CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70449 of 2024

(Arising out of Order-in-Appeal No.254-ST/APPL/LKO/2023 dated 05/04/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Christopher Turillo, ...**Appellant**
(5/202, Vineet Khand,
Gomti Nagar, Lucknow-226010)

VERSUS

Commissioner of Central Excise &
Service Tax, Lucknow ....**Respondent**
(7-A, Ashok Marg, Hazratganj, Lucknow-226001)

APPEARANCE:

None, for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70820/2025

DATE OF HEARING : 16 September, 2025
DATE OF DECISION : 16 September, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.254-ST/APPL/LKO/2023 dated 05/04/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No.357/DC/CGST/LKO-II/21-22 dated 22.03.2022 wherein following has been held:-

"ORDER

(i) I confirm the demand of Service Tax amounting to Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand 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 interest 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. 10,000/- (Rs. Ten Thousand Only) under section 77(1)(a) of the Finance Act 1994 upon the taxpayer under section 69 of the Act ibid read with Section 142 & 174 of the CGST Act for not taking service tax registration.

(iv) I impose a penalty Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand 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.

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

(vi) 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 the CGST Act, 2017 for fails to pay the Service tax electronically.

(vii) I impose a penalty of Rs.10,000/- (Rs. Ten Thousand Only) upon them under Section 77(2) of the Finance Act 1994 for not filing of statutory service tax returns for the Financial Year April 16-Sep 16, Oct 16-Mar 17."

2.1 Appellant is engaged in providing services of Professional [Other] and not registered with the Service Tax department and having PAN No.ANMPT6332M.

2.2 Through the third party information received from the Income Tax Department for the Financial Year 2016-17 following was observed:-

S.No.	Description	Amount
1.	SALE OF SERVICES (ITR)	24,00,000/-
2.	VALUE OF TDS	--

2.3 A letter dated 19.07.2021 followed by reminders dated 09.08.2021 and 26.08.2021 were issued to the appellant requesting them to furnish Balance Sheet, Service Tax returns, Ledger Account, Bank Statement, Copies of Invoices for the Financial Year 2016-17 for proper verification of their service tax liability.

2.4 As the appellant has not provided any documents referred above, on the basis of available documents, tax liability was confirmed on the appellants as indicated in table below:-

Financial Year	Sale of Services Shown in ITR	Service tax inclusive of all cess	
		Rate %	Payable
2016-17	24,00,000/-	15%*	3,60,000/-

2.5 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.3,60,000/- (Rupees Three Lakh Sixty Thousand 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 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 22.03.2022 referred in para 1 above.

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 When the matter was called for hearing on 16.09.2025, none appears on behalf of the appellant. It was observed that none appeared for hearing on 08.07.2025 and 20.08.2025 on behalf of appellant.

3.2 As the matter has been listed in the past also without causing any appearance on behalf of the appellant, in terms of Rule 20 of CESTAT Procedure Rules, matter has been taken up for consideration on the basis of available case records and after hearing Shri Santosh Kumar, learned Authorized Representative appearing for the revenue, who reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For upholding Order-in-Original, impugned order records as follows:-

"06. I find that the appellant has claimed that the services provided by them would fall under the category of 'export of services' for the reason that they had provided 'consultancy services to the foreign client Le. M/s Medha Corp., Massachusetts, USA on monthly fee of USD 1500 during the relevant period and in support of their claim, they have produced a copy of the agreement entered into between them and the said foreign client.

07. I notice that the appellant has not submitted copies of the invoices/bills issued by them to the said foreign client or any ledger with respect to the aforesaid service claimed to be provided during the relevant period. The appellant also failed to produce the financial documents ie. Foreign Inward Remittance Certificate (FIRC), Bank Certificate/Statement etc. evidencing the receipt of export proceeds in convertible foreign exchange against the said service. Mere submission of the agreement is not suffice to establish that the export of services had taken place during the said period. In the absence of the relevant documents, I am of the view that the appellant has failed to fulfill the necessary conditions as stipulated under Rule 6A of the Service Tax Rules, 1994 to merit as 'export of services'. Therefore, I do not find the appellant's said plea sustainable and they are required to discharge Service tax liability on the consideration of Rs.24,00,000/- received by them during the F.Y. 2016-17.

08. As regards the benefit of cum-tax value, I find that the appellant has not submitted copies of the invoices/bills issued by them or any other relevant document to show that they had not charged Service tax from their customers. Thus, the benefit of cum-tax value cannot be extended to them.

09. Further, I notice that the appellant has failed to declare true taxable value in as much as they had not taken Service tax Registration despite providing taxable services during the relevant period. Therefore, it is quite clear that they had suppressed the facts/figures from the department with the intention to evadé payment of due Service tax. As such, extended period of limitation is rightly invokable in this case.

10. In the light of above, I uphold the impugned order and reject the appeal filed by the appellant."

4.3 Appellant has before the Commissioner (Appeals) and also alongwith the appeal furnished a copy of agreement entered between them and the Foreign Service Recipient. The relevant clauses of the agreement are reproduced below:-

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement) is made as of the 1st day of January, 2012 (the "'Effective Date") by and between Christopher Turillo (the "Consultant" and Medha Corp., a Delaware company (the "Company")

WHEREAS, the Company desires to secure the services of the Consultant and the Consultant desires to perform such services for the Company beginning on the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties. agree as follows:

1. Services. The Company hereby engages Consultant and Consultant hereb) accepts engagement by the Company to perform advisory, strategic, and operational services to and for the Company. These services include decisions governing Human Resources, Finance, Business Development and Operations (the "Services"). Consultant shall render the Services at such time and places and in such manner as reasonably determined by the Consultant, *including but not limited to telephonically; it being the expectation of the parties that the Services rendered by Consultant shall be approximately 40 hours per week during the Term (inclusive of any services rendered in Consultant's capacity as a member of the Board)*

2. Term. This Agreement shall become effective on the Effective Date and continue until mutual agreement of the parties (the "Term")

3. Other Activities. This Agreement is not exclusive. During the Term, Consultant may (subject to the following provisions of this Section 3) be engaged n other business, charitable, civic and academic activities without the consent of the Company. Consultant will not compete with the Company, directly or indirectly, or join the governing board of, or consult with. any organization that may engage in business activities that compete with the Company, without the advance consent of the Company. This Agreement shall not limit any charitable or civic activities, personal investments or other similar activities as do not interfere with his performance of his responsibilities and obligations pursuant to this Agreement,

4. Compensation.

4.1 Consulting Fee. The Company shall pay the Consultant and Consultant hereby agrees to accept, as compensation for all Services, and for Consultant's undertakings hereunder, including his agreement not to compete with the Company (or undertake engagements with competitors of the Company) a base amount of $1,500 per month, (the "Consulting Fee"), which shall continue through the Term of this Agreement. The Consulting Fee shall be paid monthly in arrears on the last day business day of the month, unless otherwise agreed upon by the Company and Consultant

4.2 Reimbursement of Expenses. Consultant shall be eligible for reimbursement of reasonable business expenses incurred by the

Consultant promptly following submission of an invoice to the Company

4.4 It is the claim of the appellant that the services provided by them to M/s Medha Corporation, USA fall under the category of export of service as per Rule 6A of the Act. Hence, the same is not leviable to service tax, accordingly, the claim of the appellant has been rejected only for the reason that appellant has not been appealed to provide copy of invoices, ledger etc. The said reasons advanced in the impugned order or contrary to the facts as can be adduced from the above agreement. Impugned order is totally silent in respect of the agreement entered between the appellant and Medha Corporation reproduced above. It is also noted that though the services were being provided by the appellant to Medha Corporation, Delaware under this agreement, and the appellant was receiving the payments as per this agreement from the said corporation, the Form 26AS of the appellant do not reflect any deduction of TDS on these receipts. This also point to the fact that the services were not provided to any person in India but to a Corporation outside India. Hence the services provided will qualify as export of services. The agreement itself provides that the reimbursement for the services provided will be US$ 1500 per month.

4.5 However, I find that this agreement and the claim of the appellant that during the year 2015-16 also they have received a some of Rs.20,55,000/- under the same agreement from the foreign service recipient i.e. M/s Medha Corp. is enough to show that appellant entertained a bonafide belief for the appellant to hold that services provided by him under the category of export of services under Rule 6A of the Act. Hence, no service tax was payable in respect of these services for this reason appellant has not taken consideration and had not paid the service tax.

4.6 Hon'ble Supreme Court in the case of Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)] has held as follows:-

> *"**21.** The Revenue contended that of the three categories, the conduct of the appellant falls under the case of "willful misstatement" and pointed to the use of the word*

"misutilizing" in the following statement found in the order of the Commissioner of Customs, Raipur in furtherance of its claim :

"The noticee procured 742.51 kl of furnace oil valued at Rs. 54,57,357/- without payment of customs duty by misutilizing the facility available to them under Notification No. 53/97-Cus., dated 3-6-1997"

22. *We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or misstatement. The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, Sixth Edition (pp 1599) defines "willful" in the following manner :-*

"Willful. Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass…

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done…"

23. *In the present case, from the evidence adduced by the appellant, one will draw an inference of bona fide conduct in favour of the appellant. The appellant laboured under the very doubt which forms the basis of the issue before us and hence, decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did* *the appellant decide to claim exemption. Even if one were to accept the argument that the Development Commissioner was perhaps not the most suitable repository of the answers to the queries that the appellant laboured under, it does not take away from the bona fide conduct of the appellant. It still reflects the fact that the appellant made efforts in pursuit of adherence to the law rather than its breach.*

24. *Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that "the appellants had not brought anything on record" to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."*

25. *Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In Aban Loyd Chiles Offshore Limited and Ors. (supra), this Court made the following observations :*

"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful

misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :

'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which

is the allegation against the assessee falling within the four corners of the said proviso....”

(Emphasis supplied)

26. *Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant.”*

4.7 In the following decisions also it has been held that extended period of limitation could not have been invoked for making the demand when the person entertained a bonafide belief about non taxable nature or exempted nature of the services provided.

- Anand Nishikawa Co. Ltd. Vs CCE, Meerut 2025 (188) ELT 149;
- Infinity Infotech Parks Ltd. Vs UOI 2014 (36) STR 37;
- CCE, Chennai Vs Chennai Petroleum Corporation Ltd. 2007 (211) ELT 193;

4.8 In view of the above, I find that demand is hit by limitation and the findings recorded in the impugned order in this regard cannot stand in the eyes of law. Accordingly, the impugned order is set aside.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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