

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Service Tax Appeal No. 10152 of 2022 - DB**

(Arising out of OIO-AHM-EXCUS-002-COMMR-39-2021-22 dated 07/12/2021 Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD)

**EXPOSITIONS AND CONVENTIONS**

**.....Appellant**

A/1 Krishna Apartment Jagjivan Park  
Nr Ishwar Bhvan Opp Hudco Bhavan And  
Garden Nvarangpura  
Ahmedabad, Gujarat

*VERSUS*

**C.C.E.-AHMEDABAD-II**

**.....Respondent**

Custom House... First Floor,  
Old High Court Road, Navrangpura,  
Ahmedabad, Gujarat-380009

**APPEARANCE:**

Shri Bishan Shah, learned Chartered Accountant for the Appellant  
Shri R. K. Agarwal, Ld. Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 10164/2024**

DATE OF HEARING: 22.11.2023  
DATE OF DECISION: 16.01.2024

**RAMESH NAIR**

This appeal is filed against the order of the Commissioner, Central Excise & CGST, Ahmedabad-North bearing number AHM-EXCUS-002-COMMR-39/2021-22 dated 08/12/2021.

1.1. The brief facts of the case are that the appellant M/S. Expositions & Conventions is a proprietorship concern bearing service tax registration number AOLPS9646FST001 engaged in conducting conferences and exhibitions for various entities. Based on intelligence developed by DGGI, Surat zonal unit, search operations were carried out at the premises of the appellant during which it was found that the appellant had filed ST-3 returns for the period October 2014 to June 2017 but they had short declared their taxable value, as compared to their actual taxable value which had resultant in short payment of Service tax. Accordingly a detailed show cause notice dated 26th June 2020 was issued demanding service tax to the tune of Rs. 2,52,98,074/- along with interest for the period October 2014 to June 2017.

In adjudication, the said service tax demand along with interest and penalty was confirmed by the Ld. Commissioner vide impugned Order-In-Original dated 07.12.2021. Hence the present appeal.

2. Shri Bishan Shah, learned Chartered Accountant appeared for the appellant, and he argued that the transaction is not amenable to service tax as the appellant has provided services to governmental authorities which were exempted under Notification 25/2012-ST. It was submitted that the appellant had rendered services to various Government Entities such as Tourism Corporation of Gujarat; Roads and Buildings Department, Government of Gujarat; Department of Museums, State of Gujarat, and other Governmental entities which fall under purview of entry 12, 12A and other relevant entries of Notification 25/2012-ST.

3. He also submits that there is also an issue with regards to classification of service as the service rendered is works contract service and therefore service tax must be charged on reverse charge basis. For this reliance was placed on section 65B (44) of Finance Act, 1994 r/w. Rule 2A of Service Tax Rules, 2006.

4. He further submits that the contracts for which demand is said to be raised are contract entered into with government authorities and there could be no suppression of facts that could be alleged.

5. He also submits that figures from 26AS cannot be used for determining service tax liability. He placed reliance on following judgments:

- (i) M/S Luit Developers Private Limited 2022 (3) TMI 50
- (ii) M/s Quest Engineers & Consultant Pvt. Ltd. 2021 (10) TMI 96
- (iii) Kush Constructions vs CGST NACIN 2019 (34) GSTL 606

6. Without prejudice to the above submission, he further submits that extended period of limitation cannot be invoked in the present case as the entire demand is beyond the normal period of limitation. It is an admitted fact in the show cause notice that the appellant regularly filled Service Tax Return. The actions of the appellant are completely bonafide in nature and there is no question of any fraud, suppression or willful mis-statement in the facts of the present case. In support of his above submissions on merit as well as time bar, he placed reliance on the following judgments:

- M/S Oriental Insurance Company Limited v. Commissioner LTU, New Delhi (2021 (5) TMI 869)
- M/s. Gannon Dunkerley & Co. Ltd v. Comm. of Service Tax, New Delhi (2020 (12) TMI 1096)
- Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.),
- Anand Nishikawa Co. Ltd v. Commissioner of Central Excise, Meerut, 2005 (188) E.L.T. 149
- Span Commercial Co. v. CCE Ahmedabad-I. Final Order No. A/10185/2020
- Suzica Color Laboratory v. Commissioner of Central Excise and Service Tax, Patna (2019 (6) TMI 511)
- M/s. Concept Motors Pvt. Ltd. v. CST, Ahmedabad. Final Order No. A / 11717 / 2018 dated 07.08.2018:
- Infinity Infotech Parks v. Union of India (2014) 36 STR 37

7. Shri R. K. Agarwal, Ld. Superintendent, appearing on behalf of the Revenue reiterates the findings of the impugned order.

8. We have heard both sides and perused the records. We find that the case of the department against the appellant is that they had deliberately and wilfully suppressed the actual taxable value on which they supposed to pay service tax by short declaring the taxable value in their ST-3 returns for the period October 2014 to June 2017. Therefore the demand of service tax by invoking the extended period of five years was proposed vide show cause notice dated 26.06.2020 against the appellant and same was also confirmed by the Ld. Adjudicating authority. We observe that since the invocation has been challenged, foremost, the plea of limitation has to be adjudicated.

9. We find that the Section 73(1) of the Finance Act, 1994 deals with the recovery of service tax not levied or not paid or short levied or short paid or erroneously refunded. According to which the recovery may be called for by the Central Excise Officer within the period of 30 months. However, the demand could be raised for a period beyond the said period of 30 months to the maximum of 5 years. But for the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this act or of the rules made thereunder with intent to evade payment of duty.

10. We find that the extended period of limitation was invoked under proviso to Section 73(1) of the Finance Act, 1994, in the instant case only because the actual taxable value was not reflected/shown in the relevant column of ST-3 returns filed by the appellant during the relevant period. Apart from this the Show Cause Notice has not alleged anything which leads to wilful suppression of facts with an intention to evade payment of Service tax. As per the facts of the present case we find that the appellant have vehemently argued that they had provided the services to Governmental Authority in particular M/s. Tourism Corporation of Gujarat Limited, 100% owned by Gujarat Government and the activity of the appellant is carrying out work in relation to promotion of Gujarati Cultural, Educational and aesthetic aspects which is entrusted to Municipality under Article 243 W read with 12<sup>th</sup> Schedule of the Indian Constitution. It is their submission that since the services were undisputedly provided to Government Authority, they had bona fide belief that the services are not taxable. Further, they also claimed that since the services were provided along with material, the service is classifiable under works contract service and for this reason also they had Bona fide belief that services provided by them is not taxable. We find force in the argument of the appellant at least for the purpose that mala fide intention cannot be alleged against the appellant. Accordingly, the ingredients such as suppression of fact, fraud, collusion, wilful mis-statement with intent to evade payment of Duty is not satisfied in the present case. We also find that levy of Service Tax in the facts of the present case involve interpretation of law and therefore, the Bonafide of the appellant cannot be doubted. Hence, the demand for extended period is not sustainable on limitation. We also find that appellant's contract of service is with Government Authority, hence there is no possibility to suppress their transaction evade Service Tax. Therefore, the bonafide of the appellant cannot be questioned.

11. Moreover, It is pertinent to note here that the 'the said disputed taxable value' has been duly and fully reflected in the appellants' books of accounts and Balance Sheet & Profit & Loss accounts. In fact the department had taken the details of said disputed taxable value from the balance sheet, 26AS and profit and loss account of the Appellant itself. In the present matter Ld. Adjudicating authority has not considered the fact that the 'disputed service income has been duly and fully reflected in the appellants' books of accounts and that there has been no intention whatsoever on the part of the appellant to hide the said disputed taxable service value from the knowledge of the department. Further it is also not the case of department that the 'said disputed taxable value has not been reflected in their regular books of

accounts so as to invoke extended time limit. We find that it is admitted fact that the appellant have registered with service tax department and are filing the periodical returns regularly. The appellant have maintained proper books of accounts in the normal course of business. In this circumstance service tax demand by invoking the extended period is legally not correct. We draw support from the decision of Hon'ble Supreme Court in the case of *Continental Foundation Jt. Venture v. Commr. of C. Ex., Chandigarh-I* reported as [2007 \(216\) E.L.T. 177](#) (S.C.) = (2007) taxmann.com 532 (S.C.), wherein it has been held that the expression 'suppression' as has been used in the proviso to Section 73(1) of the Finance Act, 1994 is accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission 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 73(1) of the Finance Act, 1994 the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of any incorrect statement with the knowledge that the statement was not correct.

12. We also rely upon the decision of Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Company v. Collector of C. Ex., Bombay* reported as [1995 \(78\) E.L.T. 401](#) (S.C.), wherein it has been held that the meaning of the word 'suppression' 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 course the 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. We also draw support from the decision of the Hon'ble Supreme Court in the case of *Cosmic Dye Chemical v. Collector of Central Excise,*

Bombay reported as [1995 \(75\) E.L.T. 721](#) (S.C.) = 1995 taxmann.com 926 (S.C.). It reads as follows :

*"6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground" for the purpose of the provision for invoking extended period of limitation. It was clarified that for going beyond the normal period of limitation while issuing show cause notice, mis-statement or suppression of fact must be wilful."*

13. Now reverting to the facts of the present case and from the above discussed law it becomes abundantly clear that *mens rea*/the intent to evade the tax liability is the core for invoking the extended period over the normal period. Appellants apparently have mentioned themselves to be under the *bona fide* belief of still not being liable under service tax. Based on the said belief only they have not disclosed the said disputed taxable value in ST-3 returns filed before the department. Their such *bona fide* belief stands corroborated from the fact that all the transactions related to the said disputed taxable value has been disclosed by the appellant in their books of account, profit & loss account and in Balance Sheet. If the appellant have intention to evade service tax they would not have disclosed the same.

14. We also find that the documents relied on by the authority for issuing Show Cause Notice are the balance-sheet, P & L Account, 26AS, Income Ledger, and ST-3 returns for the period from October 2014 to June 2017 and clearly, these are the statutory documents which have to be prepared and filed before the respective authorities within the time-frame prescribed under the respective statutes like the Income Tax Act or the Companies Act, or Service tax law as the case may be. Clearly, the disputed service income has been picked up from these very statutory documents and therefore, there cannot be any scope to allege suppression of the fact.

15. Accordingly, we hold that the extended period of limitation is not inviolable, in the facts and circumstances of the case. Since we decide this appeal only on the ground of limitation, we do not incline to address the merit or any other issues of this case, hence those issues are left open. The impugned order is set aside and appeal is allowed only on limitation with consequential reliefs to the appellant if any, as per law.

*(Pronounced in the open court on 16.01.2024)*

**RAMESH NAIR  
MEMBER (JUDICIAL)**

**RAJU  
MEMBER (TECHNICAL)**

Arpita