CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70885 of 2016

(Arising out of Order-In-Original No AGA-EXCUS-000-COM-0008-16-17, dated 14/06/2016 passed by Commissioner, Customs, Central Excise & Service Tax, Agra)

M/s Build Age Construction **.....Appellant**
(86, Baldev Puri, Mahali Road,
Mathura, Uttar Pradesh 281001)

VERSUS

Commissioner of Service Tax, Agra **....Respondent**
(113/4 Sanjay Place, Agra,
Uttar Pradesh 282002)

APPEARANCE:

Shri Sanjay Kumar, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70363/2024

DATE OF HEARING : 28.02.2024
DATE OF DECISION : 27.06.2024

SANJIV SRIVASTAVA:

This appeal is directed against order in original No AGA-EXCUS-000-COM-0008-16-17 dated 14.06.2016 of the Commissioner Customs Central Excise and Service Tax Agra. By the impugned order following has been held:

"ORDER

1. *I hereby confirm the demand of Service Tax amounting to Rs 36,44,549.00 (Rupees Thirty Six Lakh Forty Four Thousand Five Hundred and Forty Nine only) against noticee under Section 73 (1) of the Finance Act, 1994,*

alongwith interest at applicable rates under Section 75 o the Act. I drop rest of the demand;

2. *I also order to appropriate the service tax amounting to Rs 62,507.00 (Rupees Sixty Two Thousand Five Hundred and Seven only) deposited by the noticee against the above confirmed demand;*
3. *I also impose a penalty of Rs 36,44,549.00 (Rupees Thirty Six Lakh Forty Four Thousand Five Hundred and Forty Nine only) upon the noticee under Section 78 of the Finance Act, 1994;*
4. *I confirm the demand of late fee amounting to Rs 2,20,000 (Rupees Two Lakh Twenty Thousand only) from the noticee under Rule 7C of the Service Tax Rules, 1994,*
5. *I also impose a penalty of Rs 20,000.00 (Rupees Twenty Thousand only) upon the noticee under Section 77(1)(a), 77(1)(b) and 77 (2) of the Finance Act, 1994*

2.1 Appellant is registered with and is providing/ receiving services under taxable category of "Work Contract Services" and "Legal Consultancy Services"

2.2 Investigations undertaken revealed that appellant had not paid service tax on the services provided by them to M/s Amar Nath Ashram Trust, UP State Construction and Infrastructure Development Corporation Ltd, Bulandshahar, Thakur Giriraj Ji Maharaj Trust, Govardhan, Jal Nigam, Mathura, Saint Paul School, Mathura, M/s Zillion Infra Projects, Delhi, M/s Ginni Filaments Ltd., & M/s PACCFED (UP Processing and Construction Cooperative Federation Ltd.). A show cause notice dated 21.10.2015 was thus issued to them asking them to show cause as to why:

I. *Service Tax amounting to Rs 83,14,005/- (Rupees Eighty Three Lakh Fourteen Thousand and Five only) should not be demanded and recovered from them in terms of proviso to Section 73 (1) of the Act and as to why the amount of Rs 62,507.00 (Rupees Sixty Two Thousand Five Hundred and Seven only) deposited by the noticee should not be* *appropriated against the Service Tax demand made herein;*

II. *Interest at appropriate rate on the amount f service tax so demanded till the payment of service tax should not be demanded and recovered from them under Section 75 of the Act.*

III. *Penalty equivalent to the amount of service tax demanded should not be imposed upon them under Section 78 of the Finance Act, 1994;*

IV. *Late Fees for non filing of the ST-3 returns as per provisions of Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994 should not be imposed upon them as discussed supra.*

V. *Penalty should not be imposed upon them under Section 77(1)(a), 77(1)(b) Act, ibid for the contravention of various provisions of the Act and the Rules made there under as discussed supra.*

VI. *Penalty should not be imposed upon them under 77 (2) of the Act, ibid for the contravention of various provisions of the Act and the Rules made there under as discussed supra.*

2.3 The show cause notice has been adjudicated as per the impugned order referred in para 1 above.

2.4 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Sanjay Kumar, Advocate for the appellant and Shri Manish Raj, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Demand has been confirmed against them in respect of the services provided by them to M/s Amar Nath Ashram, M/s Ginni Filaments Ltd., and M/s Madhucon Projects.
- Appellant had provided services of construction of Girls College for M/s Amar Nath Trust etc., Since M/s Amar Nath Trust is registered under Section 12AA of Income Tax Act, 1961. The service provided to the said trust which are in

respect of construction of buildings in relation to education premises are exempted vide Sl No 9 of the Notification No 25/2012-ST dated 20.06.2012. Reliance on decisions in case of

- Kanwarji Construction Co [2017 (12) TMI 1379 – CESTAT New Delhi
- Ratan Das Gupta & Co [2017 (3) GSTL 247 (T-Del)]
- Anand Construction & Co [2013 (32) STR 451 (T-Del)]

➢ The services provided by them to the M/s Amar Nath Trust and also M/s Ginni Filament are work contract services on which service tax liability is to be computed on 40% of the Gross Amount charged. Impugned order holds these services as repair and maintenance and computed service tax on 70% of gross value.

➢ They have deposited the service tax payable on the services provided to M/s Ginni Filament by computing the tax payable on 40 % of gross amount.

➢ Services provided by them to M/s Madhucon Projects are in relation to construction of toll Plaza at Jaipur Highway. These services being in relation to road are excluded from the definition of work contract services as defined under Section 65 (105) (zzzza) of the Finance Act, 1994. Reliance on

- Rajendra Singh Bhamboo [2019 (22) GSTL 278 (T-Del)]
- Jagdish Prasad Agarwal [2017 (3) GSTL 455 (t-Del)]
- IDAA Infrastructure Pvt Ltd. [2014 (34) STR 87 (T-Mum)]
- Roller Centrevs [2013 (31) STR 293 (T-Ahmd)]

➢ Circular No 147/16/2011-ST dated 21.10.2011 clarified that in case the services provided by the sub contractor to the main contractor were independently classifiable as "work contract services" then they will get the benefit of exemption.

➢ Demand is time barred. Reliance on

   - Jitendra Lalwani [2017 (51) STr 312 (T-Del)]
   - Kamal Lalwani [2017 (49) STR 552 (T-Del)]
- Cum tax benefit should be allowed
- No interest can be demanded and penalty imposed.
- Penalty cannot be imposed simultaneously under Section 76 and 78.

3.3 Learned authorized representative re-iterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records following findings to confirm the demand in respect of the services provided by the appellant to these specific service recipients:

"26. I also find that noticee further pleaded that they have done construction work related to College, individual residential building etc. for Amar Nath Ashram Trust and these work are not liable to service tax being exempted. As regards work related to Amar Nath Ashram Trust, the noticee submitted a copy of work order dated 18.07.2010 for ₹1,98,00,000.00 wherein work related to construction of Amar Nath Girls Degree College, Mathura (Ground Floor and First Floor) was awarded to them. Another work order dated 10.06.201 2 for ₹88,00,000.00 is related to construction of Second Floor of the same college. Work Order dated 15.04.2013 for ₹1,08,50,000.00 of same college is related with construction of individual residential building at Amar Nath Vidya Ashram and Work Order 12.06.2014 for ₹1,98,10,000.00 for construction of Hostel Wall and other misc. development work. 1 find that prior to 01.07.2012 the benefit of Circular No. 80/10/2004 S.T. dated 17.09.2004 (supra) need be extended to the work related with construction of College building run by a Trust. Further, the construction of individual residenfial building is also out of purview of levy of service tax, as it is clear from the work order that the building is single having multiple rooms. But after advent of Negative List regime, all the services including

declared services (Section 66E of the Act) except as mentioned in Negaiive List under Section 66D or exempted vide any exemption notification, are taxable services. I further find that vide SI. No. 13(c) of Notification No. 25/2012-S dated 20.06.2012 only construction related work in respect of building owned by an entity registered under section 12AA of the Income Tax Act, 1961 and meant predominantly for religious use by general public are exempted from payment, of service tax. Here the noticee has constructed college/ hostel building and other misc. construction work, thus the services provided by Noticee to Amar Nath Ashram Trust are leviable to service tax. As per Point (i) of second proviso to Rule 3 of the Point of Taxation Rules, 2011, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract, the date of completion of each such event shall be deemed to be the date of completion of provision of service. Accordingly the taxable value of such services provided by the noticee on or after 01.07.2012 is calculated as per Form 26AS of noticee as under:

TABLE-A

Details of Work Contract Service provided by Noticee to Amar Nath Ashram Trust, Mathura on or after 01.07.2012

(Amount in ₹)

Sl. No.	Period/ Financial Year	Service provided in respect of construction of single residential unit (Non-Taxable)	Service provided for construction of College, Hostel & other Misc. Construction (Taxable)
1	2012-13 (From 01.07.2012 onwards)	0	13939755
2	2013-14	10850000	12938754
3	2014-15	0	5392625
	TOTAL	10850000	32271134

27 ……..

28. As regards services provided to Madhucon Projects Ltd. is concerned Noticee provided a copy of certificate issued by

Madhucon Project Limited wherein it has been certified that the noticee has provided the services relating to construction of toll plaza booth at Bharatpur Jaipur Highway. From the perusal of certificate provided by the noticee, it is observed that the said certificate has been issued on a plane paper addressing To whom it may concern' and not on any letter head etc. Moreover the certificate does not bear any stamp of the issuing firm. I also observe that the noticee failed to produce any documentary evidence in support of their defence showing that Madhucon Project Limited were principal contractor for construction of Highway/ toll plaza and they worked as sub-contractor. In absence of any concrete documentary evidence, no exemption can be granted to the noticee and noticee is liable to service tax on the amount received by them from Madhucon Project Limited.

29. I also find that noticee, at no point of time denied to have service tox liability on the amount received from M/s Ginni Filaments Ltd. as such for the sake of brevity I do not discuss issue of taxability related to services provided to Ginni Filaments Ltd. and hold that the noticee is liable to pay service tax involved in the services provided by them to M/s Ginni Filaments Ltd. It is also a settled law that what is admitted need not be proved- CCE, Madras Vs. Systems & Component Pvt. Lid. [2004(165)ELT136 (SC)].

30. Here, I also find that in the show cause notice, extended period of limitation has been invoked but the noticee at no point of time opposed the imposition of extended period. On this issue, I find that the noticee while providing taxable services, did not get themselves registered with the department and got themselves registered as late as on 18.08.2015 i.e. only after initiation of investigation against them. Had the department not initiated the enquiry against the noticee, they should have succeeded in apparent evasion of service tax, as such extended period of limitation has rightly been invoked against the noticee. From the documents available on record , it has also been proved that the noticee have failed to file the required periodical *returns in time as such the noticee is liable to penal action under Rule 7C of the Service Tax Rules, 1994 as well as Section 77 of the Act ibid.*

30.1 I find that there are evidences on records which show that the noticee had knowingly and willfully suppressed material facts. The noticee failed to bring the relevant facts as outlined above to the notice of the Department. If the enquiry would not have been initiated against the noticee, this evasion of Service Tax by the noticee has remained un-noticed and the noticee would have succeeded in evading the payment of service tax. Therefore, the noticee, with intent to evade payment of Service Tax, had willfully suppressed the facts from the department and contravened various provisions of the Act and the Rules made there under. Hence, the noticee is liable for penal action under Section 78 of the Act.

31. On the basis of above discussion, the taxability on services provided by the noticee (as detailed in Table-B) and service tax liability thereon (as detailed in Table-C) comes as under

Table A

(Amount in ₹)

	F.Y.2010-11		
1	*Amar Nath Ashram Trust, Mathura*	8601586	NON-TAXABLE
2	*Ginni Filaments Ltd*	2022383	TAXABLE
3	*U.P. Processing & Const Co-operative Fed Ltd, (PACCFED)*	8677474	NON-TAXABLE
4	*Larsen and Tubro Ltd*	63914645	NON-TAXABLE
5	*Madhucon Projects*	820699	TAXABLE
	TOTAL	84036787	
	F.Y.2011-12		
1	*Amar Nath Ashram Trust, Mathura*	8387943	NON-TAXABLE
2	*U.P. Processing & Const Co-operative Fed*	7251111	NON-TAXABLE
3	*U.P. Processing & Const Co-operative Fed Ltd, (PACCFED)*	2205230	NON-TAXABLE
4	*U.P.Processing & Const Co-operative Fed*	1116716	NON-TAXABLE

5	*U.P. Processing & Const Co-operative Fed*	*3586579*	*NON-TAXABLE*
	TOTAL	*22547579*	
	F.Y.2012-13		
1	*Amar Nath Ashram Trust, Mathura*	*435030*	*NON-TAXABLE*
2	*Amar Nath Ashram Trust. Mathura*	*13939755*	*TAXABLE*
3	*Ginni Filaments Ltd*	*8570646*	*TAXABLE*
4	*Thakur Shri Girraj Ji Maharaj Mukhar Bind*	*600000*	*Non-TAXABLE*
5	*U.P. Processing & Const Co-operative Fed*	*1309275*	*NON-TAXABLE*
6	*U.P. Processing & Const Co-operative Fed Ltd. (PACCFED)*	*3673293*	*NON-TAXABLE*
7	*U.P. Processing & Const Co-operative Fed*	*13069359*	*NON-TAXABLE*
	TOTAL	*41597358*	
	F.Y.2013-14		
1	*Amar Nath Ashram Trust, Mathura*	*10850000*	*NON-TAXABLE*
2	*Amar Nath Ashram Trust, Mathura*	*12938754*	*TAXABLE*
3		*902266*	*TAXABLE*
4	*Ginni Filaments Ltd*	*1935082*	*TAXABLE*
5	*Thakur Shri Girraj Ji Maharaj Mukhar Bind*	*844050*	*NON-TAXABLE*
6	*U.P. Processing .& Const Co-operative fed*	*932273*	*NON-TAXABLE*
7	*U.P. Processing & Const Co-operative Fed*	*6177649*	*NON-TAXABLE*
	TOTAL	*34580074*	
	F.Y. 2014-15		
1	*Amar Nath Ashram Trust, Mathura*	*5392625*	*TAXABLE*
2	*Construction & Design Services*	*1130323*	*NON-TAXABLE*
3	*Ginni Filaments Ltd*	*3359598*	*TAXABLE*
4	*Ginni Filaments Ltd.*	*2229505*	*TAXABLE*
5	*ST Paul Public School*	*1400000*	*NON-TAXABLE*
6	*U.P. Processing.& Const Co-operative Fed*	*150456*	*NON-TAXABLE*
	TOTAL	*13662507*	

TABLE-B

(Amount in ₹)

SL. NO.	NAME OF DEDUCTOR	AMOUNT RECEIVED	TAXABLE VALUE (Composite Scheme of Work Contract as per Rule 2A of S.T. (Determination of Value) Rules. 200,]	RATE OF SERVICE TAX	SERVICE TAX PAYABLE	
					By Receiver	By Provider
F.Y.2010-11						
1	Ginni Filaments Ltd	2022883	2022883.00	4.12%	0	83342.78
2	Madhucon Projects Ltd	820699	820699.00	4.12%	0	33812.80
	Total	2843582	2843582.00		0	117155.58
F.Y.2011-12						
1	Nil	0	0	4.12%	0	0
F Y 2012-13						
	Ginni Filaments Ltd. (Amount received after 01.07.2012)	8570646	5999452.20	12.36%	370766.15	370766.15
	Amar Nath Ashram Trust, Mathura (Amount received after 01.07.2012)	13939755	9757828.50	12.36%	0.00	1206067.60
	TOTAL	22510401	15757280.70		370766.15	1576833.75
F Y 2013-14						
1	Ginni Filaments Ltd	902266	631586.20	12.36%	39032.03	39032.03
2	Ginni Filaments Ltd.	1935082	1354557.40	12.36%	83711.65	83711.65

3	*Amar Nath Ashram Trust, Mathura*	*12938754*	*9057127.80*	*12.36%*	*0.00*	*1119461.00*
	Total	*15776102*	*11043271.40*		*122743.67*	*1242204.67*
F Y 2014-15						
1	*Ginni Filaments Ltd*	*3359598*	*2351718.60*	*12.36%*	*145336.21*	*145336.21*
2	*Ginni Filaments Ltd.*	*2229505*	*1560653.50*	*12.36%*	*96448.39*	*96448.39*
3	*Amar Nath Ashram Trust, Mathura*	*5392625*	*3774837.50*	*12.36%*	*0.00*	*466569.92*
	Total	*10981728*	*7687209.60*	*12.36%*	*241784.60*	*708354.51*
	Grand Total	*52111813*	*37331343.70*	*12.36%*	*735294.42*	*3644548.51*

32. For calculation of penalty under Section 78 of the Act, I find that under first proviso to the section 78 of the Act there is provision that between the period from 08.04.2011 to date of enactment of Finance Act, 2015 (i.e. 14.05.2015), if the details relating to transactions, are recorded in specified records maintained under any other law, the penalty imposable under Section 78 is only 50% of tax evaded. Since the noticee has failed to submit any statutory records showing that these amounts of various services provided by them under their specified records; benefit of 50% penalty of tax evaded cannot be extended at this stage

33. As regards, demand of late fee for non filing of statutory returns, I find that at no point of time the noticee submitted anything in writing or submitted any documentary evidence showing that they have filed ST-3 returns; As such in absence of any documentary evidence, it is proved that they have not filed any ST-3 return as such they are also liable to pay late fee for non filing of ST-3 returns. Since the noticee has not filed any ST-3 return for the period 2010-11 to 2014-15 which involved total *eleven (11) returns, therefore, the noticee is liable to pay late fee @ ₹20,000.00 for each return under Rule 7C of the Service Tax Rules, 1994. Thus from above omission and commissions on the part of noticee, as discussed supra, the noticee is also liable for penal action under Section 77(1)(a), 77(1)(b) & 77(2) of the Act"*

4.3 From the show cause notice para 6.1 it is evident that the demand has been made against the appellant under the category work contract services and not under the category of Repair and Maintenance Services as has been submitted by the appellant. Para 6.1 of the show cause noptice is reproduced below:

"6.1 From the above, it appears that the activities undertaken by the noticee during the period under investigation are of the nature of work done In relation to "Repair or Maintenance, Renovation of new/ existing structures", Construction/ renovation of halls, guest house, shed, drainage within new/ existing structures, electrical works like piping, installation of electric sockets, wiring etc in the new/ existing structures" under the contracts entered between the noticee and deductor of the TDS (in other words recipient of services)

In view of the above and on taking cognizance of the statements dated 22.09.2015 of Shri Rajeev Agarwal partner of M/s Build Age Construction, Mathura, it appears that the activities undertaken by the noticee are in relation to construction repair, renovation or maintenance of new/ existing structures, drainage etc., ***hence appears classifiable under the category of the service "Work Contract"****. And the noticee is liable to pay Service Tax due there on."*

The argument advanced by the appellant that the demand has been confirmed against them by treating the services under the category of repair and maintenance services cannot thus be justified and needs to be rejected.

4.4 In respect of demand made in respect of the services provided to M/s Madhucon Projects from te impugned order it is evident that the demand has been confirmed for the reasn that appellant were unable to substantiate their claim that they were providing the services to M/s Madhucon Project for construction of Toll Plaza by way of a proper certificate. Impugned order records the reason for rejection of the said certificate. The said certificate which was produced have not be produced before us in this appeal. Instead a copy of work order dated 18.10.2010 given by M/s Madhucon Projects Limited to appellant has been produced. This work order is in respect of **"Construction of Toll Booth at Bharatpur Jaipu Highway including all finishing size 1.5 X 3.00 m".** This work order do not specify any thing in respect of road construction contract between NHAI and M/s Madhucon Projects. We on the basis of the above work order are not in position to hold that appellant while undertaking the said work were acting as sub contractor to the main contractor in relation to construction of road. In absence of any evidence to the contrary we do not find any substance in the challenge made by the appellant to the findings recorded in the impugned order. Since the claim made by the appellant has been found not toi be substantiated by suitable evidences we do not find any erits in the reliance palced by the appellant on the decisions in case of,-

- Rajendra Singh Bhamboo [2019 (22) GSTL 278 (T-Del)]
- Jagdish Prasad Agarwal [2017 (3) GSTL 455 (t-Del)]
- IDAA Infrastructure Pvt Ltd. [2014 (34) STR 87 (T-Mum)]
- Roller Centrevs [2013 (31) STR 293 (T-Ahmd)]

4.5 From the work orders of Amar Nath Ashram Trust, Mathura it is evident that each work order has been given stating that "Service Tax (if applicable) will be charge extra." Appellant have claimed exemption from payment of service tax in teeth of the above, assertion in each of work order in terms of Sl No 9 of Notification No 25/2012-ST. We reproduce the said entry below:

"9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property;"

The services provided by the appellant are under the category of "work contract services" and are not in nature of the services specified under the said entry. We do not find any merits in the submissions made by the appellant in this regard. Appellant has claimed exemption under Sl No 13 of the said notification before the original authority which has been rejected only in specific cases and appellant has not challenged the rejection at the time of argument of the appeal. The demand made in respect of the services provided by the appellant to the said trust have been held to be exempted where the services were for charitable causes in terms of the said notification under that entry. We do not find any merits in the submissions made by the appellant in this respect.

4.6 The decisions relied upon by the appellant in case of,-

- Kanwarji Construction Co [2017 (12) TMI 1379 – CESTAT New Delhi
- Ratan Das Gupta & Co [2017 (3) GSTL 247 (T-Del)]
- Anand Construction & Co [2013 (32) STR 451 (T-Del)]

Do not support the case of the appellant as these decisions are rendered in the pre negative list era and the services were found not to be taxable under the definition f services as it existed then. However with effect froct from 1st July 2012, these services are classified under the category of work contract services and the benefit of exemption under Sl No 9 of the Notification No 25/2012-ST is not admissible to them. None of these decisions have decided the issue in post negative list era.

4.6 Appellants did not challenged the demand made in respect of the services provided by the appellant to M/s Ginni Filament before the original authority or before us. There only contention before us is in respect of computation of the service tax payable. In view of the observations made in para 4.3 supra we do not find merits in the appellant challenge to the computation of the tax liability.

4.7 It is fact on record that though appellants were providing the taxable services they had never taken the registration nor had filed any return during the period under dispute. They were also not paying the service tax due. We find that in absence of any registration and filing of the returns the appellant have suppressed the relevant information with intent to evade payment of service tax due and extended period of limitation has been rightly invoked for making this demand. Reliance placed on the decisions in case of,-

- Jitendra Lalwani [2017 (51) STr 312 (T-Del)]
- Kamal Lalwani [2017 (49) STR 552 (T-Del)]

do not support the case of appellant. In both the cases demand was held time barred by the lower authorities and benefit was extended to the appellants therein by the authorities below. The question of suppression and invocation of extended period of limitation is a question of facts and needs to be examined in facts of each case. Impugned order clearly records the reason for invoking the extended period, and we do not find any challenge in the appeal or during the course of arguments before us to the same.

4.8 As we uphold the invocation of extended period the period, the penalties imposed upon the appellant under Section 78 of the Finance Act, 1994 are justified in view of the observation made by the Hon'ble Supreme Court in case of Rajasthan Spinning and Weaving Mills Ltd [2009 (238) ELT 3 (SC)].

4.9 As we uphold the demand for tax demand of interest under Section 75 is also consequential and upheld.

4.10 Penalties imposed under Section 77 (1) (a), 77 (1) (b) and 77 (2) are also justified for the reasons of contraventions of the Act and Rules made thereunder. Appellant has contravened the provisions by not taking registration, not filling the returns and not paying the tax by the due date. The penalties in such case need to be upheld in view of decision in case of Gujarat Travancore Agency [1989 (42) E.L.T. 350 (S.C.)] wherein Hon'ble Apex Court observed as follows:

"4. *Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under Section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty under Section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under Section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person 16illful16y fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C, which speaks of 16illful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no* *doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023 :*

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

5. *Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income Tax Officer under Section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67."*

4.11 As the appellant has not filed the returns by the due date, late filing fees levied in terms of Rule 7C of the Service Tax Rules, 1994 is also upheld.

4.12 We do not find any merits in the appeal

5.1 Appeal is dismissed.

(Pronounced in open court on 27.06.2024)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal