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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70331 of 2026

(Arising out of Order-In-Appeal No. NOI-EXCUSE-001-APP-246-25-26, dated - 30.01.2026 passed by Commissioner (Appeals) CGST, Noida)

M/s CPS Security Private Limited **.....Appellant**
(1006 B Tower A-I Corporate Park
Plot No.-7A/1, Sector 142, Behind Advant Navis Business Park,
Noida, Uttar Pradesh-201305)

VERSUS

Commissioner, Central Goods & Service Tax, Noida
....Respondent
(GST Bhawan, IRCON Building,
Plot No.-C-232,A/2-A/3, Sector-48,
Gautam Budh Nagar, Uttar Pradesh 201307)

<u>APPEARANCE:</u>

Shri Amit Tiwari, Chartered Accountant for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70325/2026

DATE OF HEARING : 27.08.2026
DATE OF DECISION : 02.09.2026

<u>P. K. CHOUDHARY:</u>

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No. NOI-EXCUSE-001-APP-246-25-26, dated -30.01.2026 passed by Commissioner (Appeals) CGST, Noida.

2. Briefly stated, the facts of the case are that the Appellant M/s CPS Security Private Limited, is engaged in the business of providing 'Security Agency Service/Manpower Supply Service' to various clients.

3. The Appellant was registered with the Service Tax Department and has been maintaining regular books of accounts in the ordinary course of business and have been filing statutory records under the Income Tax Act, 1961 and financial statements under the Companies Act, 2013.

4. On the basis of third party data exchange mechanism, the present proceedings were initiated on receiving From 26AS from the Income Tax Department. On the basis of which the Service Tax Department entertained a view that during the period from October 2014 to June 2017, the Appellant-Assessee had allegedly not deposited the Service Tax liability on the entire amount received during that period.

5. Based on the above allegation, a Show Cause Notice[1] dated 29.09.2020 was issued. Vide the Order-In-Original dated 19.09.2023 the following order was passed:-

ORDER

20. In view of the findings as discussed herein above, I pass the following order:

(i) I confirm that an amount (Gross) of Rs. 3,25,92,597/- received by the party from their client for the pe 2014-15 (Oct 14 to March'15), 2015-16, 2016-17 & 2017-18 (upto June'17) in lieu providing the services of "Security Agency Services/ Man Power supply Services" is to be treated as the total value of taxable services.

(ii) I confirm the demand of unpaid Service Tax totaling Rs. 49,38,552/-(inclusive all cess) for the period 2014- (Oct 14 to March'15), 2015-16, 2016-17 & 2017-18 (upto June' 17) and order to recover the same from them under the proviso to Section 73 (1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

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[1] SCN

(iii) I also order to recover interest on the amount as mentioned at (ii) above from them under Section 75 of the Finance Act, 1994, read with Section 174 of the CGST Act, 2017.

(iv) I impose a penalty of an amount Rs. 49,38,552/- under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 for failure to pay Service Tax during the relevant period suppressing the facts from the department.

(v) I impose a penalty of an amount Rs. 10,000/- on the party under Section 77 (1) (c) (ii) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 as the party has failed to provide the documents as called for.

(vi) I impose a penalty of an amount Rs. 10,000/- on the party under Section 77(1) (b) of the Finance Ac 1994 read with Section 174 of the CGST Act, 2017 for contravention of Rule 5 of the Service Tax Rules, 1994 in as much as the party has failed to maintain the prescribed records.

(vii) I also confirm the demand of late fee of Rs. 1,20,000/- order the same to be recovered from them as per provisions of Rule 7C of the Service Tax Rules read with Section 70 of the Act ibid under Section 77(2) of the Act ibid read with Section 174 of the CGST Act, 2017

6. Being aggrieved, the Appellant-Assessee was in appeal before the First Appellate Authority and the learned Commissioner (Appeals) vide the Order-In-Appeal dated 20.06.2025, dismissed the appeal before her on the ground of limitation.

7. On appeal before the Tribunal, the Tribunal vide the Final Order No.70012 of 2026 dated 05.01.2026, allowed the appeal by way of remand to the learned Commissioner (Appeals). Vide the impugned Order-In-Appeal dated 30.01.2026, the learned Commissioner (Appeals) rejected the appeal filed by the Appellant

and upheld the Order-In-Original. Hence, the present appeal before the Tribunal.

8. The learned Counsel appearing on behalf of the Appellant submits that the monthly remuneration paid to the director is nothing but salary for performing his/her job as a Director in the day to day affairs of the company. The remuneration paid to the Director is accounted for as 'Salary' and the TDS under the Income Tax Act, is also deducted under the head 'Salary' in Form-16. Therefore, the remuneration paid to the Director being a salary is not liable for Service Tax as per negative list under Section 65 B (44) (b) of the Finance Act, 1994.

9. I further find that this amount has been shown by the Directors in their individual returns under the head salary and copies of their computation of income, Acknowledgement of Income Tax Return filed by both the directors for the Financial years 2014-15 to 2017-18 have been produced. It is also the case of the Appellant that the entire proceedings is barred by limitation since the period covered in the SCN is from October 2014 to June 2017 and the SCN was issued only on 29.09.2020. A table has been submitted which is reproduced as under:-

SI. No.	Period Involved	ST-3 Return Due Date (Relevant Date)	Applicable Normal Limitation*	Last Date for Issuance of SCN under Normal Limitation	Date of SCN
1	Oct 2014 - Mar 2015	25 .04.2015	18 Months	24.10.2016	29.09.2020
2	Apr 2015 - Sep 2015	25 10.2015	18 Months	24.04.2017	29.09.2020
3	Oct 2015 - Mar 2016	25 04.2016	18 Months	24.10.2017	29.09.2020
4	Apr 2016 - Sep 2016	25. 10.2016	30 Months	24.04.2019	29.09.2020
5	Oct 2016 - Mar 2017	30.04.2017	30 Months	29.10.2019	29.09.2020
6	Apr 2017 - Jun 2017	15.08.2017	30 Months	14.02.2020	29.09.2020

10. Learned Departmental Representative pointed out that the Appellant had not filed the ST-3 Returns hence the extended

period of limitation has been rightly invoked. Accordingly, she justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

12. I find that in this case the Appellant have contested the demand on the ground of limitation. It is observed that the demand raised in the SCN dated 29.09.2020 is by invoking the extended period of imitation on the basis of difference observed in the figures in balance sheet, profit and loss account, 26AS statement which is legally not sustainable. I observe that the data available in the statutory records of the Appellants were always open to the Department for scrutiny.

13. Further, the Department has failed to bring any corroborative evidence on record to establish suppression of facts with an intent to evade payment of Service Tax on the part of the Appellant herein. On facts as stated above and under the circumstances of the case, it is my considered view that the extended period of limitation cannot be invoked for confirming the demand of Service Tax against them.

14. I find that on similar facts, the Tribunal in the case of M/s International Air Charter V/s Commissioner of Central Tax (Appeals-II), Delhi in Service Tax Appeal No.52064 of 2018 being Final Order No.51662 of 2023 dated 13.12.2023 has observed as under:-

> "7. The sole contention that has been advanced by the learned consultant for the appellant is that the extended period of limitation could not have been invoked. The show cause notice alleges that as the appellant had intentionally and willfully suppressed facts regarding providing taxable services and did not file the ST-3 returns, it appeared that the appellant had intentionally evaded payment of service tax and the facts would not have come to the notice of the department if the investigation not been conducted.

8. The appellant filed a detailed reply to the show cause notice and submitted that the appellant was under a bonafide belief that it was not liable to pay service tax since the services provided by the appellant were "air transport of passenger service". The appellant also contended that mere suppression of facts is not enough for invocation of the extended period as suppression has to be willful with an intent to evade payment of service tax.

9. This submission of the appellant did not find favour of the Additional Commissioner. The Additional Commissioner held that there is no requirement in law that suppression has to with intention to evade payment of service tax and mere suppression is enough for invoking the extended period of limitation.

10. The Commissioner (Appeals) has merely confirmed the order passed by the Additional Commissioner without even examining the contention advanced by the appellant that the extended period of limitation could have been invoked only if there was suppression of facts with intent to evade payment of service tax.

11. The finding recorded that suppression of facts is enough to invoke the extended period of limitation under the proviso to section 73 (1) of the Finance Act and there is no necessity of any intent to evade payment of service tax, is against the well settled principles.

12. Even assuming that there was suppression, it has to be examined whether suppression was willful and with an intent to evade payment of service tax. The Supreme Court and the Delhi High Court have held that suppression of facts has to be "willful" and there should also be an intent to evade payment of service tax.

13. Before adverting to the decisions of the Supreme Court and the Delhi High Court, it would be useful to reproduce the

proviso to section 11A of Central Excise Act, 1944, as it stood when the Supreme Court explained "suppression of facts" in **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay [1995 (78) E.L.T. 401 (SC)]** . It is as follows:

> "11A: Where any duty of excise has not been levied or paid or has been short-levied or shortpain or erroneously refunded, by the reason ofa. fraud; or b. collusion; or c. any wilful misstatement; or d. suppression of facts; or e. contravention of any of the provisions of this Act of the rules made thereunder with intent to evade payment of duty by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant dated, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 11AA and a penalty equivalent to the duty specified in the notice."

14. In **Pushpam Pharmaceuticals Company**, the Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Excise Act. The proviso to section 11A of the Excise Act carved out an exception to the provisions that permitted the Department to reopen proceedingsif the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, orwilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows:

"4. Section 11A empowers the Department to re- open proceedings if the levy has been short levied or not levied within six months from the relevant date. **But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

(emphasis supplied)

15. This decision was referred to by the Supreme Court in **Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise [2005 (188) E.L.T. 149 (SC)]** and the observations are as follows:

"26……….. This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly. **It does not mean any omission and the act must be deliberate and willful to evade payment of duty**. The Court, further, held :-

"In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that **"suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.** When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act."

(emphasis supplied)

16. These two decisions in **Pushpam Pharmaceuticals and Anand Nishikawa Company Ltd**. were followed by the Supreme Court in the subsequent decision in **Uniworth Textile Limited vs. Commissioner of Central Excise, Raipur [2013 (288) E.L.T. 161 (SC)]** and the observation are:

> "18. We are in complete agreement with the principal enunciated in the above decisions, in light of the proviso to section 11A of the Central Excise Act, 1944."

> 17. ……………………………
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> 18. ……………………………
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> 19. ………………………………
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> 20. It would transpire from the aforesaid decisions that mere suppression of facts is not enough and there must be a deliberate and willful attempt on the part of the assessee to evade payment of duty. In the absence of any intention to evade payment of service tax, which intention should be evident from the materials on record or from the conduct of the assessee, the extended period of limitation cannot be invoked. Thus, mere non disclosure of the receipts in the service tax return would not mean that there was an intent to evade payment of service tax."

15. I find that the taxable value considered for computing the Service Tax liability should be taken from the same source for the entire period under consideration. The Adjudicating Authority has considered the turnover as reported in the Balance Sheet for the Financial Year 2016-17 whereas for the period from October 2014 to March 2015, Financial Year 2015-16 and for Financial Year 2017-18, the turnover reported as per Form 26AS statement has been considered for the purpose of computing the demand of Service Tax. Since no reconciliation has been provided between the turnover as per the balance sheet and From 26AS Statement, the demand so raised is bad in law and cannot be sustained.

16. Further, the remuneration (Salary) paid to the Director cannot be treated as taxable service. The remuneration so paid by the company to the Director has been paid in the form of salary and the director in their individual returns have shown the amount under the head 'Salary' and paid the appropriate tax if not covered

by TDS under Self-Assessment before filing their Income Tax Return.

17. I find that the demand raised by invoking the longer period of limitation is solely based upon the Profit and Loss account and 26AS form submitted with the Income Tax Authorities which has been held to be as not proper by the Tribunal in various decisions. Reference stands made to the decision of Hon'ble High Court in the case of M/s Firm Foundation and Housing Pvt. Ltd. Vs Principal Commissioner of Service Tax, Chennai (Madras) pronounced on 06.04.2018 in Writ Petition No.21799 of 2017, as also to the Tribunal's decision in the case of M/s Sigma Trade Wings Vs Commissioner of Central Excise, Lucknow Final Order No.70049 of 2019 dated 07.01.2019. It stands held in both the above decisions that the revenue's reliance upon the Profit and Loss account are irrelevant for the purpose of confirmation of tax.

18. Inasmuch as, the Revenue's entire case is based upon the profit and loss accounts read with the 26AS Form and the service tax stands confirmed by invoking the longer period of limitation, I am of the view that the impugned order of Commissioner (Appeals) is not sustainable on limitation itself. Accordingly, I set aside the same and allow the appeal with consequential relief to the Appellant.

(Pronounced in open court on 02.09.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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