CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70409 of 2021

(Arising out of Order-In-Original No.03-Comm-ST-GZB-20-21, dated -27.01.2021 passed by Commissioner, CGST & Central Excise, Ghaziabad)

M/s Nandan Constructions **.....Appellant**
(FF-9, HRC Shopping Complex,
Indirapuram, Ghaziabad, Uttar Pradesh 201010)

VERSUS

Commissioner, Central Goods & Service Tax, Ghaziabad
....Respondent
(C.G.O. Complex-II, Kamla Nehru Nagar, Ghaziabad-201002)

APPEARANCE:

Shri Abhinav Kalra, Advocate for the Appellant
Shri N. Mohan Krishna, Authorised Representative for the Respondent

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

FINAL ORDER NO.70380/2026

DATE OF HEARING : 07.07.2026
DATE OF DECISION : 14.09.2026

P.K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the *de-novo* Order-In-Original No. 03-Comm-ST-GZB-20-21, dated -27.01.2021 passed by Commissioner, CGST & Central Excise, Ghaziabad.

2. We find from the records that vide the earlier Order-In-Original dated 13.02.2017 the learned Commissioner had passed the following order :-

> "4. I have carefully gone through the facts of the case, the allegations made in the SCN, the submissions made by the

party and the evidence on record. I find that the taxability of the services, and the fact that the party had already paid Rs.1.50 Crore, as their self-assessed service tax liability for the period under consideration as is also mentioned in the show cause notice is not in dispute. The details of the service tax already paid by the party are given in the Annexure A to the show cause notice. The amount of service tax as determined/ assessed, and paid by the party, has, therefore wrongly been included for the demand of service tax under section 73 (1) of the Act. In case any amount of service tax, as self-assessed by the party, was not paid, the same was required to be recovered by taking recourse to the provisions of Section 73 (1B) of the Act which also puts a bar on the issue of the show cause notice in respect of any such amount in default.

4.1 The party submitted, that for 2011-12 they provided services to M/s Amrapali Saphire Dev. Pvt. Ltd., and M/s Amrapali Silicon Pvt. Ltd for which they received an amount of Rs.3,83,302/- and Rs. 49,25,476/- respectively. They claimed exemption of Rs. 10 lakh under Notification No. 08/2008-ST dated 01.03.2008 and stated that they had not charged/received Service tax on the amount of Rs.3,83,302/-. The remaining amount of Rs. 49,25,476/- charged to M/s Amrapali Silicon Pvt. Ltd was, however, inclusive of service tax. The exemption claimed by the party is, therefore, admissible to the extent Rs.3,83,302/ only. On the remaining amount service tax needs to be calculated treating the amount as inclusive of the service tax.

4.2 For the year 2012-13, the party stated to have rendered 'Man Power Supply' ('MPS', short) service and claimed exemption/ abatement, in terms of the Notification No. 30/2012-ST, which required payment of 25% of service tax by them and remaining 75% by the service recipient under reverse charge mechanism. In this regard, on examination of the documents available on record, I find that the party was neither registered for providing MPS nor was this service mentioned in their ST-3 returns for 2012-13. Moreover, during investigation of the case, the party never revealed the fact before the department that they were providing MPS. Therefore, in absence of any documentary evidence, the submission/ claim of the party is found to be without substance, and therefore riot acceptable. The party further submitted that three receipts (total Rs.6,41,663/-) reflected in their 26AS for 2012-13, which were neither received by them nor they had issued any bill for the same should not be considered for calculation of service tax. They explained that the said amount represented the expenses incurred by the service receiver on their behalf. I, however, do not find any material evidence having been put forth by the party in support of their submission/ claim. Moreover, the expenses incurred by the service receiver on their behalf were nothing but a consideration flowing from the service receiver to them and, therefore, the same was includible in the taxable value. I, therefore, hold that service tax was payable on the amount of Rs. 2,69,49,667/-received during 2012-13, as shown in Form 26AS, considering the same as inclusive of service tax.

4.3 For the year 2013-14, it was stated that the amount shown in Form 26AS. received up to 31.01.2014, was inclusive of service tax as per the practice of trade. Since 01.2.2014, however, in compliance of CBDT Circular No. 01/2014 dated 13.01.2014, the amount mentioned in Form 26AS was excluding service tax. The submission of the party is acceptable as there in nothing on record to the contrary. The tax liability, therefore, needs to be worked out accordingly. Their further submission/ claim that an amount of Rs. 54,005/- which was included in the amount shown in 26AS for 2012-13 represented the expenses incurred by the service receiver on their behalf and the same should not be considered for calculation of service tax, is not acceptable due to the reasons mentioned in the foregoing para.

4.4 For the year 2014-15, it was submitted/ stated that, during this period, they received Free of Cost ('FOC', in short) material valued at Rs.9,30,73,982/-, from the service recipient. This amount had been shown in ST-3 return. Being FOC material, the same was neither reflected in Form 26AS nor in P & L account. They, therefore, argued that service tax on the value of the FOC material and on amount Rs.5,60,31,885/- received by them from the service receiver against work contract should be calculated after abatement of 60% (under Notification 24/2012). Out of the service tax so payable, their liability, being a proprietorship firm, was to the extent of 50% of service tax in terms of reverse charge mechanism (RCM', in short) under Notification No. 30/2012. The contention of the party has substance and merit and the same is, therefore, accepted. As far as liability of service tax on the remaining amount of Rs.4,15,03,492/ i.e. the amount mentioned in SCN (Rs.9,75,35,977) less the amount received against the (works contract service (Rs.5,60,31,885), the same needs to be ascertained without any abatement.

4.5 I further find that the demand of the service tax is based on the figures given in Form 26AS, Balance Sheets, ST-3 returns, Challans, and the Bill Verification Sheets (prepared by the service receiver). The submissions/ contentions of the party are also regarding these documents only. 1, therefore, proceed to determine the service tax liability of the party based on the demands made through the show cause notice, submissions made by the party, and the evidence/ material available on record.

(i) For the year 2011-12: Out of total receipt of Rs.53,08,778/-, exemption to the extent of Rs. 3,83,302/- is allowed. Treating remaining amount Rs. 49,25,476/- as cum-service tax, the taxable value comes to Rs. 44,65,527/- and service tax liability @10.30% works out to Rs.4,59,949/-.

(ii) For the year 2012-13: The total amount received by the party was Rs.2,69,49,667/-. Treating this amount as cum service tax, the taxable value comes to Rs. 2,39,85,108/- and service tax liability @12.36% works out to Rs.29,64,559/-.

(iii) For the year 2013-14: Rs. 4,02,35,647/-. Treating this amount as cum service tax, the taxable value The amount received up to 31.01.2013 vas comes to Rs. 3,58,09,582/ and service tax liability @12.36% comes to Rs. 44,26,064/-. The amount received during 01.2.2014 to 31.3.2014 was Rs. 1,31,84,909/-, treating this amount as taxable value (i.e. exclusive of service tax for the year), the Service tax @12.36% comes to Rs. 16,29,655/-. Therefore, the total Service tax liability for 2013-14 works out to Rs. 60,55,719/-.

(iv) For the year 2014-05: Amount received against works contract including value of FOC material was Rs. 14,91,05,867/-(Rs.5,60,31,885/- plus Rs.9,30,73,982/-). Service tax on this amount comes to Rs.36,85,897/- (after considering abatement of 60% and liability of the party to 50% as discussed above). Service tax liability @ 12.36% on remaining amount Rs. 4,15,03,492/ comes to Rs. 51,29,832/-. Therefore, the total service tax liability for 2014-15 works out to Rs.88,15,729/-

4.5.1 The total amount of Service Tax payable during 2011-12 to 2014-15 as discussed and ascertained above comes to Rs. 1,82,95,956. The party has already paid Rs. 1,50,06,235/- as their self-assessed service tax for which no demand under section 73 (1) is maintainable. This amount of service tax as self-assessed and paid by the party is therefore debited from the amount payable by them. The balance amount of service tax short-paid comes to Rs. 32,89,721/-. As the party failed to disclose their correct service tax liability and did not pay the service tax on the considerations received against the taxable services provided by them; failed to include, and declare in their ST-3 returns, the amounts said to be the expenditure incurred by the service receivers on their behalf, the amount of service tax short-paid amounting to Rs.32,89,721/-is liable to be demanded and recovered by invoking proviso to Section 73 (1) of the Act. This in turn renders the party liable for penal action under Section 78 ibid.

4.6 About proposal for imposition of penalty for non-filing/ late filing of the ST-3 returns, it was contended that, for the period April-11 to Sept-11, and April-12 to june-12, ST-3 returns were filed within the due date in the light of the Board's orders dated 09.01.2012, 15.10.12, an 137/99/2011-Service Tax vide which the date for the submission of the returns 12.4.2013 issued from F. No. was extended. On perusal of the said orders of the Board, I find that there was no delay in submission of the returns for the period April-11 to Sept-11, and April-12 to june-12. The penalty for late filing of the other returns, the details of which are given in table-VI under para 14 of the show cause notice, therefore, works out to Rs. 96,700/- as against Rs. 1,11,100/- mentioned in SCN.

4.7 As far as the proposal to disallow the CENVAT credit of the service tax paid on insurance service was concerned, I agree with the contention of the party that they were eligible to avail Cenvat credit of the service tax paid on insurance premium to towards insurance of their workers. The expenditure towards the insurance of the workers is an integral part of the business activity of the service provider engaged in providing the taxable services of construction of residential complexes etc. In support of their claim the party has placed reliance on the decision of the Hon'ble Karnataka High Court in the case of Millipore India ltd. (2011 (4) TMI 1122 Kr. (COMMISSIONER OF C. EX., BANGALORE-II Versus MILLIPORE INDIA PVT. LTD) in which it was held that Medical and Personal Accident Policy, Group Personal Accident Polic, Insurance, Personal Accident Policy, Personal Vehicle Services and Catering serves were 'activities relating to business' of manufacturer of excisable goods and so assessee was entitled to take credit of Service tax paid on such services.

5. In view of the above discussion and findings I pass the following order: -

ORDER

1. I confirm the demand of service tax of Rs.32,89,721/- (Rupees thirty-two lakh eighty nine thousand seven hundred twenty one only) under the proviso to Section 73 (1) of the Finance Act, 1994.

2. I demand applicable interest under Section of 75 of the Act on the amount of service tax as and above.

3. I impose a penalty of Rs.32,89,721/- (Rs. thirty two lakh eighty nine thousand seven hundred twenty one only) under Section 78 of the Act.

4. I impose a penalty of Rs. 96,700/-(Rs ninety six thousand seven hundred only) under Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994 for late filing of ST-3 returns.

5. I drop the demand of CENVAT credit of Rs. 18,357/ (Rs. Eighteen thousand three hundred fifty seven only) made under Rule 14 of the CCR.

6. The adjudged/confirmed amounts, as above, along with the applicable interest be paid forthwith by the party M/s Nandan Constructions, Indirapuram, Ghaziabad."

3. On appeal before the Tribunal, the Tribunal vide Final Order No.72790 of 2018 dated 06.12.2018 in Service Tax Appeal No.70293 of 2017 observed as under:-

"After hearing both the sides, we find that the service tax demand stands confirmed against the appellant for the year 2011-15. The same is in respect of two categories i.e. 'Manpower Supply Service' and 'Construction Services'.

2. Learned advocate appearing for the appellant is not disputing the confirmation of demand to the extent of Rs.27,329/- for the year 2011-12. In respect of balance years, he submits that the demand under Manpower Supply System has to be re-quantified inasmuch as in terms of Notification No.30/2012-ST, 25% of service tax has to be paid by the service provider and the balance 75% is required to be paid by the service recipient. The Adjudicating Authority has not extended benefit of the said Notification on the ground that the appellant was not registered with the said services.

3. We note that the appellant was admittedly registered with the Service Tax Department, though under the category of 'Construction Services' and 'Works Contract Service'. After 01/07/2012, a separate registration for each and every activity of services falling under different categories was not required to be taken. Otherwise also, if the law provides the benefit of part payment of service tax by the service provider, the said benefit has to be extended to an assessee at the time of confirmation of service tax. As such, we are of the view that the Adjudicating Authority is required to re-quantify the demand under the said category after extending the benefit of Notification in question, for which purpose we remand the matter to the Adjudicating Authority.

4. In respect of the 'Construction Services' the grievance of the appellant is that the tax has not been quantified in terms of the provisions of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. Inasmuch as the matter stands remanded for re-quantification of demand under first category, we direct the Adjudicating Authority to examine and deal with the said issue of re-quantification in terms of *the said Rule. All others issues are kept open for the appellant to contest the same before Adjudicating Authority.*

5. Appeal is thus allowed by way of remand."

4. Vide the impugned Denovo order, the learned Commissioner (Adjudicating Authority) has passed the following order:-

ORDER

(i) I confirm the demand of recovery of service tax amounting to Rs.32,89,731/-(Rupees Thirty-Two lakh Eighty-Nine thousand Seven hundred Twenty-One only) under the proviso to Section 73(1) of the Finance Act, 1994.

(ii) I confirm the demand 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 penalty of Rs.32,89,731/- (Rupees Thirty-Two lakh Eighty-Nine thousand and Seven hundred Twenty-One only) under Section 78 of the Finance Act, 1994.

(iv) I impose penalty of Rs.96,700/- (Rs. Ninety-Six thousand Seven hundred only) Under Section 70 of the Act read with Rule7C of the Service Tax Rules, 1994 for delay in filing of ST-3 returns.

(v) I drop the demand of CENVAT credit of Rs. 18,357/- (Rs. Eighteen thousand Three hundred Fifty-Seven only) made under Rule 14 of the CCR.

5. Being aggrieved, the Appellant has filed the present appeal.

6. Learned Counsel for the Appellant made the following submissions:-

(i) The Appellant is engaged in providing Works Contract Service and Manpower Labour Supply Services for various builders.

(ii) A SCN dated 10.05.2016 was issued and the matter travelled upto the Tribunal, which was remanded back vide

Final order No.72790 of 2018 dated 06.12.2018. The matter was remanded back for re-quantification of demand under different heads- Works Contract and Manpower Supply for giving benefit of Notification No. 30/2012-ST dated 20.06.2012.

(iii) The appellant was providing Works Contract Services. On comparison between 26AS and Balance Sheet, higher of the two values was taken to be taxable.

(iv) ST-3 returns were filed by the appellant and admittedly Service Tax of Rs.1.50 Cr was duly deposited.

(v) Subsequently, matter was re-adjudicated vide Denovo Order-In-Original. No quantification was done by the Ld. Commissioner and the same order was passed again confirming the demand in similar manner.

(vi) Entire Proceedings under litigation have been initiated by Anti Evasion cell by conducting an enquiry and issuing a SCN thereafter. However, it is pertinent to mention here that a detailed audit had already been conducted by the audit cell for the same period. It can be seen that entire books of accounts were duly verified by the audit cell as well and demand has already been issued.

(vii) Entire transaction was re-verified and a SCN dated 10-05-2016 was issued by the anti-evasion cell. Appellant had deposited Rupees 10 Lakhs on 30.01.2016, prior to the issuance of the SCN.

(viii) Further, the Appellant has already reconciled the entire difference between 26AS vs Books of Accounts and duly submitted his reply. Year wise reconciliation has been done and the tax short assessed has been paid.

(ix) As per the Appellant, no tax remains to be deposited.

7. Learned Departmental Representative justified the impugned order and prayed that the Appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

9. We find that in spite of the specific directions by the Tribunal in the aforesaid order for re-quantification under the category of 'Construction Service' in terms of provisions of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, we observe that the learned Adjudicating Authority in the de-novo order has not followed the directions of the Tribunal but has re-confirmed the entire order as a copy paste and has recorded the following reasons for doing so:-

(i) "The party has again failed to furnish any additional documentary evidence other than that already furnished at the time of previous adjudication. As such, I find no reason to deviate from the findings as contained in the Order-in-Original 08/COMMR./ST/GZB/2016-17 dated 09.02.2017 on this aspect.

(ii) I find the party vide their letter 24.12.2020 has only reiterated the submissions already made vide their earlier letter dated 30.08.2016 at the time of previous adjudication proceedings, without adducing any additional facts or documents which merit re-quantification of demand of service tax other than already confirmed by the then adjudicating authority in his Order-in-Original 08/COMMR./ST/GZB/2016-17 dated 09.02.2017.

(iii) The Hon'ble CESTAT's directions with regard to re-quantification of demand after giving opportunity to the party for personal hearing and contesting the issues afresh has been complied with.

(iv) In this matter it is pertinent to make reference to Section 174 of the Central Goods And Services Tax Act, 2017, sub-section (2) thereof, which stipulates that w.e.f. 01.07.2017 the amendment of Finance Act, 1994 shall not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any duty, tax surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed.

(v) In view of the above facts and findings, I find that there is no change whatsoever with regard to decision of the case vis-à-vis the original adjudication proceedings."

10. We find that the Appellant has already reconciled the entire difference between Form 26AS as against the Books of Accounts and submitted a detailed reply with reconciliation, year wise, vide their reply dated 30.08.2016 and have also deposited the balance tax and as such no further tax is payable. It is our considered view that the Appellate remedy or forum is created by the Statute to rest the dispute and not to accelerate the same for higher forum.

11. In view of the above discussions and on facts and under the circumstances of the case, we find it appropriate to set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Pronounced in open court on 14.09.2026)

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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