CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70655 of 2024

(Arising out of Order-in-Appeal No.467-ST/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Santosh Sahu, **.....Appellant**
(Triveni Nagar-III, Sitapur Road, Lucknow)

VERSUS

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

APPEARANCE:

Shri Dushyant Kumar, Consultant for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70813/2025

DATE OF HEARING : 13 August, 2025
DATE OF DECISION : 13 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.467-ST/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"In view of the above, the appellant is thus required to deposit service lax amounting to Rs.453219/ under Section 73(2) alongwith interest and mandatory equal penalty on said confirmed service tax under Section 75 & 78 of the Act respectively for the said period. As the mandatory

penalty is already imposed, so I vacate the penalty imposed under 77 of the Act."

2.1 Appellant is engaged in providing taxable services and were not registered with the Service Tax Department, they have PAN Account.

2.2 On the basis of information received from the Income Tax Department, it was observed that appellant have received following amount towards sale of services during the Financial Year 2016-17:-

S. No.	DESCRIPTION	AMOUNT
1.	SALE OF SERVICES (ITR)	30,21,458/-
2.	VALUE OF TDS	--

2.3 Appellant vide letter dated 14.07.2020, 09.08.2020 and 26.08.2020 was asked to provide the requisit details including Balance Sheet, Service Tax returns, Ledger Account, Bank Statement, Copies of Invoices for the Financial Year 2016-17 for verification of their Serivce Tax liability.

2.4 However, appellant failed to privde the informations as called for. Accordingly, service tax liability was computed on the entire value of the receipt shown in ITR in following manner:-

Financial Year	*Sale of Services Shown in ITR*	*Service tax rate inclusive of all cess*	*Service Tax Payable*	*Service Tax Paid*	*Short paid Service tax inclusive of all cess on the differential amount*
2016-17	*30,21,458/-*	*15%**	*4,53,219/-*	*Nil*	*4,53,219/-*

*1). *Effective Tax Rates includes all the statutory cesses and service tax applicability at that time.*

2). Since the party had not submitted month wise details of services provided by them therefore higher rate of Service Tax applicable during that particular year Le. @ 15% for the F.F. 2016-17 has been applied for computation of Service Tax liability."

2.5 As appellant have suppressed the material facts contravening the provisions of Finance Act, 1994 and Service Tax Rules, 1994 with intent to evade payment of service tax despite being engaged in providing taxable services. Accordingly, a show cause notice dated 12.10.2021 was issued to the appellant, asking them to show cause as to why-

> *"(i) The Service Tax amounting to Rs. 4,53,219/- (Rupees Four Lakh Fifty Three Thousand Two Hundred Ninteen Only) including Education Cess, Secondary & Higher Education Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.*
>
> *(ii) The due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.*
>
> *(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay Service Tax & suppressing the facts and contravening provisions or rules with intent to evade payment of Service Tax.*
>
> *(iv) Penalty under section 77(1)(a) of the Finance Act 1994 should not be imposed upon the taxpayer read with Section 142 & 174 of the CGST Act for not taking service tax registration under section 69 of the Act ibid.*
>
> *(v) Penalty should not be imposed upon them under Section 77(1)(C)(i)& 77(1)(C)(ii) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not furnishing the information/not producing the documents.*
>
> *(vi) Penalty should not be imposed upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for fails to pay the Service tax electronically.*
>
> *(vii) Penalty should not be imposed upon them under Section 77(2) of the Act for not filing of statutory Service Tax Returns for the Financial Year April 16-Sep 16, Oct 16-Mar 17."*

2.6 The said show cause notice was adjudicated as per the Order-in-Original dated 17.08.2022 by holding as follows:-

"ORDER

(i) I confirm the demand of Service Tax amounting to Rs.4,53,219/- (Rupees Four Lakh Fifty Three Thousand Two Hundred Ninteen Only) including Education Cess, Secondary & Higher Education Cess under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.

(ii) I confirm the intterest on the amount of Service Tax mentioned at (i) above under Section 75 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.

(iii) I impose a penalty Rs. 4,53,219/- (Rupees Four Lakh Fifty Three Thousand Two Hundred Ninteen Only) upon them under Section 78 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay Service Tax & suppressing the facts and contravening provisions or rules with intent to evade payment of Service Tax.

(iv) I impose a penalty Rs. 10,000/- (Rs. Ten Thousand Only) upon them collectively under Section 77(1)(C)(i)(ii) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not furnishing the information/ not producing the documents.

(v) I impose a penalty Rs. 10,000/- (Rs. Ten Thousand Only) upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for fails to pay the Service tax electronically.

(vi) I impose penalty of Rs. 10,000/- (Rs. Ten Thousand Only) upon them under Section 77(2) of the Finance Act, 1994 for not filling of statutory Service Tax returns for the F.Y. 2016-17."

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order referred in para 1 above.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Dushyant Kumar learned Consultant appearing for the appellant and Shri A.K. Choudhary 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 as follows:-

> *"05. I have carefully gone through the case records and submissions of the appellant.*
>
> *I find that the adjudicating authority had confirmed the demand on the basis of fact that CA certificate has been issued as per the information provided by the appellant to the CA whereas the certificate should be issued by the CA n the basis of documentary evidences. The appellant had produced copies of Bank Statements, balance sheet & ITR for the F.Y.2016-17 alongwith the CA certificate dated 03.03.2022 issued by Mr. Shashank Saxena and on perusal of the same. I find that the appellant had taken unsecured loans amounting to Rs.22.15,000/-from friends and relatives but the same was not reflected in their respective unsecured loans head in ITR-3 filed for the F.Y.2017-18 ie A.Y. 2017-18 and Balance Sheet duly certified by Mr. Shashank Saxena, CA. The appellant had not Also, the produced any documentary evidences in respect of such loans. appellant had also not filed any rectification request with the income tax department to correct their gross receipts of Rs.30,21,458/ Therefore, the contention of the appellant that the said amount is wrongly taken in their Gross receipt is not sustainable. I also find that the appellant had shown the value of services amounting to Rs.24,15,330/ in their ITR filed for the FY 2015-16 A.Y. 2016-17. Therefore, the benefit of Notification No:33/2012 ST cannot be ended to the appellant."*

4.3 As per profit and loss account of the appellant for the Financial Year 2016-17 and ITR of the appellant, it is evidente that appellant have gross receipt to the extent of Rs.30,21,458/-. Appellant has produced a Chartered Acconatnat certificate before the lower authorities and before this Tribunal stating as follows:-

13-08-25 (ADV)

Rishi

M/s ARSJ &ASSOCIATES
CHARTERED ACCOUNTANTS
A-78, Indira Nagar, Lko & 3A, 3RD Floor, Rohit Bhawan, Sapru Marg, Lucknow, UP
Hazari Lal Ka Phatak, Chowk, Fatehpur, UP- 212601
C-2802, Sector-75, The Jewels of Noida Apartments, Noida, UP-201301

CA

TO WHOM SO EVER IT MAY CONCERN

This is to certify the total gross receipts of Shri Santosh Sahu, Triveni Nagar-III, Sitapur Road, Lucknow during 2016-17 is 20,21,458/-. This gross receipts in Profit & Loss Account for the year 2016-17 has been inadvertently shown as Rs. 30,21,458/- which includes Rs. 10,00,000/- of home top-up loan sanctioned by State Bank of India on 13.05.2016 and credited to SBI Bank Account No. 62121946652 of Mrs. Rani Sahu wife of Shri Santosh Kumar Sahu.

Note: Our above Certificate for gross receipt is compiled on the basis of financial documents and ledgers provided to us.

For and on behalf of
M/s ARSJ & Associates
Chartered Accountants

ARSJ & ASSOCIATES CA Chartered Accountants

CA Abhinav Rastogi
(Partner)
M. No.: 539946
UDIN: 25539946BMIKFE4817

Date: 06/08/2025

4.4 After considering the above said CA certificate impugned order records that the deduction of Rs.10 lakhs sought to be claimed in respect of home loan is not admissible, as the CA certificate was issued at the interest of the appellant and do not reflect the correct position in this regard. Certain loan etc. which were taken are also not reflected in the ITR-3 filed by the appellant for the F.Y. 2017-18 A.Y. 2016-17. Further, the balance sheet and profit and loss account of the appellant was duly audited and certified by CA namely Mr. Shashank Saxena whereas the CA certificate in the present case was issued by Mr. Abhinav Rastogi, who also had appeared on behalf of the appellant before the First Appellate Authority. Thus, CA certificate issued was not reflected correct position in the accounts.

4.5 It is also noted that appellant is a properietorship concern of Shri Santosh Sahu having SBI Bank Account No.62121946652 and the Home Loan of Rs.10 lakhs was sanctioned in the name of wife of the appellant having SBI Account No.62465631050. As the amount of Rs.10 lakhs do not get reflected in the account of the proprietor, the same cannot be said to be gross receipt in the Account of proprietorship concern. Hence, the CA certificate and the submissions made in this regard needs to be rejected.

4.6 In case of Charu Home Products Pvt Ltd. [2009 (244) E.L.T. 465 (Tri. - Mumbai)] following was held

> *2. I have examined the records and heard both sides. ……. As regards the certificate of the Chartered Accountant, I note that it does not disclose any basis whatsoever. Such a certificate should be based on accounts and accounting practices/principles. None of this is discernible from this document. Therefore, the lower authorities are fully justified in having not admitted the Chartered Accountant's certificate as evidence against bar of unjust enrichment. The appellant has no case that a reasonable opportunity of adducing evidence was not given to them by the original authority.*

In case of Bhoruka Textiles Ltd [2005 (182) E.L.T. 403 (Tri. - Bang] following was held

> *5 …….The veracity of the Chartered Accountant's Certificate is not established as the Chartered Accountant's Certificate is dated 25-11-2002 certifying the stock position on 25-3-1994 shown in Bank Statement and submitted to the Bank on 30-4-1994. Bank Statement submitted to the Banker is uncertified and unsigned. ……"*

I also note that this decision of the tribunal has been set aside by Hon'ble Karnataka High Court as reported at [2012 (280) E.L.T. 504 (Kar)], and matter remanded to original authority for reconsideration, this observation made by the tribunal has not been commented on by the Hon'ble High Court.

4.6 I also observe that appellant has produced one chartered accountant certificate dated 03.03.2022 issued by Mr Shashank Saxena before the lower authorities. Now they have produced another Chartered Accountant Certificate dated 06.08.2025 from Shri Abhinav Rastogi to buttress their claim. I do not find any merits in the submission made. The Chartered Accountant certificate which has been issued only to buttress the arguments advanced by the appellant, and was not even produced before the lower authorities need to be rejected in view of the decision of Hon'ble Karnatak High Court in the case of [2010 (256) E.L.T. 216 (Kar.)] holding as follows:

> ***14.*** *In the instant case, we notice from the records that a certificate dated 10-5-2001 issued by the Chartered Accountant M/s. Agiwal P. Associates has been produced before the adjudicating authority and the certificate now produced by the respondent's counsel before this Court is that of Sri. Om Prakash, Chartered Accountants, dated 17-6-2002 i.e. subsequent to the order of adjudicating authority. Hence, we find that that certificate which has now been pressed into service was admittedly not available before the adjudicating authority for being considered. In these circumstances, we are of the opinion that the questions of law framed above require to be answered in favour of the revenue and against the assessee and accordingly, we do so.*

This decision has been upheld by the Hon'ble Supreme Court as reported at [2011 (274) E.L.T. 321 (S.C.)].

4.7 Hon'ble Kolkata High Court has in case of Emami Agrotech Ltd. [(2023) 3 Centax 108 (Cal.)] held as follows:

13. *We have referred to the findings recorded by the adjudicating authority to support our conclusion that the tribunal committed an error in holding that the adjudicating authority had glossed over the submissions made by the assessee. The tribunal granted relief to the assessee, substantially based on the Chartered Accountant certificate. The question would be whether the Chartered Accountant certificate was issued upon verification of all the details. Whether the assessee had produced supportive documents based on which the Chartered Accountant had certified in their favour. On going through the order passed by the tribunal as well as the other materials which were on record, we find that the Chartered Accountant certificate does not specifically state that it has been issued upon verification of all the details. It is argued by the Learned Counsel for the assessee that it may not be required for the Chartered Accountant to spell out the said details. However, it is the duty on the part of the assessee to produce documents to show that the certificate has been issued upon verification of all the details. This has not been done by the assessee as there is no record referred to or relied on by the tribunal which corroborates the certificate issued by the Chartered Accountant. Therefore, the tribunal proceeded on a mis-conception as if what has been stated in the Chartered Accountant certificate as "gospel truth" without calling upon the assessee to substantiate such stand. The Chartered Accountant certificate is dated 23-8-2016, the show cause notice cum demand is dated 27-3-2015, reply to the show cause notice is dated 4-6-2015 which has been noted by the adjudicating authority in paragraph 10.0 under heading "defence reply". It is seen that opportunity of personal hearing was granted to the assessee on 21-3-2016 and 29-3-2016 and obviously the Chartered Accountant Certificate could not have been produced during the hearing as the certificate is dated 23-8-2016. Thus, it is* *clear that the Chartered Accountant certificate was referred to and relied upon for the first time before the tribunal. In such circumstances, the appropriate course that the tribunal could have been adopted was to remand the matter to the adjudicating authority to call upon the assessee to substantiate the Chartered Accountant certificate by producing relevant documents. However, the tribunal accepted the certificate in toto without noting the fact that there were no corroborative documents produced by the assessee to substantiate the contents of the certificate which admittedly did not certify that the Chartered Accountant had verified the details and there after issued the certificate.*

14. *Thus, in our view certificate which was produced before the tribunal, appears to have been produced for the first time before the tribunal. Identical was the fact in the case of Delhi Motor Vehicles Private Limited (supra) in which the Chartered Accountant certificate was produced by the assessee with cost analysis which was produced after the adjudication order was passed which was taken into consideration by the Tribunal as fresh evidence and for examining the correctness, the matter was remanded back to the adjudicating authority. The assessee carried the matter to the Hon'ble Supreme Court. It was held that the effect and implication of the contents of the certificates are required to be examined in the light of any other evidence that may be available on record or could be made available and the parties are required to be given an opportunity to adduce such other materials which may be produced by either of the parties in respect of the dispute between them so as to come to an appropriate finding on all the issues. In the said case, the Hon'ble Supreme Court remanded the matter to the tribunal in stead of the adjudicating authority.*

15. *In Commissioner of Customs (Exports) Custom House v. BPL Ltd. 2010 SCC 3972 the substantial question of law framed for consideration was whether Chartered Accountant certificate alone can be accepted as evidence to rule out "unjust enrichment" without any corroborative evidence such as balance sheet, ledger accounts, sales invoices prior to after import etc. or not? It was held that certificate issued by the Chartered Accountant is merely a piece of evidence acknowledging certain facts, the authorities cannot merely act upon the certificate and if such an interpretation is given, then there is nothing for the authorities to decide the issue of refund. Thus, it was held that the tribunal had committed an error in merely relying upon the certificate produced by the assessee without taking into consideration of the fact that no evidence has been produced for considering the claim of refund. Thus, while answering the substantial question of law in favour of the revenue, the order passed by tribunal was set aside and the matter was remitted for a fresh consideration.*

16. *The facts of the above decision is pari- materia with the facts which are before us. There is nothing on record to indicate that the assessee had produced supportive documents to substantiate the Chartered Accountant certificate. Even assuming, the assessee was in possession of the documents, the endeavour of the tribunal should have been to either verify the documents, call for a remand report or remit the matter to the adjudicating authority to verify the correctness of the certificate issued by the Chartered Accountant. This exercise having not been done, we are of the clear view that a question of law arises for consideration in this appeal. Hence, we do not agree with the contension of the Learned Counsel for the assessee that the matter is entirely factual and equally the decisions relied on the by the Learned Counsel are clearly distinguishable on facts.*

> ***17.*** *In the light of the above, we are constrained to interfere with the order passed by the tribunal. As mentioned above, the verification is required to be made as to the correctness of the contents of the Chartered Accountant certificate, as the certificate appears to have been produced for the first time before the tribunal and does not indicate that the same has been issued after due verifications of the details.*

4.8 Accordingly, I do not find any merits in the submissions made by the appellant/appellant Counsel in this regard.

4.9 I also note that the amount reflected in the profit and loss account/ ITR of the appellant is the gross receipt and the benefit of cum duty tax should have been allowed to the appellant while computing the demand which has not been done in the present case by the lower authorities. Accordingly, I extend the benefit of cum duty price to the appellant as per Section 67 of the Finance Act, 1994. The demand of tax needs to be computed accordingly and penalties imposed under Section 78 of the Act also needs to be modified to that extent. With the above modification impugned order is upheld.

5.1 Appeal is partially allowed, for re-computation of the demand after allowing the benefit of cum tax value as per section 67 of Finance Act, 1994 and the modified penalty under Section 78 matter is remanded to the original authority.

5.2 As the matter is sufficiently old, it should be decided in remand proceedings within two months from the date of receipt of this order.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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