

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70039 of 2026

(Arising out of Order-in-Appeal No.121/ST/APPL/ALLD/2025 dated 17.07.2025 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s N. C. Vision,

.....Appellant

(Prop. Shri Umesh Kumar Verma)

311, Gali No.3, Old Shivli Road,

Gayatripuram, Kalyanpur, Kanpur-208017)

VERSUS

Commissioner of Central Excise &

CGST, Kanpur

....Respondent

(Commissionerate, Allahabad)

APPEARANCE:

A Letter on Record, for the Appellant

Shri Prashant Kumar & Shri Abhishek Mukherjee, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70214/2026

DATE OF HEARING : 15.04.2026
DATE OF PRONOUNCEMENT : 29.06.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant M/s N.C. Vision, Proprietor : Shri Umesh Kumar Verma assailing the Order-in-Appeal No.121/ST/APPL/ALLD/2025 dated 17.07.2025 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad.

2. The facts of the case in brief are that the Appellant is engaged in the business of providing 'Cable Operator Services', 'Works Contract Services', 'Construction, Maintenance or Repair Services', 'Erection Installation Services' etc. The Appellant was issued a demand-cum-show cause notice¹ dated 18.10.2018 for

¹ SCN

the period 2013-14 to 2017-18 (upto June, 2017) on the following grounds:-

1. Demand of tax of Rs.16,63,007/- on Cable Operator Services provided by the Appellant are allegedly taxable as the Basic Exemption Notification is not applicable on account of the fact that the service was provided under a brand name of another person.
2. Demand of tax of Rs.33,00,607/- on Works Contract Services provided by the Appellant based on the information from Form-26AS Statement.

Reply dated 15.07.2019 was filed in response to the SCN. The present proceedings were initiated vide an enquiry based upon third party information. Vide the Order-in-Original dated 28.03.2024 following order was passed:-

"ORDER

- (i) I confirm the demand of Rs.10,21,571/- (Rs. Ten Lakhs Twenty One Thousand Five Hundred Seventy One only) under the provisions of Section 73(2) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*
- (ii) I confirm the demand and recovery of interest from the party at the appropriate rate for the relevant period till the payment of Service Tax demanded at (i) above, including all Cesses on the said amount of Service Tax under Section 75 of the Finance Act, 1994.*
- (iii) I further impose a penalty of Rs.10,21,571/- (Rs. Ten Lakhs Twenty One Thousand Five Hundred Seventy One only) upon the party under Section 78 of the Finance Act, 1994, for failure to pay service tax and suppressing the facts and value of taxable service with an intent to evade payment of service tax. However, I give an option to the noticee under Section 78(1)(ii) of the Finance Act, 1994, that if service tax and interest is paid within a period of thirty days from the*

date of receipt of order determining the amount of service tax under Sub-section (2) of Section 73, the penalty shall be twenty five percent of the service tax determined.

(iv) I impose a penalty of Rs.10,000/- under Section 77(1)(a) of the Finance Act, 1994, a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994 and a penalty of Rs.20,000/- under Section 70 of the Finance Act, 1994 upon the party for their various acts of omission and commission as discussed above.

*(v) I, however refrain to impose any penalty upon the party under Section 76 of the Finance Act, 1994 as the penalty under Section 78 of the Act *ibid* has already been imposed.*

(vi) I drop the demand of Rs.39,42,043/- (Thirty Nine Lakhs Forty Two Thousand and Forty Three Rupees only) in terms of the discussion made above."

3. Being aggrieved, the Appellant assessee filed an appeal before the first Appellate Authority and the learned Commissioner (Appeals) CGST & Central Excise, Allahabad vide the impugned Order-in-Appeal, upheld the Order-in-Original and rejected the appeal before him. Hence, the present appeal before the Tribunal.

4. Heard learned Departmental Authorized Representative appearing for the Revenue and perused the appeal records and also the written submission filed by the learned Chartered Accountant for the Appellant.

5. I find that the demand under the two category is as under:-

Sr. No.	Services	Amount in Rs.
1.	Cable Operator Service	6,80,503/-
2.	Works Contract Service	3,41,068/-
	Total=	10,21,571/-

Month	Taxable value on the basis of payments received as per Form 26AS after deduction under Section 194C of the Income Tax Act	Rate of Service Tax (%)	Service Tax payable
2013-14	12,000	12.36	1,483
2014-15	10,81,350	12.36	1,33,655
2015-16	4,89,170	14.5	70,930
2016-17	8,50,000	15	1,27,500
April, 2017 to June, 2017	50,000	15	7,500
TOTAL			3,41,068

6. It is the case of the Appellant that the aggregate value is less than Rs.10 lakhs and hence eligible for basic exemption. The Appellant was issued invoices for receiving cable network transmission from DEN and such transmission was then provided by the Appellant to various customers. The Appellant duly paid service tax on such invoices to DEN. Hence, as per Rule 2(i) of CENVAT Credit Rules², 2004, the services received from DEN were an input service used for providing an output service i.e. cable operator services. Furthermore, the Appellant has already enclosed all the relevant invoices issued by DEN as 'Annexure-6' of Appeal Paper Book based on which the concerned CENVAT credit is being taken in accordance with Rule 9 of the CCR, 2004. Thus, the major conditions for availing of CENVAT credit have been fulfilled by the Appellant. It is to be noted that the Appellant was under a bona fide belief that service tax is not payable on cable operator services and hence, had not availed credit on time or filled ST-3 returns. However, on intimation of taxability of such service by the Department in the SCN, the Appellant had requested allowance for availing such credit in the defence reply itself. Thus, the Appellant had tried to avail the CENVAT credit as soon as he became aware of the taxability of the services provided by him. Further, the requirement of filing of ST-3 returns is only as an ancillary procedural requirement which does not directly affect the eligibility of credit to a tax

² CCR, 2004

payer. Hence, substantial benefit of the Appellant i.e. availment of credit cannot be based on minor procedural mistakes. The intent of the law is to allow a tax payer to avail credit based on invoices so as to prevent double taxation. In the present case, since the Appellant had duly paid tax on input service and provided corresponding output services, and since the relevant tax invoices are duly available, the denial of credit based on minor technicalities goes against the spirit of law and results in a cascading effect of tax. The Appellant has relied on the following judgements in this regard:-

- M/s Blue Star Communication vs. CCE & ST, Ludhiana Service Tax Appeal No.60842/2018 Final Order No.60167-60171/2019 dated 22.02.2019 (Tri.-Chan.).
- M/s Reetika Cable vs. CGST, Chandigarh [2021 (53) G.S.T.L. 261 (Tri.-Chan.)].
- M/s J. S. Communication vs. CCE, Kanpur in Service Tax Appeal No.70126/2022 Final Order No.70770/2024 dated 18.11.2024.

7. I find that the demand of tax of Rs.1,85,750/- confirmed on Works Contract Service provided to M/s Shakti Traders, Principal Contractor, for the purpose of 'laying of Optical Fibre under NOFN Project' is unsustainable. That the demand of tax of Rs.14,500/- on work undertaken for the Rohini Developers Pvt. Ltd. for the purpose of laying of underground cable at Rohini Shree Dham Apartment is unsustainable. That demand of tax of Rs.1,40,818/- on amount allegedly received from Indian Institute of Technology and Den Ambey Cable Networks Pvt. Ltd. is unsustainable. Extended period of limitation is not invocable. Section 73 of the Act provides for an extended period of limitation to issue SCN in case of tax not paid/short paid by reason of fraud, willful misstatement or suppression of facts. The burden of prima facie proving such fraud or suppression is on the Respondent which has not been discharged in the present case. The Respondent failed to show any incriminating evidence proving such *mala fide* intention on part of the Appellant. The Appellant had not misstated or suppressed facts in any manner

and all the transactions are duly recorded in the Books of Accounts thereby showing complete transparency on the part of the Appellant. The Appellant has acted throughout in a *bona fide* manner and was under a *bona fide* belief that service tax was not applicable in the present case. Hence, the present issue relates to interpretation of complex legal provisions rather than intent to evade tax. Thus, the invocation of extended limitation period in the impugned order is unwarranted.

8. It appears that the scope of activities undertaken by the Appellant is not falling under generally understood activities of cable operator who is involved in distribution of television signals to various clients. Admittedly, the television signals received from satellite is managed and handled through various layers of persons/activities till it reaches the ultimate customer. The Appellant's role is as an intermediary and apparently there could be a *bona fide* belief on their part regarding the tax liability under the said category. As already noted that they are not acting as a local cable TV operator in transmitting signals to the clients. Neither they are involved in receiving satellite signals as a MSO. The Finance Act, 1994 borrows the definitions of "Cable operator" and "Cable service" from Cable Television Network (Regulation) Act, 1995. Considering scope of definition under Section 2(aa) of the said Act, there is a possibility of *bona fide* belief for non-tax liability. Considering the ratio followed by the Tribunal in the abovementioned cases and also considering the facts of the present case, I find that it is a fit case for invoking the provision of Section 80 for waiver of penalties imposed on the Appellant. Accordingly, the penalties are set aside.

9. The law of limitation is not one of substance but of procedure. The object of prescribing limitation is to put an end to litigation, or to state it in other words, litigation may attain finality.

10. In the absence of any findings of suppression, mis-statement etc., with intent to evade payment of service tax in the impugned order and in the Order-in-Original, the SCN is definitely barred by limitation. It is a settled position in law that

mere failure to provide certain information or declaration, certain facts would not amount to suppression with intent to evade payment of taxes for invocation of extended period of limitation.

11. The Appellant could have entertained a *bona fide* belief that he was not liable to pay any service tax. In the case of **Ajitabh Mishra Vs. Commissioner of Central Excise & CGST, Raipur reported at 2025 (6) TMI 12-CESTAT NEW DELHI** following has been held:-

"7. Before going into the merits of the case, it would be appropriate to consider the issue of limitation raised by the appellant. From the submissions of the appellant, I find that it is not a case of suppression of facts, fraud or collusion, which would justify the invocation of the extended period. The appellant has duly reflected the receipt of the said amount which they had received from their service receivers in the income tax returns and the balance sheet which is a public document and accessible to the Revenue Authority. In fact, the case has been made against the appellant on the basis of the records of the income tax returns. The learned Counsel for the appellant has relied on series of decisions by the Tribunal as under:

- a. *C.S.T., New Delhi Vs. Kamal Lalwani – 2017[49] S.T.R. 552 [Tri.-Del.]*
- b. *Shri Balaji Industrial Products Ltd. Vs. Commr. Of Cus. & C. Ex., Jaipur- 2019 [370] E.L.T.280[Tri.-Del.]*
- c. *Antares Services Pvt. Ltd. Vs. Commissioner of C. Ex., Chandigarh – 2024[388] E.L.T.200[Tri.-chan.]*
- d. *Balajee Machinery Vs. Commissioner of CGST & Excise, Patna-II-*
- e. *Maa Kalika Transport Pvt. Ltd. Vs. Commissioner of CGST & C.Ex., Rourkela. -2023[79] G.S.T.L. 263[Tri. Kolkata]*
- f. *Om Sai Professional Det. & Security Ser. P. Ltd. Vs. C.C.E., Guntur-2008(10) S.T.R.59[Tri.-Bang.]*

8. In **Central Sales Tax, New Delhi versus Kamal Lalwani (supra)**, it has been categorically observed that

*all the activities undertaken by the appellant were a part of the reflection made in the balance sheet and income tax returns in which case no suppression or malafide can be attributed to the assessee. Revenue has not been able to produce any evidence on record to show that tax, which, according to the Revenue was payable, was not being paid on account of any malafide. Hence the extended period would not be available to the Revenue. Similarly in Shri Balaji Industrial Products Ltd (supra) the Tribunal noticed that admittedly, the appellant was recording the entire activity in their balance sheet, which is a proper document and as per the settled law, it cannot be said that they suppressed anything with a malafide intention. Since there was confusion as to the liability of the tax, the Tribunal held that there can be a bonafide belief on the part of the assessee, especially even when the entire activities are being reflected in the books of accounts. Accordingly, the demand was maintained only for the normal period. Reiterating the decision in the case of **Balaji Machinery (supra)**, the Tribunal in the case of **Antares Services Private Limited (surpa)** held that where the demand is merely on the basis of data obtained from the Income Tax Department, it cannot be alleged that there was suppression, etc. on the part of the assessee. To justify the invocation of extended period, the settled principle of law is that once the declaration has been made with the Income Tax Department, there cannot be any suppression of facts and, therefore, the extended period of limitation cannot be invoked. Applying the above principle to the instant case, I find that in view of the exemption provisions, the appellant was under a bona-fide belief that the services provided are not taxable. This seems to be evident by the fact that in the balance sheet and the income tax returns filed by them, they have fully described the receipt of the amount towards the services received. At the relevant time, the normal period prescribed for issuing the show cause notice was 18*

months, however the show cause notice dated 12.10.2018 was issued raising the demand for the period 2013-2014. The demand raised is, therefore, barred by limitation and in view of the discussion, above the extended period is not invocable. Hence, the entire demand is quashed on the ground of time bar."

12. In view of the above discussion, the demand for the period from 01-04-2016 to 30-06-2017 is within the normal period. The demand for the period from 2013-14 to 2015-16 is barred by limitation, hence, set aside. The penalties imposed under Sections 78, 77(1)(a), 77(2) & 70 of the Finance Act, 1994 are set aside. Accordingly, the appeal filed by the Appellant is partly allowed in the above terms.

(Order pronounced in open court on - **29.06.2026**)

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

LKS