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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70088 of 2026

(Arising out of Order-in-Appeal No.NOI-ST-APPL-001-91-2024-25 dated 11/06/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Vydianathan Anand, ...**Appellant**
(Grand Omaxe Florence, A-804,
Section 93 B, Noida-201304)

VERSUS

Commissioner of Central Excise &

CGST, Agra ....**Respondent**

(C-232A/2 to C-232A/3, Sector-48, Noida)

<u>APPEARANCE:</u>

A letter on record, for the Appellant
Shri Prashant Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70126/2026

DATE OF HEARING : 28 April, 2026
DATE OF DECISION : 28 April, 2026

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.NOI-ST-APPL-001-91-2024-25 dated 11/06/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

> *In view of the discussion and findings supra the instant appeal no. 238/ST/NOIDA/APPL/NOI/2023-24 dated 06.12.2023 filed by M/s Vydianathan Anand, Grand Omaxe Florence, A-804, Sector-93B, Noida, Gautam Budh Nagar-201304 is rejected as having no merit and legality. The impugned Order-in-Original No. 14/DC/CGST-*

AUDIT/NOIDA/23-24, Dtd. 27.09.2023 passed by the Deputy Commissioner, CGST (Audit), NOIDA is upheld as just, legal and proper."

2.1 Appellant was registered with the Department vide Service Tax Registration No.AAQPA4315ESD001 in terms of the provisions of the Finance Act, 1994.

2.2 Based on the third party data received from the Income Tax Department, it was observed that for the Financial Year 2015-16 the appellant has declared a gross taxable value of services provided by them as Rs.16,73,359/- in their periodical ST-3 Returns for the corresponding period, whereas as per the Income Tax Returns of appellant Gross receipts on Sale of Services was declared as Rs.30,99,659/-. Thus, it was noticed that there was difference in the gross value declared in their ST-3 Returns, and resulted in short payment of service tax as computed below:

Financial Year	Gross Receipts			Higher of 2-3 and 3-4	Service Tax Payable Rs
	ITR	26AS	ST3		
1	2	3	4	5	6
2015-16	3099659	3014135	16773359	1426300	206814

2.3 Enquiries/ investigations were made from the appellant and letter dated 26.11.2020 and 21.12.2020 were issued to them asking them to provide relevant details along with the reconciliation of differences. However no response was received.

2.4 Accordingly, show cause notice dated 26.03.2021 was issued to the appellant, asking them to show cause as to why:-

"(i) Service Tax amounting to Rs. 2,06,814/- (Rupees Two lakh Sixty-Eight thousand Eight hundred Fourteen only) should not be demanded and recovered from them under proviso to Section 73(1) of the Act, 1994 read with Section 142, Section 173 and Section 174 of CCS-T Act, 2017.

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

(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act 1004 read with Section 142, Section 173 and Section 174 of CGST Act. 2017 for failure to pay service tax & 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)(c) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for not maintaining the proper records."

2.5 The said show cause notice was adjudicated as per the Order-in-Original No.14/DC/CGST-Audit/Noida/23-24 dated 27.09.2023 holding as follows:-

"ORDER

i. I confirm the demand and recovery of service tax, total amounting Rs. 2,06,814/- (Rupees Two lakh Sixty-Eight thousand Eight hundred Fourteen only), inclusive of Cess for the financial year 2015-16, under the proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of CGST Act 2017.

ii. I confirm the demand and recovery of interest, at the appropriate rate, on the said confirmed amount of demand of recovery of service tax, under the provisions of Section 75 of the Finance Act, 1994.

iii. I impose a penalty of Rs. 2,06,814/- (Rupees Two lakh Sixty-Eight thousand Eight hundred Fourteen only) upon the said party under the provisions of Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act 2017. However, in view of clause (ii) of the second proviso to Section 78(1), if the amount of Service Tax confirmed and interest thereon is paid within thirty days from the date of receipt of this order, the penalty shall be twenty-five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

iv. I also impose a penalty of Rs. 10,000/- [Rupees Ten thousand only upon the said party under the provisions of Section 77(1) of the Finance Act, 1994 read with Section 174 of CGST Act 2017.

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

2.7 Aggrieved appellant have filed this appeal.

3.1 On the last date of hearing Counsel for the appellant has filed a written synopsis dated 17.04.2026 and the matter was adjourned for hearing on 28.04.2026. However, appellant filed a letter seeking adjournment vide email dated 27.04.2026.

3.2 As I find that the matter is in very narrow compass and can be decided in absence of the appellant counsel, I have taken the matter for consideration after hearing Shri Prashant Kumar learned Authorized Representative for the revenue, who reiterated the grounds recorded in the impugned order.

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 the findings as follows:-

"12.3 I find that the appellant has not declared all the actual gross receipts in his ST-3 returns. Thus, there was no occasion for the department to know that what was the taxable value received by the appellant during the relevant period against provision of services, as noticed by the respondent department from relevant ITR of the appellant. If the enquiry was not initiated, the non-payment / short payment of tax would have gone unnoticed. I also note that there are columns in the ST-3 returns for claiming exemption / deductions, in spite of that the actual gross receipt was not reflected by the appellant in respective ST-3 returns during the impugned period. Thus, I find that there was clear suppression of facts with intent to evade payment of Service Tax on the part of the appellant. Therefore, I uphold invoking of extended period of

limitation for the purpose of confirming demand by the adjudicating authority being legal and proper. Therefore, the said Service Tax of Rs.2,06,814/- not paid for the period of 2015-016 is required to be recovered along with interest under section 75 of the Act from them under the proviso to Section 73(1) of the Act, read with Section 174 of the CGST Act, 2017 by invoking extended period of five years, is proper and justified.

14. I find that Section 75 of the Act provides that every person, liable to pay the tax in accordance with the provisions of Section 68 or Rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at such rate not below ten percent and not exceeding thirty-six percent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette] for the period by which such crediting of tax or any part thereof is delayed. I find that CESTAT in the case of Ballarpur Industries Ltd V/s. Commissioner of C. Ex. Nagpur-2007(5) STR-197 (Tri.Mumbai) held that the provisions of section 75 prescribing interest on service tax paid belatedly are mandatory and therefore the appellants are liable to pay interest. I also find that CESTAT in the case INMA International Security Academy (P) Ltd. V/s. CCE_(2005)1 STT 31 (Chennai-CESTAT) held that the liability to pay interest at prescribed rate, for delayed payment of dues, was inescapable as the law did not confer any discretion in the matter of levying interest. In the light of the cited case laws, it is amply clear that the dues are liable to be recovered in terms of the provisions of Section 75 of the Act. Therefore, I hold that the appellant is liable to pay interest, at prescribed rate, on the due amount of service tax.

15. Having concluded so, I find that since in the present case, service tax has been evaded by the appellant by way *of suppression, mis-statement and with the willful intent to evade payment of service tax, penalty as imposed upon them, by the adjudicating authority under Section 70, 77(1) and Section 78 of the Act is justifiable and I find no reason to interfere in this regard. I also find that extended period clause under Section 73(1) and (or) penalty under Section 78 is leviable when it is proved beyond doubt that the service tax in question has been evaded intentionally by way of suppression, mis-statement and contravention of various provisions of law of the land."*

4.3 Appellant has claimed the benefit of threshold exemption. In the present case for claiming service tax liability appellant has provided receipts of total turnover during the previous year which was less than Rs.10 lakhs.

4.4 From the ITR return of the appellant for the year 2014-15 9Assessment year 2015-16) following is evident:

Income from salary/ pension	: Rs 19,31,016
Income from Other Sources	: Rs 92,661
Total Gross Income	: Rs 20,23,677

From the 26AS for the corresponding period it is clear that appellant had received Rs 19,31,017/- from Axis Max Life Insurance, on which TDS under Section 192 of the Income Tax Act, 1961 amounting to Rs 4,26,025/- was deducted by the employer. Appellants ITR also give reference to the Form 16 issued by the employer. Apart from the above appellant had received Rs 1,63,334/- (from M/s Digital India Corporation) + Rs 18,750/- (from M/s Indiamart Intermesh Limited) = Rs 1,82,084/- on which TDS under Section 194 J of Income Tax Act, 1961 was deducted.

Thus from the ITR Return of the appellant and 26 AS for the period 2014-15, I have no hesitation in concluding that the Gross Turnover of the Appellant towards provision of the Services was only to the extent of Rs 1,82,084/- which is much below Rs 10 lakhs, the threshold exemption limit as paer Notification No 33/2012-ST.

4.5 I find in the present case from ITR and form 26AS of appellant that the total sale of service of the appellant during 2014-15 was less than Rs.10 lakhs. Hence, they will be entitled for the threshold exemption as per the Notification No 33/2012-ST during the Financial Year 2015-16.

4.6 In the written submission, appellant has submitted that,-

"12 After taking into the consideration of the above factual position, the Taxable Value of the Service provided in F Y 2015-16 shall be Rs 20,99,659/- only (Rs 30,99,659-Rs 10,00,000 (amount of Threshold exemption u/ Notfn 33/2012)

Accordingly, the Service Tax liability on the appellant shall be determined in the following manner:-

Financial Year	*Sale of Service as per ITR*	*Gross value as per Service Tax return*	*Threshold Exemption available*	*Difference between column c & d on which tax not paid*	*S Tax due on value reflected in Col e @ 14.5%*
a	*b*	*c*	*d*	*e-[b-(c+d)]*	*f*
2015-16	*30,99,659*	*16,73,359*	*10,00,000*	*4,26,300*	*61,814*

13. The only reason for such difference in Taxable Value/ nonpayment of due service Tax is that it took a considerable time in between apply for Service Tax Registration and issuance of Registration Certificate from the Department. The appellant started to account for the Taxable Value only after grant of Service Tax Registration, which caused such anomaly."

From the above it is quite evident that appellant do not dispute that during the financial year 2015-16 they have short paid the service tax to the tune of Rs 61,814/-. The reason attributed for short payment of tax is the delay in issuance of Service Tax registration. I do not find any merit in the said submission. The appellant was well aware of the fact that he would crossing the threshold limit and should have taken necessary steps for registering with the department in advance. Further the person availing the benefit of exemption under Notification No 33/2012-ST is required to seek registration after crossing the turnover of

Rs 9,00,000/- in respect of the taxable services provided. Once the application seeking registration is made in Form ST-1 is made then the Rule 4 of Service Tax Rules, 1994 itself provides for deemed registration if registration is not granted by the jurisdictional superintendent within seven days. Further it is also to be noted that the return is filed on six monthly basis on 25th October and 25th April. Thus the gross value of service provided by the appellant was well within his knowledge at the time of filing the ST-3 return. By not declaring the gross value of consideration received the appellant suppressed the value of services provided with intention to evade payment of service tax. Hence I have no hesitation in holding that demand to this extent made by invoking extended period of limitation as per proviso to sub-section (1) of Section 73 of the Finance Act, 1994 is justified.

4.7 As I have upheld the invocation of extended period of limitation for making the demand the penalty imposed under Section 78 will follow as natural consequence. For holding so I place reliance on the decision of Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)].

4.8 As I find that appellant had failed to apply for service tax registration well within the time prescribed leading to short payment of service tax as admitted by the appellant, penalty imposed under Section 77(1) of the Finance Act, 1994 cannot be faulted with. However taking note of the fact that penalty has already been imposed under Section 78, Penalty imposed under this Section is reduced to Rs 5,000/-.

4.9 Summarizing my findings:-

- Demand of Service tax for the period 2015-16 is reduced to Rs.61,814/-.
- Demand of interest on the above amount made under Section 75 of the Finance Act, 1994 is upheld.
- Penalty under Section 78 is reduced to Rs 61,814/-. As the amount of demand and penalty under Section 78 is being modified by this order, the benefit of payment of reduced

penalty as per (ii) of Section 78 (1) will be available to appellant if he makes the payment of Service Tax along with interest and reduced penalty within thirty days of this order.

- Penalty under Section 77 (1) is reduced to Rs 5,000/-

Impugned order is modified accordingly.

5.1 Appeal is partially allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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