

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

E-Hearing  
REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70605 of 2025**

(Arising out of Order-in-Appeal No.NOI-EXCUS-APPL-001-NOIDA-32-2025-26 dated 30.04.2025 passed by Commissioner (Appeals) CGST, Noida)

**M/s K. D. Merchants Pvt. Ltd.,** .....Appellant  
(Ground Floor, A-58, Sector-57, Noida-201301)

*VERSUS*

**Commissioner of Central Goods & Service Tax, Noida** ....Respondent

(4<sup>th</sup> Floor, C-232-A/2, GST Bhawan,  
Sector-48, Noida-201305)

**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)**

**FINAL ORDER NO.- 70075/2026**

DATE OF HEARING : 26.02.2026  
DATE OF PRONOUNCEMENT : 18.03.2026

**P. K. CHOUDHARY:**

The Appellant has filed the present appeal assailing the Order-in-Appeal No.NOI-EXCUS-APPL-001-NOIDA-32-2025-26 dated 30.04.2025 passed by the Commissioner (Appeals), CGST, Noida.

2. Facts relevant to the present case are that the Appellant was registered with Central Excise as Service Tax assessee vide Registration No. AAFCK5361ESD001 for providing taxable services. The jurisdictional Range office on the basis of third-party data made available by Income Tax Department, noticed that the aggregate value of services provided by the Appellant was to the tune of Rs.85,45,477/- during 2015-16 and initiated enquiry against the Appellant and asked him to provide copy of ST-3 and other relevant documents for verification of value of taxable services provided by the Appellant during the concerned

period. However, the value of services informed by the third party, i.e., Income Tax, was taken as value of taxable services provided by the Appellant and Service Tax @14.5% was worked out to be Rs.12,39,094/-. The same was treated as Service Tax not paid by the Appellant. In view of the above, Show Cause Notice<sup>1</sup> dated 26.03.2021 was issued to the Appellant for demand of Service Tax amounting to Rs.12,39,094/- under Section 73(1) of the Finance Act, 1994 alongwith interest and imposition of penalty. Penalty under Section 77(1)(d) of the Finance Act, 1994 was also proposed.

3. The case was adjudicated and during adjudication, the Appellant emphasized that the value of services provided by him was very much declared in the ST-3 returns filed alongwith Service Tax liability. On verification, it was found that value of taxable services declared in the return was equal to value of services informed by the third party. Only difference was in computation of tax liability. The tax liability as determined in the SCN was Rs.12,39,094/- whereas as per ST-3 returns filed for the concerned year, the tax liability was calculated to be Rs.11,95,096/-. However, the Adjudicating Authority confirmed the demand of Rs.12,39,094/- as proposed in the SCN along with interest and imposed equal penalty under Section 73(1) of the Finance Act, 1994 and also imposed penalty under Section 77(1)(d).

4. The Appellant preferred an appeal against the said order before the Commissioner (Appeals), CGST, Noida, who reduced the demand to Rs.11,95,096/- as claimed by the Appellant on the grounds that rate of Service Tax during the concerned period was consistently changing from time to time from 12.36%, 14%,14.5% to 15%, but in the SCN, the demand was worked out at a fixed rate of 14.5%, which was not correct. The Appellate Authority noticed from the ST-3 filed by the Appellant for the concerned period, that an amount of Rs.3,25,468/- out of declared tax liability of Rs.11,95,096/- was already deposited. Thus, demand of Rs.8,69,628/- was confirmed along with equal penalty and interest. Penalty of Rs.5,000/- imposed under Section 77(1)(d) was upheld.

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<sup>1</sup> SCN

5. Shri Abhinav Kalra, learned Advocate appeared on behalf of the Appellant to plead the case. Learned Advocate contended that once tax liability has already been declared in ST-3 returns, notice under Section 73 for demand of short paid service tax cannot be issued as per the provisions of Section 73 (1)(B) of the Finance Act, 1994. He therefore pleaded that the whole proceedings initiated under Section 73(1) is without authority of law and is liable to be quashed since the Appellant had voluntarily accepted and declared tax liability fairly in its ST-3 returns. He vehemently argued to set aside the impugned appeal order which was passed under Section 73(1) of the Finance act, 1994 ignoring the provisions of Section 73(1)(B) of the Finance Act, 1994. He also submits that penalty under Section 77(1)(d) cannot be imposed for late filing of returns inasmuch under the said provision, penalty is imposable only when tax is not deposited electronically. In the present case, issue does not relate to deposition of tax electronically. Learned Advocate has therefore submitted that penalty imposed under Section 77(1)(d) may kindly be dropped.

6. The learned Departmental Representative contended and reiterated findings of the Commissioner (Appeals) and emphasized that the same is according to law.

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

8. I find that the present demand was made on the basis of information from Income Tax Department which provided aggregate value of services rendered by the Appellant during the period 2015-16 without carrying out proper enquiry. I further find that the Appellant had already filed its Service Tax returns for the concerned period of 2015-16 much before the initiation of proceedings for the demand under Section 73(1) of the Finance Act, 1994. It is further noticed and as admitted by the Adjudicating Authority that the Appellant had already filed its ST-3 returns as per requirement of Section 70 of the Finance Act, 1994 for the concerned period wherein value of services provided by him and tax liability thereon were already declared. Declared value of services was matching with the value of services informed by the Income Tax Department. Correct tax liability on the said value was also declared in ST-3 returns for

the said period. Under Section 73(1), the proper officer was authorized to issue notice for demand which was short paid or not paid. But under Section 73(1B), it was provided that in case tax liability was already declared in return, there was no need of issuance of notice under Section 73(1). For better appreciation of the provisions of Section 73(1B), the same is reproduced as under : -

*"(1B) notwithstanding anything contained in sub- Section 1, in a case where the amount of service tax payable has been self assessed in the return furnished under sub-Section 1 of Section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon as per provisions of Section 87, without service of notice under sub- Section (1)".*

The above clause begins with the word 'notwithstanding' anything contained in sub-Section (1) ..... it means the provisions of clause (1B) will have overriding effect on provisions of sub-Section (1) of Section 73 of the Finance act, 1994. The issuance of notice under sub-Section (1) of Section 73 is, therefore unwarranted and invalid in view of the above provisions particularly in a case when notice is itself invalid, the adjudication thereof is also not sustainable.

9. I further find that the penalty under Section 77(1)(d) is not imposable for late filing of ST-3 returns when there was specific provision under Section 70(1) of the Finance Act, 1994 for payment of late fee.

10. In view of the above discussion, I hereby set aside the impugned order and allow the appeal of the Appellant with consequential relief, as per law.

(Order pronounced in open court on **18.03.2026**)

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

LKS