CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70659 of 2025

(Arising out of Order-in-Appeal No.956/ST/ALLD/2023 dated 17.05.2023 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

Shri Himanshu Srivastava, **.....Appellant**
(Prop. M/s Lakshmi Enterprises
5/9, Madan Mohan Malviya Road,
George Town, Allahabad-211002)

VERSUS

Commissioner of Central Excise &
CGST, Allahabad **....Respondent**
(38, M.G. Marg, Civil Lines, Allahabad-211001)

APPEARANCE:

Shri S. R. Agrawal, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70069/2026

DATE OF HEARING : 10.03.2026
DATE OF PRONOUNCEMENT : 13.03.2026

P.K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.956-ST-ALLD-2023 dated 17.05.2023 passed by the Learned Commissioner (Appeals) Customs, GST & Central Excise, Allahabad.

2. The facts of the case in brief are that the Appellant namely Shri Himanshu Srivastava, Proprietor of M/s Lakshmi Enterprises 5/9- Malviya Road, George Town, Allahabad-211002 is engaged in the activity of Trading of Goods and mostly to various Government establishments including supply of imported goods to Government organizations.

3. The proceedings were initiated on the basis of third-party information received from the Income Tax Department reflecting receipts under the head "Sale of Services" in Form 26AS statement for F.Y. 2016-17.

4. On the basis of such Income Tax data, a Show Cause Notice[1] dated 22.10.2021 was issued proposing to demand Service Tax amounting to Rs.86,23,306/- under Section 73(1) read with Sections 66B and 68 of the Finance Act, 1994 along with interest under Section 75 of the Act and for imposition of penalties under Sections 77 and 78 and recovery under Section 73A of the Finance Act, 1994.

5. The SCN was adjudicated *ex-parte* against the Appellant confirming the demand of service tax along with interest and imposing equal penalty under Section 78 and other penalties as proposed in SCN by invoking extended period of limitation.

6. Being aggrieved by the said Order-in-Original, the Appellant preferred an appeal before the Commissioner (Appeals). However, the learned Commissioner (Appeals) also disposed of the appeal *ex-parte* and upheld the Order-in-Original vide Order-in-Appeal dated 17.05.2023 without properly appreciating the facts, submissions and the legal position involved in the matter.

7. Aggrieved thereby, the Appellant has preferred the present appeal before the Tribunal.

8. The Appellant challenged the impugned orders on grounds of violation of principles of natural justice, incorrect invocation of extended period, non-taxability of trading activity, demand based solely on Income Tax data, absence of pre-SCN consultation and unsustainability of penalties.

9. The learned Counsel for the Appellant submitted that the entire demand is barred by limitation as period involved in the present proceedings is F.Y. 2016-17, whereas the SCN was issued on 22/23.10.2021, after invoking extended period of limitation. He further submits that an earlier SCN for F.Y. 2015-16 had already been issued on identical grounds and that the said SCN has been decided in favour of the Appellant by the Commissioner (Appeals), Central Excise & CGST, Allahabad, therefore, issuance of subsequent notice invoking extended period on the same facts is legally impermissible. A copy of the Order-in-appeal has been filed to evidence this fact. He relied upon following decisions in support of his submissions: -

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[1] SCN

A. Nizam Sugar factory Vs. Collector of Central Excise, Andhra Pradesh 2006 (197) E.L.T. 465 (SC).
B. Decision of the Tribunal vide Final Order No.70700/2025 dated 30.09.2025 in the case of M/s. Samriddhi Infrabuild Vs. Commissioner of Central Excise & CGST, Lucknow.

10. The learned Counsel for the Appellant further submitted that the entire proceedings have been initiated solely on the basis of third-party information received from the Income Tax Department. No independent verification of books of accounts, invoices or nature of transactions was conducted by the Department before alleging tax liability. Demand arises merely on presumptions, assumptions and Income Tax data and is thus, legally unsustainable. Reliance was placed on the following decisions: -

a. M/s A.P. Construction & Suppliers Vs. Commissioner of Central Excise & CGST, Noida 2026 (2) TMI 527- CESTAT Allahabad; (Being Service Tax Appeal No.70624 of 2025 in Final Order No.70002/2026 dated 07.01.2026).
b. M/s Mamta Advertisers Vs. Commissioner of Central Excise & Service Tax, Lucknow 2025 (7) TMI 1143 - CESTAT ALLAHABAD; (Being Service Tax Appeal No.70214 of 2024 in Final Order No.70499/2025 dated 18.07.2025).

11. It was also contended that the Appellant was engaged purely in trading of goods, which falls under clause (e) of Section 66D of the Finance Act, 1994 (Negative List), and therefore is not liable to Service Tax.
12. It was further argued that no specific taxable service has been identified or classified by the Department in the SCN or in the impugned orders.
13. The Ld. Counsel for the Appellant further submitted that mandatory pre-SCN consultation, as prescribed under Departmental Circulars for demands exceeding Rs.50 lakhs, was not conducted. Lastly, it is submitted that penalties under

Sections 77 and 78 are wholly unsustainable in absence of mis-statements, suppression of facts etc. with an intention to evade payment of Service Tax.

14. The Ld. Counsel for the Appellant has also submitted written submissions wherein he submitted that the amount received from Shri Sanjay Minotra were also related to the trading activity. An Affidavit sworn by the Appellant alongwith copies of the documents evidencing their contention were submitted during the course of hearing.

15. Shri Santosh Kumar Ld. Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

17. We now proceed to take up the issues raised by the Appellant. We find it appropriate to take up the issue of limitation agitated by the Appellant. We note that the subsequent SCN dated 22/23.10.2021 for the period 2016-17 has been issued by the Joint Commissioner, Lucknow invoking extended period. We also find that another SCN dated 13.12.2020 had been issued for the F.Y. 2015-16 on the similar facts invoking extended period. We observe that the said SCN was adjudicated and appealed against by the Appellant. We further, note that the said SCN was finally decided by the Ld. Commissioner (Appeals) in favour of the Appellants vide Order-in-Appeal No.246/ST/APPL/ALLD/2025 dated 18.11.2025.

18. It has been a consistent view of the Courts that if a SCN has been issued invoking extended period of limitation, then the subsequent SCN cannot be issued invoking the extended period based on the same set of facts. It is quite obvious that once the Department becomes aware of certain facts, the same facts cannot be suppressed subsequently. The Hon'ble Supreme Court in the case of P & B Pharmaceuticals (P) Ltd. vs. Collector of Central Excise reported in (2003) 3 SCC 599 = 2003 (153) E.L.T. 14 (S.C.) has taken a view that in a case in which a SCN has been issued for the earlier period on certain set of facts, then on the same set of facts another SCN invoking extended period of limitation on the plea of suppression of facts cannot be issued.

19. Further, Hon'ble Supreme Court in the case of 'Nizam Sugar Factory Vs. Collector of Central Excise, Andhra Pradesh reported in 2006 (197) E.L.T. 465 (SC) laid down the ratio that demand is not sustainable when all the relevant facts were in the knowledge of authority when the first SCN was issued. We find that the Appellant have been filing ST-3 Returns and both the SCN's have been issued mechanically on the basis of third party data provided by the Income Tax Department, hence no *mala-fide* is a attributable to the Appellant. The extended period of limitation is applicable only when there is conscious act of either fraud, collusion, suppression etc., with an intent to evade payment of tax. In the instant case, when the authorities issued the second SCN, the similar facts were taken as suppression of facts on the part of assessee and these facts were already in the knowledge of the Department. We find that there was no evidence of suppression of facts on the part of the Appellant and as such larger period of limitation is not invokable. The Appellant was regularly filling ST-3 Returns and all the facts were in the knowledge of the Department.

20. We also find that the entire demand has been initiated on the basis of third party information received from the Income Tax Department. We also note that no other record of the Appellant was taken into consideration for demanding the Service Tax amounting to Rs.86,23,306/- for the period 2016-17. The Appellant has agitated that it is the consistent view of the higher courts that demands on the basis of third party information are not sustainable. A similar issue had come up for consideration in the case of M/s Sharma Fabricators & Erectors Pvt. Ltd. Vs. C.C.E., Allahabad reported as 2017 (5) G.S.T.L. 96 (Tri.-All.) wherein it was held as under:-

> ***"3.****Heard the ld. Counsel for M/s. Sharma he has basically argued that the said Show Cause Notices were not issued by examining the books of account maintained by M/s. Sharma. The Show Cause Notices were based on the presumptions and third party information. He has argued that even when the payments were not made by the clients but the clients booked the expenditure in their*

books of account they were required to pay the related tax deducted at source to the exchequer and issue a certificate of TDS and incorporate the same in the return called 26AS filed with the Income Tax Authorities and such information cannot be the basis for arrival of the consideration received by the service provider. He has submitted that both the Show Cause Notices were issued without examining the books of account maintained by M/s. Sharma and were issued on the basis of presumptions about the consideration received by M/s. Sharma. The considerations taken into account for issue of Show Cause Notices was in no way near to the actual consideration received by M/s. Sharma during the relevant period which should be the basis for arriving at the assessable value. He has stated that they had elaborated before the Original Authority various reasons for discrepancies in the figures arrived at presuming the considerations received by M/s. Sharma on the basis of such TDS Certificates and the figures in the returns. He has further relied upon this Tribunal's Final Order in the case of Alpa Management Consultants P. Ltd. v. Commissioner of Service Tax, Bangalore reported in 2007 (6) S.T.R. 181 (Tri. - Bangalore). He submitted that this Tribunal in the said case has held that demands, solely based on the income-tax returns for liability of Service Tax under Finance Act, 1994 is not sustainable. In respect of appeal filed by Revenue ld. counsel for M/s. Sharma has contended that the grounds of appeal are travelling beyond the Show Cause Notice and therefore that is not sustainable. He has further elaborated that cargo handling was brought in as ground by Revenue in the appeal filed by Revenue whereas that issue was not at all dealt with in the Show Cause Notices dated 20-4-2009 & 13-10-2009.

4.*Heard the ld. DR, who has presented the grounds of appeal in appeal filed by Revenue.*

5.*Having considered the rival contentions and on perusal of record, we find that in the cases of both the Show Cause*

Notices dated 20-4-2009 & 13-10-2009 there is no whisper of examination of books of account maintained by M/s. Sharma to arrive at the value of consideration received by them. Surprisingly the draft audit report was the relied upon document. It may be worth mentioning here that the purpose of audit report is to point out any discrepancy to the notice for examination by the executive and it is the duty of executive to examine the records and examine the objection raised with reference to the records and facts of the case and take a view whether there is a sustainable case for issue of Show Cause Notice. Such vital aspects of framing of charges have been missing in the present case. The charges in the Show Cause Notice have to be on the basis of books of account and records maintained by the assessee and other admissible evidence. The books of account maintained by M/s. Sharma were not looked into for issue of above stated two Show Cause Notices. Therefore, the transactions recorded in the books of account cannot be held to be contrary to the facts. Therefore, we hold that the said Show Cause Notices are not sustainable. Since the said Show Cause Notices are not sustainable, appeal bearing No. ST/890/2010 filed by M/s. Sharma is allowed and appeal bearing No. ST/949/2010 filed by Revenue is dismissed. Miscellaneous Applications also stand disposed of. Cross Objection also disposed of."

21. We find that the decision of the Tribunal in the case of Sharma Fabricators & Erectors Pvt. Ltd. (Supra) has been upheld by the Hon'ble High Court of Allahabad reported as 2019 (22) G.S.T.L. J166 (All.). We also find that the case of the Appellant is squarely covered by the aforesaid decision of this Tribunal as upheld by Hon'ble Allahabad High Court.

22. We also find that the Appellant has strongly contended that they are engaged in the activity of trading of goods only which activity is covered under clause (e) of Section 66D of the Finance Act, 1994 (Negative List) and therefore, no Service Tax is payable by them. The Appellant has filed the copies of sale invoices evidencing sale of goods. A chart has also been

provided by the Appellant to evidence that the sale to different buyers are tallying with the Form 26AS statement which is the basis of the demand. We have gone through the sale invoices and the chart prepared by the Appellant. We have perused the invoices of sale placed at page 56 to 78 of Appeal paper book and we observe that all these invoices are for sale of goods on which proper VAT has been discharged by the Appellant.

23. The Appellant has also submitted that they are also engaged in supply of imported goods to various Government organizations as associate of M/s. Syncotts International. The Appellant has also submitted sample copies of documents in this regard. We observe that M/s. Syncotts International have issued a certificate certifying that the Appellant is associate of M/s. Syncotts International. The documents submitted by the Appellant initiate the import of Synthetic Turf for UPRNN & UP Jal Nigam. We are thus convinced that the Appellant is engaged in trading activity only.

24. We thus find that the impugned order is not sustainable on limitation as well as on merits. The impugned order is set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on **13.03.2026**)

Sd/-

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS