

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 1

Service Tax Appeal No. 52711 of 2015

(Arising out of Order-in-Appeal No. 99/SLM/ST/JPR-I/2014 dated 31.12.2014 passed by the Commissioner (Appeals), Central Excise, Jaipur-I)

M/s National Refrigeration

Near Head Post Office,
Jatiya Bazar,
Sikar (Rajasthan)-332001.

Appellant

VERSUS

**Commissioner of Central Excise,
Jaipur-I**

Respondent

Appearance

Shri Bipin Garg & Ms. Kainaat, Advocates – for the Appellant

Shri Rajeev Kapoor, Authorized Representative – for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

**DATE OF HEARING : 09/12/2022
DATE OF DECISION : 13/04/2023**

Final Order No. 50484/2023

P.V. Subba Rao:

M/s National Refrigeration, Sikar (Rajasthan) ¹ filed this appeal to assail the order in appeal dated 31.12.2014² whereby the order in original dated 28.03.2011 passed by the Assistant Commissioner was upheld and the appellant's appeal was rejected.

2. The appellant was registered with the Service Tax Department were providing maintenance or repair services. A show cause notice dated 12.01.2007 was issued to the appellant

1 the appellant
2 the impugned order

demanding service tax of Rs. 47,696/- along with interest under Section 73 and 75 of the Chapter V of the Finance Act, 1994³. Penalties were also proposed under Section 77 and 78. After following due process, the Assistant Commissioner passed the order in original. The operative part of which is as follows :

- (1) I confirm the demand of Service Tax amounting to Rs. 47,696/- and order for recovery of the same from the service provider under provisions of Section 73 of the Finance Act, 1994;
- (2) I order for recovery of interest at specified rate from the service provider on the amount of service tax confirmed above, under Section 75 of the Finance Act, 1994;
- (3) I do not impose penalty under Section 76 of the Finance Act, 1994 on them as per power conferred upon me under Section 80 of the Finance Act, 1994;
- (4) I impose a penalty of Rs.1000/- under Section 77 of the Finance Act, 1994 on the service provider;
- (5) I impose a penalty upon the service provider, which is equivalent to the amount of Service Tax confirmed of Rs. 47,696/-under Section 78 of the Finance Act, 1994;

However, the service provider may avail the benefit of payment of 25% of the penalty imposed on them under Section 78 of the Finance Act, 1994, provided the said Service Tax amount confirmed under Section 73 of the Finance Act, 1994 and the interest thereon is paid within thirty days from the date of communication of this order.

- (6) I also order the service provider to file the Service Tax-3 Returns for the half years ending on 30.09.2003, 31.03.2004, 30.09.2004, 31.03.2005, 30.09.2005, 31.03.2006 and 30.09.2004."

3. Aggrieved, the appellant appealed to the Commissioner (Appeals), who confirmed the order in original. Hence this appeal.

4. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records.

The grounds of this appeal are as follows:

- (i) The impugned order was passed without consideration of the facts available on record is arbitrary;
- (ii) The appellant did not suppress the facts on the department. The department came to the knowledge of the services on the appellant's own record.
- (iii) There can be no suppression of facts which are not required to be disclosed. The appellant was not required to disclose anything to the department regarding its business activities and it was only the case of failure;
- (iv) Show cause notice relied upon the Income Tax returns, the appellant which is a public document filed with the Income Tax department;
- (v) No penalty is imposable because the appellant had not suppressed any facts.

5. Learned counsel for the appellant reiterated the above submissions and prayed that the appeal may be allowed and the impugned order may be set aside.

6. Learned authorised representative for the Revenue supports the impugned order.

7. The only issue pressed before us by the appellant is that there was no suppression of facts and hence extended period of limitation could not have been invoked as the period involved is July 2003 to July 2004 and the show cause notice was issued on 12.01.2007. On the same ground, the appellant also contested that penalty should not have been imposed. The appellant does

not dispute that it was provided maintenance and repair services during the period.

8. We find that the original authority and the Commissioner (Appeals) have dealt with this issue of suppression of facts at length. It is recorded that the appellant submitted an application for registration and obtained registration on 24.08.2004. Even after obtaining registration, the appellant had not followed the procedure of service tax laws and had not filed periodical returns despite the jurisdictional Superintendent repeatedly advising and requesting them to follow the procedure and providing sufficient time for the appellant to submit the ST-3 returns and pay the tax which was due. However, the appellant had, on one or another pretext avoided submitting the returns and hence it was concluded that the appellant had wilfully evaded paying service tax.

9. It was further recorded that non-submission of account of transactions despite being provided sufficient time and enough opportunities shows the intention to evade payment of service tax. As the appellant had not provided the value of the services provided, best judgment assessment was made by the Assistant Commissioner based on the information which could collect from the Income Tax department regarding the amounts received by the appellant.

10. The intention to evade payment of service tax and suppression of facts needs to be determined based on the evidence available on records. As long as the assessee is registered and continues to file returns as required and supplies information

sought by the officers, nothing more is required from the assessee. The assessee is required to self assess its service tax, and the officer is required to carry out the scrutiny of the returns if filed or otherwise make best judgement assessment. The appellant had taken service tax registration and admittedly it had not filed any ST-3 returns. Even if the appellant was under the impression that it was not required to file returns or pay tax, there can be no justification whatsoever for the appellant to not reply to or provide information which is sought by the officers. Since the appellant had not supplied the information despite repeated reminders from the Range Superintendent, the Assistant Commissioner did what was best possible under the circumstances. He obtained details of the amounts received by the appellant from the Income Tax office and made an assessment. Under these circumstances, we find that the lower authorities were correct in concluding that the appellant had intention to evade payment of service tax and had suppressed providing the information. For the same reason, we find no reason to interfere with the penalties imposed as well.

11. In view of the above, the appeal is dismissed and the impugned order is upheld.

(Pronounced in open Court on 13/04/2023)

(Justice Dilip Gupta)
President

(P.V. Subba Rao)
Member (Technical)

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