CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70723 of 2025

(Arising out of Order-in-Appeal No.NOI/EXCUS/002/APPL/250/2023-24 dated 11/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Advance IT Solutions, **.....Appellant**
(173/174, Khawaja Qutub, Bara Bazar, Bareilly)

VERSUS

Commissioner of Central Excise &

CGST, Noida **....Respondent**

(Commissionerate, Noida)

APPEARANCE:

Shri Madhukar Anand, Consultant for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70015/2026

DATE OF HEARING : 05 January, 2026
DATE OF DECISION : 05 January, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI/EXCUS/002/APPL/250/2023-24 dated 11/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

10. In view of the above discussion and findings I reject the appeal No. 04/ST/NOIDA/APPL/GBN/2023-24 dated 05.04.2023 filed by M/s Advance IT Solutions, 173/174, Khvaja Qutub Nagar, Bara Bazar, Bareilly-243005 (U.P.). The Order-in-original No. 81/ST/AC/BLY-1/2022-23 13.01.2023 issued under C. No. 20-CGST/Bly-I/Adj./SCN-

46/Advance IT/71/2022 dated 13.01.2023 by the Assistant Commissioner, CGST, Division-I, Bareilly is upheld as just, legal and proper."

2.1 Appellant is registered with Service Tax Department as service provider with Service Tax registration no.ABAFA4854BSD001 under the category of Business Auxiliary Service.

2.2 As per the information received from the Income Tax Authorities it was observed that appellant has declared an amount of Rs.26,11,508/- in their ITR against total receipt of Rs.41,35,964/- in their 26AS. On comparison of the figures with ST-3 return, it was observed that appellant had short paid service tax during the period 2016-17 as detailed in table below:-

Period	Receipts as Per			Service Tax	
	26 AS	ST-3	Difference	@ %	Short Paid
2016-17	4135964	1686173	2449791	15	367469

2.3 Show cause notice dated 05.10.2021 was issued to the appellant asking them to show cause as to why:-

"(i) Service Tax amounting to Rs.3.67,469/- (including all Cesses) as narrated above, not paid by them, payable on taxable services income received during the period 2010-17 should not demanded and recovered from them under the proviso to Section 73(1) of Finance Act 1994 read with Section 83 of the Act, and further read with Section 38A of Central Excise Act, 1944 and Section 174 of the Central Goods and Services Tax Act, 2017.

(ii) Interest on the service tax at the applicable rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994.

(iii) Penalty should not be imposed upon them under Section 78 of Finance Act, 1994 for the reason of suppressing the material fact and value wilfully with the department with intent to evade payment of Service Tax.

(iv) Late fee should not be imposed upon them under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of

the Finance Act, 1994 for violation of Rule 7 of Service Tax Rules, 2004 by not filing ST-3 returns.

(v) Penalty should not be imposed upon them under Section 77 (2) of Finance Act, 1994 for violation of Rule 7 of Service Tax Rules, 2004."

2.4 The said show cause notice was adjudicated as per the Order-in-Original dated 13.01.2023 by holding as follows:-

"ORDER

(i) Confirm the demand of Rs. 3,67,469/- (Rs. Three Lakhs Sixty Seven Thousand Four Hundred Sixty Nine only) and order to recover from the notice under Section 73(2) of the Finance Act, 1994,

(ii) I confirm the demand of interest on the confirmed demand in para (1) above and order to recover from the notice at applicable rates under Section 75 of the Finance Act, 1994;

(III) I impose penalty of Rs. 3,67,469/- (Rs. Three Lakhs Sixty-Seven Thousand Four Hundred Sixty-Nine only) upon the notice under Section 78 of the Finance Act, 1994:;

(IV) impose pernaity/ late fee amounting to Rs.21500/- (Twenty One Thousand and Five Hundred only) for late/ non-filing of Service Tax Return under Section 70 of the finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994

(V) I also impose penalty of Rs. 10,000/--(Rs. Ten Thousand only) upon the notice under rule 7 of the Service Tax Rules, 1994 read with Section 77(1)(c) of the Finance Act, 1994 as discussed supra."

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed as per the impugned order referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Madhukar Anand, Consultant for the appellant and Smt Chitra Srivastava, Authorised Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Demand of service tax cannot be raised on the basis of a third-party wrong data which has already been rectified.
- The actual service tax liability for the appellant during the financial year 2016-17 would be as follows:-

Total Receipt in F.Y. 2016-17 as per 26AS & B/Sheet			
Period	**Amount Received**	**Rate of S.Tax in %**	**S. Tax & Cesses Payable**
1.4.16 to 31.5.16	5,22,855	14.50%	75,814
1.6.16 to 31.3.17	20,88,653	15%	3,13,298
	26,11,508		**3,89,112**

- Appellant have against the above service tax liability already deposited amount of Rs.3,71,380/- along with interest as per the tables reproduced below:-

S. No	**Challan No**	**Date**	**ST inclusive of Cess**	**Interest**	**Whether reflected in ST-3**
1	51513	28/10/2016	78623	5893	No
2	51743	29/12/2016	72314	3994	No
3	50392	17/05/2017	101989	0	**Yes**
4	55694	14.08.2017	0	5756	**-**
5	55922	14/08/2017	62972	4927	No
6	50107	30/09/2017	55482	0	No
		Total	371380	20570	

- The difference between computed liabilities of service tax along with interest due would also be paid by the appellant or the same can be adjusted from the pre-deposit made.
- Demand of service tax only on the basis of ITR data and without any investigation is neither legal nor proper. Reliance is placed on the following decisions:-
  - Alpa Management Consultants [2016 (44) S.T.R. J284 (S.C.)].
  - M/s. Tempest Advertising [2007 (5) S.T.R. 312 (Tri. - Bang.)]
  - Krishna Construction Co [2022 (8) TMI 644 - CESTAT AHMD]
  - Shresth Leasing & Finance [2023 (68) G.S.T.L. 143 (Tri.-Ahmd)]
  - Ved Security [2019(6) TMI 383 CESTAT, Kolkata]
  - Shree Kankeshwari Enterprise [(2023) 9 Centax 77 (Tri.-Ahmd)]
  - Vatsal Resources Pvt.Ltd. [2023 (68) G.S.T.L. 279 (Tri. -Ahmd)]
  - Forward Resources (P.) Ltd. [2023 (69) G.S.T.L. 76 (Tri. -Ahmd)]
  - Reynolds Petro Chem Ltd. [2023 (68) G.S.T.L. 292 (Tri.-Ahmd)]

3.3 Learned Authorized Representative 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 Impugned order records as follows:-

"8.1 I find the appellant has assailed the impugned order on technicalities only. The appellant has contended that no proceeding could have been initiated under the provisions of erstwhile Chapter V of the Finance Act, 1994 which stood omitted vide Section 173 of the Goods & Service Tax Act, 2017 and that the Impugned Adjudicatory Order has been issued by a person whose is not an Assessing Authority known to law and hence the order issued is wholly without any authority of law and liable to be quashed and set aside. I find that vide Section 174 (2) of the Central Goods and Services Tax Act, 2017, Inter alia, any notice issued and its adjudication were validated through saving clause. I further observe that vide the said provisions of law the adjudicating authority was the proper authority and was within his statutory rights to adjudicate the case. In the Finance Act, 1994 there is no provision requiring the adjudication by assessing authority as contended by the appellant. The relevant section of demand is Section 73 of the Finance Act, 1994 and the same only states that a Central Excise officer shall serve a notice and adjudicate the same. Against this, In the instant case the demand has been issued by a Central Excise officer and has been adjudicated by a Central Excise officer and accordingly, I hold that the case has been properly adjudicated and the averments of the appellant have no basis and is legally not sustained.

8.2 1 also observe that the appellant has observed that the demand in the instant case is time barred as the same has been issued under extended period of limitation which is not liable to be invoked in the instant case and that the SCN issued without conducting any investigation into the matter. I find that as per the facts of the case, which have not even been contravened by the appellant; the appellant was providing taxable services and were receiving consideration against the same. The appellant has never *disclosed the facts to the department and has not paid due service tax on the same. Further, when the department asked the appellant to explain such non-payment of Service tax, the appellant did not participated in the investigation process. Such being the conduct of the appellant, I hold that the suppression of facts with intent to evade payment of Service tax is established and, ipso facto, I hold that the impugned SCN has been issued following correct procedure of law and the extended period of demand has rightly been invoked in the instant case.*

8.3 I also observe that the appellant has tried to calculate the demand of Service tax by seeking abatement from value. I find that the appellant has miserable failed to establish his case as the appellant has adduced no corroborating evidence to prove the nature of services being provided by them. In catena of judgments the trite law has been laid down that if the appellant wants to avail any exemption then, the onus lies of the appellant To establish his credentials and also his eligibility to avail such exemption. I find that the appellant has miserable failed to justify their claim. Accordingly, I hold that the exemption being claimed by the appellant can not be extended to them.

8.4 My above views gain strength from the case law of Commnr. Of Central Excise, New Delhi vs M/S. Hari Chand Shri Gopal & Ors (2005). 8 SCC 164, Five Member Bench of the Hon'ble Supreme Court, wherein the following was laid down:

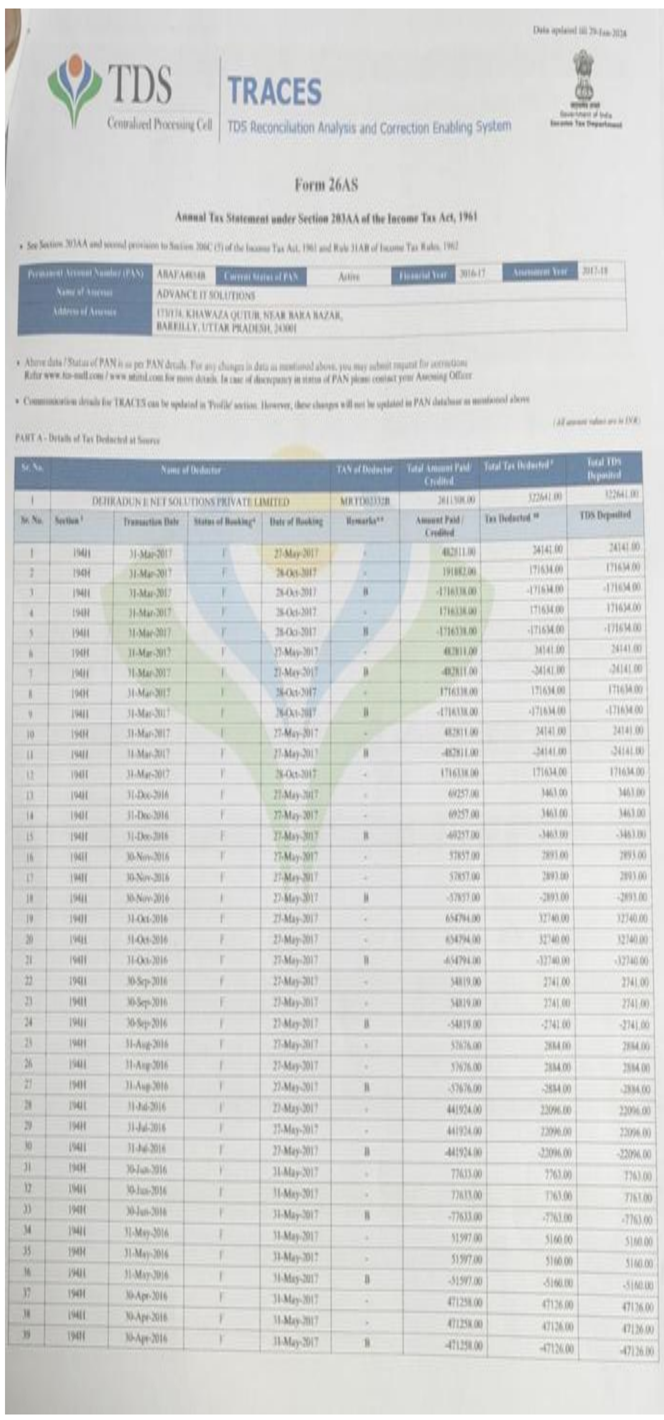
22. The law is weil settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with *certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a fallure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, l.e., by the plain terms of the exemption."*

9. I also hold that the appellant has deliberately and with mala fide intentions have evaded the payment of Service tax and accordingly I hold that the penalty u/s 78 and 77 of the Act has correctly been imposed upon the appellant. I also hold that since the appellant has not disputed the imposition of late fee, therefore, I am not considering the same for adjudication and the same becomes absolute."

4.3 I observed that in the present case, it is not in dispute that appellant was registered with the Service Tax Department and was paying service tax on the basis of self assessment made during the course of scrutiny of the information received from the Income Tax Department discrepancies were observed in the amount shown in ITR and the 26AS of the appellant. In ITR, amount of Rs.26,11,508/- was shown as receipt towards the services provided, in 26AS the same were shown as

Rs.41,35,964/-. On comparison of figures with ST-3 returns filed by the appellant it was observed that appellant has during the said period paid service tax on the gross value of Rs.16,86,173/- in ST-3 return and they were required to pay service tax on the remaining amount.

4.4 I observe that the entire case has been made against the appellant on the basis of differences observed in the figures in ST-3 return and in the form 26AS, though there were difference between the ITR figures and 26AS figures also. Appellant has produced the revised 26AS for the relevant period showing the details against the services provided identical to the figures declared in the ITR. Copy of revised 26AS is reproduced below:-



Data updated till 29-Jan-2024

TDS Centralized Processing Cell | TRACES TDS Reconciliation Analysis and Correction Enabling System

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)	ABAFA4834B	Current Status of PAN	Active	Financial Year	2016-17	Assessment Year	2017-18
Name of Assessee	ADVANCE IT SOLUTIONS						
Address of Assessee	173/174, KHAWAZA QUTUB, NEAR BARA BAZAR, BAREILLY, UTTAR PRADESH, 243001						

- 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.utiitsl.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

(All amount values are in INR)

PART A - Details of Tax Deducted at Source

Sr. No.	Name of Deductor	TAN of Deductor	Total Amount Paid/ Credited	Total Tax Deducted	Total TDS Deposited
1	DEHRADUN E NET SOLUTIONS PRIVATE LIMITED	MRTD02332B	2611508.00	322641.00	322641.00

Sr. No.	Section	Transaction Date	Status of Booking	Date of Booking	Remarks**	Amount Paid / Credited	Tax Deducted ##	TDS Deposited
1	194H	31-Mar-2017	F	27-May-2017	-	482811.00	24141.00	24141.00
2	194H	31-Mar-2017	F	28-Oct-2017	-	191882.00	171634.00	171634.00
3	194H	31-Mar-2017	F	28-Oct-2017	B	-1716338.00	-171634.00	-171634.00
4	194H	31-Mar-2017	F	28-Oct-2017	-	1716338.00	171634.00	171634.00
5	194H	31-Mar-2017	F	28-Oct-2017	B	-1716338.00	-171634.00	-171634.00
6	194H	31-Mar-2017	F	27-May-2017	-	482811.00	24141.00	24141.00
7	194H	31-Mar-2017	F	27-May-2017	B	-482811.00	-24141.00	-24141.00
8	194H	31-Mar-2017	F	28-Oct-2017	-	1716338.00	171634.00	171634.00
9	194H	31-Mar-2017	F	28-Oct-2017	B	-1716338.00	-171634.00	-171634.00
10	194H	31-Mar-2017	F	27-May-2017	-	482811.00	24141.00	24141.00
11	194H	31-Mar-2017	F	27-May-2017	B	-482811.00	-24141.00	-24141.00
12	194H	31-Mar-2017	F	28-Oct-2017	-	1716338.00	171634.00	171634.00
13	194H	31-Dec-2016	F	27-May-2017	-	69257.00	3463.00	3463.00
14	194H	31-Dec-2016	F	27-May-2017	-	69257.00	3463.00	3463.00
15	194H	31-Dec-2016	F	27-May-2017	B	-69257.00	-3463.00	-3463.00
16	194H	30-Nov-2016	F	27-May-2017	-	57857.00	2893.00	2893.00
17	194H	30-Nov-2016	F	27-May-2017	-	57857.00	2893.00	2893.00
18	194H	30-Nov-2016	F	27-May-2017	B	-57857.00	-2893.00	-2893.00
19	194H	31-Oct-2016	F	27-May-2017	-	654794.00	32740.00	32740.00
20	194H	31-Oct-2016	F	27-May-2017	-	654794.00	32740.00	32740.00
21	194H	31-Oct-2016	F	27-May-2017	B	-654794.00	-32740.00	-32740.00
22	194H	30-Sep-2016	F	27-May-2017	-	54819.00	2741.00	2741.00
23	194H	30-Sep-2016	F	27-May-2017	-	54819.00	2741.00	2741.00
24	194H	30-Sep-2016	F	27-May-2017	B	-54819.00	-2741.00	-2741.00
25	194H	31-Aug-2016	F	27-May-2017	-	57676.00	2884.00	2884.00
26	194H	31-Aug-2016	F	27-May-2017	-	57676.00	2884.00	2884.00
27	194H	31-Aug-2016	F	27-May-2017	B	-57676.00	-2884.00	-2884.00
28	194H	31-Jul-2016	F	27-May-2017	-	441924.00	22096.00	22096.00
29	194H	31-Jul-2016	F	27-May-2017	-	441924.00	22096.00	22096.00
30	194H	31-Jul-2016	F	27-May-2017	B	-441924.00	-22096.00	-22096.00
31	194H	30-Jun-2016	F	31-May-2017	-	77633.00	7763.00	7763.00
32	194H	30-Jun-2016	F	31-May-2017	-	77633.00	7763.00	7763.00
33	194H	30-Jun-2016	F	31-May-2017	B	-77633.00	-7763.00	-7763.00
34	194H	31-May-2016	F	31-May-2017	-	51597.00	5160.00	5160.00
35	194H	31-May-2016	F	31-May-2017	-	51597.00	5160.00	5160.00
36	194H	31-May-2016	F	31-May-2017	B	-51597.00	-5160.00	-5160.00
37	194H	30-Apr-2016	F	31-May-2017	-	471258.00	47126.00	47126.00
38	194H	30-Apr-2016	F	31-May-2017	-	471258.00	47126.00	47126.00
39	194H	30-Apr-2016	F	31-May-2017	B	-471258.00	-47126.00	-47126.00

Assessee Name: ADVANCE IT SOLUTIONS

Assessment Year: 2017-18

Assessee PAN: ABAFA4834B

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
1	DEHRADUN E NET SOLUTIONS PRIVATE LIMITED			MRTD02332B	0.00	0.00	0.00
Sr. No.	Section 1	Transaction Date	Date of Booking	Remarks**	Amount Paid/Credited	Tax Deducted ##	TDS Deposited
1	194A	31-Dec-2016	27-May-2017	-	0.00	0.00	0.00
2	194A	30-Nov-2016	27-May-2017	-	0.00	0.00	0.00
3	194A	31-Oct-2016	27-May-2017	-	0.00	0.00	0.00
4	194A	30-Sep-2016	27-May-2017	-	0.00	0.00	0.00
5	194A	31-Aug-2016	27-May-2017	-	0.00	0.00	0.00
6	194A	31-Jul-2016	27-May-2017	-	0.00	0.00	0.00
7	194A	30-Jun-2016	31-May-2017	-	0.00	0.00	0.00
8	194A	31-May-2016	31-May-2017	-	0.00	0.00	0.00
9	194A	30-Apr-2016	31-May-2017	-	0.00	0.00	0.00

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 1	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 Head	Minor Head	Tax	Surcharge	Education Cess	Penalty	Interest	Others	Total Tax	BSR Code	Date of Deposit	Challan Serial Number	Remarks**

No Transactions Present

Part D - Details of Paid Refund

Sr. No.	Assessment Year	Mode	Refund Issued	Nature of Refund	Amount of Refund	Interest	Date of Payment	Remarks
1	2016-17	PAPER	-	PAN	118650.00	1752.00	21-Dec-2016	-

Part E - Details of SFT Transaction

Sr. No.	Type Of Transaction	Name of SFT Filer	Transaction Date	Amount (Rs.)	Remarks**

No Transactions Present

Notes for SFT: -
1. Amount shown for SFT-005 and SFT-010 is as per below formula:-
Aggregate gross amount received from the Person (-) Aggregate gross amount paid to the Person

PART F - 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 Buyer/Tenant of Property /Payer of resident contractors and professionals)

Sr. No.	Acknowledgement Number	Name Of Deductee	PAN of Deductee	Transaction Date	Total Transaction Amount	Total TDS Deposited***	Total Amount ### Deposited other than TDS
Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking*	Date of Booking	Demand Payment	TDS Deposited***	Total Amount ### Deposited other than TDS
		Gross Total Across Deductor(s)					

No Transactions Present

PART G - TDS Defaults* (Processing of Statements)

(All amount values are in INR)

Sr. No.	Financial Year	Short Payment	Short Deduction	Interest on TDS Payments Default	Interest on TDS Deduction Default	Late Filing Fee u/s 234E	Interest u/s 220(2)	Total Default
Sr. No.	TANs	Short Payment	Short Deduction	Interest on TDS Payments Default	Interest on TDS Deduction Default	Late Filing Fee u/s 234E	Interest u/s 220(2)	Total Default

No Transactions Present

***Notes:**

1.Defaults relate to processing of statements and do not include demand raised by the respective Assessing Officers.

2.For more details please log on to TRACES as taxpayer.

4.5 From the above, it is evident that appellant has received an amount of Rs.26,11,508/- towards provision of service to the service recipient M/s Dehradun E Net Solutions Pvt. Ltd. this fact is also stated by the service recipients by the certificate reproduced below:-

9

e-net Solutions™
simply 'the e-xperts' ...

DEHRADUN E NET SOLUTIONS PVT LTD
H.O.: 180, Gen Aurora Hall, Sandhu Centre, Clement Town, Dehradun (Uttarakhand)
Website : www.enet.net.in email ID: admin@enet.net.in

TO WHOMSOEVER IT MAY CONCERN

This is to declare that we have deducted TDS of **Advance IT Solutions (PAN: ABAFA4854B)**on Gross Amount (Total Billed Amount Including Service Tax) instead of Invoice Base amount for FY 15-16 &FY 16-17

We further declare that we have deposited excess TDS amount of Rs.142567 for FY 16-17 in the pan number of Advance IT Solutions but adjusted this TDS amount against its dues on us.

Detail of Billing:

Financial Year	Base Amount	Service Tax	Total Amount	TDS Deducted & Deposited
15-16	1211054	136103	1347157	134157
16-17	2611508	389443	3000951	322641

Regards,

Dehradun E Net Solutions Pvt. Ltd.

GautamSehgal (Director)

Dehradun E Net Solutions (P) Ltd.
180,Gen. Aurora Hall, Sandhu Centre
Transport Nagar, Dehradun
Uttarakhand-248006

Cin Number : U72300UR2011PTC033414

4.6 In view of the above, I have no hesitation in holding that the total value of the receipts towards provisions of services during the period of 2016-17 was Rs.26,11,508/- and service tax was required to be paid on the said amount. I also find that undisputedly appellant has declared this amount as receipts towards the sale of services in their ITR for the said period. Therefore I do not find any merits in the demand made by taking the gross receipts for 2016-17 as Rs 41,35,964/-.

4.7 Counsel for the appellant admits that the service tax in respect of this amount is required to be paid by them and the service tax liability on this amount comes out to Rs.3,89,112/- against this liability they have deposited service tax to the tune of Rs.3,71,380/- along with due interest much prior to issuance of show cause notice. I also observe that in the certificate provided by the M/s Dehradun E Net Solutions Pvt Ltd. the amount of service tax which has been shown is Rs. 3,89,443/- .Further, he has undertaken to pay the remaining amount or the same could have been adjusted against the pre-deposit made for filing of this appeal. Taking note of the above submission, I hold that appellant is required to pay the differential amount of the admitted liability and the amount deposited towards service tax along with the interest due on the same amount. Thus, I uphold the demand of differential amount of Rs.18,063/- (Rs.3,89,443/- - Rs.3,71,380/-) confirmed along with interest.

4.8 I also find that appellant has short paid the service tax by suppressing the correct value of the services provided. In their ST-3 return they had declared the gross receipts towards the services as Rs 16,86,173/-, whereas the total value of services provided was 26,11,508/-. It is also evident from the facts as they unfold that they had collected service tax amounting to Rs 3,89,443/- from the service recipients. They had been paying service tax, much delayed by the due date and the service tax paid for the period 2016-17 was admittedly less than the amount that was required to be paid. The intention to evade payment of tax by suppressing the value of services is thus evident. However I observe that the appellant has paid against the amount of service tax due from them an amount of Rs 3,71,380/- much prior to issuance of the show cause notice dated 05.10.2021. Accordingly, penalty imposed under Section 78 of the Act is upheld but limited to the amount of demand of service tax confirmed. I also find Section 78 provides as under:-

> *"**SECTION [78. Penalty for failure to pay service tax for reasons of fraud, etc.** — (1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of*

service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

***Provided** ….. :*

***Provided** further that where service tax and interest is paid within a period of thirty days of —*

(i) ……;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

***Provided** also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :*

***Explanation**. — ……*

(2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) of section 73, then, the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified.

(3) Where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of service tax shall be counted from the date of the order of the

Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be. *]"*

4.9 Thus, in case appellant deposits the entire amount along with penalties as per Section 78 of the Act then the benefit of the payment of penalty be calculated to 25% of the demand confirmed would be leviable to the appellant.

4.10 I also uphold the late fee imposed upon the appellant for late/non filing of service tax return under Section 70 of the Finance Act read with Rule 7 of Service Tax Rules, 1994 and the penalty imposed under Rule 7 of Service Tax Rules 1994 read with Section 77(1)(c) of Finance Act, 1994.

4.11 With the above modifications impugned order is upheld.

5.1 Appeal is disposed of.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp