CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70694 of 2025

(Arising out of Order-in-Appeal No.407/ST/Alld/2024 dated 11/11/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Allahabad)

M/s Mahendra Kumar Jaiswal, **.....Appellant**
(3/1-A, Madho Kunj, Katra, Allahabad-211002)

VERSUS

Commissioner of Central Excise &

CGST, Allahabad **....Respondent**

(38 MG Marg, Civil Lines, Allahabad)

<u>APPEARANCE:</u>

Shri Madhukar Anand, Consultant for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70014/2026

DATE OF HEARING : 06 January, 2026
DATE OF DECISION : 06 January, 2026

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.407/ST/Alld/2024 dated 11/11/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Allahabad. By the impugned order, Commissioner (Appeals) has allowed the appeal of the revenue by holding as follows:-

"6.8 As a result, I allow the appeal of the department and I confirm the demand of Service Tax on Rs 1,17,77,537/- under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 and 174 of CGST Act, 2017 along with interest under Section 75 of the Finance Act, 1994 read with Section 142, 173 & 174 of CGST Act, 2017 and 1

impose penalty under Section 78 of the Finance Act, 1994 read with Section 142, 173 & 174 of CGST Act, 2017. The respondent is further liable for penalty amounting to Rs 10,000/- each under section 77(1)(a). 77(1)(b), 77(1)(c), 77(1)(d), and 77(2) of the Act.

7.0 in the light of discussions made in the foregoing paras, I allow the appeal filed by the appellant department as above."

2.1 An enquiry was conducted against the appellant for the financial year 2016-17 as in the ITR for the corresponding period the amount to the tune of Rs.1,17,77,537/- was shown as received against sale of service.

2.2 During the course of enquiry it was revealed that the appellant is not registered with the Service Tax Department. Further they have neither filed their half yearly ST-3 Returns for the period 2016-17, nor did they discharged their service tax liability.

2.3 During the course of enquiry certain documents viz. copy of Balance Sheet, Form 26AS, Works Contract, Bills/ Invoices etc were requested. However, they failed to provide any document and even did not respond in reference to the letters issued to them.

2.4 Accordingly, on the basis of available information, Show Cause Notice dated 22.10.2021 was issued to the appellant asking them to show cause as to why:-

"(i) Service Tax amounting to Rs.17,66,631/- (Rupees Seventeen Lakhs Sixty Six Thousand Six Hundred Thirty One Only) should not be demanded and recovered from them under the proviso to the Section 73 (1) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017.

(ii) Due interest on the amount of Service Tax mentioned at (1) above should not be demanded and recovered from them under Section 75 of Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017.

(iii) Penalty should not be imposed upon him/them under Section 78 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017 for failure to pay Service Tax and suppressing the facts and value of taxable service with intent to evade payment of Service Tax.

(iv) Penalty should not be imposed upon them under Section 77 (1) (a) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of COST, 2017 for not taking registration.

(vi) Penalty should not be imposed upon them under Section 77 (1) (b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017 for not maintaining the proper records. Penalty should not he imposed upon them under Section 77 (1) (c) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017 for not furnishing documents and information called by the officer.

(vii) Penalty should not he imposed upon them under Section 77 (1) (d) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST, 2017 for not depositing the Service Tax electronically.

(viii) Penalty should not be imposed upon them under Section 77 (2) of the Finance Act, 1994 read with Section 142, Section 173 and Section 171 of CGST, 2017 for not filing ST-3 Return for the period 201617."

2.5 The said show cause notice was adjudicated as per the Order-in-Original No.145/ST/Div-II/Alld/2023-24 dated 25.10.2023 by holding as follows:-

"ORDER

I drop the proceedings initiated against M/s. Mahendra Kumar Jaiswal, 3/1-A, Madho Kunj, Katra, Allahabad 211003 vide Show Cause Notice vide C. No. C. No. V(I)/R-II/ST/TPV/Unreg/191/MKJ/2021 covering the period from April 2016 to March, 2017."

2.6 Aggrieved revenue have filed appeal before Commissioner (Appeals) which has been allowed as per the impugned order referred in para 1 above.

2.7 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Madhukar Anand learned Consultant appearing for the appellant and Shri A.K. Choudhary learned Authorised 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 Impugned order records as follows:-

"3.1 Under the provisions of the section 84(1) of the Act, the impugned order was reviewed by the competent authority on the following grounds-

(i) That the services are not covered under Notification No. 25/2012-ST dated 20.06.2012 in as much as the same was amended vide Notification No. 09/2016-ST dated 01.03.2016 wherein it was laid that the construction services provided to the Governmental authority were exempted from Service Tax in the event if the contract was entered prior to 01.03.2015.

(ii) That all the work orders provided by the respondent were executed on or after 01.03.2015.

4.0 MEMORANDUM OF CROSS OBEJCTION FILED BY THE REPONDENT-

That the impugned order was reviewed by the competent authority and appeal against the same has been filed before the First Appellate Authority. Vide C.No. 43/ST/Appl/Alld/2024/2582 dated 11.01.2024 a copy of the appeal was dispatched to the respondent for submitting cross objection, if any. However the respondent did not submit any reply with respect to the appeal filed against the impugned order.

5.0 Record of personal hearing-

5.1 Shri Mahendra Kumar Jaiswal vide his letter dated 12.03.2024 requested for adjournment on the ground that his counsel was ill. He further requested to fix any date after 15.04.2024 so that he may provide the documents. Thenafter, he was accorded suitable opportunity for personal hearing however he neither responded nor did he provide any documents."

4.3 On plain reading of the impugned order, I find that no proper/effective opportunity of hearing was provided to the appellant and the impugned order has been passed in violation of principles of natural justice. In fact appellant had not filed any submissions in the appeal filed by the revenue.

4.4 As I find that no proper opportunity to present his case or considering the submissions of the appellant was being given by the Commissioner (Appeals), I find this matter to be fit for de novo consideration of the Commissioner (Appea)

4.5 In view of the above, impugned order is set aside and matter is remanded back to Commissioner (Appeals) for decision on merits, and on all the grounds that appellant intends to take in his defence in the appeal filed by the revenue. Appellant should appear before Commissioner (Appeals) on the date fixed along with all the documents that he would like to rely upon and not to seek unnecessary adjournments in the matter.

5.1 Appeal is allowed by way of remand to Commissioner (Appeals) for decision on merits within a period of three months from the issuance of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp