

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.70680 of 2024

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-MRT-107-2024-25 dated 09.07.2024 passed by Commissioner (Appeals) CGST, Ghaziabad)

M/s APN Infra Pvt. Ltd.,
(FF-9, HRC Shopping Complex,
½ Vaibhav Khand, Indirapuram,
Ghaziabad-201002)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Ghaziabad**
(Office Room No.231 & 232, CGO Complex-I,
Kamla Nehru Nagar, Ghaziabad-201002)

....Respondent

APPEARANCE:

Shri Abhinav Kalra, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70091/2026

DATE OF HEARING : 10.03.2026
DATE OF PRONOUNCEMENT : 30.03.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.GZB-EXCUS-000-APPL-MRT-107-2024-25 dated 09.07.2024 passed by the learned Commissioner (Appeals) CGST, Ghaziabad. By the impugned order the learned Commissioner (Appeals) modified and reduced the Service Tax demand to Rs.27,47,198/-. He also set aside the penalties imposed under Section 77(1) & 77(2) of the Finance Act, 1994.

2. The facts of the case in brief are that the Appellant is registered as a Works Contractor and providing services to a builder namely M/s Amrapali Group in Noida. In Financial Year 2016-17, invoices were issued to M/s Amrapali Group for an

amount of INR 2,32,08,454/- which were never booked by the builder. On the basis of third-party data from the Income Tax Department, figures from ITR were taken and since statutory Service Tax returns (ST-3) were not filed by the Appellant, Show Cause Notice¹ dated 15.06.2021 was issued for the Financial Year 2015-16 and 2016-17. The SCN proposed to demand Service Tax of Rs.20,68,035/- for the Financial Year 2015-16 and Rs.27,47,198/- for the Financial Year 2016-17. Vide the Order-in-Original dated 22.11.2023, the demand of Service Tax as proposed in the SCN was confirmed alongwith applicable interest and penalty of equal amount was imposed under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017. Penalty of Rs.10,000/- each was also imposed under Section 77(1) & 77(2) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

3. Being aggrieved, the assessee filed appeal before the first Appellate Authority. The learned Commissioner (Appeals) held that the demand for the Financial Year 2015-16 is barred by limitation of time since the SCN has been issued even beyond the extended limitation time of five years. He accordingly modified the demand and set aside the penalties imposed under Section 77(1) & 77(2) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017. Still aggrieved, the Appellant has filed the present appeal before the Tribunal.

4. Learned Counsel Shri Abhinav Kalra appearing on behalf of the Appellant submits that the Service Tax had been demanded by issuance of SCN dated 15.06.2021 in view of clause (ii)(A) of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 in respect of the amount charged for providing works contract services and the value of goods received free of cost, however, it has never been discussed in length in the Order-in-Original and the Order-in-Appeal under which Rule/clause of the Service Tax (Determination of Value) Rules, 2006, the taxable value has been worked to 40% of the value of services and 40% of the value of free of cost material has been taken for demanding

¹ SCN

Service Tax. The learned Adjudicating Authority and the learned Appellate Authority, both, have confirmed the demand of Service Tax on the value of works contract services actually charged in the invoices and the value of free of cost materials supplied by M/s Amrapali Centurion Park P. Ltd., which is in contravention of clause (ii)(A) of Rule 2A read with Explanation-1 given in the said Rules.

5. He further submits that M/s Amrapali Group has fallen bankrupt and had ceased its business activities. Since this amount was non-recoverable, the same has been reflected in the Profit & Loss account of the Appellant during the post GST era as bad debts. It is also submitted that the Appellant could not pay Service Tax against the services provided as no payments from M/s Amrapali Group against the services provided during the period of 2016-17, which put the Appellant in a financial crunch. The Appellant had no intention of not paying the Service Tax but he was waiting for payments from the service receivers and in absence of finances he could not pay the tax in time. However, the Appellant had declared the value of services in his Income Tax Returns and the Profit & Loss accounts as he was of the view that as soon as the payments are received, the tax due on the services provided by him would be paid, but it could not happen.

6. From the Balance Sheet of the Appellant, it is visible that entire amount booked was shown as receivable and pending. Subsequently, the builder went into National Company Law Tribunal² as the project was dumped without getting completed. The services so provided were never accepted and the bills issued were never booked by the service receiver. In good faith the Appellant has been showing Service Tax liability in his Balance Sheet as Service Tax payable (page 69). The Appellant has never received any payment against the services provided. Now since the liability arises as soon as invoices are generated, they have recorded the same instantly in their books of accounts. The Balance Sheet was audited and signed on 30.08.2017. However, SCN has been issued on 15.06.2021. How

² NCLT

can it be construed that there was an intention to evade tax when Appellant has self disclosed his liability prior to SCN. Extended period cannot be invoked. SCN for normal period could have been issued only till 24.03.2019. He accordingly prayed that the demand of Service Tax is liable to be set aside.

7. The learned Authorized Representative appearing for the Revenue 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 the Appellant issued invoices to M/s Amrapali Group of Companies on account of Works Contract Services but the entire amount turned into bad debt as M/s Amrapali Group became bankrupt and dispensed with its business activities.

10. We find that the Appellant had been waiting for the receipt of payments from M/s Amrapali Centurion Park P. Ltd., but the same was not received. The Appellant has also taken up the matter with the NCLT, New Delhi, Principal Bench and the NCLT has adjourned the matter sine die. The copy of the Order of the NCLT in Item No.116,(IB)-128(PB)/2018 and Item No.101, (IB)-90(ND)/2017, both dated 27.09.2018 are attached and marked as Annexure-5 which shows that the payments were not made to the Appellant by M/s Amrapali Centurion Park P. Ltd. Therefore, there was neither any intention to evade payment of Service Tax nor any suppression of the value of works contract services provided by the Appellant. Accordingly, the demand of tax under the proviso to Section 73(1) of the Finance Act, 1994 is not sustainable. The Appellant had maintained all the Books of Accounts as required under various laws and the amount of services provided during the relevant period had been declared in the Balance Sheet/ Profit & Loss accounts also. Therefore, it cannot be held that the Appellant had suppressed anything from the Department or Government. Moreover, the accounts of the Appellant were duly audited by a Chartered Accountant and the Balance Sheet and Profit & Loss accounts were prepared from such accounts which were open to all legal authorities.

11. We find that the bone of contention in this case is whether Service Tax could be charged simply on the basis of invoices issued or after completion of services. We further find that invoice under the Service Tax Rules, 1994, as provided in Rule 4(A), is required to be issued after completion of the service. The provisions of issuing invoices are as under:-

“(1) Every person providing taxable service[, not later than [thirty] days from the date of [completion] of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect such taxable service provided or [agreed]to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-”

12. A careful reading of the above provision reveals that invoice is required to be issued within 30 days after completion of the service or on receipt of payment towards value of taxable service. The important issue in this case is to ascertain whether the invoices were issued by the Appellant after completion of service or not. In this context, we find that due to business closure of M/s Amrapali Group of Companies, the services provided by the Appellant could not be completed. So, invoices issued by the Appellant cannot be treated proper invoice in terms of Rule 4(A) of the Service Tax Rules, 1994. For issuance of invoice, completion of service is an essential condition, which has visibly not taken place in this case. So, we are of the considered view that no service tax is chargeable on the basis of invoice which was issued before completion of work. We, further find that as per Section 65(44), service means any activity carried out by a person for another person. In this case no activity was carried out because of the fact that the business of service recipient was closed. As per Section 66(B) of the Finance Act, 1994, service tax was chargeable on the value of services. As there was no service, service tax was not chargeable on the Appellant. In this regard, reliance is placed on the decision of the Tribunal in the case of Credence Property Developers Pvt. Ltd.,

[2023 (71) GSTN 294 (T)]. In this case, advance was taken by the builder from the customers for purchase of flat but the same could not be materialized. The Department of service tax issued demand of service tax on such advance which was subsequently refunded to customers. The Tribunal held that in such a situation when service was not rendered, no service tax can be charged. Following the above decision, we hold that the demand confirmed vide impugned Order-in-Appeal is not sustainable.

13. We, further find that when no demand is sustainable, imposition of any type of penalty is improper and unwarranted.

14. In view of the above discussions, the appeal filed by the Appellant is allowed, with consequential relief, as per law.

(Order pronounced in open court on **30.03.2026**)

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

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

LKS