CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70358 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APPL-206-23-24 dated 17.08.2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Noida)

M/s Madhuvan Enterprises, ...Appellant
((Partner) Shri Devpal Singh, H. No.196,
Kothiyat, Bulandshahar-203001)

VERSUS

Commissioner of Central Excise &
CGST, Noida ....Respondent
(GST Bhawan, IRCON Building, Plot No.-
C-232, A/2-A/3, Sector-48, Gautam Budh Nagar
Noida-201301)

APPEARANCE:

Shri Nishant Mishra, 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.- 70004/2026

DATE OF HEARING : 31.10.2025
DATE OF PRONOUNCEMENT : 08.01.2026

The present appeal is directed against the Order-in-Appeal No. NOI-EXCUS-002-APPL-206-23-24 dated 17.08.2023 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Noida, by which the appeal filed by the Appellant namely M/s Madhuvan Enterprises, has been rejected both on limitation as well as on merits and Order-in-Original No.41/AC/D-BSR/GBN/2022-23 dated 09.12.2022 has been affirmed. By the said Order-in-Original dated 09.12.2022, demand of service tax of Rs.4,51,861/- along with interest and penalty of Rs.4,51,861/- was confirmed against the Appellant.

2. Briefly stated, the facts of the case are that during the period 2016-17, the Appellant, a partnership firm, was

registered under the Finance Act, 1994[1]. It is the case of the Appellant that pursuant to some work contract awarded to M/s EMC Limited by Railways, M/s EMC Limited sub-contracted some part of work by awarding work order to the Appellant with the condition that since Service Tax is exempted on services provided to Railways, hence no Service Tax is payable. Accordingly, the Appellant filed NIL returns for the period 2016-17 by treating the provision of services under the work order to M/s EMC Limited as exempted services.

3. On the basis of third party data received from the Income Tax Department showing receipts of Rs.30,12,405/- in the hands of the Appellant, the Revenue formed an opinion that the amount of Rs.30,12,405/- represents consideration against provision of taxable services and since the same was not disclosed by the Appellant in its returns, hence the Appellant has short-paid service tax amounting to Rs.4,51,861/-.

4. On the aforesaid facts, Show Cause Notice[2] dated 12.10.2021 was issued directing the Appellant to show cause as to why not service tax of Rs.4,51,861/- along with interest may be demanded and recovered from the Appellant and as to why not penalty be imposed on the Appellant. The SCN was adjudicated *ex-parte* against the Appellant confirming demand of service tax of Rs.4,51,861/- along with interest and imposing penalty of Rs.4,51,861/- by invoking extended period of limitation.

5. Aggrieved with Order-in-Original dated 09.12.2022, the Appellant preferred appeal before the Commissioner (Appeals) contesting the demands on merits as well as on limitation. The Appellant in the memo of appeal in Form ST-4 disclosed 02.01.2023 as the date of service of order dated 09.12.2022 and as per the Appellant the appeal was accompanied with a prayer seeking condonation of delay of two days in filing appeal. During the pendency of appeal, personal hearing was granted by the Commissioner (Appeals), during which the counsel for the

[1] Act
[2] SCN

Appellant appeared and sought 15 days' time to furnish documents required by the Commissioner (Appeals).

6. However, since the required documents were not filed by the Appellant, the Commissioner (Appeals) proceeded *ex-parte* against the Appellant and passed the impugned order dated 17.08.2023 rejecting the appeal both on limitation as well as on merits. The Commissioner (Appeals) held that the appeal has been filed with a delay of two days and since the Appellant has not filed any delay condonation application and has also not assigned any reason for delay of two days, hence the appeal is barred by limitation of time. After dismissing the appeal on limitation, the Commissioner (Appeals) further held that since the Appellant has not filed copies of Railway contract and EMC, hence the claim of exemption is not admissible. The Commissioner (Appeals) also upheld invocation of extended party of limitation. Aggrieved with the impugned order dated 17.08.2023, the Appellant has preferred the present appeal.

7. Ld. Counsel for the Appellant has submitted that the finding recorded in the impugned order that delay condonation application was not filed by the Appellant, is perverse, as delay condonation application for the delay of two days was in fact filed by the Appellant, copy of which is enclosed at page 23 of the appeal paper book filed before this Tribunal. He further argued that since the entire case of the revenue was based on information received from the Income Tax Department, hence the impugned order cannot be sustained as the revenue failed to adduce any evidence to show that the consideration received was consideration towards provision of taxable services. He also argued that the services provided by the Appellant to M/s EMC Limited were that of sub-contractor and since the services provided by contractor were exempt, hence the services provided by the Appellant were also exempt under clause 29(h) of Notification No.25/2012-ST dated 20.06.2012, as amended. Lastly, he argued that extended period of limitation cannot be invoked on the given facts.

8. Learned Departmental Authorized Representative for the revenue reiterated the findings recorded in the impugned order and supported the same.

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

10. I find that the first issue to be decided in the present case is to whether the Appellant filed any delay condonation application before the Commissioner (Appeals). On attention being invited to page 23 of the appeal paper book, I find that the same is a delay condonation application bearing stamp dated 03.03.2023, which is identical to the stamp affixed on the appeal memo in Form ST-4 filed before the Commissioner (Appeals). Thus, the application appearing at page 23 of the appeal paper book is an application seeking condonation of delay of two days in filing of appeal on 03.03.2023 with specific averment of order dated 09.12.2022 served on the assessee on 02.01.2023. The reason assigned for delay is that the counsel for the Appellant was busy in some other official work.

11. In view of identical stamps affixed on the appeal memo and the application, it is clear that the Appellant did file application seeking condonation of delay in filing appeal and therefore, it appears that the delay condonation application annexed at page 23 of the appeal paper book escaped attention of the Learned Commissioner (Appeals), due to which a contrary finding has been recorded in the impugned order. Since the reason for delay is also satisfactory, hence the impugned order is not sustainable on this ground and the short delay in filing appeal is condoned. Since the Commissioner (Appeals) has also touched the merits of the case in the impugned order, hence it is necessary to examine the contention of Appellant on merits as well. I find that the demand of Service Tax in the present case is based on the income tax return of the Appellant wherein the Appellant has disclosed the receipts of Rs.30,12,405/-. Merely there was a mismatch in figures disclosed in Income Tax return and Service Tax return, the same by itself cannot form the basis for initiating proceedings unless the revenue is in possession of some evidence showing that the

amount disclosed in income tax return represents consideration against taxable services. This is more so when the burden to prove taxable event i.e. provision of taxable services is on the revenue and the Appellant is duly registered under the Act. However, I find from the adjudication and the impugned order that there is neither any evidence nor any material on record to suggest that the amount disclosed in income tax return represents consideration against taxable services. In the adjudication order as well as the impugned order, the burden of proving taxable event has been reversed on the Appellant and the revenue has proceeded on an assumption that the Appellant has provided taxable services against consideration and has failed to substantiate the claim of exemption. This approach is clearly contrary to the settled law laid down by this Tribunal in catena of decisions including Kush Constructions vs. CGST NACIN, ZTI, Kanpur, 2019 (24) G.S.T.L. 606 (Tri.-All.), Alpha Management Consultants Pvt. Ltd. vs. Commr. of S.T., Bangalore 2007 (6) S.T.R. 181 (Tri.-Bang.) and Synergy Audio Visual Workshop Pvt. Ltd. vs. Commr. of S.T., Bangalore, 2008 (10) S.T.R. 578 (Tri.-Bang.). Additionally, the adjudication order does not even refer to the nature of taxable services provided by the Appellant and therefore demand of Service Tax confirmed in violation of law laid down by this Tribunal cannot be sustained.

12. I also find force in the submission of the Counsel for the Appellant that the Appellant acted as a sub-contractor in providing works contract services of construction, renovation to the main contractor i.e. M/s EMC Limited, who in-turn provided such works contract services to Railways. I find that clause 14(a) of Notification No.25/2012-ST dated 20.06.2012 exempts services by way of construction, erection, commissioning or installation of original works pertaining to Railways. Thus, once the main service provided by M/s EMC Limited to Railways is exempted under the said notification, then the services provided by the Appellant as a sub-contractor is also exempted under clause 29(h) of Notification No.25/2012-ST dated 20.06.2012 which exempts services provided by a sub-contractor by way of

works contract to another contractor providing works contract services which are exempt. The demand of Service Tax is therefore not sustainable in law. Consequently, the demand of interest and imposition of penalty is also not sustainable and is hereby set-aside.

13. In view of the above discussion, the impugned order is set-aside and the appeal filed by the Appellant is allowed with consequential reliefs to the Appellant, as per law.

(Order pronounced in open court on - **08.01.2026**)

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

LKS