

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 40322/2016

(Arising out of Order in Appeal No. 043/2015 dated 26.11.2015 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore @ Madurai)

**The Tuticorin Sri Subramanya Swami
Mahamai Paribalana Sangam**
15B, Sivankovil Street
Tuticorin – 628 002.

Appellant

Vs.

Commissioner of GST & Central Excise
Central Revenue Building
No. 4, Lal Bahadur Shastri Road
Bibikulam, Madurai – 625 002.

Respondent

APPEARANCE:

Shri R. Swaranavel, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative
for the Respondent

CORAM

**Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)**

FINAL ORDER NO. 40603/2026

Date of Hearing: 30.01.2026
Date of Decision: 26.05.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 043/2015 dated 26.11.2015 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore @ Madurai (impugned order).

2. Brief facts of the case are that the appellant is a society registered under Tamil Nadu Societies Registration Act. It statedly owns immovable properties at Tuticorin on which shops have been constructed and rented out for commercial purpose. It appeared to the department that the said service rendered by the appellant is amenable

to Service Tax under 'Renting of Immovable Property Service' of the Finance Act 1994 (**FA 1994**). However, it was alleged that the appellant had not registered with the department nor paid the Service Tax due for the period from June 2007 to March 2014. Hence two Show Cause Notices (**SCN**), dated 13.5.2014 and 13.05.2014 were issued for the period from 01.06.2007 to 31.03.2012 and April 2012 to March 2014, respectively. After due process of law, the Ld. Adjudicating Authority confirmed the demand of Rs.21,69,612/- (Rs.12,75,045/- + Rs.8,94,567/-) for the two periods along with interest and imposed equal penalty. The appeal preferred by the appellant before the First Appellate Authority was partly allowed by extending the benefit of Notification No. 24/2007-ST dated 22.5.2007 and 29/2012-ST dated 20.6.2012 and was remanded to the lower authority for quantification purpose. Dis-satisfied by the said Order the Appellant is before us in the present appeal.

3. The learned Advocate Shri R. Swaranavel appeared for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative appeared for the respondent.

Submissions made by the Appellant

3.1 Shri R. Swaranavel the Ld. Advocate for the appellant submitted as follows:

A. They are a society registered under the Tamil Nadu Societies Registration Act, 1975, established to conduct religious and charitable activities including poojas, festival services for devotees, and support to poor students, for which they constructed and rented shops situated within the precincts of the Sri Vinayaga temple to generate funds. The Order of the Tribunal in DAKSHINA KANNADA MOGAVEERA MAHAJANA

SANGHA (2010 (17) STR 258, Tri. Bang.), recognised that where a temple and surrounding complex are enclosed within a boundary, the entire area can be treated as part of the temple precincts, supporting exemption claims.

B. Proceedings were initiated for non-payment of service tax on such rental income through two show cause notices covering the period from 01.06.2007 to 31.03.2014, a substantial portion of which falls prior to 01.07.2012, when the relevant taxing provisions were not in force, rendering the demand unsustainable.

C. In any event, the appellants claim exemption on the ground that the properties belong to a religious body and the income is wholly applied for religious and charitable purposes; further, Notification No. 25/2012-Service Tax dated 20.06.2012, SI. No. 5(a), exempts renting of precincts of a religious place, and as the shops are within the temple complex, the activity remains non-taxable even thereafter.

D. The appellants acted under a bona fide belief regarding non-liability, without suppression of facts, as all transactions were duly recorded in their accounts, and subsequently paid tax, interest, and reduced penalty upon adjudication, entitling them to relief from penalties and refund. In *ISPAT INDUSTRIES LTD v CCE* (2006 (199) ELT 509, Tri. Mumbai), the Tribunal held that the extended limitation period cannot be invoked merely because the assessee interpreted the law differently from the department; absence of deliberate misinterpretation or intent is crucial.

E. After receipt of the order-in-original the appellants paid the entire tax with appropriate interest and 25% of penalty to prove their bonafide and such amount is liable to be refunded.

F. The invocation of the extended limitation period is challenged as untenable in the absence of wilful suppression, supported by judicial precedents, while the imposition of multiple penalties, including under Sections 76 and 78 and again in subsequent notices, is argued to be legally unsustainable. As per the judgment of the Apex Court in M/s. JAIPRAKASH INDUSTRIES LTD (2002 (146) ELT 481, SC), mere failure or negligence in obtaining registration or paying duty does not justify invoking the extended period of limitation without evidence of willful suppression. He further relied on the following decisions:

- i. UNIWORTH TEXTILES LTD. v CCE-2013 (288) E.L.T. 161 (S.C.)
- ii. STEELCAST LTD. v CCE 2009 (14) S.T.R. 129 (Tri. Ahmd.) maintained in CCE V STEEL CAST LTD. 2011 (21) S.T.R. 500 (Guj.)
- iii. HINDALCO INDUSTRIES LTD. v CCE-2003 (161) E.L.T. 346 (Tri. - Del.)
- iv. SUBHASH KHANDELWAL & SONS v CCE-2011 (24) S.T.R. 461 (Tri. -Del.)
- v. PAHWA CHEMICALS PRIVATE LIMITED v CCE-2005 (189) E.L.T. 257 (SC)

In respect of second SCN invocation of extended period is not sustainable as held by the Hon'ble Apex Court in NIZAM SUGAR FACTORY v CCE-2006 (197) E.L.T. 465 (S.C.).

G. As no service tax was collected, the receipts should be treated as cum-tax value. He relied on CCE Vs ADVANTAGE MEDIA CONSULTANT (2008 (10) STR 449, Tri. Kolkata; affirmed by SC 2009 (14) STR J49), which laid down that where service tax is not separately collected, the consideration received should be treated as cum-tax value for computing tax liability.

H. Overall, the appellants emphasise their non-profit, charitable character and lack of intent to evade tax, seeking setting aside of penalties and consequential relief. He relied on the following decision in support of his submissions.

- i. ANKLESHWAR TALUKA ONGC LAND LOOSERS TRAVELLES CO. OP. v CCE-2013 (29) S.T.R. 352 (Guj.)
- ii. NOBLE HOSPITAL & RESEARCH CENTRE V CCE-2017 (5) G.S.T.L. 408 (Tri. Mumbai)
- iii. JUMERA PROMOTORS & DEVELOPERS PVT. LTD. v CCE-2017 (5) G.S.T.L. 266 (Tri. - Del.)
- iv. RAGHUVIR MOTORS AGENCIES PVT. LTD. v CCE, CUS. & ST-2017 (4) G.S.T.L. 57 (Tri. - Mumbai)

The Ld. Advocate prayed that in light of the submissions the impugned order may be set aside with consequential relief.

Submissions made by the Respondent-Revenue

3.2 Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative who appeared on behalf of Revenue, took us through the OIO and the impugned order and submitted:

A. The appellant had admitted their tax liability and only raised three issues before the Commissioner (Appeals) as seen at para 07 and 10 of the impugned order, which was partly allowed. These are:

- (i) Entitlement for cum-tax benefit as per Section 67(2) of the Finance Act 1994. The prayer was rejected.
- (ii) Exclusion of value of taxable service to the extent of Municipal Taxes paid by them from the purview of Service Tax, in terms of Notification No. 24/2007-ST dated 22.05.2007 and 29/2012-ST dated 20.06.2012. The prayer was allowed.

(iii) Waiver of penalty under Section 80 of the Finance Act 1994.

The prayer was rejected.

The same cannot be expanded to include other issues like time bar at this stage.

B. The appellant-society comprises members of a specific family within a particular community and was not a religious or charitable institution but existed primarily to manage its properties, with membership restricted to that family group.

C. Under Section 67(2) of the Finance Act, 1994, a gross amount can be treated as cum-tax only when there is clear evidence that it includes service tax, which was absent in this case. Judicial precedents consistently hold that, in the absence of explicit indication in invoices or supporting documents, cum-tax benefit cannot be extended.

D. Furthermore, the appellant admitted its tax liability only at the personal hearing stage, having earlier claimed exemption under Notification No. 25/2012-ST. This conduct was viewed as deliberate non-payment based on incorrect interpretation of the law, and case law also establishes that cum-tax benefit is not available in cases involving intentional evasion. Accordingly, the appellant's claim for cum-tax benefit was rightly rejected.

E. Penalty under section 76 and 78 of FA 1994 were made mutually exclusive only w.e.f. 10.05.2008 as per the amendment made to the Finance Act hence there is no lacunae in imposing both the penalties for the earlier period and excluding the same after the amendment was made.

F. The payment of duty with interest and 25% penalty as claimed by the appellant requires verification.

G. The matter was remanded by the First Appellate Authority after examining the prayer made by the Appellant and now the same cannot be appealed against on the question of time bar and exemption benefit as a charitable trust, which is a mixed question of fact and law at the Second Appellate Stage.

The Ld. A.R. prayed that the appeal may be rejected.

Analysis

4. We have heard the parties to the dispute and have perused the appeals. The Appellant's '**PRAYER**' at para 19 of the Appeal Memorandum is reproduced below:

"19. In view of what has been stated herein above the appellants pray that:

i. The part of the impugned order which denied cum tax benefit and confirmed the penalty imposed may please be set aside as null and void with consequential relief

ii. They may be heard in person before the case is decided

iii. They may be permitted to add / amend / annul any of the grounds at any time in future or in any case at the time of personal hearing."

A 'Prayer' on the issue of time-bar or on the taxability of the service itself, are conspicuous by its absence. Further in response to the question at Sl. No. 24 of FORM ST-3, pertaining to the 'Relief claimed in the Appeal' it is stated, "To set aside the part of the impugned Order passed by the Commissioner of Central Excise (Appeals-i), Coimbatore by which cum tax benefit was denied and imposition of penalty was upheld with consequential relief". In fact, it is recorded by the First Appellate Authority that the appellant has admitted their duty liability and have abandoned their claim for exemption as per Notification

25/2012-ST and now in their Appeal Memorandum the appellant claims to have paid the duty, interest and 25% of the penalty imposed as provided for in law. No Miscellaneous Application has been filed by the Appellant to add / amend / annul any of the grounds stated above. The issue of exigibility to tax as a charitable institution, was never raised before the Authorities below, and cannot be answered at this stage. The question then arises as to whether the issue of time-bar and non-exigibility to tax can be raised at the Bar.

5. It would be helpful to reproduce the relevant Rules governing the procedure as set out in the CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982 [**CESTAT Rules, 1982**], below:

RULE 10. — Grounds which may be taken in appeal. - The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any grounds not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or those taken by leave of the Tribunal under these rules :

Provided that the Tribunal shall not rest its decision on any other grounds unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

RULE 11. Rejection or amendment of memorandum of appeal. —

(1) The Tribunal may, in its discretion, on sufficient cause being shown, accept a memorandum of appeal which is not accompanied by the documents referred to in rule 9 or is in any other way defective, and in such cases may require the appellant to file such documents or, as the case may be, make the necessary amendments within such time as it may allow.

The Tribunal may reject the memorandum of appeal (2) referred to in sub-rule (1), if the documents referred to therein are not produced, or the amendments are not made, within the time-limit allowed.

On representation of any memorandum of appeal after (3) making the necessary amendments referred to in sub-rule

(1), the memorandum of appeal shall be signed and dated by the officer competent to make an the endorsement under rule 7.

The President may in his discretion authorise any [(4) officer of the Tribunal to return any memo of appeal, application or document(s) which is/are not in accordance with the [Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982]. The Officer so authorised may, however, allow the documents to be refiled after removal of the defects in the specified time.

On representation the Bench concerned may in its discretion either accept the memorandum in terms of 11(1) or reject the same in terms of 11(2) but the appeal/application may not be restored to its original number unless the Bench allows it to be so restored on sufficient cause being shown.]

5.1 As per Rule 10 of the CESTAT Rules, 1982 an appellant may only argue grounds stated in the appeal memorandum unless the Tribunal permits otherwise. It would normally not be expected, for the Tribunal to make out a case in favour of the appellant, which they had never canvassed in their appeal memorandum and which the other side was not required to counter. In **Messrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar** [AIR 1953 SC 235], the Apex Court held at para 29, as under:

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. **Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.**"

(emphasis added)

5.2 Written submissions or synopsis submitted at the time of oral hearing or later as permitted by the Tribunal are documents submitted to the Tribunal which merely summarise arguments and give details of relevant facts and issues of law raised etc. They serve as an aide-mémoire and cannot replace the appeal memorandum.

5.3 The Hon'ble Supreme Court has in its judgment in **Chittoori Subbanna Vs Kudappa Subbanna** (AIR 1965 SC 1325) recognized that it is possible to include additional grounds in the grounds of appeal **by moving a separate application for permission before the appropriate forum for its consideration.** No such leave has been sought nor has been granted by us.

5.4 However as per **Article 265** of the Constitution no tax shall be levied or collected except by authority of law. Since the issue pertains to the exigibility of a service to Tax, it would be just and proper for the issue being examined. The Apex Court while dealing with the role of appellate courts in **RAMAKANT AMBALAL CHOKSI Vs HARISH AMBALAL CHOKSI & OTHERS** [2024 INSC 913 / CIVIL APPEAL NO. 13001 OF 2024, Dated: 22.11.2024], examined the hierarchical functioning of the trial court and the appellate court in a criminal trial and held:

“30. This Court in **Shyam Sel & Power Ltd. Vs Shyam Steel Industries Ltd.** reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. **It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.**

31. This Court in **Monsanto Technology LLC Vs Nuziveedu Seeds Ltd.** reported in (2019) 3 SCC 381, observed that the **appellate court should not usurp the jurisdiction of the Single Judge** to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.”

(emphasis added)

We feel that the principle is applicable to quasi-judicial authorities also.

This issue would hence merit being examined by the Original Authority.

6. However, the other questions mentioned in the 'prayer' of the appellant, needs to be examined so as to prevent the appellant from travelling back to the Tribunal at a later stage, if required, to unsettle legal rights and issues that have been finalized in the impugned order.

6.1 The question of time-bar is critical when raised before any forum and stands on an entirely different footing. It must be examined by an authority deciding a matter, when it comes to its knowledge or is perceived, even if limitation has not been set up as a defence by the appellant. As per Rule 10 of the CESTAT Rules, 1982, the Tribunal in deciding the appeal, is not confined to the grounds set forth in the memorandum of appeal or those taken by leave of the Tribunal. The Apex Court in **Noharlal Verma Vs Distt. Coop. Central Bank Ltd.** [(2008) 14 SCC 445 / AIR 2009 SUPREME COURT 664], while examining the issue of limitation held as under:

"27. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an Adjudicating Authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

28. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under;

(3) Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

29. Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, **appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up.** In other words, even in absence of such plea by the defendant, respondent or opponent, the Court or Authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation."

(emphasis added)

[Also see: **State Bank of India Vs B.S. Agricultural Industries** – AIR 2009 SUPREME COURT 2210 / **Commissioner Of Customs, Mumbai Vs M/S B.V. Jewels And Ors** -AIR 2005 SUPREME COURT 1231 / **Commissioner Customs, Central Excise & Service Tax Vs M/S Monsanto Manufacturer Pvt. Ltd.** [2014 (35) STR 177 (ALL) / **E.T.A. General Pvt. Ltd. Vs Additional Commissioner of C. Ex., Chennai** - 2016 (44) S.T.R. 409 Mad.]

7. It has been held in several judgments of the Apex Court, including **Town Municipal Council, Athani Vs Presiding Officer, Labour Court, Hubli** (1970) 1 SCR 51 / (AIR 1969 SC 1335); **Nityananda M. Joshi Vs Life Insurance Corporation of India** (1970) 1 SCR 396 / (AIR 1970 SC 209); and **Sushila Devi Vs Ramanandan Prasad** (1976) 2 SCR 845 : (AIR 1976 SC 177), that the provisions of the Limitation Act, 1963 do not apply to quasi-judicial authorities such as tribunals or executive authorities which are not “courts.” However, where a special law, such as the Finance Act, 1994, is silent regarding a particular aspect—for instance, the implication of limitation on jurisdiction or at the time of adjudication of issues on merits—which is specifically dealt with by the general law, the provisions of the general law would apply. This principle has been encapsulated by the Hon’ble Supreme Court in **Mirza Iqbal Hussain Vs State of U.P.** [AIR 1983 SC 60 / 1983 SCC (Cri) 111].

8. The legal position further remains that limitation is a jurisdictional issue that may be raised at any stage of the dispute resolution process. Jurisdiction refers to the power of an authority to hear and decide a dispute. It cannot be conferred by the consent of the parties and must be examined at the threshold. A decision rendered

without jurisdiction is *coram non judice*, void, and a nullity, having no legal effect. [See: **Kiran Singh Vs Chaman Paswan** - AIR 1954 SC 340; **Chief Justice of Andhra Pradesh and Another Vs L.V.A. Dikshitulu and Others** - AIR 1979 SC 193; **Sushil Kumar Mehta Vs Govind Ram Bohra** - 1990 (1) SCC 193; **MD Army Welfare Housing Organisation Vs Sumangal Services (P) Ltd.** (2004) 8 SCC 619]. Accordingly, we proceed to examine the jurisdictional issue of time bar in the present appeal.

9. The SCN dated 18.10.2012 pertains to the period from 01.06.2007 to 31.03.2012, as quantified in paragraph 7 of the SCN, demanding duty under the proviso to Section 73(1) of the Finance Act, 1994. As per paragraph 14 of the OIO dated 31.12.2014, the SCN was received by the appellant on 19.10.2012. The SCN dated May 2014 covers the period from April 2012 to March 2014 under Section 73(1) *ibid*. The proviso to the section has not been invoked, contrary to the claim made by the appellant at the Bar.

10. Without going into the merits of the issue, we find that a portion of the SCN dated 18.10.2012 falls beyond the extended period, and if the charge is sustained, the demand would require reworking. Similarly, a part of the demand for the normal period, as per the SCN dated May 2014, appears to be beyond the prescribed time limit and may also require re-quantification. However none of the SCN's are completely barred by limitation and hence the question of a lack of jurisdiction does not arise and the appeal can be examined on merits.

11. We hence proceed to examine the issues raised in the appellant's prayer, namely, the grant of cum-tax benefit and the setting aside of the penalty imposed. **In assessment proceedings, the primary**

concern is the correct assessment of tax as authorised by law, i.e., the proper quantification and computation of the total tax due under the statute. In contrast, penalty proceedings focus on the conduct of the assessee. We first examine the assessment carried out allegedly without granting the benefit of cum-tax.

12. As regards the appellant's request for the grant of cum-tax benefit while calculating the duty payable, it is incumbent upon the Revenue to establish that the appellant had collected tax separately but failed to pay it to the Government, or that, after the demand was raised, the appellant recovered the same from the recipient of the service. That is not the case here. There is also nothing on record to suggest that the consideration received was not cum-duty. Accordingly, we hold that where consideration is received for services rendered, such consideration is deemed to be inclusive of service tax, and the appellant is entitled to the benefit of cum-tax while determining the taxable value. Moreover, Section 67(2) of the Finance Act, 1994 provides that where the gross amount charged is inclusive of service tax, the value of the taxable service shall be the amount which, after adding service tax, equals the gross amount charged. A coordinate Bench has taken a similar view in **CCE, Patna Vs Advantage Media Consultant**, [2008 (10) STR 449 (Tri.-Kolkata)].

Relevant portion is reproduced below:

3. Service tax is an indirect tax. As per this system of taxation, tax borne by the consumer of goods/services is collected by the assessee (manufacturer/service provider) and remitted to the Government. **When the amount is collected for the provision of services, the total compensation received should be treated as inclusive of service tax due to be paid by the ultimate customer of the services unless service tax is also paid by the customer separately. So considered, when no tax is collected separately, the gross amount has to be**

adopted to quantify the tax liability treating it as value of taxable service plus service tax payable. We find that this principle has been legislated in the following terms with effect from 18-4-2006 in Section 67(2) of the Finance Act, 1994 as amended :

“67(2). Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.”

4. This principle has all along been relevant and had to be applied. In the circumstances, we find no reason to interfere with the impugned order and we reject both the appeals filed by the Revenue.

(emphasis added)

13. We next examine the conduct of the appellant in the context of penalty proceedings under Section 78 of the Finance Act, 1994. This requires an assessment of whether the non-payment of duty was occasioned by blameworthy conduct on the part of the appellant. The period in question is from 01.06.2007 to March 2014. The relevant portion of Section 78, as it stood at the material time, is reproduced below:

“78. **Penalty for suppressing etc. of value of taxable services**

(1) 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 misstatement; or
- (d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder **with the intent to evade payment of service tax**, the person, liable to pay such service tax or erroneous refund, as determined under subsection (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, **which shall be equal to the amount of service tax** so not levied or paid or short-levied or short-paid or erroneously refunded. . . .”

(emphasis added)

14. For invoking Section 78, it must be established that the duty in question was short-levied or short-paid for the stated reasons, with the intent to evade payment of service tax. The law, as it has evolved, recognises that mere non-payment of service tax is not equivalent to collusion, wilful misstatement, or suppression of facts; the intention to evade payment must also be clearly established. The judgment of the Hon'ble Supreme Court in **Easland Combines, Coimbatore Vs Collector of Central Excise, Coimbatore** [(2003) 3 SCC 410 = 2003 (152) E.L.T. 39 (S.C.)], though rendered in the context of Central Excise law, has been applied in Service Tax matters as well.

"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. **This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.**"

(emphasis added)

In **Uniworth Textiles Ltd. Vs Commissioner of Central Excise, Raipur** [2013 (288) E.L.T. 161 (S.C.)], the Apex Court held:

"22. We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or misstatement. **The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant** by gauging its actions, which is an indication of one's state of mind. **Black's Law Dictionary**, Sixth Edition (pp 1599) defines "willful" in the following manner :-

"Willful. Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass...

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..."

(emphasis added)

Moreover, the severity of the penalty under Section 78 indicates that the conduct in question must be of a serious and blameworthy nature, involving a conscious and deliberate intent to evade payment of tax. In the present case, no such allegation is discernible from the SCN. The mere detection of short payment during a visit by officers of the Divisional Preventive Unit, in the absence of any corroborative evidence, cannot ipso facto lead to the conclusion that the non-payment was wilful or with an intent to evade tax.

14.1 Accordingly, we are of the considered view that the imposition of penalty under Section 78 is unsustainable and is liable to be set aside. Further, since the very same ingredients—namely suppression of facts, wilful misstatement, or intent to evade—are essential for invoking the extended period of limitation, the demand raised beyond the normal period cannot be upheld. Consequently, the demand must be restricted to the normal period alone.

15. Considering the foregoing discussion, we deem it appropriate to set aside the impugned order and remand the appeal to the file of the Original Authority with the following directions:

(i) The claim of the appellant for exemption under Notification No. 25/2012–Service Tax dated 20.06.2012, should be duly examined in accordance with law.

(ii) Due consideration shall also be given to CBEC Circular No. 200/10/2016–Service Tax dated 06.09.2016 while adjudicating the matter.

In the event that the service is found liable to tax:

(a) The demand arising from both the SCNs shall be confined to the normal period of limitation only.

(b) Apart from the exclusion of value of taxable service to the extent of Municipal Taxes paid by them from the purview of Service Tax, in terms of Notification No. 24/2007-ST dated 22.05.2007 and 29/2012-ST dated 20.06.2012, permitted by the Commissioner (Appeals), the benefit of cum-duty valuation shall also be extended while computing the tax liability.

The Original Authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state its case both orally and in writing if it so wishes, before issuing a speaking order in the matter. The appellant should also co-operate with the Original Authority in completing the process expeditiously and in any case within ninety days of receipt of this order. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of in the aforesaid terms.

(Order pronounced in open court on 26.05.2026)

(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Rex

Per AJAYAN T.V.

16. I have carefully gone through the order recorded by my Learned Brother Shri. M. Ajit Kumar, Member (Technical) and I am in broad agreement with the conclusions arrived at by my Ld. Brother in his decision and concur with the final outcome and directions issued. However, I would respectfully express some reservation with regard to certain portions of the analysis.

17. A perusal of the appeal paper book, particularly the grounds set out under paras-B(iii) and B(iv), indicates that the appellant has, inter alia, contended that the allegation of having knowingly evaded payment of tax by misinterpreting the provisions of the Act—so as to justify invocation of the extended period—is not sustainable in law. It has also been urged that mere non-registration or non-payment of tax, by itself, does not warrant invocation of the extended period.

18. These grounds, as well as the others urged, when read in conjunction with the prayer and verification, which have been subscribed to by the appellant, appear to be limited in their articulation. Probably for want of legal guidance at that stage, the relief sought in the appeal is, in essence, confined to the grant of cum-tax benefit and to the setting aside of the penalty imposed. Nevertheless, the Ld. Advocate for the appellant had made his submissions at the bar, as recorded in para 3.1 of my Ld. Brother's decision, heard by us unquestioned, and has sought remand for extending the benefits as prayed for.

19. In these circumstances, it appears to me that the discussion contained in paragraphs 4 to 10 may not be strictly necessary for the determination of the issues arising from the appeal, having regard to

the grounds of appeal urged read with the scope of the relief sought and needless to say, the powers inherent in the Tribunal to grant relief as per the submissions at the bar and the grounds urged.

20. At the same time, I am in agreement with the reasoning and findings recorded in paragraphs 11 to 14.1. I also concur with the ultimate conclusion and the directions issued in paragraph 15.

Sd/-
(AJAYAN T.V.)
Member (Judicial)

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