CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I
(E-Hearing)
Service Tax Appeal No.70094 of 2023

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/63/2022-23 dated 25/11/2022 passed by Commissioner (Appeals) Central Excise & CGST, Ghaziabad)

M/s E-Web Guide, **.....Appellant**
(Plot No.55, Ground Floor, Punjabi Bagh,
Near Mohial Bhawan, Saharanpur-247001)

VERSUS

Commissioner of Central Excise &

Service Tax, Meerut **....Respondent**

(Mangal Pandey Nagar, Meerut)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70183/2025

DATE OF HEARING & DECISION : 20 February, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/63/2022-23 dated 25/11/2022 passed by Commissioner (Appeals) Central Excise & CGST, Ghaziabad. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original dated 30.09.2021 wherein following has been held:-

"***ORDER***

(i) I confirm the demand of the Service Tax amounting to Rs. 1,22,983/- (Rs.One lakh twenty two thousand nine hundred eighty three only) (including E. Cess & SHE. Cess)

under proviso to Section 73(1) of the Finance Act, 1994 Read with Section 174 of the CGST Act, 2017.

(ii) I hereby confirm the demand of interest on Rs. 1,22,983/-, as applicable under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

(iii) I impose a penalty of Rs:1,22,983/- (Rs one lakh twenty two thousand nine hundred eighty three only) upon them under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

(iv) I confirm the demand of Service tax amounting to Rs. 14,574/- (Rs. Fourteen thousand five hundred seventy four only) (including E. Cess & SHE. Cess under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

(v). I hereby confirm the demand of Interest on the said amount as applicable under Section 75 of the Act ibid read with Section 174 of the CGST Act, 2017

(vi) I impose a Penalty of Rs. 14,574/- under Section 78 of Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

(vii) I impose a Penalty of Rs. 10,000/- (Rs. Ten thousand only) upon them under Section 77 (1) (a) of Finance Act, 1994 read with Section 69 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017."

2.1 Appellant is registered for providing taxable services namely "Selling of Space or Time Slot for advertisement" as defined under Section 65(105)(zzzm) of the Finance Act, 1994, on 30.12.2014. During the course of audit of the records of unit for the Financial Year Oct-2014 to June-2017, it was observed that the appellant has availed exemption of Rs.9,95,004/- on the total value of services rendered and not paid service tax on the consideration received in respect of services provided to his clients during the period from October-2014 to December-2014. The auditors has observed that the appellant was not providing service of "Selling of Space or Time slot for Advertisements" rather they provide links to clients of the prospective customers, whose website is being exhibited in the website of the appellant. Thus, the auditors classified the service as "Business Auxiliary Service" and requested appellant to deposit service tax amounting to Rs.1,22,983/-on the value of Rs. 9,95,004/- claimed by them as exemption. The auditors further noticed a difference between the amount shown in Form 26 AS of the appellant and the taxable amount, on which he has paid service tax during the period from April, 2017 to June, 2017. Thus, there was a short payment of Service tax of Rs.14,56,613/-.

2.2 On this account also show cause notice dated 25.08.2020 was issued to the appellant asking them to show cause as to why-

> *"i. Service Tax amounting to Rs.1,22,983/- (Rupees One Lakh Twenty Two Thousand Nine Hundred and Eighty Three only), including Education Cess and Higher Education Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*
>
> *ii. Interest on Rs.1,22,983/- as applicable should not be charged and recovered under Section 75 of the Act ibid, read with Section 174 of the CGST Act, 2017.*
>
> *iii. Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*
>
> *iv. Service Tax amounting to Rs.14,574/- (Rupees fourteen Thousand five Hundred seventy four only), including Education Cess and Higher Education Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*
>
> *v. Interest on the said amount as applicable should not be charged and recovered under section 75 of the Act ibid, read with Section 174 of the CGST Act, 2017.*

vi. A penalty should not be imposed on them under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

vii. A penalty of Rs. 10,000/- (Rupees Ten Thousand Only) should not be imposed upon them under Section 77(1)(a) of the Finance Act, 1994 read with Section 69 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017."

2.3 This show cause notice has been adjudicated as per the Order-in-Original referred in para-1 above.

2.4 Aggrieved appellant have filed appeal before Commissioner (Appeals), which has been dismissed as per the impugned order.

2.5 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Aalok Arora learned Counsel appearing for the appellant and Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 On the issue of limitation Impugned order records as follows:-

"8.12. I find that the appellant contention that the demand is hit by time limitation is not valid and correct as the appellant were very well aware about the nature and use of their service but with intention to evade payment of service tax they suppressed this vital fact from the department and did not pay service tax and also availed exemption of ten lacs meant for new service provider under notification 33/2012 ST. Thus, I hold that as they suppressed the material facts with regards to nature of said service, extended period is rightly invoked and they are liable to pay equal penalty to confirm demand under Section 78 and interest at appropriate rate in terms section 75 of the Act. Further as they failed to obtain Service Tax Registration under proper head of service and also did not declare correct taxable value and tax not paid

therein, penalty under Section 77 is rightly imposed. The case laws cited are not relevant in this case as merit of the case are different."

4.3 Order-in-Original on limitation records as follows:-

"4.20 It is also observed that the party has obtained Service Tax Registration but have not paid service tax under the category 'Business Auxiliary Services' & also not reflected/declared the same in their statutory Service Tax Returns. Moreover, the facts regarding collection of said amount came to the notice of the department only during the course of audit. The party failed to levy or pay the Service Tax due with the intent to evade payment of Service Tax as it appears that the party have failed to discharge their responsibility deposed in self-assessment regime that they will themselves assess and pay the Service Tax on the consideration received for providing Service to their clients/customers. Thus, the party cannot be said to have taken reasonable steps as enjoined upon them by the Rule 6 of Service Tax Rules, 1994 read with Section 68 of the Finance Act, 1994. Therefore, extended period of limitation under clause (d) & (e) of proviso to Section 73(1) of the Finance Act, 1994 are rightly invokable in the present case to demand & recover service tax not paid by the party. The party is also liable to pay interest under Section-75 of the Finance Act, 1994.

It is observed that the proviso to Section 73(1) of the Finance Act, 1994 provides that where any service tax had not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of -

(a) fraud; or

(b) collusion; or

(c) willful misstatement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this chapter or of the rules made there under with intent to evade payment of service tax, by the person

chargeable with the service tax or his agent, the provisions of this sub-section shall have the effect, as if, for the words "one year", the words "five years had been substituted."

4.4 I do not find any specific reason recorded in the impugned order or in Order-in-Original for invoking the extended period of limitation even in the show cause notice following has been recorded:-

"13. It is also observed that the party has obtained service tax registration but have not paid service tax under the category 'Business Auxiliary Services' & also not reflected/declared the same in their service tax returns. Moreover, the facts regarding collection of said amount came to the notice of the department only during the course of audit. The party failed to levy or pay the Service Tax due with the intent to evade payment of Service Tax as it appears that the party have failed to discharge their responsibility deposed in self assessment regime that they will themselves assess and pay the Service Tax on the consideration received for providing Service to their clients/customers. Thus, the party cannot be said to have taken reasonable steps as qnjoined upon them by the Rule 6 of Service Tax Rules, 1994 read with Section 68 of the Finance Act, 1994. Therefore, extended period of limitation under clause (d) & (e) of proviso to Section 73(1) of the Finance Act, 1994 are invokable in the present case to demand & recover service tax not paid by the party. The party is also liable to pay interest under Section-75 of the Finance Act, 1994."

4.5 In all the three documents only records failure to payment of service tax as a reason for invocation of extended period of limitation.

4.6 Delhi Bench of the Tribunal in the case of M/s Vacmet India Ltd. Final Order No.50299 of 2025 dated 11.02.2025 has held as follows:-

"6. What is evident from the above is that the only reason given in the order for confirming the duty demanded for the extended period of limitation and penalty is that the alleged wrong availment of Cenvat credit came to notice during the audit. This is not one of the grounds on which extended period of limitation can be invoked. There is no allegation that the appellant had not been filing its returns. When returns are filed, it is for the officers to scrutinize them and if necessary, call for additional information and raise demands. The fact that the alleged wrong availment was discovered during audit only means that the officer responsible to scrutinise the returns had not done his job. Otherwise, what was discovered by the audit could have as well been discovered by the officer. Thus the sole ground on which the extended period of limitation has been invoked is effectively that the assessing officer had not done his job. If the assessing officer did not do his job, it does not mean that the assessee has suppressed anything willfully or mis-stated.

7. In view of the above, the demand and penalty cannot be sustained on the ground of limitation itself. We, therefore, find no need to examine the merits of the case as the entire demand is time barred."

4.7 In view of the above decisions, without going into merits of the demand, the demand needs to be set aside on the issue of limitation itself.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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