CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 1448 of 2011

[Arising out of Order-in-Original No. 42/ST/CHD-II/2011 dated 30.06.2011 passed by the Commissioner of Central Excise & Service Tax, Chandigarh-II]

M/s R.S. Financial Services **……Appellant**
KSM Road, Rajpura, Distt. Patiala

VERSUS

Commissioner of Central Excise Chandigarh_ii **……Respondent**
C.R. Building, Plot No. 19, Sector 17-C, Chandigarh

APPEARANCE:

Present for the Appellant: Shri Vikrant Kackria, Advocate

Present for the Respondent: Shri Pawan Kumar and Shri Harish Kapoor, Authorized Representatives

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60489/2024

DATE OF HEARING: 03.05.2024
DATE OF DECISION: 27.08.2024

PER S. S. GARG

The present case is directed against the impugned order dated 30.06.2011 passed by the Central Excise and Service Tax, Chandigarh whereby the Ld. Commissioner has confirmed the demand of service tax amounting to Rs. 52,92,942/- along with interest and equal penalty under Section 78 of the Act.

2. Briefly the facts of the present case are that the appellants were engaged in providing services to ICICI Bank Ltd. as Direct Marketing Associates (in short 'DMA') by arranging loans for purchase of automobiles etc. for the customers and was registered with the department for providing taxable service of Business Auxiliary Service falling under Section 65(19) & 65(105)(zzb) of the Finance Act. 1994.

2.2 During the course of audit of accounts of the appellant and subsequent inquiry, it was found that the appellants were paid commission by the Bank after certain deductions including DMA subvention/Reduce etc., Commission, Cancellation cases amount, etc. and that the appellants were paying Service Tax on Net amount of Commission and not on Gross Commission. The certificates issued by the ICICI Bank categorically reflected the Gross Commission payable, based on the loan amounts. As such, it was alleged that the appellants have not discharged service tax on the Gross Commission amount due to the appellants from ICICI Bank, as per provision of Section 67 of the Act and it resulted in short payment of service tax amounting to Rs.52,92,942/-/.

2.3 It was also alleged that the appellants have willfully & intentionally suppressed the Gross Commission, which resulted into short payment of service tax. They also not paid service tax during the half-year ending 31.03.2005 and also failed to file ST-3 Return for this period. Also a part of value of taxable service escaped assessment by reason of willful suppression of material facts and material information with an intention to evade payment of service

tax. Thus, it appears that the short paid service tax is liable to be recovered by invoking extended period of limitation. After following the due process, the adjudicating authority vide impugned order dated 30.06.2011 has confirmed the demand of service tax along with interest under section 73 and 75 of the Act by invoking extended period of limitation. He also imposed penalty equal to the amount of demand of Service tax under Section 78 and Rs. 1000/- under Section 77 of the Act. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. Ld. Counsel for the appellant further submits that the internal Audit Team of the Department after scrutinizing the books of accounts came to a conclusion that the amount payable to the appellant was more than the amount actually paid and the amount on which service tax was discharged by the appellant. The department has relied upon the provision of Section 67 of the Finance Act 1994 to come to a conclusion that the amount of service tax was to be discharged on the amount payable to the appellant and not on the amount actually received by them.

4.1 Ld. Counsel further took us through the provision of Section 67 of the Finance Act which provides valuation of taxable service and submits that the adjudicating authority has relied upon the Explanation (c) of Section 67 of the Act to say that "amount charged includes" which is liable to be paid for the transaction. He further

submits that the Ld. commissioner has not at all considered the plea of the appellant that the Explanation (c) is only applicable in case of associated enterprises and not otherwise. He further submits that he has rightly paid the service tax on the net commission received by him from the ICICI Bank and regularly filing the service tax returns which has never been objected by the department. He also refer to Rule 6 of the Service Tax Rules, 1994 to submit that the tax was payable on the amount actually received during the relevant period by the appellant on which service tax has already been discharged. In support of his submissions he relied upon the following decisions:

- M/s EM PEE Motors Limited Versus Commissioner of Central Excise, Chandigarh reported as 2012 (25) S.T.R. 68 (Tri.Del)

- Commissioner of Central Excise, Jaipur-l Versus Chambal Motors (P) Ltd. reported as 2008(9) S.T.R. 275 (Tri-Del.)

- M/s Pagariya Auto Center Versus Commissioner of C. Ex. Aurangabad reported as 2014 (33) S.T.R. 506 (Tri-LB)

- South City Motors Ltd. Versus Commissioner of Service Tax, Delhi reported as 2012(25) S.T.R. 483 (Tri. Del).

4.2 As regards the invocation of extended period of limitation is concerned, Ld. Counsel for the appellant submits that there does not exist any ground for invoking the extended period of limitation as the appellant has not suppressed anything from the Department with intend to evade payment of service tax. He further submits that the appellant had been paying the service tax on the amount

received as commission from the banks and there was no malafied intention to evade. Ld. Counsel also submits that the impugned order has been passed in violation of principle of natural justice because the same has been passed without supplying the copies of the documents on the basis of which adverse finding has been given, in fact the appellant kept on requesting the department for supply the documents resumed by them on 20.03.2009 during the search operation but the same were not given to the appellant and the copies of the records have finally been handed on 20.09.2011, after the impugned order was passed on 30.06.2011, which has seriously caused prejudice to the appellant to defend his case properly and effectively. In support of his submissions that extended period has wrongly been invoked; the appellant has relied upon the following decisions :

- Dinesh Chandra Dubey Versus Commissioner of CGST, Ex & CUS, Udaipur reported as 2023(69) G.S.T.L. 297 (Tri.- Del)

- Continental Foundation JT. Venture Versus Commissioner of C. Ex. Chandigarh-I reported as 2007(216) E.L.T. 177(S.C.).

5. On the other hand, Ld. DR defended the impugned order and submitted that the main issue involved in the present case is whether the service tax is chargeable on the gross commission due to the appellants as reflected in the certificates issued by the bank or on the net amount received by appellant from the bank.

5.2 Ld. DR further refer to the provision of sub section 1 (i) of section 67 of the Act which provides that in case where the provision

of service is for a consideration in money, the service tax chargeable on any taxable service with reference to its value shall be the gross amount charged by the service provider for such service provided or to be provided by him. He further submits that for the purpose of this section, gross amount charged has been defined under explanation (c) to the said section, and it includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise. He further submits that it is on record that the details of gross commission due to the appellants, deductions etc have been shown in the certificates issued by the bank. He further submits that the appellant have been paid commission after certain deductions from the gross commission due to the appellant and that these deductions are related to the services provided by the appellants. Therefore, net amount paid by the Bank to the appellants cannot be termed as gross amount of consideration due to the appellants for provision of the services to the bank. He further submits that as per provision of the Service Tax (Determination of Value) Rules, 2006 where under inclusion in or exclusion from value of various components has been detailed and there is no clause, in the Valuation Rules 2006, for exclusion of such deductions. Further, as per Rule 5(1) of the Valuation Rules 2006 stipulates that "Where any expenditure or costs are incurred by the service provider in the

course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service. He further submits that the contention of the appellant in reference to section 194 H of the Income Tax Act does not help them in the instant case as the provisions of the income tax Act cannot be applied for computation of taxable value for the payment of service tax. He further submits that is identical facts and circumstances, the *Hon'ble CESTAT, Mumbai in case of Commissioner of Service Tax v. JMD Marketing (P) Ltd. 2016 (46) STR 504 (Tri. Mumbai) and the Hon'ble CESTAT, New Delhi in case of EM PEE Motors Ltd. v. CCE Chandigarh - 2012 (25) STR 68 (Tri.Del.),* held that the assessee would be liable to pay service tax on gross amount of commission.

5.3 As regards the invocation of extended period of limitation, Ld. DR submits that the appellant has suppressed the material facts from the Department and it was only due to the internal audit of the Department that the Department came to know that the appellant was discharging service tax liability on the net amount of commission received from the service recipient.

6. We have considered the submissions made by both the parties and perused the material on record, the first issue involved in the present case is relating to the demand of service tax in respect of the commission received by the appellant for getting loan sanctioned from various banks; the stand of the appellant is that they were under a bonafide belief that service tax is to be paid on the actual

amount of commission received from the banks and on that commission they have been paying service tax and filing service tax returns regularly. During the internal audit of the Department, the Department came to the conclusion that the amount of service tax was short paid by the appellant because as per the Department, Section 67 of the Finance Act provides that service tax is to be discharged on the gross amount received and not on the amount actually received by the appellant. This issue was considered by the Division Bench of this Tribunal under similar facts in the case of *Commissioner of Service Tax v. JMD Marketing (P) Ltd.* cited (Supra) wherein the Tribunal has held in para 6 & 7 as under:

> *"6. During arguments, the respondents admitted that the banks are deducting TDS on the whole of the commission including the subvention. The respondents also submitted that the amount of subvention was directly paid by the bank to the customers taking loan and the respondents have never received the amount.*
>
> *7. We find that this issue is already settled by the decision of the Tribunal in the case of CCE, Jaipurv. Chamb Motors (P) Ltd. reported in 2008 (9) STR. 275. The Tribunal held as under:*
>
> *6. It is obvious from the reasoning adopted by the Commissioner (Appeals) that he has proceeded on totally an erroneous footing that, a bank cannot avail of 'Business Auxiliary Services' as a client From the nature of agreements on record including the franchisee agreement in the third appeal, it is clear that the assessees were, under an agreement with the bank had undertaken to provide service in relation to promotion or marketing of the*

Banking and Financial Services provided by the banks. The banks were providing services under the category Banking and Other Financial Services' falling in Clause (12) of Section 65 in relation to those services, the respondent-assessees were providing services for promotion or marketing of the banking and other financial services provided by the banks. The banks were, therefore, their clients being recipient of such services from the respondents. It has come in evidence that the respondents ware required to obtain loan applications from their customers who desired to avail loans from the banks. The respondents had undertaken to process those applications and after scrutiny forward them to the bank. Admittedly for such services, they were paid commission by the bank, which was reflected in their account. Once consideration accrued to them, as against the services provided by them to the bank, by way of commission, it was hardly of any consequence how a portion of that commission, which as per the particulars provided by the Bank was given as "pay out" to assessees in respect of which even the TDS was deducted, was spent by them. If they chose to give some amount from that gross commission amount to their customers either directly or through the bank, it would not change the nature of the receipts in their hand."

8. Similarly, in the case of Em Pee Motors Ltd cited (Supra), the Tribunal has held in para 4 & 5 as under:

4. Considered arguments of both sides. It is very clear titat as per Section 67 of Finance Act, 1994 service tax shall be paid on the gross amount charged by the service provider. It is also noticed that as per the submission of the appellant, the TDS certificate was issued by the Bank in the name of the appellant for deduction of income tax on the full amount paid to the appellant. This means

that while filing income-tax return, he is taking the credit for entire TDS including the amount deducted on account of payments directly made to the customers. Therefore, this is an arrangement where the appellant decided to get the benefit of deduction of TDS for the whole amount for income tax purpose but to pay service tax only on the amount net of subvention. Thus there is a inherent contradiction in the stand that is being taken by the appellant before the two tax authorities The arrangement made for the purpose of reducing incidence of income-tax is not a subject mattar of these proceedings.

5. We are of the view that the amount paid by the bank for the services rendered by the appellant and reflected as receipts in the books of accounts of the appellant, should be subjected to service tax and therefore the orders passed by the lower authorities is maintainable and thus appeal filed by the appellant is rejected.

9. Further, if we see the provision of Section 67 of the Act which provides that in case where the provision of service is for a consideration in money, the service tax chargeable on any taxable service with reference to its value shall be the gross amount charged by the service provider for such service provided or to be provided by him; therefore, considering the provision of Section 67 of the Fiannce act and the decision of the Tribunal in the case of JMD Marketing (P) Ltd and Em Pee Motors Ltd. cited (Supra) we hold that the appellant is liable to pay service tax on the gross commission rather than the net commission received by them, hence this issue is decided against the appellant. As regards invoking the extended

period of limitation, the Department has to establish the ingredients as provided in Section 73 of the Finance act, namely;

"(a) fraud; or

(b) Collusion; or

(c) willful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules thereunder with intent to evade payment of service tax"

Whereas, in this case, the Department has been able to establish that the appellant has suppressed the material facts with intention to evade the payment of service tax because the appellant was under bonafide belief that they are liable to pay service tax on the net amount of commission received from the bank and they have been paying the service tax accordingly and have been filing service tax returns. Further we find that the Division Bench of the Delhi Tribunal in the case of Shyam Spectra Private Limited has examined the issue of limitation in detail and after considering the various decisions of the High Court and the Supreme Court, has come to the conclusion that if the ingredients of Section 73(1) are not established then the extended period of limitation cannot be invoked. The relevant findings are reproduced here in below:

"13. In order to appreciate whether the extended period of limitation was correctly invoked, it would appropriate to reproduce section 73 of the Finance Act as it stood at the

relevant time. This section deals with recovery of service tax not levied or paid or short levied or short paid or erroneously refunded. It is as follows;

> *"**73.(1)** Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*
>
> ***PROVIDED** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-*
>
> *(a) fraud; or*
>
> *(b) collusion; or*
>
> *(c) wilful mis-statement; or*
>
> *(d) suppression of facts; or*
>
> *(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*
>
> *by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."*

14. It would be seen from a perusal of sub-section (1) of section 73 of the Finance Act that where any service tax has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve a notice on the person chargeable with the service tax which has not been levied or paid, requiring him to show cause why he should not pay amount specified in the notice.

15. The 'relevant date' has been defined in section 73 (6) of the Finance Act as follows;

> ***73(6)*** *For the purpose of this section, "relevant date" means,-*
>
> *(i) In the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short paid-*
>
> *(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;*
>
> *(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;*
>
> *(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;*

16. The proviso to section 73(1) of the Finance Act stipulates that where any service tax has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Chapter or the Rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax, the provisions of the said section shall have effect as if, for the word "one year", the word "five years" has been substituted.

17. It is correct that section 73 (1) of the Finance Act does not mention that suppression of facts has to be "wilful" since "wilful" precedes only misstatement. It has, therefore, to be seen whether even in the absence of the expression "wilful" before "suppression of facts" under section 73(1) of the Finance Act, suppression of facts

has still to be willful and with an intent to evade payment of service tax. The Supreme Court and the Delhi High Court have held that suppression of facts has to be "wilful" and there should also be an intent to evade payment of service tax.

18. In ***Pushpam Pharmaceuticals Company*** *vs.* ***Collector of Central Excise, Bombay***[1]*, the Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Excise Act. The proviso to section 11A of the Excise Act carved out an exception to the provisions that permitted the Department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows;*

> *"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date.* ***But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.*** *The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the*

2005 (188) E.L.T. 149 (SC)

context in which it has been used indicates otherwise. ***A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.*** *Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

(emphasis supplied)

19. This decision was referred to by the Supreme Court in ***Anand Nishikawa Company Ltd.*** *vs.* ***Commissioner of Central Excise***[2] *and the observations are as follows:*

"26 ……..This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly. ***It does not mean any omission and the act must be deliberate and willful to evade payment of duty.*** *The Court, further, held :-*

> *"In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v.

2005 (188) E.L.T. 149 (SC)

> *Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that* ***"suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.*** *When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act."*
>
> ***(emphasis supplied)***

20.These two decisions in ***Pushpam Pharmaceuticals*** *and* ***Anand Nishikawa Company Ltd.*** *were followed by the Supreme Court in the subsequent decision in* ***Uniworth Textile Limited*** *vs.* ***Commissioner of Central Excise, Raipur***[3] *and the observation are:*

> *"18. We are in complete agreement with the principal enunciated in the above decisions, in light of the proviso to section 11A of the Central Excise Act, 1944."*

21.The Supreme Court in ***Continental Foundation Joint Venture Holding*** *vs.* ***Commissioner of Central Excise, Chandigarh-I***[4] *also held:*

> *"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission*

2007 (216) E.L.T. 177 (SC)

> *to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.* ***Suppression means failure to disclose full information with the intent to evade payment of duty.*** *When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*
>
> ***(emphasis supplied)***

22.The Delhi High Court in ***Bharat Hotels Limited*** *vs.* ***Commissioner of Central Excise (Adjudication)***[5] *also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act and held as follows;*

> *"27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uniworth (supra), "misstatement or suppression of facts" does not mean any omission. It must be deliberate.* ***In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty.***
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> ***xxxxxxxx***
>
> ***Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or mere failure to pay duty or take out a license without the presence of such intention."***

2018 (12) GSTL 368 (Del.)

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The Revenue has not been able to prove an intention on the part of the Appellant to avoid tax by suppression of mention facts. In fact it is clear that the Appellant did not have any such intention and was acting under a bonafide belief."

(emphasis supplied)

23. It is, therefore, clear that even when an assessee has suppressed facts, the extended period of limitation can be invoked only when "suppression" is shown to be wilful with intent to evade the payment of service tax.

24. It clearly transpires from paragraphs 11 and 12 of the show cause notice which have been reproduced above, that after mentioning that the appellant had contravened the provisions enumerated in the said paragraph, it merely mentions that by doing so the appellant had intentionally and willfully suppressed facts and did not pay the service tax; by not disclosing the entire facts to the department, the taxable value escaped the assessment resulting into contravention of various provisions of the Finance Act with intention to evade payment of service tax; and had the audit not been conducted by the department this fact would not have come to the notice of the department.

25. The show cause notice, therefore, presumes that there was intent to evade payment of service tax merely because the appellant had not disclosed the correct service tax liability in the service tax returns. The show cause notice does not disclose why the appellant had an intent to evade payment of

service tax. Merely because the correct service tax liability had not been disclosed, it cannot be presumed that there was an intent to evade payment of service tax. The Commissioner has also upheld the invocation of the extended period of limitation for the reason that under the self-assessment scheme, proper service tax disclosure is on the appellant, but the appellant suppressed all material facts from the department. The Commissioner has also not given any reason as to why the appellant had an intent to evade payment of service tax.

26. The burden of proving that the appellant had suppressed facts with an intent to evade payment of service tax was clearly upon the department. It was necessary for the department to illustrate any positive act on the part of the appellant. According to the appellant, it was under a bonafide belief that it was not liable to pay service tax and the matter also involved interpretation of various provisions of the Finance Act as well as the services rendered to the SEZ Units and to the STPI Units. The appellant had been filing the service tax returns and an audit of the records of the appellant had also been conducted in 2010 for the period 2006-07 to 2009-10. The show cause notice was, however, issued on 19.10.2011 after a substantial lapse of time.

27. In this connection, it would be pertinent to refer to the judgment of the Supreme Court in ***Commissioner of C. Ex. & Customs*** *vs.* ***Reliance Industries Ltd.***[6]*. The Supreme Court held that if an assessee bonafide believes that it was correctly*

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[6]. **2023 (385) E.L.T. 481 (S.C.)**

discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would not render such a belief of the assessee to be malafide. If a dispute relates to interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it the responsibility of the assessee to determine the liability correctly and this determination is required to be made on the basis of his own judgment and in a bonafide manner. The relevant portion of the judgment is reproduced below:

> *"23.* ***We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of Tribunal. We note that the issue of valuation involved in this particular matter is indeed one were two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona fides. In any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.***
>
> *24.* ***The extent of disclosure that an assessee makes is also linked to his belief as to the requirements of law.*** *xxxxxxxxxxx. On the question of disclosure of facts, as we have already*

> *noticed above the assessee had disclosed to the department its pricing policy by giving separate letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed earlier there was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on exports.* ***There was therefore nothing wrong with the assessee's action of including the value of deemed exports within the value of domestic clearances."***
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> ***(emphasis supplied)***

28. The Commissioner was swayed by the fact that the appellant was working under a self-assessment scheme and, therefore, the onus to pay proper service tax was on the appellant.

29. The Commissioner was not justified in recording such a finding. In ***M/s. Raydean Industries*** *vs.* ***Commissioner CGST, Jaipur***[7]***,*** *the Tribunal in connection with the extended period of limitation, observed that even in the case of self assessment, the department can always call upon an assessee and seek information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted that departmental instructions issued to officers also emphasise that it is the duty of the officers to scrutinize the returns. The relevant portion of the decision is reproduced below:*

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[7]. **Excise Appeal No. 52480 of 2019 decided on 19.12.2022**

"24. ***It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it had cleared the final products by availing the exemption under the notification dated 17.03.2012. The applicant had furnished the returns on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information.*** *It is under sub-rule (1) of rule 6 of the Central Excise Rules, 20028 that the assessee is expected to self assess the duty and sub-rule (3) of rule 12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.* ***Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.***

25. ***Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns.*** *The instructions issued by the Central Board of Excise & Customs on December 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:*

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> *26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT.*
>
> *xxxxxxxxxx*
>
> *27.* ***It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.****"*
>
> ***(emphasis supplied)***

30. There is, therefore, no suppression of material facts from the department, much less with an intent to evade payment of service tax. The extended period of limitation contemplated under the proviso to section 73(1) Finance Act, therefore, could not have been invoked in the facts and circumstances of the case.

31. Learned counsel for the appellant also submitted that when the extended period of limitation cannot be invoked, the demand for the period which is within limitation cannot be confirmed and in this connection reliance has been placed on the judgment of the Kolkata High Court in ***Infinity Infotech Parks.***

32. In ***Infinity Infotech Parks,*** *the Calcutta High Court observed as follows:*

> *"92. When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transaction, once it is found that the extended period of limitation is not invocable. This proposition find*

support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4SCC 630=2003 (153) E.L.T. 241 (S.C.).”

10. In view of the various decisions of the Tribunal the demand is entirely barred by limitation because the show cause notice has invoked the extended period of limitation.

11. In view of our above discussion on merit, the demand is upheld but on limitation the demand is set aside, hence, the impugned order is set aside and the appeal is allowed only on limitation.

(Order pronounced in the open court on 27.08.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash