

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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70079 of 2026

(Arising out of Order-in-Appeal No.20/ST/APPL/ALLD/2025 dated 15/10/2025
passed by Commissioner (Appeals) Central Excise & Service Tax, Allahabad)

M/s Ram Lal Contractor,
(Manchhana, Manchhana, Mainpuri-205001)
VERSUS

.....Appellant

Commissioner of Central Excise &

CGST, Kanpur

....Respondent

(117/07, Sarvoday Nagar, Kanpur-208005)

APPEARANCE:

Request for adjournment, for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70086/2026

DATE OF HEARING : 23 March, 2026
DATE OF DECISION : 23 March, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.20/ST/APPL/ALLD/2025 dated 15/10/2025 passed by Commissioner (Appeals) Central Excise & Service Tax, Allahabad.

2.1 Appellant for the appellant filed a request for adjournment on the ground that documents are required to obtain from the various government departments. The appeal filed below the tribunal in present case is second appeal. I do not find any reason to entertain such a request for obtaining the documents which were not available at the stage of adjudication or consideration of first appeal. The production of documents is akin to establishing the question of facts and should have been taken up at the earliest stage of proceedings. If production of

new documents is permitted at this stage it would be contrary to settled procedure and authority of the appellate remedies. If those documents were not in existence at the time of initiation of proceedings the same should not be allowed to be produced at the second stage of appeal.

2.2 In case of K. R. Mohan Reddy Vs. Net Work Inc. [(2007) 14 SCC 257] Hon'ble Supreme Court after referring to earlier decisions in State of Gujarat Vs. Mahendra Kumar Parshottambhai Desai (dead) by L.Rs. [AIR 2006 SC 1864] & Municipal Corporation of Greater Bombay Vs. Lal Pancham and others [AIR 1965 SC 1008], observed as follows:

"15. The High Court, unfortunately did not enter into the said questions at all. As indicated hereinbefore, the High Court proceeded on the basis as if Clause(b) of Sub-rule (1) of Rule 27 of Order XLI of CPC was applicable.

16. It is now a trite law that the conditions precedent for application of Clause (aa) of Sub-rule (1) of Rule 27 of Order XLI is different from that of Clause (b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand Clause(b) to Sub-rule (1) of Rule 27 of Order XLI of CPC is to be taken recourse to, the appellate Court was bound to consider the entire evidences on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant was necessary.

17. The fact that the High Court failed to do so, in our opinion, amounts to misdirection in law. Furthermore, if the High Court is correct in its view that the plaintiff respondent had proceeded on the basis that the suit in its entirety based on a cheque, wherefor, it was not necessary for it to file the books of accounts before the trial Court, finding contrary thereto could not have been arrived at that the same was in fact required to be proved so as to enable the appellate Court to arrive at a just conclusion.

18. *The Supreme Court in State of Gujarat v. Mahendra Kumar Parshottambhai Desai(dead) by L.Rs. AIR 2006 SC 1864 relying upon Municipal Corporation of Greater Bombay v. Lal Pancham and Ors., held as under:*

Though the appellate Court has the power to allow a document to be produced and a witness to be examined under Order XLI Rule 27 CPC, the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision did not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in the case. It does not entitle the appellate court to let in fresh evidence only for purposes of pronouncement of judgment in a particular way.

19. *Appellate Court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial Court, but it will be different if the Court itself require the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the Court. But mere difficulty is not sufficient to issue such direction. While saying so, however, we do not mean that the Court at an appropriate stage would be precluded from considering the applicability of Clause (b)."*

2.3 In *State of Karnataka and another Vs. K.C.Subramanya and others* [(2014) 13 SCC 468], Hon'ble Supreme Court again observed as follows:

"4. However, we do not feel impressed with this argument and deem it fit to reject it in view of Order 41 Rule 27(1)(aa) which clearly states as follows:

*"27. (1)(a)****

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the

exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
 (b) ***"

On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will."

2.4 In case of A.Andisamy Chettiar Vs. A.Subburaj Chettiar [(2015) 17 SCC 713] Hon'ble Supreme Court observed as follows:

"11. Under the scheme of the Code of Civil Procedure, 1908 (for short "the Code") whether oral or documentary, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1)(d) read with Rule 27 of Order 41 of the Code. Rule 27 of Order 41 reads as under:

"27.Production of additional evidence in appellate court.—

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission."

12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ext.A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

13. In *K.R. Mohan Reddy v. Net Work Inc.* [*K.R. Mohan Reddy v. Net Work Inc.*, (2007) 14 SCC 257] this Court has held as under: (SCC p. 261, para 19)

"19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction."

14. In *North Eastern Railway Admn. v. Bhagwan Das* [*North Eastern Railway Admn. v. Bhagwan Das*, (2008) 8 SCC 511] this Court observed thus: (SCC pp. 515-16, para 13)

"13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist."

15. In *N.Kamalam v. Ayyasamy* [*N.Kamalam v. Ayyasamy*, (2001) 7 SCC 503] this Court, interpreting Rule 27 of Order 41 of the Code, has observed in para 19 as under:(SCC p. 514)

"19. ... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in

the court of appeal— it does not authorise any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

16. In *Union of India v. Ibrahim Uddin* [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] this Court has held as under: (SCC p. 171, para 49)

"49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

2.5 I would also refer to the following decisions wherein similar view has been expressed:

- *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148
- *Sanjay Kumar Singh v. State of Jharkhand*, (2022) 7 SCC 247
- *Javedbhai v. Sikandarali Kasamali Kureshi*, 2024 SCC OnLine Guj 3987

2.6 In the present case I find counsel for appellant at second stage of appeal is seeking adjournment on the ground for discovering and producing certain documents which were not

even produced at the earlier stages of adjudication and appeal. They were not available even at the time of filing this appeal. I do not find any merits in such a request more specifically when the amount of tax effect involved in this appeal is as low as Rs 20,000/-. The adjournment request is not entertained and dismissed.

3.0 I have heard Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

4.1 I have considered the impugned order along with the submissions made in appeal.

4.2 Impugned order records as follows:-

"5.2 I have carefully gone through the case records, and find that the appeal has been filed on 01.01.2025 against the impugned order dated 30.07.2024 which as per ST-4 is said to have been communicated to the appellant on 11.10.2024. Even going by the date of effective communication the appeal has been filed after a delay of 20 days. The appellant has cited medical reasons for the delay in their delay condonation application. They requested to condone the delay and decide the case on merits. I find the reason given for delay in filing the appeal to be satisfactory. Since the delay is within condonable limit, as such exercising the powers conferred to me under the provisions of section 85(3A) of the Act, I condone the delay and regularize the appeal to decide it on merit.

5.3 After going carefully through the facts of the case on the basis of documents/records available on the case file, I find that the Adjudicating Authority has decided the case after taking into account all the documents submitted by the appellant. As per the impugned order the appellant has submitted the copy of work orders, Form 26AS and other relevant documents. The Adjudicating Authority has extended the benefit of exemption to the appellant on the consideration received by them except on the gross amount of Rs. 312944/- received for construction of Anganwadi Kendra. Also, the Adjudicating Authority held that the

appellant is liable to pay service tax on the expense of Rs. 9000/- incurred towards legal fees. Therefore, I would limit myself only on the issue related to point of appeal.

5.4 In their defence the appellant have submitted that they have provided construction services to government department which is covered under mega exemption notification and hence no service tax is applicable on it. With regard to imposition of service tax liability on the legal expense incurred, the appellant submitted that they were the expense for meeting out purchase of stamps. Hence there is no tax liability on the purchase of stamps under reverse charge.

5.5 I find that there is no issue regarding the nature of services provided and the service recipient. The appellant has contended that construction services provided to government department are covered under mega exemption notification, hence no service tax is applicable. Further there is no tax liability under reverse charge on purchase of stamps. However, I note that the Adjudicating Authority has observed that the appellant had received the consideration of Rs. 312944/- in lieu of services provided for construction of Anganwadi Kendra during the period 2016-17 on which the appellant were liable to pay tax in terms of Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006.

*5.6 I am of the opinion that with the introduction of Notification No. 09/2016-ST dated 01.03.2016, the reach of mega exemption notification has been limited and confined to the provisions contained under clause no. 12A. The plain reading of the same reveals that the exemption provided has been limited on specific activities for the contract which were entered prior to 01.03.2015. In this connection I observe that the appellant have not proved that the agreement were entered prior to the specific date as give under clause no. 12A of the notification *ibid*. Thus, I find that the services provided to Anganwadi Kendra during the period 2016-17 were not covered under mega exemption*

notification, as amended. The relevant provisions of the same is given as under-

12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession:*
- (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*
- (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act:*

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020:]

5.7 I also note that Rural Engineering Service is not a body corporate as it is not profit oriented and also because it is not registered under Company's Act 1956, hence the provision of reverse charge would not be applicable in this case. Now coming to the issue of cum-tax-benefit, I note that the appellant has not submitted any document which could establish that service tax has not been charged separately. The appellant should have provided the copy of invoices/ bills or agreement which could corroborate that the appellant has not charged service tax separately. Thus, I find that the Adjudicating Authority has rightly concluded the service tax liability to the tune of Rs. 18777/- on the gross receipt of Rs. 312944/-

5.8 The appellant has also contested that they have not incurred any legal expense towards payment of Advocate fee, which was rather paid for purchase of stamps. However, the demand was confirmed by the Adjudicating Authority on the payment of Rs. 9000/-made by appellant under legal head due to non-sufficiency of documents. It was found that the appellant did not provide any material documents in support of their version. Therefore, the Adjudicating Authority confirmed the demand of Rs. 1335/- on the expense of Rs. 9000/- incurred under legal head.

5.9 I am of the opinion that exemptions are conditional and require strict compliance with the stipulated conditions. The onus is on the assessee to prove eligibility for the exemption through clear, cogent, and admissible documentary evidence. This is in line with general principles of taxation law, where exemptions are construed strictly, and the burden of proof lies with the claimant. Thus, in the absence of documentary proof and cogent I am unable to extend any relief to the appellant. Accordingly, I conclude that the appellant were rightly held liable to pay service tax amounting to Rs. 20112/- (Rs. 18777/- for providing WCS + Rs. 1335/- for legal expense).

5.10 Thus I find that the Adjudicating Authority has rightly deduced the service tax to the tune of Rs. 20112/- which the appellant is liable to pay alongwith interest and penalty under section 75 and 78 of the Act, respectively. I also agree with the Adjudicating Authority with regard to the imposition of penalty of Rs. 10000/- each under section 77(1)(a), 77(1)(c) and 77(1)(d) and late fee of Rs. 100000/-under section 70 of the Act.

6.0 Therefore, in the light of discussions made in the preceding paras, I find no anomaly in the impugned order and hence reject the appeal filed by the appellant. The appeal is accordingly disposed of in the above terms."

4.2 I find that the total amount of demand for tax involved in the present appeal is Rs.20,112/- with penalties of Rs.10,000/-

each under Section 77(1)(a), 77(1)(c) and 77(1)(d) of the Act and late fee of Rs.1,00,000/- under Section 70 of the Act. The total tax involved involved in the present appeal is much less than Rs.2 lakhs.

4.4 Hence, I do not find the appeal need be admitted by Tribunal (second stage of appeal) or to be maintainable before this Tribunal in terms of second proviso to Section 35B (1) of Central Excise ACT, 1944 read with Section 86 (7) of the Finance Act, 1994. Moreover, there is no issue of rate of taxation or valuation of services involved in the present case. In the case of Roots Multiclean Ltd [2016 (336) E.L.T. 25 (Mad)] Hon'ble Madras High Court has held as follows:-

"4.3 A perusal of Section 35B of the Act would go to show that sub-section (i) specifies orders against which appeal lies to the Appellate Tribunal and the proviso to sub-section (i) stipulates three clauses of cases, which have to be decided by the Central Government, in Revision, under Section 35EE of the Act. Under the second proviso to Section 35B of the Act, the Appellate Tribunal is vested with discretion to refuse to admit an appeal, in respect of the order referred to in clause (b) or clause (c) or clause (d), where,

- (i) in any disputed case, other than a case, where the determination of any question having a relation to the rate of duty of the excise or to the value of goods for the purpose of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved or*
- (ii) the amount of fine or penalty determined by such order does not exceed two lakhs rupees.*

4.4 The CESTAT may, at its discretion, refuse to admit an appeal, if the (a) duty involved or (b) difference of duty involved or (c) penalty involved is less than Rupees two lakhs. However, such appeal cannot be refused if the issue pertains to valuation or rate of duty. Originally the limit was rupees fifty thousand which has been enhanced to Rupees

two lakhs, by Finance Act (No. 2), 2014, with effect from 6-8-2014.

4.5 Further, in the case of J.K. Sharma v. Government of India, 1993 (66) E.L.T. 66 (Mad.), it has been held that the minimum monetary limit prescribed under Section 131B of the Customs Act, 1962, as per the proviso applies to each clause separately and not cummulatively and that under each clause, referring duty, differential duty, penalty or fine, the limit will be separately applicable (analogous to Second Proviso to Section 35B(i) of the Customs Act, 1962).

4.6 The Tribunal has a power to refuse to admit an appeal, at its discretion, if the amount involved (duty or fine or penalty) is not more than Rupees two lakhs. But, this would not be applicable, if the dispute is pertaining to cases other than duty or rate of duty or valuation of goods. Whether the disputed issue before the Tribunal was pertaining to cases other than duty, rate of duty or valuation of goods, and if that be so, whether the Tribunal is justified in dismissing the appeal under Section 35B of the Act is the issue to be decided.”

5.0 Appeal is not maintainable and is not admitted.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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