

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55302 of 2023 [SM]

[Arising out of Order-in-Appeal No. 93/ST/APPL/DDN/2022-23 dated 29.09.2022 passed by the Commissioner of Central Goods & Service Tax (Appeals), Dehradun]

M/s. Joshi Tax Consultancy & Services

...Appellant

Near Utsav Garden Chaudhary Bhawan,
Nainital Road, P.O. Bhotia Road,
Haldwani, Nainital,
Uttarakhand - 263139

VERSUS

**Commissioner of CGST & Central Excise,
Dehradun**

...Respondent

E-Block, Nehru Colony,
Dehradun - 263139

APPEARANCE:

Shri R.M. Saxena, Advocate for the Appellant

Shri Arun Sheoran, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 08.05.2024
DATE OF DECISION: **06.09.2024**

FINAL ORDER No. 58538/2024

DR. RACHNA GUPTA

The appellant in the present case is registered for providing taxable services. Department had an information that various service providers have shown different taxable values to the CBDT and CBIC in their returns filed by the respective departments. Based on that information, appellant was enquired vide letters dated 25.01.2021 and 13.09.2021 and was asked to inform the reason behind the difference in turnover shown in ITR vis-à-vis a taxable value declared in ST-3 returns during the Financial Year 2016-17. The appellant was also enquired taxable value of service

provided amounting to Rs.59,12,145/- being received by the appellant, as to whether the same is exempted or is eligible for abatement of value remitted or for benefit of reverse charge to be extended or for determination of taxable value to be made under provision of Service Tax (Determination of Value) Rules, 2006 or for benefit of threshold limit; in terms of the Notification No. 25/2012, 26/2012, 30/2012 and 33/2012 respectively all dated 20.06.2012. Since no response was received from the appellant and that the activity of appellant was opined to be a taxable service that vide Show Cause Notice No. 3/2021 dated 21.10.2021 service tax amounting to Rs.8,86,822/- for Financial Year 2016 and 2017 was proposed to recovered along with the interest and the penalty. Late fee for non-filing/late filing of service tax was also proposed to be imposed. The said proposal has been confirmed vide Order-in-Original No. 30/2022-23 dated 27.07.2022. Appeal against the said order has been rejected by Commissioner (Appeals) vide Order-in-Appeal No. 93/2022-23 dated 16.03.2023. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri R.M. Saxena, learned Advocate for the appellant and Shri Arun Sheora, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the case against the appellant is exclusively based on letter dated 22.05.2019 of the Additional Director General (EDW), Directorate General System & Data Management, Customs & Central Excise, New Delhi and there is no other document nor any investigation which has been dealt with in the impugned show cause notice. The

show cause notice otherwise has been beyond the normal period of limitation of 30 months. The extended period has wrongly been invoked as there is no evidence on record about the alleged suppression of vital facts. The findings under challenge are therefore erroneous and incorrect. The demand is liable to be set aside not only on the merits but also being barred by time. For the said reason the order under challenge is prayed to be set aside and appeal is prayed to be allowed. Learned counsel has relied upon the decision of this Tribunal in the case of **Vatsal Resources Pvt. Ltd. Vs. CCE, Surat-I reported as 2023 (68) GSTL 279 (Tri.-Ahmd.)**

4. Learned Departmental Representative on the other hand has reiterated the findings arrived at by Commissioner (Appeals). Impressing upon no infirmity in those findings, the present appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the documents, to begin with the show cause notice, I observe that the entire show cause notice has not discussed even a single word about the nature of the service and its taxability. The Commissioner (Appeals) itself had framed the question to be adjudicated as follows:

"Whether the payment of Rs.59,12,145/- reported as income from sale of service in the ITR of the appellant is taxable or not?"

6. The said question has been answered in following words:

"Further, during the course of adjudication proceedings, sufficient opportunities were granted to the appellant. For want of this and in absence of any evidence produced by the appellant

regarding taxability or non-taxability of the services rendered by them during the period in question there is no option but to work out the tax liability of the appellant on the basis of data provided by Income Tax Department."

7. This perusal makes it abundantly clear that the demand in question has been confirmed purely based on third party document/information gathered from the Income Tax Department for Financial Year 2016-17. Hon'ble Supreme Court in the case of **Jaiprakash Industries Ltd. Vs. Commissioner of Central Excise, Chandigarh reported as 2002 (146) ELT 481 (SC)** has held that the demand based on Income Tax Returns and Form 26AS and/or Balance Sheet is not sustainable without proper enquiry and analysis. The said decision has been followed by this Tribunal in the case of **Calving Wooding Consulting Ltd. Vs. Commissioner of Central Excise, Indore reported as 2007 (7) STR 411 (Tri. Del.)**. As already observed above, there seems no enquiry nor any analysis to the basic aspect of nature of activity rendered by the appellant. Confirming demand, in absence thereof, but based on income tax data is therefore liable to be set aside.

8. Further it is observed that it is the settled principle of Revenue jurisprudence that the burden to prove the allegations against the assessee rests on the department. I draw my support from the decision in the case titled as **Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages Pvt. Ltd. reported as 2007 (213) ELT 487**, wherein it was additionally held that if the allegations in show cause notice are not specific, the same is sufficient to hold that the notice was not given proper opportunity

to meet the allegation the said show cause notice. The said burden stands absolutely un-discharged by the department.

9. It is coming from the show cause notice itself that the appellant is registered with the service tax department having registration no. AEBPJ1665HSD001. Despite this there is no mention of the nature of services for which the appellant has got itself registered even in the show cause notice. Also it is apparent from the show cause notice that no provision under which the payment would have been made before Income Tax Authorities has been observed or cited by the department. It is apparent from Para 4 of the show cause notice that the gross receipt shown in their income tax return for Financial year 2016-17 is being considered as taxable value for the purpose of levy of service tax. These observations are sufficient to hold that department has failed to act diligently and to discharge its burden of proving the appellant's alleged failure. No proper investigation has at all been conducted by the department.

10. It is also observed that the document which has been relied upon by the department and has been used against the assessee was neither produced by the assessee nor has been seized from his premises or control. This observation is sufficient to hold that presumption as to document as available under Section 36A of Central Excise Act, 1944 is not applicable to the DGS and DM's letter dated 22.05.2019 based whereupon the impugned show cause notice was issued and the demand proposed therein has been confirmed on the same basis. The document is not at all admissible into evidence. Hence the very basis of department's case vanishes.

I draw my support from the decision relied upon by the appellant
i.e. **Vatsal Resources Pvt. Ltd. (supra)**

11. With these observations and findings, I hereby set aside the order under challenge. Consequent thereto, the appeal stands allowed.

[Order pronounced in the open court on **06.09.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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