

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

REGIONAL BENCH - COURT No.II

**Service Tax Appeal No.70707 of 2025**

(Arising out of Order-in-Appeal No.1485/ST/Alld/2023 dated 01/12/2023 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

**Mr. Kamruddin,**

**.....Appellant**

(Sahabganj, Mugra Badshahpur, Jaunpur-222202)

*VERSUS*

**Commissioner of Central Excise &**

**CGST, Allahabad**

**....Respondent**

(38, MG Marg, Civil Lines, Allahabad)

**APPEARANCE:**

Shri Navin Singh, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

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

**FINAL ORDER NO.70881/2025**

DATE OF HEARING : 09 December, 2025  
DATE OF PRONOUNCEMENT : 17 December, 2025

**SANJIV SRIVASTAVA:**

This appeal is directed against Order-in-Appeal No.1485/ST/Alld/2023 dated 01/12/2023 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad. By the impugned order following has been held:-

*"(i) The confirmed demand is reduced to Rs.2,50,642/- (Rupees Two Lakhs Fifty Thousand Six Hundred and Forty Two Only) under Section 73(2) of the Act alongwith applicable interest under Section 75 of the Act.*

*(ii) The penalty is reduced to Rs.2,50,642/ (Rupees Two Lakhs Fifty Thousand Six Hundred and Forty Two Only) under Section 78 of the Act.*

*(iii) The penalties imposed under Section 77(1)(a), Section 77(2) and 77(1)(c) of the Act shall remain unchanged."*

2.1 Appellant having PAN No.AAIPQ6530F was not registered with Service Tax Department.

2.2 On the basis of third party information received from Income Tax Department regarding gross receipt of Rs.26,70,950/- against sale of services declared by the appellant in ITR for the F.Y. 2016-17.

2.3 Vide letters dated 12.05.2021 & 23.06.2021 appellant was asked to clarify in this regard. In response appellant has only provided the document as Form 26AS (for the period 2016-17), Copy of ITR.

2.4 On the basis of available information it was observed that appellant has short paid service tax as detailed in table below:-

Financial Year	Sale of Services as per ITR	Service Tax payable @ (incl. cesses)	Service Tax not paid
2016-17	26,70,950	15%	4,00,643/-

2.5 Show cause notice dated 18.10.2021 was issued to the appellant, asking them to show cause as to why:-

*"(i) Service Tax liability of Rs.400643/- should not be demanded and recovered from them under the proviso to the section 73 (1) of the Act along with interest under section 75 of the ibid.*

*(ii) Penalty should not be imposed upon them under section 78 of the Act, for the suppression of facts from the department.*

*(iii) Penalty should not be imposed upon them/him under Section 77(1)(a) of the Act for not obtaining service tax registration within stipulated time under Section 69 of the Finance Act. 1994 read with Rule 4 of Service Tax Rules, 1994.*

*(iv) Penalty should not be imposed upon them under Section 77(2) of the Act read with Rule 7 of the Service Tax Rules, 1994 for not submitting ST-3 return.*

*(v) Penalty should not be imposed upon them/him under 77(1) (c) of the Act, for not furnishing information/documents called by the department."*

2.6 The said show cause notice was adjudicated as per the Order-in-Original No.410/ST/Asstt.Commr./JNP/2022-23 dated 23.03.2023 holding as follows:-

**"ORDER**

*(i) I confirm the demand of service tax (including cesses) of Rs.400643/- under the provision of proviso to Section 73(1) of the Finance Act, 1994 along with interest under the provision of Section 75 of the Finance Act, 1994.*

*(ii) I impose a penalty of Rs.400643/- upon the party under the provision of Section 78 of the Finance Act, 1994. The party shall be liable for reduced penalty specified in second and third proviso to section 78 of the Finance Act, 1994, subject to fulfillment of conditions specified therein.*

*(iii) I impose a penalty of Rs.10,000/- under Section 77(1)(a) of the Finance Act, 1994.*

*(iv) I impose a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994.*

*(v) I impose a penalty of Rs.10,000/- under Section 77(1)(c) of the Finance Act, 1994."*

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 I have heard Shri Navin Singh, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative 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:-

*"4.4 I have gone through the facts of the case, averments made in the appeal and all the material available on the*

*records. It is observed that in the instant case, it is required to be ascertained whether the appellant has received consideration on account of sale of soil which is non-taxable in terms of Section 66D of the Act or not?*

*4.4.1 It is observed that appellant has claimed the sale of soil to be non taxable for service tax. It is observed that sale of goods has been made non-taxable in terms of negative list of services under Section 66D(e) of the Act, which provides as under:*

*"Section 66D(e): trading of goods;"*

*4.4.2 In order to ascertain the actual nature of services provided by the appellant, all the relevant documents are required to be examined. Here at the appellate stage, appellant has provided copy of Form 26AS for 2016-17, sample copy of sale bills and a statement of sale details. On going through the details of the bills, it is observed that it contains the name of purchaser, name of commodity as soil, details of Tractor trolley No.'s. and rate/amount. It is observed that bills provided do not contain printed serial Number and any detail of seller and complete details of purchaser and seems to be prepared in cyclostyled manner to show the activities as sale of goods. Further no details of vehicle owners and payments made to vehicle owners, diesel purchase for transportation of soil has been made available. In absence of such supporting details/documents, the nature of activity undertaken by the appellant cannot be considered as sale of goods as claimed by the appellant and the value shown in ITR against sale of services pertains to service as per Section 65B(44) of the Act and leviable to service tax under Section 68 of the Act.*

*4.4.3 Further appellant has sought benefit of threshold exemption as per Notification No.33/2012-ST dated 20.06.2012. It is observed that threshold exemption upto Rs.10 Lakhs is available subject to condition that turnover*

*of taxable services during the previous financial year is below Rs.10 Lacs. Here appellant has provided ITR for the Financial Year 2015-16 showing sale of services as NIL. Therefore it is observed that appellant is eligible for threshold exemption upto Rs.10 lakhs during the financial year 2016-17. Accordingly the taxable value and service tax liability against the appellant is re-quantified for the period 2016-17 as under:*

<i>S. No.</i>	<i>Gross turnover of sale of services during 2016-17</i>	<i>Taxable after turnover threshold exemption of Rs. 10 lakhs</i>	<i>Service tax rate</i>	<i>Service Tax involved</i>
<i>1.</i>	<i>2670950</i>	<i>1670950</i>	<i>15%</i>	<i>250642</i>

*Thus the appellant is liable for payment of service tax of Rs.2,50,642/-for the period 2016-17.*

*4.4.4 It is observed that the appellant has not discharged their service tax liabilities pertaining to period 2016-17 within the stipulated time period, therefore they are also liable for payment of service tax of Rs.2,50,642/-alongwith applicable interest under Section 75 of the Act.*

*4.4.5 Further it is observed that appellant has suppressed the material fact of providing taxable services during the period 2016-17 contravening the provisions of Section 68 of the Act with intent to evade to evade payment of service tax as the fact of non-compliance of service tax provisions came into notice after the department conducted the enquiry against them. It is observed that the appellant never disclosed this fact on their own and contravened the provisions with intent to evade payment of service tax and therefore they are rightly liable for penalty under Section 78 of the Act.*

*4.4.6 It is observed that contraventions of non-registration, non-filing of ST-3 returns, non-furnishing of information/documents called by the department are apparent on the records and therefore they are rightly*

*liable for penalty under Section 77(1)(a), Section 77(2) and 77(1)(c) of the Act.”*

4.3 I find that appellant had produced a copy of ITR-3 for the Assessment Year 2017-18 (F.Y. 2016-17), page No.5 of the ITR is reproduced below:-


Acknowledgement Number : 542354020290318 Assessment Year : 2017-18

6	In a case where regular books of account of business or profession are not maintained (furnish the following information as on 31st day of March, 2017, in respect of business or profession).		
	a.Amount of total sundry debtors	6a	0
	b.Amount of total sundry creditors	6b	0
	c.Amount of total stock-in-trade	6c	0
	d.Amount of the cash balance	6d	0
<b>Part A-P and L- Profit and Loss Account for the financial year 2016-17 (fill items 1 to 52 in a case where regular books of accounts are maintained, otherwise fill item 53)</b>			
1	Revenue from operations		
A	Sales/ Gross receipts of business (net of returns and refunds and duty or tax, if any)		
i.	Sale of goods	i	0
ii.	Sale of services	ii	2670950
iii.	Other operating revenues (specify nature and amount)		
	Nature	Amount	
iii	Total		0
iv.	Total (i + ii + iii)	Aiv	2670950
B	Gross receipts from Profession		
B		B	0
C	Duties, taxes and cess, received or receivable, in respect of goods and services sold or supplied		
i.	Union Excise duties	i	0
ii.	Service tax	ii	0
iii.	VAT/ Sales tax	iii	0
iv.	Any other duty, tax and cess	iv	0
v.	Total (i + ii + iii + iv)	Cv	0
D	Total Revenue from operations (Aiv + B+Cv)	1D	2670950
2	Other income		
i.	Rent	i	0
ii.	Commission	ii	0
iii.	Dividend income	iii	0
iv.	Interest income	iv	0
v.	Profit on sale of fixed assets	v	0
vi.	Profit on sale of investment being securities chargeable to Securities Transaction Tax (STT)	vi	0
vii.	Profit on sale of other investment	vii	0
viii.	Profit on account of currency fluctuation	viii	0
ix.	Agricultural income	ix	0
x.	Any other income (specify nature and amount)		
	Nature	Amount	

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4.4 Revenue has taken this figure indicated towards sale of service as gross receipts during this year for computation of their service tax liability. Appellant has also produced a copy of form 26AS which is reproduced below:-

Data updated till 23-Apr-20



**TDS**  
Centralized Processing Cell

**TRACES**  
TDS Reconciliation Analysis and Correction Enabling System



भारत सरकार  
Government of India  
Income Tax Department

**Form 26AS**

**Annual Tax Statement under Section 203AA of the Income Tax Act, 1961**

\* See Section 203AA and second provision to Section 206C (5) of the Income Tax Act, 1961 and Rule 31AB of Income Tax Rules, 1962

Permanent Account Number (PAN)	AAIPQ6530F	Current Status of PAN	Active and Operative	Financial Year	2016-17	Assessment Year	2017-18
Name of Assessee	KAMRU DDIN						
Address of Assessee	SAHABGANJ, MUNGRA BADSHAHPUR, UTTAR PRADESH, 222202						

\* Above data / Status of PAN is as per PAN details. For any changes in data as mentioned above, you may submit request for corrections Refer www.tin-nsdl.com / www.utitl.com for more details. In case of discrepancy in status of PAN please contact your Assessing Officer

\* Communication details for TRACES can be updated in 'Profile' section. However, these changes will not be updated in PAN database as mentioned above

**PART A - Details of Tax Deducted at Source** (All amount values are in IN)

Sr. No.	Name of Deductor				TAN of Deductor	Total Amount Paid / Credited	Total Tax Deducted*	Total TDS Deposited
Sr. No.	Section <sup>1</sup>	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid / Credited	Tax Deducted**	TDS Deposited
No Transactions Present								

**PART A1 - Details of Tax Deducted at Source for 15G / 15H**

Sr. No.	Name of Deductor				TAN of Deductor	Total Amount Paid / Credited	Total Tax Deducted*	Total TDS Deposited
Sr. No.	Section <sup>1</sup>	Transaction Date	Date of Booking	Remarks**	Amount Paid/Credited	Tax Deducted**	TDS Deposited	
No Transactions Present								

**PART A2 - Details of Tax Deducted at Source on Sale of Immovable Property u/s 194IA/ TDS on Rent of Property u/s 194IB / TDS on payment to resident contractors and professionals u/s 194M (For Seller/Landlord of Property/Payee of resident contractors and professionals)**

Sr. No.	Acknowledgement Number	Name of Deductor	PAN of Deductor	Transaction Date	Total Transaction Amount	Total TDS Deposited***
Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking*	Date of Booking	Demand Payment	TDS Deposited***
Gross Total Across Deductor(s)						
No Transactions Present						

**PART B - Details of Tax Collected at Source**

Sr. No.	Name of Collector				TAN of Collector	Total Amount Paid/ Debited	Total Tax Collected*	Total TCS Deposited
Sr. No.	Section <sup>1</sup>	Transaction Date	Status of Booking*	Date of Booking	Remarks**	Amount Paid/ Debited	Tax Collected**	TCS Deposited
No Transactions Present								

**PART C - Details of Tax Paid (other than TDS or TCS)**

Sr. No.	Major <sup>3</sup> Head	Minor <sup>2</sup> Head	Tax	Surcharge	Education Cess	Penalty	Interest	Others	Total Tax	BSR Code	Date of Deposit	Challan Serial Number	Remarks**
1	0021	400	80.00	0.00	0.00	0.00	0.00	0.00	80.00	0004329	13-Jul-2020	01760	-
2	0021	300	4160.00	0.00	0.00	0.00	0.00	0.00	4160.00	0290027	27-Mar-2018	00055	-

**Part D - Details of Paid Refund**

Sr. No.	Assessment Year	Mode	Refund Issued	Nature of Refund	Amount of Refund	Interest	Date of Payment	Remarks
No Transactions Present								

**Part E - Details of SFT Transaction**

Sr. No.	Type Of Transaction <sup>4</sup>	Name of SFT Filer	Transaction Date	Amount (Rs.)	Remarks**
No Transactions Present					

4.5 From form 26AS of the appellant, it is evident that appellant have not received any amount on which TDS has been deducted towards provision of services under various Sections (from Section 194 A to D). The basic question arises, if appellant was having their receipts to the tune of Rs.26 lakhs towards sale of services, why the same do not reflect in their form 26AS?

4.6 Appellant have produced invoices, bills etc. before the Commissioner (Appeals) to stake their claim that they were engaged in the activity of sale of soil, for which this amount has

been received, however, Commissioner (Appeals) rejected that argument.

4.7 I find that appellant produced copies of balance sheet and profit and loss account for the year 2015-16 and 2016-17, the same are reproduced below:-

**MR. KAMRUDDIN S/O MR. HAZI MANJOOR AHMAD**  
MUGRA BADSHAHPUR, JAUNPUR UP  
BALANCE SHEET AS AT 31st MAR, 2016

Liabilities		Amount	Assets		Amount
<b>Proprietor's Capital Account</b>			<b>Investment &amp; Deposits</b>		
Mr. Kamruddin			Post Office RD A/c No-45888		21,000.00
Opening Capital	1,42,749.00		UBI RD A/c No- 0000183	90,033.00	3,63,583.00
Add : Adarsh Construction	2,50,100.00		N.S.C & Interest	2,52,550.00	
Add : Bank Intt From RD	6,600.00				
Add : Intt. On S/B	838.00		<b>Current Assets</b>		
Add : Gas Subsidy	1,987.78		<b>Loan &amp; Advances Assets</b>		Nil
Add : Intt. From N.S.C New	2,550.00		<b>Cash &amp; Bank Balances</b>		
Add : Intt. From RD A/c			Post Office A/C NO. 88948	100.00	
Add : Net Profit	1,25,000.00		U.B.I. S/B A/C NO. 94600	786.28	886.28
	5,29,824.78		Cash In hand		1,85,000.00
Less: LIC PMJJBY	660.00		(As taken valued & certified by proprietor)		
Less: Intt on Bank Loan	3,833.00	4,65,331.78			
Less: Withdrawals	60,000.00				
<b>Un -Secured Loans</b>					
Mohd. Khalid	35,304.50	35,304.50			
<b>Secured Loans</b>					
UBI TL A/C NO -3457070	48,833.00	48,833.00			
<b>Current Liabilities</b>					
Sundry Creditors:-		Nil			
<b>Total</b>		<b>5,49,469.28</b>	<b>Total</b>		<b>5,49,469.28</b>

For Agrahari & Associates  
Chartered Accountants  
Bijendra Agrahari  
(Partner)  
Place-Jaunpur  
Date - 25 Jun, 2016

Mr. Kamruddin  
(Proprietor)

**MR. KAMRUDDIN S/O MR. HAZI MANJOOR AHMAD**  
MUGRA BADSHAHPUR, JAUNPUR UP  
TRADING AND PROFIT & LOSS FOR YEAR ENDED 31st MAR, 2016

Particulars	Amount	Particulars	Amount
Soil Purchased	10,67,540.00	Gross Receipts	12,56,060.00
Salary to Staff	48,000.00		
Misc Expenses	6,040.00		
Telephone & Mobile Exps	3,620.00		
Travelling & Conveyance	5,860.00		
Net Profit transferred to Capital A/c	1,25,000.00		
<b>Total</b>	<b>12,56,060.00</b>	<b>Total</b>	<b>12,56,060.00</b>

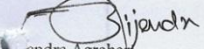
For Agrahari & Associates  
Chartered Accountants  
Bijendra Agrahari  
(Partner)  
Place-Jaunpur  
Date - 25 Jun, 2016

Mr. Kamruddin  
(Proprietor)

**MR. QAMARUDDIN S/o HAZI MANJOOR AHMAD**  
**MUNGRA BADSHAHPUR, JAUNPUR, U.P.**  
**BALANCE SHEET AS AT 31st MAR, 2017**

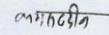
Liabilities		Amount	Assets		Amount
<b>Proprietor's Capital Account</b>			<b>Fixed Assets</b>		Nil
Opening Capital	4,65,331.78		<b>Investments</b>		
Add : Interest on NSC	24,500.00		Post Office RD	33,000.00	
Add : Interest on SB A/c	759.00		RD with UBI	1,53,539.00	
Add : Interest on RD	10,633.00		NSC	2,77,050.00	4,63,589.00
Add : Gas Subsidy	2,377.57				
Add : Net Profit	3,00,510.00				
	8,04,111.35		<b>Current Assets</b>		
Less: LIP	330.00		Closing Stock		-
Less: Intt on Term Loan	2,023.00		(As Valued & Certified by Proprietor)		
Less: Withdrawals	72,000.00	7,29,758.35	Sundry Debtors		Nil
<b>Unsecured Loans</b>			TDS		2,127.00
Loan With Baroda UP Bank		35,304.50	<b>Cash &amp; Bank Balances</b>		
			UBI SB A/c 94600		1,73,592.85
<b>Current Liabilities</b>			Post office SB A/c		100.00
Sundry Creditors		Nil	Cash & Bank Balances		1,25,654.00
			(As taken valued & certified by proprietor)		
<b>Total</b>		<b>7,65,062.85</b>	<b>Total</b>		<b>7,65,062.85</b>

For Agrahari & Associates  
Chartered Accountants

  
Bijendra Agrahari  
(Partner)

Place-Jaunpur  
Date- 24 Jun, 2017






(Proprietor)

**MR. QAMARUDDIN S/o HAZI MANJOOR AHMAD**  
**MUNGRA BADSHAHPUR, JAUNPUR, U.P.**  
**TRADING AND PROFIT & LOSS FOR YEAR ENDED 31st MAR, 2017**

Particulars	Amount	Particulars	Amount
Opening Stock	-	Sales of Soil	26,70,950.00
Purchases of Soil	22,91,740.00	Closing Stock	-
Gross Profit c/d	3,79,210.00		
<b>Total</b>	<b>26,70,950.00</b>	<b>Total</b>	<b>26,70,950.00</b>
Salary to Staff	60,000.00	Gross Profit b/d	3,79,210.00
Misc Exps	7,670.00	Round off	-
Telephone & Mobile Exp.	3,890.00		
Travelling & Conveyance Expenses	7,140.00		
Net Profit transferred to Capital A/c	3,00,510.00		
<b>Total</b>	<b>3,79,210.00</b>	<b>Total</b>	<b>3,79,210.00</b>

For Agrahari & Associates  
Chartered Accountants

  
Bijendra Agrahari  
(Partner)

Place-Jaunpur  
Date- 24 Jun, 2017





(Proprietor)

4.8 From perusal of the above audited balance sheet and profit and loss account of the appellant, it is evident that appellant was engaged in the activity of sale of soil. In the profit and loss account for the year 2015-16 they had shown the gross receipt of Rs.12,56,060/- and they have purchased soil for the amount of Rs.10,67,540/-.

4.9 For the Financial Year 2016-17 from their profit and loss account it is evident that they incurred expenditure of Rs.22,91,740/- for the purchase of soil was and their receipts against the sale of soil was Rs.26,70,950/-. The balance sheet and profit and loss account of the appellant are duly certified by Chartered Accountant. On the basis of above, I have no hesitation in concluding that the receipt of Rs.26,70,950/- shown in the profit and loss account for the year 2016-17 and in ITR-3 reproduced above are only towards the sale of soil and not towards of any services. It is only an erroneous entry made in the ITR-3 which has affected the entire proceedings. The fact that these are towards the sale of service, it is also evident from various bills on sample basis that were produced before Commissioner (Appeals) also and by pointing certain lacunae Commissioner (Appeals) found it fit to reject them but the claim made by the appellant on the basis of bills is also supported by their financial records.

4.10 I do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Order pronounced in open court on- 17 December, 2025)

**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

*akp*