Rule 6 of the Service Tax Rules, 1994, are quoted hereunder :-

[(1) The service tax shall be paid to the credit of the Central Government by the 5th of the month immediately

following the calendar month in which the payments are received, towards the value of taxable services :

Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 5th of the month immediately following the quarter in which the payments are received towards the value of taxable services:

Provided further that notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part of whole of the value of services were not taxable :

Provided also that the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.]

A plain reading of the Rules make it abundantly clear that the amount payable is not an amount which is received and not an amount which may be received in future. The conclusion drawn by the Tribunal that the show cause notice is bad and not in accordance with Rules is, therefore, correct. The question of law is, therefore, answered in favour of the assessee and against the department.

The appeal is accordingly dismissed."

12. From the appeal records it is very clear that none of the records of the Appellant were taken into consideration for framing charges that the Appellant has short paid Service Tax to the tune of Rs.2,86,859/- and the said charges were framed only on the basis of information in From 26AS. Further, I find that on the basis of Form 26AS and Returns filed under Income Tax Act, without examining any other records of the Appellant, charges of short payment of Service Tax was made against the Appellant. It

was possible for the Revenue to know the transactions between the other party and the Appellant. From Form 26AS, Revenue could have investigated into the nature of such transactions and should have established that the said transaction were in respect of the provisions of such services, then alone the charges of short payment of service tax could have sustained.

13. I find that Final Order of this Tribunal in the case of Sharma Fabricators & Erectors Pvt. Ltd. (Supra) is squarely applicable to the facts of the present case.

14. Further, I do not find any ingredients of suppression of facts, fraud, willful misstatement etc. with an intent to evade payment of Service Tax and therefore, the extended period of limitation could not have been invoked.

15. Further, this is also a fact on record that the Appellant-Assessee neither charged Service Tax in the invoices nor collected it separately from the Insurance Companies in question. I, therefore, hold that the Revenue did not discharge its burden to prove non payment/short payment of Service Tax. I also hold that the SCN dated 28.04.2021 is not sustainable.

16. In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 06.11.2025)

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

Nihal