IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 18 of 2012

(Arising out of Order-in-Appeal No.179/PAT/S.Tax/Appeal/2011 dated 19.10.2011 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Patna.)

M/s. Avery India Ltd
(B-199, S. K. Puri, Patna-800001)

Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Patna
(2nd Floor, Central Revenue Building, Birchand Patel Path, Patna-800001)

R**espondent**

APPEARANCE :
Mr. J. K. Mittal, Advocate for the Appellant
Mr. S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75014/2024

Date of Hearing : 12 December 2023
Date of Pronouncement: 09.01.2024

PER R. MURALIDHAR:

The appellants, having obtained Service Tax Registration No.AACCA4694BST038 were engaged in providing 'Maintenance and Repair Services' and 'Installation and Commissioning services'. After investigation and verification, the Revenue found that the appellants were not discharging Service Tax for the services rendered to their Nepal clients. Invoking the extended period provisions, the Show Cause Notice was issued on 02.09.2009 for the period April 2004 to March 2009. After due process the Service Tax demand of Rs.10,92,313 along with interest and penalty was confirmed by the Adjudicating authority. On appeal, the Commissioner (Appeal) upheld the Order in Original and dismissed the Appeal. Being aggrieved the appellant is before the Tribunal.

2. The learned counsel appearing on behalf of the appellant contested the confirmed demands on the following grounds :

(1) The services were rendered outside the territory of India and the provision of Section 64 is applicable for the service provided within the country and hence there is no Service Tax liability on the appellant. On this issue, he mainly relied on the case law of Indian Association of Tour Operators Vs UOI – decided by the High Court of Delhi on 31.8.2017 [2017) 5 GSTL 4], Cox & Kings India Ltd Vs CST New Delhi – 2014(35) STR 817 (Tri-Del) and SBI Card and Payment Services Pvt Ltd Vs CST New Delhi – 2016 (41) STR 846 (Tri-Del).

(2) Extended period of limitation is not invokable as admittedly the appellant has shown the turnover in respect of Nepal in the ST 3 Returns treating the same as exports and appellant was carrying bonafide belief that no Service Tax is required to be paid for export of services.

(3) Payment has been received in Nepalese Currency, which was converted into Indian Rupees and remittance has been received. Hence it cannot be treated as suppression of facts.

(4) Penalties under 76 and 78 are not simultaneously imposable.

(5) Part of the confirmed demand was even beyond the extended period of 5 years

(6) The appellant would be entitled for cum-tax benefit since they have not charged any Service Tax on their Nepal based clients.

3. Based on the above arguments, the learned counsel submits that the confirmed demands are not sustainable both on merits as well as on account of time bar. Hence, he prays that the Appeal may be allowed on both these counts.

4. The learned AR submits that the appellant was rendering the service to their Nepal based clients, which is taxable unless it is proved that the consideration has been received in 'convertible foreign exchange'. Though, the appellant might have received the consideration in Nepalese Rupees, the same cannot be treated as 'convertible foreign exchange'. Hence, he justifies the demand confirmed by the lower authorities on this ground. He further submits that the Dept. has come to know that the appellants were claiming the Service Tax exemption towards their Nepal transactions only after detailed investigation and verification was undertaken by the Dept. Had this exercise not been taken up, the evasion of Service Tax would not have seen the light of the day. Hence, he submits that the appeal is liable to be dismissed.

5. Heard both sides. We have perused the Appeal papers and Synopsis submitted by the Learned Counsel and arguments adduced by both the sides.

6. We first take up the first ground taken up by the appellant, viz., that the Service was provided outside the territory of India and hence in terms of Section 64, no Service Tax liability accrues. The case laws cited have also been considered.

7. The relevant portions of statutory provisions and case law cited by the appellants are extracted below :

> **The Finance Act 1994 :**
>
> **SECTION 64. Extent, commencement and application -**. (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.
>
> (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable services provided on or after the commencement of this Chapter.

SECTION 65B. Interpretations. — In this Chapter, unless the context otherwise requires,—
(52) "taxable territory" means the territory to which the provisions of this Chapter apply;
SECTION 94. Power to make rules. — (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-
(a) collection and recovery of service tax under sections 66 and 68;
(aa) determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, under section 67;
(b) the time and manner and the form in which application for registration shall be made under sub-sections (1) and (2) of section 69
(c) the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70]
(cc) the manner of provisional attachment of property under sub-section (1) of section 73C;
(ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;
(d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
(e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
(ee) * * * *
(eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service;
(eeee) the manner of recovery of any amount due to the Central Government under section 87;
(f) provisions for determining export of taxable services;

The Service Tax Rules 1994 [With effect from 1.7.2012]
6A Export of Services
(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,
(a) The provider of service is located in the taxable territory,
(b) The recipient of the service is located outside India,
(c) The service is not a service specified in the section 66D of the Act,
(d) The place of provision of the service is outside India,
(e) The payment for such services has been received by the provider of service in convertible foreign exchange, and
(f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

> (2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

8. Before drawing any conclusion about the applicability or otherwise of the above provisions, it would be material to go through the facts and outcome of the cited case law :

Indian Association of Tour Operators Vs UOI-2017 (5) G.S.T.L. 4 (Del.)

> ***9.*** *On the strength of Sections 93 and 94(2)(f) of the FA, the Central Government issued the Export of Services Rules, 2005 ('ESR, 2005'). Rule 3(1)(ii) ESR, 2005 inter alia stated that "export of taxable services shall in relation to taxable services specified in sub-clause (n) of clause (105) of Section 65 of the Act, be provision of such services as are performed outside India". The proviso thereto stated that where such taxable service is partly performed outside India, "it shall be treated as performed outside India."*
>
> ***10.****Rule 3(2) of ESR, 2005 initially stated that the provision of any taxable service specified in Rule 3(1) shall be treated as export of service when the following conditions are satisfied, viz.:*
>
> *(a) such service is delivered outside India and used outside India; and*
>
> *(b) payment for such service provided outside India is received by the service provider in convertible foreign exchange.*
>
> ***26.*** *Rule 6A is a departure from the earlier regime governing export of services. It may be recalled that under Rule 4 of the ESR, 2005, tour operator service could be exported without payment of Service Tax. Further the proviso to Rule 3(1)(ii) of ESR, 2005 stated that where such taxable service is partly performed outside India, "it shall be treated as performed outside India." This took care of composite tour operator services which may have been provided partly outside India and partly within India. They were entirely outside the ambit of Service Tax. Rule 6A of the ST Rules, which substitutes the repealed ESR, 2005, however, changes this position. While clauses (a) to (c) of sub-rule (1) of Rule 6A is consistent with the earlier description of 'export of services', clause (d) brings about a change inasmuch as it recognises only such tour operator service rendered outside India as 'export of service'. Further sub-rule (2) of Rule 6A states that the Central Government may by notification grant rebate of Service Tax or duty paid input services or inputs subject to conditions where there is an export of services. This pre-supposes that such provision of service outside India is in fact amenable to Service Tax. However, as already noticed, the entire Chapter V of the FA applies only to taxable services and taxable services are those provided in the taxable territory i.e. the whole of India except Jammu and Kashmir.*
>
> ***23.****It in the above background that Rule 6A of the ST Rules, inserted with effect from 1st July, 2012, requires to be examined. Rule 6A reads as under :*

> ***"6A. Export of services. -***
>
> *The provision of any service provided or (1) agreed to be provided shall be treated as export of service when -*
>
> *(a) the provider of service is located in the taxable territory*
>
> *(b) the recipient of service is locate outside India*
>
> *(c) the service is not a service specified in the Section 66D of the Act,*
>
> *(d) the place of provision of the service is outside India*
>
> *(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and*
>
> *(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act*
>
> *Where any service is exported, the Central (2) Government may, by notification, grant rebate of Service Tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by Notification."*
>
> ***15.****The resultant position, prior to 1st July, 2012, as far as export of tour operator services was that even if a part thereof was performed outside India and the remaining in India, it would still be treated as having been performed outside India and thereby be construed as an export of service. Such export of tour operator service was not exigible to Service Tax. This position continued till 1st July, 2012.*

9. In this case, the issue was that of sustainability or otherwise of Rule 6A of the Service Tax Rules, coming into effect from 1.7.2012, which was challenged by the Petitioners. The service in question was being provided by the service provider located in India, to Indian clients wherein part of the service was rendered to these clients in foreign locations. The service in question was that of 'tour operator in relation to a tour'. Section 65B (52) and 66B considered by the High Court came into effect from 1.7.2012. It is also observed that the Petitioners, as a matter of fact canvassed the lenient clauses of Export of Services Rules 2005, by which they were better off under those Rules rather than the modified provisions of Rule 6A of Service Tax Rules. This point also has been considered, while the High Court rendered the judgement. Therefore, in the present case where the period is question in April 2004 to March 2009 and Rule 6A has no

application, the decision of this case law is not relevant to the facts of the present case.

Cox & Kings India Ltd Vs CST New Delhi-2014 (35) STR 817 (Tri-Del.)

> ***6.*** *In outbound tours, assessees organise tours outside the territory of India, for Indian tourists. In this category, the tour is performed entirely outside India, to facilitate Indian tourists visit various locales, in territories outside India.*
>
> ***7.*** *The dispute presented in the appeals before us is confined to "outbound tours" only.*
>
> ***8.*** *Proceedings were initiated against the assessees, invoking the extended period of limitation under the proviso to Section 73(1) of the Act proposing assessment and levy of Service Tax, interest and penalties, for having provided the taxable "Tour Operator" service, by way of outbound tourism. After a due process the impugned adjudication orders ensued.*

10. In this case also the issue involved was that of Tour Operator, providing service to their Indian clients, when they were touring foreign countries. The entire Order of the Tribunal dwells about the procedures adopted by the Tour operator, taxability or otherwise for various activities carried within the transactions, abatements claimed and their applicability etc. It is also observed that the Tribunal having come to a conclusion on a different ground, refused to consider the appellants submission with regard to jurisdiction to levy the Service Tax. Therefore, as the facts of the present case are totally different, with the service provider located in India and the service recipient being located in Nepal, the ratio of Cox & Kings case has no relevance to the present case.

SBI Cards Vs CST New Delhi-2016 (41) S.T.R. 846 (Tri.-Del.)

> ***13.*** *Considering the above discussion and findings we hold that the mark up charges accruing to the appellant when cardholder uses card to pay in foreign exchange abroad is not liable to service tax under 'Credit Card Services' during the impugned period. This conclusion is based both on merit of scope of 'Credit Card Services' during relevant period and lack of territorial jurisdiction of charge.*

11. In this case, the issue was that of the Indian service provider [SBI], issuing Credit Card to their Indian clients and tax liability or otherwise for the services received by the cardholder overseas. Since the facts are totally different, we are not required to consider the applicability of this case law.

12. Now first coming to the statutory provision of Section 64 (1), it reads as under :

> **SERVICE TAX ACT Chapter V of the Finance Act, 1994**
>
> **SECTION 64. Extent, commencement and application -**. (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

13. Section 64 is the first Section under Finance Act 1994. It is in the nature of Preamble stating the jurisdiction of the subsequentl Sections of the Act. It rightly states that it is applicable for the services provided within India [excluding the State of J & K at that time].

14. The appellant's argument that because of such wording (extending to the whole of India), any service rendered outside India would completely go out of the purview of the Service Tax, would render all the Rules framed under the Finance Act, 1994 like Export of Services Rules, 2005 to facilitate Service Tax free exports, otiose and redundant, in our considered opinion.

15. If this argument is accepted, in order to frame any Rules on Export of Services, this Section should be reading *'extends to the whole world except…….'*. However, since the law is enacted by the Government of India, it can be made applicable within the territory of India only.

16. Now we take up the example of the **Central Excise Act 1994 and the Customs Act, 1962 :**

Section 1. Short title, extent and commencement. -

(1) This Act may be called the Central Excise Act, 1944.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

The relevant extract of Customs Act 1962 :

Section 1. Short title, extent and commencement. -

(1) This Act may be called the Customs Act, 1962.

(2) It extends to the whole of India

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

17. If the appellant's argument is considered, the Excise Duty liability would be only for domestic despatches within the country only and if the goods are exported to a foreign country, they would go out of purview of Central Excise Duty. In such a case, framing of Rules for Exports, making provisions of Cenvat Credit for the inputs used in the exported goods etc., would be rendered redundant.

18. The Customs Act provides the mechanism to levy Customs Duty basically for imports but also deals with Export Duty in some cases. Based on Section 1(A), can it be argued that since it speaks of only India, if the goods are exported, no Export Duty can be demanded?

19. It can be observed that in respect of all the above Acts, which basically form the core law of the Indirect Taxation in India, the jurisdiction has been specified as India only. The purpose of the First Section in these Acts is to specify the jurisdiction not only towards the levy, but also towards the applicability of all the subsequent Sections right from their legality, applicability to litigation policy etc.

20. So far as the Export of Services are concerned, in order to ensure that the service providers do not end up paying the Service Tax when the services are exported, thereby losing the international competitiveness, Export of Services Rules, 2005 have been framed under the Finance Act, 1994. These Rules have been framed to completely exempt the Service Tax payment. The Cenvat Credit Rules 2004, have been framed to grant Cenvat Credit for the inputs, input services and capital goods, so as to avoid the cascading effect of Taxation. All these years, the assesses exporting services have been availing the Rebate/Cenvat benefits had no qualms whatsoever. In such a situation, this argument of the Appellant about non-applicability of Service Tax provisions is not only far fetched but also has no legal legs to stand on.

21. Therefore, we are not inclined to accept the argument of the appellant that when the service is provided to an entity situated in foreign territory, Service Tax provisions would not apply in view of Section 64 (1). Finding no merits in such a submission, we reject this argument forthright.

22. Now that we have seen that there existed a proper mechanism to exempt the Service Tax when the services are exported, we dwell upon the relevant portion **Export of Services Rules 2005** which was applicable for the exports during the period under dispute.

1. Short title and commencement. - (1) These rules may be called the Export of Services Rules, 2005.

(2) They shall come into force on the 15th day of March, 2005.

2. Definitions. - In these rules, unless the context otherwise requires,-
(a) "Act" means the Finance Act, 1994 (32 of 1994);
(b) "input" shall have the meaning assigned to it in clause (k) of rule 2 of the CENVAT Credit Rules, 2004;
(c) "input service" shall have the meaning assigned to it in clause (l) of rule 2 of the CENVAT Credit Rules, 2004.

3. Export of taxable service. - (1) Export of taxable services shall, in relation to taxable services,-

(i) specified in sub-clauses (d), (p), (q), (v), (zzq), (zzza), (zzzb), (zzzc), (zzzh), (zzzr), (zzzy) (zzzz) and (zzzza) of clause (105) of section 65 of the Act, be provision of such services as are provided in relation to an immovable property situated outside India;

(ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (m), (n), (o), (s), (t), (u), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv),(zw), (zza), (zzc), (zzd), (zzf), **(zzg),** (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf) (zzzp) (zzzzg) (zzzzh) and (zzzzi) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India:

Provided that where such taxable service is partly performed outside India, it shall be treated as performed outside India;

Provided further that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer

network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India;

(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

(a) such service is provided from India and used outside India; and

(b) payment for such service is received by the service provider in convertible foreign exchange.

Explanation. - For the purposes of this rule "India" includes the designated areas in the continental shelf and Exclusive Economic Zone of India as declared by the notifications of the Government of India in the Ministry of External Affairs numbers S.O. 429(E), dated the 18th July, 1986 and S.O. 643(E), dated the 19th September, 1996.]

4. Export without payment of service tax. - Any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax.

5. Rebate of service tax. - Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

23. A harmonious reading of the above Rules clarifies that they are beneficial Rules, granting Service Tax exemption for various services exported. It also provides for sanctioning of Rebate [refund] for the Service Tax paid on the end Service exported or for the duty paid and

input services used in the provision of such exported Services. Thus not only the service per se gets the full Service Tax exemption, but also the inputs and input services used are also eligible for Rebate.

24. Coming to the conditions specified for get the full Service Tax exemption, the following conditions are required to be fulfilled :

(1) Firstly, the service should get specified within the specific Heading under Section 65 (105), based on which the services would be taken as exports.

(2) Tthe export proceeds should be received in convertible currency.

25. We find that they are mandatory conditions and not mere procedural requirements. Unless all these conditions are fulfilled, the exemption from Service Tax cannot be claimed.

26. In the present case, the service provided by the appellant falling under Section 65 (105) (zzg), is specifically mentioned at Export of Services Rules, 2005, Rule 3 (1) (ii). Under this Rule, even if the service is partly provided abroad, the same is to be treated as export of service. In the present case, admittedly, the 'repairs and maintenance service' has been carried out for their Nepal based clients at Nepal only. Therefore, this condition is getting fulfilled.

27. Now we come to the argument of the appellant that they have received the payment in Nepalese currency and the same has been converted into Indian Rupees and hence the same is to be treated receipt of convertible foreign currency. On going through the nine invoices enclosed in the Appeal book, we find that the amount is given as "Rs.", without specifying as to whether it is for "Nepalese Rupees" or for " Indian Rupees".

28. The definition of 'convertible foreign exchange' is not given in the Finance Act 1994. For this, we have to refer to the Exchange Control Manual of Reserve Bank of India. The relevant portions are extracted below :

Permitted Methods for Receipts

2.5 Authorised dealers should receive remittances from foreign countries (other than Nepal & Bhutan) or obtain reimbursement from their branches and correspondents in those: countries against payments due for exports from India and other payments in a manner conforming to the methods of payment indicated below:

	Group		Permitted methods
(i)	All countries other than those listed under (ii) below	(a)	Payment in rupees form the account of a bank situated in any country in this Group
		(b)	Payment in any permitted currency
(ii)	**Member countries in the Asian Clearing Union (except Nepal)**	(a)	Payment for all **eligible** current transactions by debit to the ACU dollar account in India of a bank of the participating country in which is resident or by credit to the ACU dollar account of the authorised dealer maintained with the correspondent bank in the other participating country.
		(b)	Payment in any permitted currency in other cases

Permitted Methods of Payments

2.6 Authorised dealers should make remittances from India or provide reimbursement to their overseas branches and correspondents in foreign countries (other than Nepal and Bhutan): against payments due for imports into India and other payments in a manner conforming to the methods of payment indicated below:

	Group		Permitted methods
(i)	All countries other than those listed under (ii) below	(a)	Payment in rupees to the account of a resident of any country in this Group
		(b)	Payment in any permitted currency
(ii)	**Member countries in the Asian Clearing Union (except Nepal)**	(a)	Payment for all **eligible** current transactions by debit to the ACU dollar account in India of a bank of the participating country in which is resident or by credit to the ACU dollar account of the authorised dealer maintained with the correspondent bank in the other participating country.

(b)	Payment in any permitted currency in other cases

29. From the above Table, it can be observed that Nepali currency is not termed as 'Convertible Foreign Exchange' both for receipts and payments, since Nepal is specifically excluded under 2.5 (ii) and 2.6 (ii).

30. We also find that the condition of receiving the proceeds in convertible foreign exchange is a mandatory condition and not a procedural one. During the period under discussion, the Tribunals and High Courts were consistently holding that while mandatory condition is required to be fulfilled without any deviation, the procedural lapses, if any, can be condoned.

31. Therefore, in the present case, the appellant has not fulfilled the Condition of receiving the proceeds in 'Convertible Foreign Exchange', as has rightly been held by the Adjudicating Authority with proper reasoning at Page 6 of the Order in Original and as upheld by the Commissioner (Appeals). Therefore, we hold that the Appeal fails on merits. Accordingly, we uphold the impugned Order on merits.

32 Now coming to the appellant's plea to treat the Invoice amount as cum-tax receipt, in the normal course, if the Service Tax is not separately collected, the benefit under Section 67(2) should be granted. But in this case, the appellant has carried a firm belief that Service Tax is not payable in terms of Section 64(1) and did not pay the same. They also treated the transactions as exports in their ST 3 Return showing the full Invoice value as turnover and did not pay the Service Tax, on a clear belief that no Service Tax is payable. The Invoice has been raised for the full consideration. Therefore, in view of these factual details, we cannot hold that the appellant had any intention to treat the consideration received as cum-tax amount. They have realized the amount purely for the services rendered only.

Hence, the provisions of Section 67(2) cannot be applied in this case. Therefore, we are unable to extend this benefit for quantification of demand.

33. Next we take up the argument of the appellant on the time bar issue. We find that admittedly, the appellants are registered as service provider. The sample copy of the ST 3 Returns shows that they have shown the turnover for Nepal transactions under the Heading 'Amount billed for exported services without payment of tax'. From the Invoices, it is seen that they have not charged any Service Tax on the Nepal service recipients. The appellants have, in fact fulfilled the first condition of Export of Services Rules, 2005 by rendering the same fully at Nepal. Therefore, they can be said to have entertained bonafide belief that no Service Tax is payable. All the documentary evidence shows that they have declared all the transactions in their books of accounts, ST 3 Returns and Income Tax Returns. Hence, far from the allegation of suppression with an intent to evade, the appellants have come clean with their proper filing of ST 3 Returns and other statutory Returns. Hence, we hold that the confirmed demand for the extended period is legally not sustainable. Hence, we set aside the confirmed demand for the extended period. However, they are required to pay the Service Tax, if any for the normal period. Even in the cited case of Cox & Kings relied upon by the appellant, after setting aside the demand in respect of extended period, the demand towards normal period has been confirmed.

34. The appellant has also submitted that a part of the confirmed demand is for the period even beyond the 5 years' period. On the ground that there is no power conferred on the Revenue to demand any Service Tax for this period beyond 5 years, the confirmed demand, if any, for the period beyond 5 years, we set aside the same.

35. Since we are holding that the confirmed demand for the extended period is not legal and payable, the appellants are required to discharge the Service Tax which is payable, if any, for the normal period, along with interest in terms of Section 75.

36. As the issue is that of bonafide belief and interpretational difficulties, we set aside all the penalties, including in respect of the balance amount to be quantified for the normal period.

37. The appeal is partly allowed on the above terms.

(Pronounced in the open court on 09.01.2024)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja