

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70502 of 2024**

(Arising out of Order-in-Appeal No.1445/ST/ALLD/2023 dated 09.11.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

**Shri Babu Lal Kushwaha,**

(860/1 Near Hari Singh Medical  
Shivaji Nagar, Jhansi)

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise &  
CGST, Kanpur**

(Commissionerate, Kanpur)

**....Respondent**

**APPEARANCE:**

Ms. Stuti Saggi, 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.- 70814/2025**

DATE OF HEARING : 29.08.2025  
DATE OF PRONOUNCEMENT : 27.11.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.1445/ST/ALLD/2023 dated 09.11.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad.

2. Briefly stated, the facts of the case are that the Appellant Shri Babu Lal Kushwaha is engaged in providing taxable branded services of retransmission of broadcast television signals received from their Multi System Operator<sup>1</sup> i.e. M/s DEN Ambey Cable Network Pvt. Ltd<sup>2</sup>, Kanpur and the benefit of threshold exemption under Notification No.33/2012-ST dated 20.06.2012

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<sup>1</sup> MSO

<sup>2</sup> M/s DEN

was not available to them. Show Cause Notice<sup>3</sup> dated 07.11.2019 was issued to the Appellant proposing as under:-

- i. *The total (taxable) amount of Rs.23,48,364/- (Rs Twenty three lacs forty eight thousand three hundred sixty four only) received by the party from their customers during the F.Y. 2014-15 to F.Y. 2017-18 (upto June, 17) as shown in the table above for the relevant periods on account of the taxable services provided under "Cable Operator Service" should not be treated as the value of taxable services provided by them and accordingly why Service Tax not paid/ short paid, as shown in table total amounting to Rs.3,11,470/- (Rs. Three Lac Eleven Thousand Four Hundred Seventy only) (inclusive of Education Cess & Higher & Secondary Education Cess and Swach Bharath Cess and Krishi Kalyan Cess) should not be demanded and recovered from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Section 174 of the Central Goods and Service Tax Act, 2017.*
- ii. *Interest at the appropriate rate for the relevant period on the above amount of service tax till the payment of service tax should not be demanded and recovered from them under the provisions of Section 75 of the Act *ibid* read with Section 174 of the Central Goods and Service Tax Act, 2017.*
- iii. *Penalty should not be imposed upon them under Section 70 of Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994 for non filing of ST-3 returns read with Section 174 of the Central Goods and Service Tax Act, 2017.*
- iv. *Penalty should not be imposed upon them under Section 76 of the Act *ibid* for failure to pay Service Tax in accordance with the provisions of Section 68 of the Central Goods and Service Tax Act, 2017.*

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<sup>3</sup> SCN

- v. *Penalty should not be imposed upon them under Section 77(1)(b) of the Act ibid and read with Section 174 of the Central Goods and Service Tax Act, 2017 for contravention of various provisions of the Act and the rules made there under as discussed supra.*
- vi. *Penalty should not be imposed upon them under Section 77(1)(c) of the Act ibid and read with Section 174 of the Central Goods and Service Tax Act, 2017 for contravention of various provisions of the Act and the rules made there under as discussed supra.*
- vii. *Penalty should not be imposed upon them under Section 77(1)(d) of the Act ibid and read with Section 174 of the Central Goods and Service Tax Act, 2017 for contravention of various provisions of the Act and the rules made there under as discussed supra.*
- viii. *Penalty should not be imposed upon them under Section 77(1)(e) of the Act ibid for contravention of various provisions of the Act and the rules made there under as discussed supra.*
- ix. *Penalty should not be imposed upon them under Section 77(2) of the Act ibid and read with Section 174 of the Central Goods and Service Tax Act, 2017 for contravention of various provisions of the Act and the rules made there under as discussed supra.*
- x. *Penalty should not be imposed upon them under Section 78 of the Finance Act and read with Section 174 of the Central Goods and Service Tax Act, 2017 for evasion of service tax amounting to Rs.3,11,470/- by suppression of facts and the value of taxable services, willful mis-statement and for contravention of various provisions of the Act and the rules made there under with intent to evade payment of service tax.*

3. SCN was adjudicated vide the Order-in-Original dated 18.04.2023 and the following order was passed:-

**"ORDER**

- (i) I confirm the demand of service tax of Rs.3,11,470/- (Rs. Three Lac Eleven Thousand Four Hundred Seventy only) (inclusive of Education Cess & Higher & Secondary Education Cess and Swach Bharath Cess and Krishi Kalyan Cess) under Section 73(2) of the Act.
- (ii) I impose the penalty of Rs.3,11,470/- under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act 2017 upon the party. However, I give an option to the party to deposit the reduced penalty of 25% in view of 2<sup>nd</sup> proviso to Section 78 of the Finance Act, 1994 i.e. if the tax at SI. No.(i) and interest is paid within 30 days of receipt of order.
- (iii) I confirm the demand of interest under Section 75 of the Act on the amount as confirmed at (i) above.
- (iv) I do not impose penalty under Section 76 of the Finance Act, 1994.
- (v) I also impose the penalty of Rs.5,000/- under Section 77(1)(b) of the Act read with Section 174 of the CGST Act 2017 upon the party.
- (vi) I also impose the penalty of Rs.5,000/- under Section 77(1)(c) of the Act read with Section 174 of the CGST Act 2017 upon the party.
- (vii) I do not impose the penalty under Section 77(1)(d) of the Act read with Section 174 of the CGST Act 2017 upon the party.
- (viii) I also impose the penalty of Rs.2,000/- under Section 77(1)(e) of the Act read with Section 174 of the CGST Act 2017 upon the party.
- (ix) I do not impose any penalty under Section 77(2) of the Finance Act, 1994.
- (x) I confirm the demand of late fee of Rs.1,40,000/- (Rs.20,000/- per return not filed) under Section 70 of Finance Act, 1994 read with Rule 7(C) of the Service Tax Rules *ibid* and read with Section 174 of CGST Act, 2017."

4. Being aggrieved, the Appellant filed appeal before the first Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-in-Appeal, modified the Order-in-Original as under:-

- (i) Confirmation of demand of Service Tax (including Cesses) is reduced to Rs.2,90,980/- alongwith interest;
- (ii) Penalty imposed upon the appellant, under Section 78 of the Act, is reduced to Rs.2,90,980/- and
- (iii) Rest of the order shall remain unchanged.

Hence, the present appeal before the Tribunal.

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

6. I find that the tax liability is not in dispute. It appears that the scope of activities undertaken by the Appellant is not falling under generally understood activities of cable operator who is involved in distribution of television signals to various clients. Admittedly, the television signals received from satellite is managed and handled through various layers of persons/activities till it reaches the ultimate customer. The Appellant's role is as an intermediary and apparently there could be a *bona fide* belief on their part regarding the tax liability under the said category. As already noted that they are not acting as a local cable TV operator in transmitting signals to the clients. Neither they are involved in receiving satellite signals as a MSO. The Finance Act, 1994 borrows the definitions of Cable operator" and „Cable service“ from Cable Television Network (Regulation) Act, 1995. Considering scope of definition under Section 2(aa) of the said Act there is a possibility of bona fide belief for non-tax liability. Considering the ratio followed by the Tribunal in the abovementioned cases and also considering the facts of the present case, I find that it is a fit case for invoking the provision of Section 80 for waiver of penalties imposed on the Appellant. Accordingly, the penalties are set aside.

7. Further the period under dispute is Financial Year 2014-15, 2015-16, 2016-17, 2017-18 (upto June, 2017).

<b>Sr. No.</b>	<b>Financial Year</b>	<b>Date of Limitation</b>
1.	2014-15	30.09.2016
2.	2015-16	30.09.2017
3.	2016-17	30.09.2018
4.	2017-18(upto June, 2017)	31.12.2018

8. Further, the SCN was issued only on 07.11.2019 which is much beyond the period of limitation as indicated above.

9. The law of limitation is not one of substance but of procedure. The object of prescribing limitation is to put an end to litigation, or to state it in other words, limitation may attain finality.

10. In the absence of any findings of suppression, mis-statement etc., with intent to evade payment of service tax in the impugned order and in the Order-in-Original, the SCN is definitely barred by limitation. It is a settled position in law that mere failure to provide certain information or declaration, certain fact would not amount to suppression with intent to evade payment of taxes for invocation of extended period of limitation.

11. The Appellant could have entertained a *bona fide* belief that he was not liable to pay any service tax. In the case of **Ajitabh Mishra Vs. Commissioner of Central Excise & CGST, Raipur reported at 2025 (6) TMI 12-CESTAT NEW DELHI** following has been held:-

*"7. Before going into the merits of the case, it would be appropriate to consider the issue of limitation raised by the appellant. From the submissions of the appellant, I find that it is not a case of suppression of facts, fraud or collusion, which would justify the invocation of the extended period. The appellant has duly reflected the receipt of the said amount which they had received from their service receivers in the income tax returns and the balance sheet which is a public document and accessible to the Revenue Authority. In fact, the case has been made against the appellant on the basis of the records of the income tax returns. The*

*learned Counsel for the appellant has relied on series of decisions by the Tribunal as under:*

- a. C.S.T., New Delhi Vs. Kamal Lalwani – 2017[49] S.T.R. 552 [Tri.-Del.]*
- b. Shri Balaji Industrial Products Ltd. Vs. Commr. Of Cus. & C. Ex., Jaipur- 2019 [370] E.L.T.280[Tri.-Del.]*
- c. Antares Services Pvt. Ltd. Vs. Commissioner of C. Ex., Chandigarh – 2024[388] E.L.T.200[Tri.-chan.]*
- d. Balajee Machinery Vs. Commissioner of CGST & Excise, Patna-II-*
- e. Maa Kalika Transport Pvt. Ltd. Vs. Commissioner of CGST & C.Ex., Rourkela. -2023[79] G.S.T.L. 263[Tri. Kolkata]*
- f. Om Sai Professional Det. & Security Ser. P. Ltd. Vs. C.C.E., Guntur-2008(10) S.T.R.59[Tri.-Bang.]*

**8. In *Central Sales Tax, New Delhi versus Kamal Lalwani (supra)*, it has been categorically observed that all the activities undertaken by the appellant were a part of the reflection made in the balance sheet and income tax returns in which case no suppression or malafide can be attributed to the assessee. Revenue has not been able to produce any evidence on record to show that tax, which, according to the Revenue was payable, was not being paid on account of any malafide. Hence the extended period would not be available to the Revenue. Similarly in *Shri Balaji Industrial Products Ltd (supra)* the Tribunal noticed that admittedly, the appellant was recording the entire activity in their balance sheet, which is a proper document and as per the settled law, it cannot be said that they suppressed anything with a malafide intention. Since there was confusion as to the liability of the tax, the Tribunal held that there can be a bonafide belief on the part of the assessee, especially even when the entire activities are being reflected in the books of accounts. Accordingly, the demand was maintained only for the normal period. Reiterating the decision in the case of **Balaji Machinery****

*(supra), the Tribunal in the case of **Antares Services Private Limited (surpa)** held that where the demand is merely on the basis of data obtained from the Income Tax Department, it cannot be alleged that there was suppression, etc. on the part of the assessee. To justify the invocation of extended period, the settled principle of law is that once the declaration has been made with the Income Tax Department, there cannot be any suppression of facts and, therefore, the extended period of limitation cannot be invoked. Applying the above principle to the instant case, I find that in view of the exemption provisions, the appellant was under a bona-fide belief that the services provided are not taxable. This seems to be evident by the fact that in the balance sheet and the income tax returns filed by them, they have fully described the receipt of the amount towards the services received. At the relevant time, the normal period prescribed for issuing the show cause notice was 18 months, however the show cause notice dated 12.10.2018 was issued raising the demand for the period 2013-2014. The demand raised is, therefore, barred by limitation and in view of the discussion, above the extended period is not invocable. Hence, the entire demand is quashed on the ground of time bar."*

12. In view of the above discussion, the appeal filed by the Appellant is allowed on limitation.

(Order pronounced in open court on - **27.11.2025**)

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

LKS