CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.71202 of 2018

(Arising out of Order-in-Appeal No.194/Commr.(Audit)/CE/APPL./KNP/2018 dated 23.03.2018 passed by Commissioner (Audit), Central Tax & Central Excise, Kanpur)

M/s Durga Ji Traders, **.....Appellant**
(E-81, MIG World Bank, Barra, Kanpur, Uttar Pradesh 208027)

VERSUS

Commissioner of Customs, Central Excise &
Service Tax, Kanpur **....Respondent**
(117/7, Sarvodaya Nagar, Kanpur, Uttar Pradesh)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representatives for the Respondent

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

FINAL ORDER NO.-70354/2026

DATE OF HEARING : 01.09.2026
DATE OF DECISION : 01.09.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.194/Commr.(Audit)/CE/APPL./KNP/2018 dated 23.03.2018 passed by Commissioner (Audit), Central Tax & Central Excise, Kanpur.

2. Briefly stated, the facts of the case are that the Appellant is registered with the Service Tax Department under the category of "Erection Commissioning and Installation Services". During the audit, the Officers detects two tax compliance issues:-

- A short payment of service tax totaling Rs.14,45,132/- for the period of October 2010 to September 2011 on laying, trenching ducting cables for various mobile companies and receiving job charges and paying service tax on contract receipts received from their principals.

- A non-payment of service tax totaling Rs.2,03,992/- on an income of Rs.19,80,500/- generated from hiring out cranes and machines during the financial year ending March 2011. This hiring activity was determined to be a taxable service under the category of "Supply of Tangible Goods."

3. The Appellant made three separate payments (on 29.01.2012, 20.03.2012, and in Oct 2012) totaling Rs.9,50,000/- against the short-payment demand of Rs.14,45,320/-

4. A Show Cause Notice [1]dated 04.09.2013 was issued proposing Service Tax demand of Rs.14,45,132/- & Rs.2,03,992/- . The Adjudicating Authority vide the Order-In-Original dated 16.01.2025 confirmed the demand as proposed in the SCN and also imposed penalty of equal amount under Section 78. Penalty of Rs.10,000/- each under Section 77(1)(b) & 77(2) and penalty of Rs.200 per day under Section 77(1)(a) of the Finance Act, 1994 were imposed.

5. The Appellant-Assessee filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-In-Appeal, modified the Adjudication Order, reduced the penalty imposed under Section 77(1)(b) and 77(2) to Rs.5,000/- each (earlier it was Rs.10,000/-).

6. Being aggrieved, the Appellant-Assessee has filed the present appeal before the Tribunal.

7. The learned Advocate appearing on behalf of the Appellant submitted that the demand of Rs.14,45,132/- is liable to be set aside since the Adjudicating Order does not specify the Taxable value of the services provided, it does not specify the place of provision of service or the point of taxation. Similarly, the demand of Rs.2,03,992/- is challenged since the Adjudication Order does not specify the period during which the taxable services were

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[1] SCN

provided or the place of provision of services or the point of taxation.

8. The learned Departmental Representative appearing on behalf of the Revenue justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

9. We find that the whole demand in dispute and the impugned order is vitiated as Revenue have failed to give any breakup of the demand in the SCN. We find that the Audit Team has observed that the job-work i.e. trench ducting and laying cables is for various mobile companies namely Vodaphone, Idea etc. The Appellant-Assessee was receiving the job-charges and paying Service Tax on the amount received from their principals.

10. So far the work of cabling alongside/under the road is done for **NPCL** is concerned, it is urged that tax in dispute of **Rs.14,45,132/-,** is fit to be set aside as the same is not taxable in view of Board's Circular No. 123/5/2010-TRU, wherein at Para 2 - (ii), it has been clarified that under Erection, Commissioning and Installation Service, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. machine or equipment that uses electricity to perform some other function), the same is outside the purview of taxable service of ECIS. Further, in Para (iii) by C.B.E. & C. Circular a table has been given and explaining the tax status of the activities wherein at Serial No. (1) Laying of cables under/alongside road have been stated as not a taxable activity.

11. We find that it is an admitted fact that they have maintained proper records, all the transaction are through the banking channel and they have disclosed their turnover in the Books of Accounts which is reflected in their Annual Statements being Profit and Loss account and Balance Sheet and the same was disclosed with various departments like Income-tax etc. As such there is no basis for the allegation of suppression of facts. Further, at the very first instance on the date of inspection in the statement of the proprietor recorded, it was stated that tax was

not paid on these services under dispute as the proprietor believed that these services are not taxable. The learned Counsel further stated that the stand of the proprietor is supported by the subsequent Circular of the C.B.E. & C. referred to hereinabove. Accordingly, the extended period of limitation is not invocable and the demand for the extended period is fit to be set aside.

12. We find that the SCN is vague as it does not state the premises on the basis of which demand have been proposed under 'Erection, Commissioning and Installation Service'. The SCN is also vague on account of not giving bifurcation of the demand year wise and category wise.

13. We also hold that there is no element of suppression, fraud or any mala fide on the part of the Appellant and they have not concealed information or made any misstatement of facts before the Revenue. At the very first instance, the proprietor of the Appellant has deposited the admitted tax liability and the issue being wholly interpretational, we hold that extended period of limitation is not attracted in the facts and circumstances of the case. Thus, the impugned order is set aside. The Appeal is allowed with consequential benefits to the Appellant, if any, as per law.

(Operative part of the order is pronounced in open court)

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

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

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