

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No. 70689 of 2025

(Arising out of Order-In-Appeal No.248-ST-ALLD-2024, dated 25.04.2024 passed by Principal Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Grace Infraventures Private LimitedAppellant
(37, Elgin Road, Civil Lines,
Prayagraj, Uttar Pradesh 211001)

VERSUS

Commissioner, Customs, CGST & Central Excise, Allahabad
...Respondent

(38, M.G Marg, Civil Lines, GST Bhawan,
Prayagraj, Uttar Pradesh 211001)

APPEARANCE:

Shri Amit Tiwari, C. A. & Shri Atul Mishra, C.A. 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.-70213/2026

DATE OF HEARING : 13.05.2026
DATE OF DECISION : 25.06.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.248-ST-ALLD-2024, dated 25.04.2024 passed by Principal Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. The Appellant M/s Grace Infraventures Pvt. Ltd. is registered with the Service Tax Department. An inquiry was initiated due to observed discrepancy in Service Tax liabilities. Based on the information provided by the Appellant in ST-2, ST-3, Payment Challans, Form 26AS, Balance-Sheet, profit and loss account for the Financial Year 2015-16 and 2017-18. Accordingly, Show Cause Notice¹ dated 30.12.2020 was issued proposing as under:-

¹ SCN

(i) Service Tax total amounting to Rs. 9,37,986/- (Rupees Nine Lakhs Thirty Seven Thousand Nine Hundred Eighty Six only) (including Swachh Bharat Cess & Krishi Kalayan Cess,) should not be demanded and recovered from them under the proviso to the section 73 (1) of the Act alongwith interest under section 75 of the ibid.

(ii) Penalty should not be imposed upon him/them under section 78 of the Act, for the suppression of facts from the department with intent to evade payment of Service Tax.

(iii) Cenvat Credit wrongly availed amounting to Rs. 35,58,062/- (Rupees Thirty Five Lakhs Fifty Eight Thousand Sixty Two only) should not be recovered under Rule 14 of Cenvat Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994. along with interest under Section 75 of the Finance Act, 1994.

(iv) The party is also liable to pay Penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994 for wrongly availed Cenvat Credit.

(v) Penalty under Section 77 (1) (c) (i) & 77(1) (c) (iii) of the Finance Act, 1994 should not be imposed upon them.

(vi) The service tax so collected from the customers and not deposited with the Govt. exchequer, if any, should not be demanded and recovered from them under section 73A of the finance Act, 1994;

(vii) The interest due thereon on the amount of service tax collected and not deposited by the party to the credit of Central Government, if any, should not be demanded and recovered from them under section 73B of the Finance Act, 1994;

3. Reply to the SCN was filed and the Adjudicating Authority vide the Order-In-Original dated 17.07.2023 dropped the proceedings initiated vide the SCN. Subsequently, vide Review Order No.24/2023-ST dated 13.10.2023, the Order-In-Original was reviewed and the learned Commissioner, CGST, Allahabad directed to file the appeal against the Order-In-Original before the First Appellate Authority. The learned Commissioner (Appeals) vide the impugned Order-In-Appeal set aside the Order-In-Original dated 17.07.2023 and passed the following order:-

“(1) I Confirm demand of Service Tax (including Cesses) amounting to Rs. 1,25,775/- along with interest. Since respondent has already deposited service tax Rs. 1,25,775/- & due interest Rs. 81,752/-, therefore, I appropriate the same into Government account;

(ii) I impose penalty of Rs. 1,25,775/ under Section 78 of the Act. Since respondent has already deposited penalty amounting to Rs. 22,917/-, therefore, I appropriate the same into Government account. Rest of the penalty amounting to Rs. 1,02,858/- is recoverable from the respondent;

(iii). I disallow the CENVAT credit amounting to Rs. 33,16,333/-, therefore, the same is recoverable under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act'1994 along with interest under Section 75 of the Act.

(iv) I impose penalty of Rs. 33,16,333/- under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 78(1) of the Finance Act'1994.”

4. Being aggrieved the Appellant-Assessee is in appeal before the Tribunal on the following grounds:-

- a) Erroneous imposition of full penalty under Section 78 of the Finance Act, 1994 despite part-payment and subsequent compliance regarding service tax liability.

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- b) Unjustified disallowance and recovery of CENVAT Credit amounting to Rs.33,16,333/- and corresponding penalty, particularly regarding cancellation of commercial spaces bookings and misinterpretation of Rule 6(3) of Service Tax Rules, 1994.
- c) The SCN is barred by limitation.

5. Heard both the sides and perused the appeal records.
6. I find that the learned Principal Commissioner (Appeals) vide the impugned order has confirmed the demand of Service Tax amounting to Rs.1,25,775/-. The Appellant had also deposited the full amount of service tax of Rs.1,25,775/- alongwith interest of Rs.81,752/- and both these amounts have been appropriated in the impugned order. Further, the Appellant has also deposited 22,917/- towards the penalty of Rs.1,25,775/- imposed under Section 78 of the Act and amount of Rs.22,917/- has also been appropriated in the impugned order. I find that in the ST-3 Returns, Appellant-Assessee claimed the CENVAT Credit in Column D2 whereas it should have been claimed in Column D4. I find that the CENVAT Credit has been availed as under:-

Financial Year	Cenvat Credit Availed
2015-16 (October to March)	1,77,178/-
2016-17 (April to September)	28,53,138/-
2016-17 (October to March)	5,27,746/-
Total	35,58,062/-

7. I find that in the Order-In-Original the learned Adjudicating Authority has observed in Para 16.1 as under:-

16.1. The party has accepted in terms of point 1 above that it is liable to service tax liability on the differential amount of Rs.8,38,500/-

Accordingly, the party has paid service tax liability of Rs.125775/- and interest (as per applicable rate) of Rs.81752/- on its taxable value of Rs.844761, vide challan dated 14.02.2021.

8. Further, regarding the CENVAT Credit, he has observed as under:-

"18.1. In this context, the party submitted the ledger of all its customers who had taken advance in the year 2013-14 to 2016-17 and deposited service tax on it, after which the booking of the flat was cancelled by that customer. A summary of the number of customers who cancelled flats, in the form of an annual chart, is given below:-

Srl No.	Period	Assessable Value	Service Tax received and paid	Swachh Bharat cess received and paid	Krishi Kalyan Services	If reversed paid in F.Y
1	2015-16 (October to March)	237854	177178	1537	-	2015-16
2	2016-17 (April to September)	85540342	2853138	241	172	2013-14, 2014-15 & 2015-16
3	2016-17 (October to March)	12830888	528646	2281	1479	2015-16
		Total	35,58,962/-	4059/-	1651/-	
					Grand Total	35,64,672/-

From the above, I observed that the party has again reclaimed into its register the CENVAT which had deposited the service tax on the advance received from its customers for the years 2013-14 to 2016-17 and subsequently, the allotment of the flat was cancelled by the customer.

18.2. Further, we find that the legal provision in STR as far as it relates to present case are as follows:-

"6 (3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, [or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract] the assessee may take the credit of such excess service tax paid by him, if the assessee -

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or]

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

6 (4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may"

19.1. Perused the ST-3 return in respect of short service tax deposited by the party of Rs.450 for the period 2016-17(April to September) and observed that the service tax deposited by the party is correct and not short.

20.0. In view of the above facts and discussions, no Service Tax liability has been found, which was due against the party From the Financial Year 2015-16 to 2016-17. Therefore, I hold that the present case is not a case of deliberate non-declaration and suppression of vital facts from the Department with the willful intention to evade payment of service tax. Accordingly, I hold that the invocation of the extended period for the demand of Service Tax under proviso of Section 73 (1) of the Act, in this case, is not justified and therefore, I drop the demand of Service Tax (including various cess) of Rs. 9,37,986/- and Cenvat credit wrongly availed demand amounting to Rs. 35,58,062/- under proviso to Section 73 (1) of Finance Act, 1994 along with interest

under Section 75 of the Act, as Service Tax is not demandable from them then interest is also not recoverable from the party.

20.1 Since no due taxability of Service Tax is observed on the party, the suppression, willful mis-statement, or the case of fraud do not attract to the instant case. Therefore, I find that the penalty under Section 78 of the Finance Act, 1994 is not applicable to the party.

20.2 With Respect to the imposition of penalty under Section 77 (1)(c), (i) & (iii), I have already observed that imposition of penalty under Section 77 is not sustainable. The party has also provided all the documents during PH and maintained all the documents and record therefore imposition of penalty under Section 77 is not sustainable.

21. In view of the above discussions and findings, I pass the following orders:

ORDER

I hereby drop the proceedings as initiated against M/s Grace Infraventures Private Limited, 37, Elgin Road, Civil Lines, Allahabad-211001 (U.P)), vide Show Cause Notice issued under File number V(ST) Div-II/SCN/Grace Infra/223/2020 dated 31.12.2020

9. I find that the learned Adjudicating Authority has passed a detailed and well reasoned order resulting in dropping of the proceedings initiated against the Appellant vide the SCN dated 31.12.2020. I do not find any infirmity in the Order passed by the learned Adjudicating Authority and the same is upheld.

10. Further, the SCN was issued for the Financial Year 2015-16 to 2017-18 (up to June 2017) and accordingly entire demand raised in the present case is *ex-facie* barred by limitation and hence liable to be set aside. In the present case all transactions were duly recorded in the books of accounts and CENVAT Credit were duly reported in the ST-3 Return. Entire data was available with the Department and enquiry was conducted based on the

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records submitted by the Appellant-Assessee. Mere difference in presentation or reconciliation of figures do not constitute suppression. Therefore, I do not find ingredient of suppression, willful misstatement etc. with an intent to evade payment of Service Tax. Accordingly, invoking of extended period of limitation is not available to the Department.

11. I allow the CENVAT Credit of Rs.33,16,333/- and set aside the penalties of Rs.1,25,775/- imposed under Section 78 and penalty of Rs.33,16,333/- imposed under Section 78(1) of the Act.

12. In the present case if the excess Service Tax paid as per Rule 6(3) of the Service Tax Rules is not allowed the Appellant Assessee would be entitled to refund. I find that credit of excess Service Tax paid by the Appellant was a right that had accrued in favour of the Appellant and such right of the Appellant ought to be upheld and protected.

13. The impugned order is set aside and the Order-In-Original No.66/ST/DIV-II/ALLD/2023-24 dated 17.07.2023 is upheld. The appeal filed by the Appellant is allowed in above terms.

(Pronounced in open court on 25.06.2026)

Sd/-

**(P. K. CHOUDHARY)
MEMBER (JUDICIAL)**

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