CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70760 of 2025

(Arising out of Order-in-Appeal No.95/ST/Appl/Alld/2025 dated 26/06/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

Shri Surendra Singh, **.....Appellant**
(Nagla Sukhi, Onha, Karhal, Mainpuri-205264)

VERSUS

Commissioner of Central Excise &

CGST, Kanpur **....Respondent**

(113/4, Sanjay Place, Agra-282002)

APPEARANCE:

Ms Stuti Saggi, Advocate &
Shri S.P. Ojha, Consultant for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70868/2025

DATE OF HEARING : 10 December, 2025
DATE OF DECISION : 10 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.95/ST/Appl/Alld/2025 dated 26/06/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order, Commissioner (Appeals) has observed as follows:-

> *"5.3 I find that the Adjudicating Authority has observed that the appellant has provided services to Block Development Officer, Salfai, Mount Litera School Vikas Sewa Samiti and Zila Panchayat Mainpuri and has received the consideration of Rs. 594867/-, 526000/- and*

4683000/-, He found that all the services were exempt by virtue of either section 66D(e) or item no. 9 and 13 of Notification No. 25/2012-ST dated 20.06.2012. However he noticed that the appellant has also provided services to the Zila Panchayat for construction of shop whose contract was entered into on 23.05.2015. He further observed that since the services were provided alongwith material hence the benefit of abatement at the rate of 60% in terms of Rule 2(A)(ii) of the Service Tax (Determination of Value) Rules, 2006 was provided and the service tax of Rs. 41876/- on the abated taxable value(40%) of Rs. 288800/- was confirmed.

5.4 It is pertinent to mention that with the introduction of Notification No 09/2016-ST dated 01.03.2016, a new clause 12A was introduced which states that construction services provided to government/government authority or local authority would qualify for exemption only when the contract was entered prior to 01.03.2015. Thus the plain reading the said notification makes it clear that in order to avail the benefit of exemption the services should have been provided to government/government authority or local authority whose contract should have been entered before the threshold date i.e. 01.03.2015. However in the current scenario, the findings of the Adjudicating Authority are explicit that the since the contract was entered on 23.05.2015 i.e. after 01.03.2015, hence the same is outside the purview of Notification No. 25/2012-ST dated 20.06.2012 as well as Notification No. 09/2016-ST dated 01.03.2016.

5.5 I also note that the appellant has submitted that since the taxable income during F.Y 2014-15 (previous financial year) is below Rs. 10 lakhs hence he is eligible for the benefit of threshold exemption during the current year i,e. F.Y 2015-16. In support of his claim, the appellant has submitted the copy of ITR for the period 2014-15. However, I find that the adjudicating authority has made

ample discussions while confirming service tax liability in his order, however, the issue of threshold exemption to the appellant was not the subject matter of the impugned order, hence, in absence of verification of data pertaining to the F.Y 2014-15 at field level, I am not inclined to extend any such benefit to the appellant."

2.1 As the information received to department that during the financial year 2015-16 the appellant has received huge sum on account of providing services as per his ITR/TDS data but has not paid service tax. Therefore the appellant was requested to provide certain documents so that the quantum of service tax could be analyzed.

2.2 The record of the appellant was searched but due to some technical glitch the ST-3 Return or challans could not be traced. The appellant also did not cooperate with the department and failed to produce any document. However, the third party data provided revealed that the appellant has received consideration under section 194C which is meant for works contract service and commission & brokerage service respectively. Thus appellant had not paid the service tax in respect of these receipts computed as follows:

Value of Services provided			Service Tax (inclusive of cesses)	
ITR	26AS	Higher	Rate (%)	Payable
1470164	5803867	5803867	14.5	8,41,561

2.3 Show cause notice dated 02.11.2020 was issued asking them to show case as to why-

"(i) An amount of Rs. 58,03,867/-(Rupees Fifty Eight Lakh Three Thousand Eight Hundred Sixty Seven Only) should not be treated as the value of taxable services provided by them during the Financial Years 2015-16, and accordingly Service Tax amounting to Rs.8.41,561/- (Rupees Eight Lakh Forty One Thousand Five Hundred Sixty One Only) as detailed in Table-A not paid /short paid including Education Cess, Secondary & Higher Education Cess and Swachh Bharat Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act,

1994 as amended read with Section 174 of the CGST Act, 2017:

(ii) Interest at the appropriate rate should not be charged and recovered from the 'Noticee' in respect of amount of service tax mentioned at S.N. (1) aboveunder Section 75 of the 'Act' readwith Section 174 of CGST Act. 2017;

(iii) Penalty should not be imposed upon them in respect of amount of service tax mentioned at S.N. (i) aboveunder Section 78 of the 'Act' read with Section 174 of CGST Act, 2017.

(iv) Penalty under Section 77(1)(a), 77(1)(c), 77(1)(d) and 77(2) of Finance Act, 1994 readwith Section 174 of CGST Act, 2017 should not be imposed upon them for their various acts of omission and commission;

(v) the late fee / amount under Section 70 of Finance Act, 1994 read with Rule 7(C) of ibid and read with Section 174 of CGST Act, 2017should not be imposed upon them for their various acts of omission and commission."

2.4 The said show cause notice was adjudicated as per the Order-in-Original dated 22.04.2022 by holding as follows:-

"ORDER

1. I confirm the amount of Rs. 58,03,867/- (Rupees Fifty Eight Lakh Three Thousand Eight Hundred Sixty Seven Only) charged/received during the F.Y. 2015-16 by Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri as taxable value under Section 67 of Finance Act 1994 and accordingly I confirm the demand of Service Tax amounting to Rs.8,41,561/- (Rupees Eight Lakh Forty One Thousand Five Hundred Sixty One Only) including Cesses under proviso to Section 73(1) ibid and order for recovery of the said amount from Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 73(2) of the Finance Act, 1994 readwith Section 174 of CGST Act 2017 as discussed above.

2. I further order for recovery of interest at the appropriate rate for the relevant period till the payment of said confirmed amount of Service Tax from Shri Surendra Singh. Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed above.

3. I further impose a penalty of Rs.8,41,561/- (Rupees Eight Lakh Forty One Thousand Five Hundred Sixty One Only) upon Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under section 78 of the Finance Act, 1994read with Section 174 of CGST Act, 2017, as discussed above. Further, I give an option to the party to pay 25% penalty of amount of confirmed demand of service tax as provided in the Section 78 of the Act, if Service Tax and Interest is paid within a period of 30 days of the date of receipt of this order. Further, the benefit of reduced penalty shall be available only if the amount of such reduced penalty is also paid within 30 days.

4. I impose a penalty of Rs. 10,000/- (Ten thousand rupees only) upon Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017, as discussed above.

5. I impose a penalty of Rs.10,000/- (Ten thousand rupees only) upon Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 77(1)(c) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017, as discussed above.

6. I impose a penalty of Rs.10,000/- (Ten thousand rupees only) upon Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 77(1)(d) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017, as discussed above.

7. I impose a penalty of Rs.10,000/- (Ten thousand rupees only) upon Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 77(2) of the Finance

Act, 1994 read with Section 174 of CGST Act, 2017, as discussed above.

8. I impose a penalty of Rs.20,000/- (Twenty thousand rupees only) upon Shri Surendra Singh, Village Nagla Sukhi, Post Onha, Karhal, Mainpuri under Section 70 of the Finance Act, 1994 read with Rule 7(C) of Service Tax Rules, 1994 and read with Section 174 of CGST Act, 2017, as discussed above."

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which was allowed as per order in appeal No 621/ST/ALLD/2022 dated 20.12.2022/26.12.2022 observing as follows:

"4.2 I have carefully gone through the facts of the case, the averments made at the time of personal hearing and all other materials/ documents on record.

4.3 It is observed that the appellant neither submitted his defence reply nor appeared before the adjudicating authority. Accordingly, the impugned order was issued ex-parte by the adjudicating authority. Here at the appellate stage, the appellant has submitted some documents but not all the documents necessary to ascertain the tax liability. Further, the veracity of this document cannot be ascertained at this stage and needs to be verified at the stage of adjudicating authority

4.4 I therefore, find that the issues with respect to the classification of the services provided, their taxability, and re-quantification of the taxable value, needs fresh examination, after ascertaining the nature of activities performed by the appellant against which they had received the payment during the material period. Therefore, I have no option but to remand the case in the light of Section 85(4) of the Act to the Adjudicating Authority. The appellant is also directed to provide all the necessary documents to the adjudicating authority within 15 days of receipt of this order. In this regard, I place

reliance on the following case laws, wherein it has been held under the Act, the Commissioner (Appeals) has the power to remand the proceedings:

(i) Commissioner of S. Tax vs. Associated Hotels Ltd. 2015 (37) S.T.R. 723 (Guj.)

(ii) CCE, Bangalore US, MavenirSystems Pvt. Ltd.2012 (27) S.T.R. 510 (Tri.- Bang.)

(iii) CCE, Pune-I vs. Sai Advantium Ltd. 2012 (27) S.T.R. (Tri.- Mumbai)

(iv) Commissioner of S.Tax, Delhi vs. World Vision 2010 (20) S.T.R.) 49 (Tri.- Del.). This decision was also upheld by the Hon'ble High Court of Delhi reported as 2011 (24) S.T.R. 650 (Del.)

5. In view of the above, I set aside the impugned Order and remand the matter to he original Adjudicating Authority to decide, the case afresh, in the light of aforesaid observations preferably within six months from date of receipt of this Order."

2.6 In the remand proceedings the show cause notice was adjudicated as per the order in original No 81/AC/ADJ/ST/2024 dated 30.03.2024 holding as follows:

(i) I hereby confirm the demand of Service Tax amounting to Rs,41,876/- (Rupees Forty One Thousand Eight Hundred Seventy Six only) on the taxable amounts received/ incurred during FY 2015-16 by the party and order to recover the same from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017;

(ii) I hereby order to recover interest at the appropriate rate on the above confirmed amount of service tax from hem under the provisions of Section 75 of the Finance Act, 1994 read wlth Section 174 of the CGST Act, 2017;

(iii) I hereby impose penalty amounting to Rs.41,876/- (Rupees Forty One Thousand Eight Hundred Seventy Six only) upon them under Section 78 of the Finance Act,

1994,read with Section 174 of the CGST Act, 2017 for their acts of omission and commission as mentioned in preceding paras;

(iv) *I hereby also impose penalty amounting to Rs.10,000/- (Rupees Ten Thousand only) under Section 77(1)(a) of the Finance Act, 1994, read with Section 174 of the CGST Act, 2017 for their acts of omission and commission as mentioned in preceding paras;*

(v) *I hereby also impose penalty amounting to Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(1)(c) of the Finance Act, 1994,read with Section 174 of the CGST Act, 2017 for their acts of omission and commission as mentioned in preceding paras:*

(vi) *I hereby also impose penalty amounting to Rs,10,000/- (Rupees Ten Thousand only) under Section 77(1)(d) of the Finance Act, 1994,read with Section 174 of the CGST Act, 2017 for their acts of omission and commission as mentioned in preceding paras;*

(vii) *I hereby order to recover a late fee of Rs. 20,000 (Rupees Twenty Thousand only) per ST-3 return not filed by them during the FY 2015-16, under Section 70 of the Finance Act, 1994, read with Section 174 of the CGST Act, 2017 for their acts of omission and commission as mentioned in preceding paras;*

(viii) *I do not impose any penalty upon them under Section 77(2) of the Finance Act, 1994, as discussed above*

2.7 Aggrieved appellant filled the appeal before Commissioner (Appeal) which has been disposed off by the impugned order referred in para 1 above.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri S P Ojha & Ms Stuti Saggi, Advocate appearing for the appellant and Smt Chitra Srivastava Authorized 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 I find that the issue involved is in very narrow compass. Commissioner (Appeals) has himself has observed that appellant has before him claimed benefit of threshold exemption which should not be allowed for the reason that this plea was never taken before the Original Adjudicating Authority. Appellant had produced the copy of his ITR and 26AS for the previous year i.e. 2014-15, showing the total receipts which is below the threshold exemption limits as provided. I also observe that the only prayer made by the appellant before the Commissioner (Appeal) was as follows:

"PRAYER

15. That in view of the submissions made by the appellant in their appeal memo, on merits, the appellant is not liable to pay service tax on consideration of Rs. 7,22,000/-, being below threshold exemption limit of Rs 10 lakhs as envisaged in the SSI Exemption Notification No. 33/2012-ST dated 20.06.2012 read with explanation B of the said notification which laid down as under:-

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year **but does not include value charged in the invoices issued towards such services which are exempt from whole of service tax leviable thereon under Section 66B of the said Finance Act under any other notification."**

In my view the approach of the Commissioner (Appeal) is not justifiable for the reason that the entire demand is made against the appellant on the basis of the information made available by the Income Tax department as per the ITR and 26AS of the appellant. It was necessary for the revenue to examine the ITR for previous year and record a finding on the admissibility of the threshold exemption.

4.3 From the prayer made in the appeal before the Commissioner (Appeal) it is evident that the appellant was not questioning the demand confirmed in respect of the services provided to the extent of Rs 41,876/-. I also observe that

question of admissibility of threshold exemption under Notification No 33/2012-ST, is not purely a question of law, but a mixed question of fact and law. It should have been taken at the first available opportunity. I find appellant had never claimed this exemption in the first round of litigation and also before the adjudicating authority when the matter was being agitated in the remand proceedings. Thus taking such a plea in the second round of proceeding before the Commissioner (Appeal) may not be justified in view of the decision of Delhi Bench in the case of Century Yarn [2011 (270) E.L.T. 554 (Tri. - Del.)] observing as follows:

> ***"13.*** *…. It is a mixed question of law and facts. It is to be raised at the first available opportunity. The contesting party is entitled to place on record its defence supported by the facts and materials which could support the defence plea. In the absence of such plea being raised before the adjudicating authority, obviously the department had no opportunity to meet the same by placing on record the required material in support of their defence. Being so, it is too late in the day for the appellants to raise such issue at the appellate stage."*

4.4 In the case of Warner Hindustan Ltd [1999 (113) E.L.T. 24 (S.C.)] Hon'ble Supreme Court observed as follows:

> *"2. ….. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. It is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before the authorities below."*

4.5 In the case of Vee Gee Faucets P. Ltd. [2010 (259) E.L.T. 273 (Tri. – Del)] Delhi bench observed as follows:

> ***25.*** *……. It is a mixed question of law and facts. A party who wants to raise such point has to raise the same at the earliest point of opportunity so that the defending party can rebut the same by producing proper evidence. Admittedly the appellants had not raised the said point*

either in reply to the show cause notice or even in the appeal memo filed in the present case. It is only in the course of the argument that the learned Advocate sought to raise the said point. Such a procedure is not permissible.

26. *It is also sought to be contended that considering the provisions of Rule 25 of the Central Excise Rules, 2002, the goods seized were not liable to be confiscated. Rule 25 provides that subject to the provisions of Section 11AC of Central Excise Act, 1944, if any producer, manufacturer, registered person of a warehouse or a registered dealer either removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules or does not account for any excisable goods produced or manufactured or stored by him or engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under Section 6 of the Act; or contravenes any of the provisions of the said rules or the notifications issued under these rules with intent to evade payment of duty, then all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to any of the provisions to the said rule has been committed or Rs. 10,000/- whichever is greater. Indeed we find no material on record to justify the action of the authority under Rule 25 of the said Rules. It is sought to be contended on behalf of the respondent that there was no strict compliance of the said Rules in-as-much as there was no disclosure of the relevant factors in quarterly returns filed by the appellants. That may be so in relation to the goods which were cleared and not in relation to the goods in question because there was still time for the appellants to file such*

return. Being so on the said ground, the authorities could not have invoked the powers under Rule 25 of the said Rules. To that extent impugned order cannot be sustained. Obviously, therefore alongwith the confiscation, the penalty also cannot be sustained under Rule 25 in relation to the goods which were seized from the premises of the appellants."

This order has been affirmed by Hon'ble Punjab and Haryana High Court as reported at [2015 (329) E.L.T. 76 (P & H)] and Hon'ble Supreme Court at [2015 (316) E.L.T. A72 (SC)]. Hon'ble Punjab and Haryana High Court while upholding this order observed as follows in relation to the penalty imposed:

25. *With these judgments of the Supreme Court, we now examine the scope of the Rules in question. Rule 25 and Rule 26 of the Central Excise Rules confer the power to impose penalty on the adjudicating authority subject to provisions of Section 11AC of the Act. Penalty is imposable under Rule 25, if any producer, manufacturer, registered person of a warehouse or a registered dealer, contravenes any of the provisions of these Rules or the notifications issued under these rules 'with intent to evade payment of duty'. It also contemplates that 'penalty shall not exceed the duty on the excisable goods'.*

26. *A reading of clause (d) of Rule 25 shows that the penalty is imposable if there is intention to evade payment of duty. Thus, mens rea becomes a necessary ingredient before imposition of penalty under Rule 25. The Tribunal has set aside the order of imposing penalty finding that it is a bona fide belief of the assessee in using the brand name of its sister concern. Therefore, such user is not with intent to evade payment of duty and, thus, levy of penalty has been rightly set aside.*

27. *In respect of penalties imposable under Rule 26, again the penalty is payable if a person acquires possession of, or in any manner deals with any excisable*

goods 'which he knows or has reason to believe' are liable to confiscation under the Act. Such provision again makes the mens rea a necessary ingredient for imposition of penalty, as held by the Supreme Court in Pepsi Foods Ltd. case (supra).

28. *In view of the above, we find that the Revenue has not been able to prove the intention to evade the payment of duty or the fact that the assessee knew or has reason to belief that the goods used are liable to be confiscated under the Act. The Tribunal is right in setting aside the order of imposition of penalty.*

4.6 Without disturbing the findings recorded in para-5.5 of the impugned order that this plea was never taken before the Original Authority, hence could not be taken in the appellate proceedings, I find sufficient reason to hold that appellant was having a bonafide belief for not getting registered and non-payment of service tax by the due date.

4.6 Taking note of the fact that appellant was having a bonafide belief, I do not find any reason why penalties imposed upon the appellant under Section 77, 77(1A), 77 (1C), 77 (1d) & 78 of the Finance Act, 1994 should be upheld. Accordingly, the penalties imposed upon the appellant under the said Section are set aside.

4.5 In view of the above modification rest of the impugned order is upheld.

5.1 Appeal is partially allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp