CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70129 of 2026

(Arising out of Order-In-Appeal No.NOI-EXCUS-002-APP-380-23-24, dated -22.11.2023 passed by Commissioner (Appeals), CGST, Noida)

M/s Abhishek Construction, **.....Appellant**
(Sanjeev Kumar Kaushik)
House No 176/16, as 218/23 Devipura 2nd,
Bulandshahar, Uttar Pradesh 203001)

VERSUS

Commissioner, CGST & Central Excise, Noida
....Respondent
(GST Bhawan, IRCON Building, Plot No.-C-232, A/2-A/3,
Sector-48, Gautam Budh Nagar, Noida-201305)

APPEARANCE:

Shri Prakhar Shukla, Advocate for the Appellant
Shri Prashant Kumar, Authorised Representative &
Shri Abhishek Mukherjee, Authorised Representative for the Respondent

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

FINAL ORDER NO.-70402/2026

DATE OF HEARING : 25.05.2026
DATE OF DECISION : 16.09.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.NOI-EXCUS-002-APP-380-23-24, dated -22.11.2023 passed by Commissioner (Appeals), CGST, Noida.

2. The learned Advocate appearing on behalf of the Appellant submits that the Appellant was registered under composition scheme and as per Works Contract (Composition Scheme for

Payment of Service Tax) Rules, 2007 provides option to pay service tax @ 4% of the gross amount charged for the works contract.

3. The Appellant's main business was Construction i.e. execution of Original Work Contracts where it was pleaded that service tax is payable on 40% of the value of work contract as per provision of Rule 2A of the Service Tax Rules, 2006 (the Rules), and has provided the services and service tax as follows in disputed year:

Bill Date	Invoice Amount	Service Tax on billing Amount	Service tax on free Material Supplied	Total Service tax
10-02-2017	31,18,830.00	93,565.00	59,453.00	1,53,018.00
04-03-2017	29,30,011.00	87,900.00	44,874.00	1,32,774.00
30-03-2017	19,74,693.00	59,241.00	17,488.00	76,729.00
Total	80,23,534.00	2,40,706.00	1,21,815.00	3,62,521.00

4. As per the Finance Act, the services provider is liable to pay 50% Service Tax to the Government Exchequer and balance 50% service tax to be paid by Service Receiver. During the FY 2016-17, the Appellant had provided works contract service of Rs. 80,23,534/- on which total Service Tax of Rs. 3,62,521/- under composite scheme had been duly paid. The challans that were paid are mentioned in the Order-In-Original dated 31.03.2023 at Page no. 50 of the Appeal Paper Book.

5. That Show Cause Notice[1] dated 20.10.2021 was issued to the Appellant based on the difference between ITR and Service Tax Return. The fact is that as per Form 26AS statement, total service provided was Rs. 60,48,841/- whereas, as per Income Tax Return it was Rs. 80,23,693/-. One Invoice dated 30-03-2017 amounting to Rs. 19,74,693/- was booked in the Books of Accounts on accrual basis. However, the Service Recipient had

[1] SCN

deducted the TDS on this Invoice in the subsequent Financial Year and deposited the same. The same is being reflected in Form 26AS statement of FY 2017-18.

6. He further submits that the above defence in detail was taken by the Appellant in reply to SCN and considering the evidences at hand, the learned Adjudicating Authority in Order-In-Original dated 31.03.2023 has dropped the demand of Rs. 7,82,294/- and confirmed only a demand calculated on finishing work payable at 70% of the value of work contract for Rs.4,21,236, which is incorrect.

7. In the impugned Appellate order dated 22.11.2023, applying the same set of facts and analysis of Order-In-Original, the appeal has been dismissed with application of Section 73 (1) and extended period and thereby penalty under Section 78 of the Act. Hence, the present appeal before the Tribunal.

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

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

10. I find that Work Done by the Appellant comes under Execution of Original Works with Service Tax Applicable Only on 40% of the Work Contract Value. As per Rule 2A of Service Tax (Determination of Value) Rules, 2006 under sub-head Rule 2A(ii)A where it has been stated that:

> "(A) in case of works contract entered into for execution of original works, service tax shall be payable on forty percent of the total amount charged for the works contract."

11. The Appellant is covered under 40 % as the work done vide work order dated 12.01.2017, was execution of original works. However, the learned Adjudicating Authority has confirmed. tax as per provision 2A(ii)(B) where it is applicable as per 70%. From 01-06-2016, Service Tax Rate was increased to 15% inclusive of

KKC and SBC and the Appellant-Assessee is covered under Category A-Execution of Original Works Contract. The Service Tax Rate comes to Rs. 15%*40% = 6% on Contract Value. The Service Tax amounting to Rs.3,62,521, has already been paid as calculated and covered under Notification No. 30/2012-ST issued by CBEC on 20-06-2012. Service Provider is liable only to the extent of 50% of total service tax liability to be deposited in the Government Treasury and balance 50% shall be deposited by the service Receiver on reverse charge basis. Hence, Net Service Tax Rate comes to 3% (6%*50%).

12. I find that in case of **KUNJARVEL POUNDASS vs. ASSISTANT COMMISSIONER OF GST AND CENTRAL EXCISE, MADURAI, (2023) 10 Centax 57 (Mad.),** while quashing assessment order Madras High Court, has held as under:-

> *'As per the said rule 2 ii A, if the petitioner is considered as individual, the respondent ought to impose only 40%. Hence the respondent has not granted the abatement of 60% provided for the work contract. If the said rule is applied then the respondents not empowered to impose 100% tax.'*

13. I find that the SCN is bad in law as being issued solely on the basis of public document like ITR. As per the SCN, difference between ITR and ST-3 Return was for Rs. 80,23,534/-. As per the data received from Income Tax Department, total sales of service was Rs. 80,23,534/-. As per Form 26AS statement total service provided was Rs. 60,48,841/-. However, as per Income Tax Return it was Rs. 80,23,693/- as specified in Serial No. 4. Form 26 AS statement is also a public document and could have been relied for taxation. In case of **M/s Vinyl Tech v/s Commissioner CGST and Central Excise having FINAL ORDER NO.-70132/2026** the Tribunal held that :

> *'12. I find that the entire demand is based on difference in ST-3 Return and Income Tax Return and that the demand is raised without examination of the Books of Accounts and therefore, the said demand is bad in law.*

14. No Extended Period is invokable under Section 73 (1) as the demand is barred by limitation. The SCN has been issued on 20.10.2021 which is barred by limitation, as the normal period for issuance of SCN has to be within thirty months.

15. The Appellant has already deposited challans on 1st April 2017 for payment of service tax to the tune of Rs. 2,85,792/- while rest was deposited later and the same was informed. In the case of **Teena Gupta V/S Commissioner of Central Excise & Service Tax, Indore, (2025) 27 Centax 79 (Tri-Del)** it was held that:

> **"27.** What, therefore, transpires from the aforesaid decisions is that there can be a difference of opinion between the department and an assessee. An assessee may genuinely believe that duty is not leviable, while the department may believe that duty is leviable. The assessee may, therefore, not pay duty in the self-assessment carried out by the assessee, but this would not mean that the assessee has willfully suppressed facts. To invoke the extended period of limitation, at least one of the five necessary elements must be established and their existence cannot be presumed merely because the assessee is operating under self assessment. If some duty escapes assessment, the officers of the department can always call upon the assessee to submit further documents and he may also conduct an enquiry. In fact when an audit is conducted, the officers of the audit team scrutinize the records and, therefore, notice should be issued within the stipulated time from the date the audit was conducted. Even otherwise, merely because facts came to light only during the audit does not prove that there is an intent on the part of the assessee to evade payment of duty."

16. I find that in the Show Cause Notice there is no whisper of examination of Books of Accounts maintained by the Appellant to arrive at the value of consideration received by him. It is the duty

of executive to examine the records and examine the objection raised with reference to the records and facts of the case and take a view whether there is a sustainable case for issue of Show Cause Notice. Such vital aspects of framing of charges have been missing in the present case. The charges in the Show Cause Notice have to be on the basis of Books of Accounts and records maintained by the Appellant-Assessee and other admissible evidence. Therefore, the transactions recorded in the Books of Account cannot be held to be contrary to the facts. Therefore, I hold that the said Show Cause Notice is not sustainable. Similar case laws relevant to the case are:-

- Pravesh Kumar Maurya vs. Commissioner of Central Excise and CGST, (2024) 19 Centax 375 (Tri-All)

- M/s D.K. Construction vs. Commissioner of Central Excise and CGST, Lucknow, Final Order No 70259 of 2025 CESTAT Alld

17. In view of the above discussions, the impugned order cannot be sustained and is accordingly set aside. The Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 16.09.2026)

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

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