

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70204 of 2021

(Arising out of Order-In-Original No.KNP-EXCUS-000-COM-024-2020-21,
dated 29.01.2021 passed by Commissioner (Appeals) CGST & Central Excise,
Kanpur)

M/s Ashish Enterprises

.....Appellant

(Station Road, Near Police Chowki, Parichha,
Jhansi, Uttar Pradesh 284305)

VERSUS

Commissioner, GST, Customs & Central Excise, Kanpur

....Respondent

(117/7, Sarvodaya Nagar, Kanpur-208005)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant for the Appellant
Shri A. K. Choudhary, 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. -70117/2026

DATE OF HEARING : 10.03.2026
DATE OF DECISION : 30.04.2026

P. ANJANI KUMAR:

M/s Ashish Enterprises, the Appellants, are engaged in providing construction services in respect of Commercial or Industrial Building and Civil Structure to Government Organizations like National Projects Construction Corporation Limited (NPCCL), U.P. Rajya Vidyut Utpadan Nigam Limited (UPRVUNL), and also to few private parties; the Appellants are registered under 'Works Contract Services', 'Erection, Commissioning Installation Services' and other taxable services. Revenue called for documents and attested copies of ST-3 Return for the Financial Year 2010-11 and 2011-12 and

agreements with various agencies. On perusal of the documents it appeared to the Revenue that the Appellants have received gross payments of Rs.10,27,93,514/- and Rs.9,14,03,650/- during the Financial Year 2010-11 and 2011-12 respectfully and they had issued bills amounting to Rs.1,83,23,625/- and Rs.9,69,96,177/- during the same Financial Years.

2. Statements of Shir Ashok Kumar Singh, Partner were recorded and on conclusion of the inquiry it appeared to the Revenue that the Appellants have suppressed the material facts with intent to evade payment of duties and have evaded Service Tax amounting to Rs.4,74,66,698/- during the period from 01.04.2009 to 31.03.2014. Accordingly, a Show Cause Notice dated 21.10.2014 was issued to the Appellants demanding Service Tax along with interest and penalty. In the first round of proceedings Order-In-Original dated 03.01.2017 was issued by the Commissioner confirming Service Tax of Rs.4,27,31,692/- along with interest and penalty. On an appeal filed by the Appellants this Bench vide Final Order No.70881 of 2019 dated 23.04.2019 remanded the matter back to the Adjudicating Authority for afresh consideration. Accordingly, Order-In-Original in remand was passed vide Order dated 29.01.2021 confirming the demand of Rs.1,67,83,479/- after allowing the benefit of abatement as per Notification No.1/2006-ST dated 01.03.2006 and Rule 2A of Service Tax (Valuation) Rules, 2006. Hence this appeal.

3. Shri Dharmendra Srivastava, Chartered Accountant, learned Counsel appearing on behalf of the Appellants submits that the present proceedings have been initiated on the basis of Form 26AS/Balance Sheet and the same is in violation of the settled legal principals. He relies on the judgement of the Tribunal in the in the case of M/s Gopi Chenna v/s Commissioner of Central Tax Medchal-GST in Service Tax Appeal No. 30412 of 2023 and M/s Quest Engineers & Consultants Pvt. Ltd. v/s Commissioner, CGST & Central Excise in Service Tax Appeal No. 70616 of 2019.

4. Learned Counsel further submits that the impugned order travels beyond the Show Cause Notice; whereas the demand is on 'Commercial Construction Service' the confirmation of Service Tax was under 'Construction of Complex' and 'Supply of Tangible Goods'; for this reason the impugned order is liable to be set aside as held by this bench Vide Final Order No.71982 of 2019 dated 28.11.2019 in the case of Shri Kalka Prasad Niranjana V/s C.C.E.& S.T., Kanpur. Learned Counsel submits further that services rendered by the Appellants, in the Construction of Residential Units', during the relevant period, were for personal use. The services rendered do not fall either under the ambit of 'Construction of Complex Service' as defined under Section 65(105) (zzzh) of the Finance Act, 1994 or under the ambit of 'Residential Complex Service' as defined under Section 65(105) (30a) of the Finance Act, 1994. He relies upon the following:-

- Instruction F No. 332/16/2010-TRU dated 24.05.2010 issued by CBEC
- M/s Nithesh Estates Ltd 2015 (40) STR 815 (Tri. – Bang.)
- M/s Khurana Engineering Ltd 2011 (21) STR 115 (Tri. – Ahmd.)
- M/s East Coast Constructions & Industries Ltd Kolkata [ST Appeal No. 84 & 85 of 2010]

5. Further, the Appellants submits year wise details of the contracts with various customers. He also submits that Service Tax is not payable for the reasons mentioned against the contracts or the case law relied upon as the case may be. The details, in the form of a table, are as follows.

S. No.	Nature of contract	Reason of non-taxability
2009-10		
1	Construction Of Non-EPC Civil Work Inter alia	Construction of residential quarters for stay of employees &

	Residential Quarters / Colony Of 2*250 Mw Paricha Extension Project	not for purpose of commerce or industry, hence, out of commercial construction service Relied on-Nitesh estates ltd. vs CCE, Bangalore-2015(40) STR 815
2.	White Washing, Distemping & Painting Work in the aforesaid residential Colony Area at PTPP, Parichha	Work done in residential colony area hence, not for purpose of commerce or industry hence, out of definition of commercial construction service
3.	Raising of Ash-Dyke compartment A&B of Parichha Thermal power Project (PTPP), Parichha	Mandatory obligation for preserving environment hence, not for purpose of commerce or industry. Relied on-Circular No. 80/10/2004-S.T.-Ann-13, dated 17-9-2004
4.	Misc Civil work in Power House at PTPP, Parichha	Falls under threshold exemption limit as per NN. 06/2005-ST dated 01.03.2005
2010-11		
1.	1 to 3 as of year 2009-10	Same as discussed above
2.	Contract at Sr.4 of 2009-10	Falls under threshold exemption limit as per NN. 06/2005-ST dated 01.03.2005
3.	Development of Civil-work vide LOI no. 288/AUD/PTPP/T-17/2009-10dt 31/10/09	Same as above
4.	work of Revamping of existing in Plant Railway Yard, PTPP, Jhansi-Ann-15	Works executed for railways is outside definition of commercial construction service- Relied on- B.M.R. CORPORATION LTD. Vs MINISTRY OF FINANCE, GOVT. OF

		INDIA- 2013 (29) S.T.R. 469 (Kar.)
5.	HIRING OF L&T-no written agreement	Order confirmed demand under supply of tangible good service whereas demand raised under commercial construction service in SCN
6.	Contract undertaken for envirad projects pvt. ltd.	Tax paid by principal contractor Relied on- 1. DNS Contractor 2015 (37) STR 848 (Tri. - Del.); 2. Thadi Satya Ramalinga Reddy 2017 (4) GSTL421 (Tri. - Hyd.)
2011-12		
1.	Contract executed for HEIDELBERG CEMENT INDIA LIMITED	Service tax has been deposited on 33% of contract value by taking abatement as per NN. 01/2006-ST & shown in returns Relied on- WCT certificates
2.	Running contract of cycle stand	Tax paid on 100% contract value & shown in returns
3.	Revamping of existing in Plant Railway Yard, PTPP, Jhansi	Works executed for railways is outside definition of commercial construction service
4.	White Washing, Distemping & Painting Work in the residential Colony Area at PTPP, Parichha	Work done in residential colony area, not for purpose of commerce or industry hence, out of definition of commercial construction service
5.	Construction Work undertaken for M/s Envirad	Tax paid by principal contractor

	projects Pvt. Ltd.	
6.	Material Supply to Gram Panchayat amounting to Rs. 5,28,326/-	Sale of material is subject to VAT. Amount shown as sale in Sales account in P/L
2012-13		
1.	Contracts executed for M/s UPRVUNL & for Heidelberg Cement India Limited	Deposited tax & shown in returns
2.	White Washing, Distemping & Painting Work in the residential Colony Area at PTPP, Parichha	Services rendered prior to 01.07.2012 & not taxable as work done in residential colony area, not for purpose of commerce or industry hence, out of definition of commercial construction service
3.	Contract executed for Suresh Chand Gupta in relation to Revamping of existing in Plant Railway Yard, PTPP, Jhansi	Construction in respect of railways is outside the purview of "Commercial or industrial Construction" service
4.	Contract executed for Envirad Projects Pvt. Ltd	Tax paid by principal contractor
	Taxable value of 2013-14 overstated by Rs. 25,88,485/- which is double entry as appearing in 26 AS (194C& 194A) at Sl. No. 3 & 4 under details of payments received from M/s Suresh Chandra Gupta. Form 26AS of FY 2012-13 is enclosed as	
2013-14		
1.	Deposited tax on all receipts accruing in 2013-14 except for one amount of Rs. 379,794/- realized from Envirad projects Pvt. Ltd. on which appellant will pay tax	

6. Learned Counsel for the Appellants also submits that there was no willful misstatement or suppression of facts by the Appellants. Revenue has not discharged its responsibility to

prove the same with evidences; the *bona fides* of the Appellants are evident from the fact that all the transactions are duly recorded in the books of accounts and extended period cannot be invoked as they entertained a *bona fide* belief that they are not liable to pay the Service Tax for the reasons cited above; as the issue pertains to interpretation of legal provisions, extended period cannot be invoked.

7. Shri A. K. Choudhary, learned Authorized Representative appearing on behalf of the Revenue reiterates the finding recorded in the impugned order.

8. Heard both the sides and perused the records of the case.

9. We find that this Bench while remanding the case to the Original Authority in the first round of litigation, vide Final Order No.70881 of 2019, this Bench has categorically directed the Adjudicating Authority to examine the applicability of the decision of the Tribunal in the case of M/s Nitesh Estates Ltd. V/s Commissioner of Central Excise, Service Tax & Customs, Bangalore (Supra); availability of the abatement to the Appellants and the issue of limitation. We find that the learned Adjudicating Authority has rightly extended the benefit of abatement. The Bench directed the Authority as follows: -

"5. We find that the applicability of the Tribunal decision in the case of Nitesh Estates Ltd. referred supra or any other precedent decision which the appellant may choose to rely upon, is required to be examined by the Original Adjudicating Authority in the facts and circumstances of the present case. Similarly, as the issue of abatement has not been discussed by the Original Adjudicating Authority, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority. We also hold that the plea of limitation raised before us would also be examined by the Original Adjudicating Authority. We make it clear that all the issues are kept open for the appellant with liberty to raise any issue before the

Original Adjudicating Authority for which purpose he would be given an opportunity.”

10. We find that learned Adjudicating Authority distinguished the facts of the impugned case to the case of M/s Nitesh Estates Ltd. V/s Commissioner of Central Excise, Service Tax & Customs, Bangalore (Supra) and observed that in the case of /s Nitesh Estates Ltd, the service was provided by the primary/main contractor whereas in the impugned case the Appellants are a sub-contractor. The Appellants submit that in respect of some projects tax has been paid by the principal contractors and the Appellants being a sub-contractor are not required to pay the Service Tax in view of the decisions in the case of DNS Contractor (Supra) & Thadi Satya Ramalinga Reddy (Supra).

11. However, we find that the crux of the issue is whether or not the services were in relation to residential plots fulfilling the criteria there under and not as to whether the same was rendered in the capacity of the main contractor or sub-contractor. To that extent, we find that learned Adjudicating Authority has not appreciated the ratio of the decision of the Tribunal in Nitesh Estates Ltd. (Supra).

12. In respect of the services rendered by the appellants regarding the residential quarters/colony for M/s Paricha Extension Project, they submit that it is a residential colony not used for commerce or industry and therefore they are not taxable. The counsel for the Appellants submits that the work undertaken by them was in respect of residential units which are not used for any commercial activity. We further find that he submits that the work was in relation to conservation of environment and therefore, reliance on Circular No.80/10/2004-ST dated 17.09.2004 they are not taxable; certain activities undertaken during certain year falls under the threshold limit in terms of Notification No.06/2005 dated 01.03.2005; in some cases, the tax has been paid by principal contractor. The Service Tax has been paid by them availing abatement in terms of

Notification No.01/2006-ST whereas the Revenue demanded Service Tax on the entire amount; the taxable value of the amount during the year 2013-14 was overstated by Rs.25,88,485/- because of the entry appearing twice in Form 26AS in respect of the payment received from M/s Suresh Chandra Gupta.

13. Further, on the issue of limitation learned Commissioner comes to the conclusion that the Appellants had suppressed the material facts like the value. However, the impugned order does not satisfy as to how the Appellants have suppressed the material facts and that to with intent to evade payment of duty. It is not disputed that the instant case has been made on the basis of the Balance Sheet/Form 26AS statements which in itself cannot form material evidence to allege suppression of fact on the part of the Appellants. We find that in the cases relied upon by the Appellant it has been categorically held that when the Show Cause Notice has been issued on the basis of Form 26AS statement extended period cannot be invoked. We find that this Bench in the case of M/s Quest Engineers & Consultants Pvt. Ltd. V/s Commissioner, CGST & Central Excise held as under:-

"13. We further hold that the extended period of limitation is not available to Revenue under the facts and circumstances. We further hold that the appellant is entitled to exemption under the Notification No. 25/2012-ST under Sl. No. 13(a) of the said notification for providing consulting engineer services in the matter of road construction. When road construction is exempt, every activity is exempt relating to the road construction including consulting engineer services. The appellant also relied on the ruling in Lord Krishna Real Infra Pvt. Limited vs. Commissioner of Customs, CE & ST, Noida, Final Order No. 70126/2019 dated 27.12.2018. This Tribunal has held in other disputed cases, that even the barricade provided on the side of highway, maintaining greenery on the side or middle of highway, construction of any facility,

refreshment Centre for road users, is also part of the road construction and such activity is also exempt. Even the administrative building constructed by the concessionaire, for construction of the road or highway for administration and collection of tolls etc. is part of road."

14. We find there is nothing on record to allege that there was any positive act of commission or omission by the Appellants with intent to evade payment of duty and no such action if any put forth for evidence. That being so, mere nonpayment of Service Tax and non-filing of returns would not in itself be a reason to hold that Appellants have suppressed material facts before the Department. On the other hand it is not the case of the Department that the Appellants have not registered themselves and have not paid Service Tax at all. Once the Appellant are registered and have filed ST-3 Returns it was incumbent upon the authorities to cause necessary inquiries and to raise demand in even time as held by the Tribunal in the case of M/s GD Goenka Pvt. Ltd. V/s CGST, Delhi in Service Tax Appeal No.51787 of 2022 having Final Order No.51088 of 2023. Also, we find that the issue being of interpretation nature the Appellants have right to hold a belief which in the absence of evidences of *mala fide* intention requires to be held to be a *bona fide* opinion in nature. Therefore, we find that Revenue has not made out any case for invocation of extended period.

15. In respect of the year 2013-14, we find that the learned counsel submits fairly that an amount of Rs.3,79,794/- tax remains to be paid and the same would be paid. It can be seen that in view of the discussion in the preceding paragraphs, we are of the considered opinion that the Appellants are not required to pay Service Tax in respect of the services rendered in respect of 'Construction of Residential Complex Service', in view of the decision in the case of Nitesh Estates Ltd. (supra) and that the impugned Show Cause Notice and hence the order can not be maintained on limitation.

16. In view of the above, the appeal is allowed partly on merits and in full on limitation. The Appellant shall pay applicable Service Tax, on the amount accrued of Rs.3,79,794/- received during the year 2013-14, as admitted.

(Pronounced in open court 30.04.2026)

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

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

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