CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 1775 of 2011

[Arising out of Order-in-Appeal No. 186/ST/APPL/CHD-II/2011 dated 28.11.2011 passed by the Commissioner of Central Excise, Chandigarh II, Central Revenue Building, Chandigarh]

M/s Ashok Puri, Contractor **......Appellant**
House No. 258/1A, Shivalik Avenue, Naya Nagal, Distt.
Ropar (Punjab) 140126

VERSUS

Commissioner of Service Tax, Chandigarh-I **......Respondent**
Central Revenue Building, Plot No. 19, Sector 17-C,
Chandigarh 160017

<u>APPEARANCE:</u>

Shri Naveen Bindal, Advocate for the Appellant

Shri Raman Mittal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60099/2025

DATE OF HEARING: 10.01.2025
DATE OF DECISION: 10.01.2025

The present appeal is directed against the impugned order dated 28.11.2011 passed by the Commissioner (Appeals), wherein the Commissioner (Appeals) has dropped the demand for extended period but confirmed the demand for normal period along with penalty under Section 76.

2. Briefly the facts of the present case are that the appellant is registered with the service tax department for providing taxable

services under the category of "Management, Maintenance or Repair Services" and "Construction Services".

2.2 On the basis of information supplied by M/s National Fertilizers Ltd. Naya Nangal, Distt. Ropar (Punjab) and M/s PACL, Naya Nangal; it was alleged that the appellant has received an amount of Rs.25,24,875/- during the period 2004-05 to 2007-08 involving Service Tax of Rs.3,01,604/- and out of which the appellant has paid only an amount of Rs.79,372/-. The allegation against the appellant that he has not paid the Service tax amounting to Rs. 2,22,233/- and accordingly a show cause notice was issued for recovery of service tax of Rs. 2,22,233/- for the period from 2004-05 to 2007-08 by invoking the extended period of limitation under Section 73 of the Finance Act, 1994 along with interests and penalties. After following the due process, the adjudicating authority confirmed the demand along with interest and penalty. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) confirmed the demand amounting to Rs. 1,44,026/- under the category of "Maintenance & Repair Service for the period 2007-08 along with penalty under Section 76 of the Finance Act, 1994. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submits that in the impugned order, the Ld. Commissioner (Appeals) has dropped the demand for the extended period but has only confirmed the demand for the normal period. He further submits that in the show

cause notice as well as in the Order-in-Original extended period of limitation has been invoked by alleging suppression with intend to evade payment of service tax on the part of the appellant. He further submits that this issue is no more *res integra* and the Tribunal in various judgments has held that when the demand for the extended period is invoked and is dropped thereafter the demand for the normal period will also go in view of the decision of Calcutta High Court in the case of Infinity Infotech Parks Ltd. Vs. Union of India reported in 2014 (36) S.T.R. 37 (Cal.) and he further submits that the Tribuinal in the case of R.S. Financial Services Vs. CCE, Chandigarh vide Final Order No. 60489/2024 decided on 27.08.2024 has held that the demand is entirely barred by limitation because the show cause notice has invoked the extended period of limitation.

5. On the other hand, Ld. AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record and also perused the judgments given by them we find that this issue is no more *res integra* and this Tribunal in the case of R.S. Financial Services cited (Supra), by relying upon the decision of the Calcutta High Court in the case of Infinity Infotech Parks Ltd cited (Supra) has held that when the show cause notice has invoked the extended period of limitation and the same was dropped by the appellate authority then the demand for the normal period cannot be upheld and has also to go. In the case of Infirmity Infotech Parks Ltd. it has been observed as under:

"92. When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transaction, once it is found that the extended period of limitation is not invocable. This proposition find support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4SCC 630=2003 (153) E.L.T. 241 (S.C.)."

7. By following the ratio of the decision of the Calcutta High Court, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same by allowing the appeal of the appellant, with consequential relief, if any, as per law.

(Operative part of the order dictated in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL

Kailash