IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 45 OF 2021

The Principal Commissioner of CGST
& Central Excise, Mumbai East
Commissionerate, having office at
9th Floor, Lotus Info Centre,
Station Road, Parel (East),
Mumbai - 400 012. ... **APPELLANT**

V E R S U S

The Securities and Exchange Board
of India, A Board constituted
by an act of Parliament
Having office at SEBI BHAWAN,
Plot No.C4-A, 'G' Block,
Bandra - Kurla Complex,
Bandra (East), Mumbai-400 051. ... **RESPONDENT**

Mr. Vijay H. Kantharia with Mr. Padmakar S. Patkar, Advocate for Appellant.
Mr. Darius Shroff, Senior Advocate with Mr. Mihir Mody, Mr. Dhaval Patil & Mr. Arnav Misra i/b Mr. K. Ashar & Co., Advocates for Respondent.

CORAM : DHIRAJ SINGH THAKUR AND
VALMIKI SA MENEZES, JJ.

PRONOUNCED ON : 13/03/2023.

JUDGMENT : (PER VALMIKI SA MENEZES, J.) :

1. This is an appeal filed under Section 35 (G) of the Central Excise Act, 1944 at the behest of the Principal Commissioner of the Commissionerate of Goods and Services Tax

impugning the order dated 23/07/2020 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (CESTAT), West Zonal Bench, Mumbai allowing in Service Tax Appeal No.ST/ 88336/2018 at the behest of the respondent herein.

The impugned order of the CESTAT allowed the appeal of the respondent and set aside the order in original dated 02/05/2018, passed by the Principal Commissioner of the GST, Mumbai, East Commissionerate which has made a demand of service tax amounting to Rs.75,22,81,847/- for the period 1st July, 2012 to 31st March, 2015 under Section 73 (2) of the Finance Act, 1994, with a further demand of interest under Section 75 of the Finance Act, 1994 on the amount of service tax demanded, in addition to which penalty of Rs.75,22,81,847/- has been imposed on the respondent in terms of Section 78 of the Finance Act, 1994; the order dated 02/05/2018 of the Commissioner further imposed a penalty of Rs.10,000/- from the respondent for not filing proper returns under Section 70 of the Finance Act, 1994 and further confirmation of the demand of service tax from the respondent amounting to Rs.55,07,78,305/- for the period October, 2012 to September, 2013 under Section 73(2) of the Finance Act, 1994 along with interest under Section 75 of the said Act and further

penalty of Rs.10,000/- for not filing proper returns under Section 70 of that Act. It has also imposed penalty of Rs.5,50,77,830/- equivalent to 10 % of the sales tax amount in terms of provisions of Section 76 r/w Section 78 of the Finance Act, 1994.

2. The present appeal has been filed by the appellant on the proposed following substantial questions of law for our decision :-

i. Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the Respondent was discharging sovereign function ;

ii. Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the extended period of limitation was not applicable to the demand of Service Tax in the first Show Cause Notice dated 17/03/2016 ;

iii. Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in setting aside even the demand for normal period which is sustainable as per provisions of section 73(2A) of the Finance Act, 1994 ;

iv. Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the principles of Natural Justice was violated in the matter of the second Show Cause Notice dated 21/02/2018 ;

v. Whether in the facts and circumstances of the case, the Hon'ble Tribunal was justified in remanding back the second Show Cause Notice dated 21/02/2018 without considering that the same was issued as a

statement of demand under Section 73(1A) of Finance Act, 1994.

3. The facts that have led to the filing of present appeal are as under :-

a] With the insertion of Section 66 (3) in the Finance Act, 1994, w.e.f. 1st July, 2012, when a Negative Tax Regime was introduced, the Commissioner of Tax-I at Mumbai issued a letter dated 11/01/2013 in terms of Section 14 of the Central Excise Act, 1994 (Excise Act) seeking information / data from the respondent and alleging that the respondent was undertaking certain activities under the Securities and Exchange Board of India Act, 1992 (SEBI Act) in the course of which it was collecting fees from various entities under its control, and which appeared to the Commissioner to be taxable w.e.f. 1st July, 2012; similar request for data from the respondent was made by communication dated 28/03/2013 issued by the Commissioner of Service Tax-I, Mumbai.

b] In reply to the above communication, the respondent, on 03/07/2013 denied its liability to levy of service tax mainly on the contention that the respondent was performing regulatory functions under SEBI Act. The Respondent contended that on a

reading of Section 11, Section 14 and Section 25 of SEBI Act, the nature of the statutory functions of the respondent was not one in which it provided any service in terms of the Goods and Services Act and there was no quid pro quo or service provided for a fee, in relation to various entities required to be registered with the respondent under the SEBI Act. The further contention raised by the respondent in its communication, was that there was no element of contractual relationship in the nature where its activity was undertaken for a consideration, and such activity being statutory in nature and not for consideration or fee, it was not liable to levy Service Tax. It is further its contention that the fee received by the respondent being one of compulsory nature as mandated by its controlling statute, the SEBI Act, the respondent was neither liable to register itself as a service provider nor could any service tax be levied on the respondent.

The respondent by letter dated 17/12/2013 made a detailed representation to the Department of Revenue, Ministry of Finance, Government of India setting out its various contentions as stated above, which would entitled it to be exempted from the purview of service tax and requested the Department of Revenue to include the service of the respondent under the Negative List as

was done in the case of the Reserve Bank of India, it requested the Department to issue necessary circular / instructions / notification to exempt SEBI to avoid any ambiguity on the question of applicability of the service tax.

c] On 21/03/2014, the Commissioner issued yet another letter to the respondent alleging that the monthly turnover fees collected by the respondent was for the services provided to Stock Brokers, and since the services do not appear in the Negative List or exemption notification, such fees were taxable in the hands of the respondent for the last five years. It requesting the respondent to make payment of service tax on these amounts;

By its reply dated 10/04/2014, the respondent forwarded to the Commissioner its representations made to the concerned Ministry and by further reply dated 08/05/2014, the respondent reiterated its stand that it was not providing any service of a nature which was chargeable to tax.

d] Despite these replies, the Commissioner, by its letter dated 26/05/2014 requested the respondent to submit month-wise details of fees collected by it from July, 2012 to March, 2014;

by a summons issued under Section 14 of the Central Excise Act read with Section 83 of Chapter-IV of the Finance Act, issued on 09/03/2015, the Commissioner ordered the appearance of the respondent.

In the meanwhile, by Finance Act, 2015 Parliament inserted Sub-section 26(A) in Section 65 thereof, w.e.f. 14/04/2015, defining the word "Government" to mean and include any entity, whether statutory or otherwise, the accounts of which were not required to be kept in accordance with Article 150 of the Constitution of India or Rules made thereunder. It was the respondent's contention that under Section 15 of the SEBI Act, the respondent was required to maintain its account in such form as was prescribed by the Central Government in consultation with the Comptroller and Auditor General of India, and its accounts are in fact audited by the Comptroller and Auditor General of India; thus, from 14/05/2015 onwards, the functions of the respondent would fall within the Negative List specified under Section 66 (B) (a) of the Finance Act, 1994.

e] In reply to the aforementioned summons, the respondent, on 04/06/2015 provided the details of the fees

collected by it under the Statute from July, 2012 to December, 2014; on 07/09/2015, the Commissioner issued a demand for details of fees collected by the respondent from January, 2015 to June, 2015 along with a legal opinion, if any, which may have been obtained by the respondent on the question of taxability of the respondent's activities under Service Tax. Accordingly, the respondent submitted all the relevant details along with a legal opinion obtained by it, to the appellant.

f] On 17/03/2016, the Commissioner issued show cause notice (hereinafter referred to as "first notice") directing the respondent to show cause why service tax amounting to Rs.75,22,81,847/- for the period July, 2012 to March, 2015 under Section 73 of the Finance Act, 1994 r/w Rule 6 of Service Tax Rules, 1994, along with penalty under Section 76 of the Finance Act, 1994, interest applicable at rates under Section 75 thereof and penalty under Section 77 for failure to obtain registration, and also for penalty under Section 78 of the said Act for suppression of facts, should not be paid by the respondent.

g] On 12/01/2018, the respondent filed its reply to the first show cause notice and personal hearing was given to the respondent to that notice on the same day.

h] A second show cause notice dated 21/02/2018 (hereinafter referred to as "second notice") was issued to the respondent to show cause why service tax amounting to Rs.55,07,78,305/- for the period of April, 2015 to March, 2016 under Sections 73, 76, 75 and 77 should not be levied.

i] The respondent replied to the second notice on 07/04/2018. However, without giving the respondent any hearing on the second notice, the Commissioner passed his order dated 03/05/2018 in respect of both show cause notices, essentially holding the respondent liable to pay service tax for the period July, 2012 to 31/03/2016 along with penalties under Sections 77 and 78 of the Finance Act with interest under Section 75 of the said Act in respect of the second show cause notice. The Commissioner held the respondent liable to pay service tax for the period October, 2012 to September, 2013 along with penalty thereon in terms of Sections 76 and 77 of the Act.

The Commissioner also held that the invocation of the extended period of time for confirmation of demand under Section 73 (1) of the Finance Act was fully justified.

j] The order dated 03/05/2018 was challenged in terms of Section 86 of the Finance Act, 1994 before the CESTAT which has passed the order impugned in this appeal.

4. We have heard Shri Vijay Kantharia, learned counsel for the appellant and Shri Darius Shroff, learned Senior Counsel for the respondent and perused the relevant record, including the Memo of Appeal bearing No.ST/88336/2018 along with all its annexures before the CESTAT; we have also gone through the first and second show cause notice, replies filed by the respondent thereto and the entire correspondence on record of the original authority, Principal Commissioner of GST, Mumbai.

5. Shri Kantharia, learned counsel for the appellant basically raised two contentions before us, the first that the CESTAT has committed an error in holding that the respondent was discharging sovereign function and was therefore, exempt from payment of service tax; and his second contention is that CESTAT fell in error in holding that the extended period of limitation under Section 73 of the Finance Act, 1994 was not applicable to the demand of service tax on the first notice dated 17/03/2016. It is the contention of the appellant that the finding

of the Commissioner in the original order, that the respondent was well aware of its liability to pay service tax, and on the facts of the present case, has indulged in wilful suppression of facts, with an intent to evade payment of tax, and therefore, the extended period of limitation under Section 73 (1) of the Finance Act, 1994 had been correctly invoked by the original authority. It is, further the submission of the appellant that the Commissioner has correctly applied the judgment rendered by CESTAT in the case of **Star India Pvt. Ltd. Vrs. Commissioner of Central Excise, Thane-I**, reported in **2015 (038) STR 0884 TRI-Bom** to hold that the invocation of the extended period of limitation for confirmation of the demand was justified in the facts of this case.

6. Per contra, learned Senior Advocate Shri Darius Shroff took us through the scheme of the SEBI Act, more particularly through the definition of the word "fund" under Clause (d) of Section 1, Section 3, Section 11, Section 13, Section 14 and Section 15 of that Act to contend that SEBI was a statutory Body, empowered by the SEBI Act to collect certain fees as part of its funds, which its statutory function; that the fees collected were primarily for registration of entities which were required by the statute to register with SEBI prior to commencing any activities

which would be regulated by SEBI in terms of the provisions of that Act. He has further contended that the accounts of SEBI in terms of Section 15 of the SEBI Act are required, under that Statute, to be maintained in such form as may be prescribed by the Central Government in consultation with Controller and Auditor General of India, akin to the Department of Central Government and State Government or Union Territories and in accordance with Article 150 of the Constitution of India. As such, looking to the scheme of the SEBI Act and the statutory functions of SEBI thereunder, SEBI was performing a sovereign function, consequently, even though not specifically exempted under the Negative List, was not liable to service tax as claimed by the show cause notice.

It is further the contention of learned Shri Shroff that there was no element of quid pro quo in charging of fees by the respondent, since such fees levied in terms mandated by the Statute had no element of contractual relationship between various entities registered with the respondent, in exchange for a consideration such as service. It is his further contention that there is not a single reference in the show cause notices as to the acts or the manner in which the respondent has indulged in wilful

suppression or, fraud or any misstatement to the Department, to legally justify its demand beyond the period of limitation set in Section 73 of the Finance Act, 1994 or to invoke the extended period of limitation; he argues that the finding of the CESTAT which has considered all the material before the Commissioner, arriving at a conclusion that there was no suppression or misrepresentation by the respondent, can neither be termed as perverse or nor based on any erroneous reading of the factual record. It is further contended that finding that the invocation of the extended period of limitation in imposing penalty under Section 78 of the Finance Act, 1994 has no basis in any material before the Commissioner, thus the CESTAT has rightly reversed the order of the Commissioner which does not call for interference in this appeal.

The respondent has relied upon the following Judgments to buttress its contention that there was no wilful misstatement or suppression of facts for invocation of the extended limitation period;

a] 2015 SSC OnLine SC 1396
[Jayant Juneja Vrs. Commissioner of Central Excise, Jaipur]

b] (2007) 7 SCC 490.
[Commissioner of Central Excise, Mumbai-IV Vrs. Damnet Chemicals Pvt. Ltd. and others.]

c] (1995) 6 SCC 117
[Cosmic Dye Chemical Vrs. Collector of Central Excise, Bombay].

d] (1989) 2 SCC 127
[Collector of Central Excise, Hyderabad Vrs. M/s. Chempher Drugs and Liniments, Hyderabad].

7. On perusing the impugned order of the CESTAT, we note that though the respondent has raised grounds in its appeal before the Tribunal, that it being a statutory authority, and performing sovereign functions, it was not liable to pay tax, the Tribunal, at Paragraph Nos. 23, 24 and 25 of the Judgment has specifically refrained from ascertaining the legality of the claim raised by the respondent on this issue. It is thus, clear that CESTAT has refrained from arriving at any finding based upon the respondent's claim that it was performing a sovereign function or acting as Regulatory under the SEBI Act or on the contention that the nature of fees collected by it in terms of Section 14 of the Act were not chargeable to service tax. It is also evident that the Tribunal has refrained from considering whether the respondent was exempt from being registered with the Department based on its contention that it was a statutory authority, whose accounts were being maintained in such form as was prescribed by the Central Government and audited by the Comptroller and Auditor General of India. The Tribunal has decided the appeal on the sole

ground of whether the appellant was justified in invoking the extended period of limitation under Section 73 of the Finance Act, 1994 and imposing penalty in terms of Section 78 of that Act.

8. Section 73(1) of the Finance Act, 1994 reads as under :-

> "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-
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> a) fraud; or
>
> b) collusion; or
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> c) wilful mis-statement; or
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> d) suppression of facts; or
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> 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 his sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted.

> Explanation.- Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be."

9. A plain reading of this provision would reveal that where service tax has not been paid, notice is required to be served on the person chargeable to service tax within one year from the relevant date, which in the present case, according to first show cause notice would have comments on July, 2012. The first show cause notice would have therefore, on the face of it be barred by limitation prescribed under Sub-section (1) of Section 73.

The proviso to sub-section (1) of Section 73, however, allows for the extension of the period of limitation of one year upto five years, only in the event of the Assessee not paying service tax for reasons of fraud or collusion or wilful misrepresentation or suppression of facts or in contravention of any of the provisions of Chapter-V of the Finance Act, 1994.

10. In the present case, Paragraph Nos. 7 to 9 of the show cause notice dated 17/03/2016 refers to all the correspondence between the respondent and the Commissioner. However, it does not refer to any specific instances of fraud, collusion, misstatement

or suppression of facts indulged in by the respondent. At Paragraph No. 10 of the first show cause notice, the Department only states that it appears from the correspondence referred to therein that the respondent has wilfully suppressed facts from the Service Tax Department with an intention to evade payment of service tax. It does not specify any material particulars of how wilful misstatements or suppression of facts has been indulged in by the respondent or in what manner the acts of the respondent are wilful or with an aim to evade tax.

11. **The Commissioner of Central Excise Vrs. Damnet Chemicals Pvt. Ltd. and others** (supra) was a case decided by the Hon'ble Supreme Court on the provisions of Section 11-A(1) of the Central Excise Act which read as under :-

> **"Section 11A.** Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or [erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder], a Central Excise Officer may, within [one year] from the relevant date, serve notice on the person chargeable with the

duty which has not been levied or paid or which has been short-levied or short-paid or to whom the 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 duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, 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, by such person or his agent, the provisions of this sub-section shall have effect [as if] for the words [one year], the words 'five years' were substituted."

Section 11-A of the Central Excise Act is similar to the provisions of Section 73(1) of the Finance Act, 1994. In that, the grounds for extending the period of limitation provided for recovery of duty not paid by the Assessee on the basis of fraud, collusion or wilful misstatement or suppression of facts are pari materia with those under the Finance Act.

While considering the meaning of the words "wilful misstatement" and "suppression of facts" with intent to evade duty, the Hon'ble Supreme Court has held in Paragraph Nos.26, 27 and 28 of **Commissioner of Central Excise Vrs. Damnet Chemicals Pvt. Ltd. (supra)** as under :-

"26. In the circumstances, we find it difficult to hold that there has been conscious or deliberate withholding of information by the assessee. There has been no wilful misstatement much less any deliberate and wilful suppression of facts. It is settled law that in order to invoke the proviso to Section 11-A(1) a mere misstatement could not be enough. The requirement in law is that such misstatement or suppression of facts must be wilful. We do not propose to burden this judgment with various authoritative pronouncements except to refer the judgment of this Court in *Anand Nishikawa Co. Ltd. V. CCE* wherein this Court held : (SSC p. 759, para 27)

"27. ... 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 and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. *There must be some positive act from the side of the assessee to find wilful suppression."*

27. It is clear from the material available on record that the Excise Authorities had inspected the manufacture process, collected the necessary information and details from the respondent assessee and even collected the samples and sent for chemical

analysis. The authorities were aware of the tests and analysis reports of the products manufactured by the respondent assessee. The relevant facts were very much within the knowledge of the Department authorities. The Department did not make any attempt to lead any evidence that there was any wilful misstatement or suppression of facts with intent to evade payment of duty.

28. For the reasons aforesaid, we are of the view that the Tribunal did not commit any error in holding that the extended period of limitation was not available to the Department for initiating the recovery proceedings under Section 11-A(1) of the Act."

12. Again, in **Cosmic Dye Chemical** (supra), the Hon'ble Supreme Court has also considered a similar issue on the question of what constitutes fraud, collusion or wilful misstatement or suppression of facts for the purpose of invocation of the extension of period of limitation under section 11-A of the Excise Act, as quoted below :-

"5. The main limb of Section 11-A provides limitation of six months. In cases, where the duty is not levied or paid or short-levied or short-paid or erroneously refunded, it can be recovered by the appropriate officer within six months from the relevant date. (The

expression "relevant date" is defined in the section itself.) But the said period of six months gets extended to five years where such non-levy, short levy, etc. is "by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty ...."

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 misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words "misstatement 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 misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful."

13. In **Collector of Central Excise, Hyderabad Vrs. M/s.Chemphar Drugs and Liniments, Hyderabad** (supra), the Hon'ble Supreme Court held in Paragraph Nos.8 and 9 thus :-

"8. On the aforesaid view the Tribunal came to the conclusion that the demand raised on this for a period beyond 6 months was not maintainable.

9. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods

> which they manufactured at the relevant time. The Tribunal found that explanation was plausible, and also noted that the department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under T.I. 14-E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence."

14. From a reading of the decisions of the Hon'ble Supreme Court cited above, it would be incumbent upon the appellant to demonstrate from the correspondence / material on record or on the specific averments made in the first show cause notice, as to how the respondent has indulged in fraud, collusion or wilful misstatement or suppression of facts. In fact all disclosures as required by the earlier notice issued by the appellant were made by the respondent in its correspondence laid before the Appellant.

All that the Commissioner has done, in its order dated 03/05/2018 was to refer to the Judgment of the CESTAT in **Star India Pvt. Ltd** (supra) but has not discussed any of the material on record to arrive at a specific finding that the respondent had

indulged in any acts of fraud, suppression of facts or wilful misstatement.

On the other hand, the CESTAT has considered in detailed the material before the Commissioner and has arrived at a specific finding that from the disclosures made in the correspondence and the documents on record, no motive could be attributed to the respondent in any manner acting fraudulently or by making wilful statement or suppressing any facts. There is also a specific finding recorded by the CESTAT that there is no allegation in the first show cause notice or suppression of facts or misrepresentation by the respondent.

15. At Paragraph No. 28 of its Judgment, the CESTAT noticed that the issue of tax on the fees charged by the respondent was laid down in the correspondence with the Tax Administration as well as with various Government Authorities within a few months of the transition to the Negative List regime. It further records a finding of fact that after considering the record, the jurisdictional tax authority was cognizant of the non-payment and for the reasons for such non-payment by the respondent, well before the normal period of limitation had lapsed. It further records a finding that there was no justification for the delay on

the part of tax authorities in issuing the show cause notice when it was aware of the representation made by the respondent to the Ministry of Finance, which had in fact included bodies such as the respondent, in the amended provisions from the year 2015 onwards.

16. Having examined the entire correspondence on record, which has been produced before us along with record of the appeal filed by the respondent before the CESTAT, we are of the opinion that the finding of fact arrived at by the CESTAT to the effect that there was no suppression, misrepresentation or fraud committed by the respondent, to enable the appellant to invoke the extended limitation clause in Section 73 is proper and based upon the correct appreciation of the record. Accordingly, we conclude, that the substantial questions raised by the appellant in its appeal on the question of holding that the extended period of limitation was not applicable, do not arise in the present appeal, in view of the specific factual finding arrived at by the CESTAT.

The other substantial questions of law sought to be raised, as to whether the CESTAT was right in holding that the respondent was discharging sovereign function does not arise as the CESTAT has clearly refrained from giving its finding on that question. This is evident from reading of the contents of Paragraph

Nos.23, 24 and 25 of the impugned order, whereat, the CESTAT had recorded that it has withheld ascertainment of the legality of the claim made by the respondent on the question of whether it was exercising sovereign functions under the SEBI Act and therefore, not liable to pay service tax.

17. For the reasons cited above, we conclude that no substantial question of law arises for our determination in the present appeal which is hereby dismissed. No costs.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**

Choulwar