CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. II

Service Tax Appeal No.70954 of 2018

(Arising out of Order-in-Appeal No.189-190/ST/ALLD/2018 dated 26.03.2018 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s V. M. Placements Services Pvt. Ltd., ...Appellant
(129, Manohar Nagar Barra-2,
Barra, Kanpur Nagar-208027)

VERSUS

Commissioner of Central Excise &
CGST, Kanpur ....Respondent
(38, M.G. Marg, Civil Lines, Allahabad-211001)

<u>WITH</u>

Service Tax Appeal No.70955 of 2018

(Arising out of Order-in-Appeal No.189-190/ST/ALLD/2018 dated 26.03.2018 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

Shri Vinod Kumar Mishra, Director .....Appellant
(129, Manohar Nagar Barra-2,
Barra, Kanpur Nagar-208027)

VERSUS

Commissioner of Central Excise &
CGST, Kanpur ....Respondent
(38, M.G. Marg, Civil Lines, Allahabad-211001)

<u>APPEARANCE:</u>

Request for adjournment, for the Appellant
Smt Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NOs.<u>-70487-70488/2025</u>

DATE OF HEARING : 14.07.2025
DATE OF DECISION : 14.07.2025

<u>ANGAD PRASAD:</u>

The present appeal has been filed by the Appellants against the Order-in-Appeal No.189-190/ST/ALLD/2018 dated

26.03.2018 passed by the learned Commissioner (Appeals) CGST & Central Excise, Allahabad.

2.1 Brief facts of the Case are that acting on intelligence that appellants were engaged in providing Manpower Recruitment of Supply Agency Service taxable under the Finance Act, 1994, without properly discharging their Service Tax liability. The Officers of the Directorate General of Central Excise Intelligence, Lucknow searched at the registered office at C-144, Awas Vikas Colony, Etawah and the corporate branch office at LGF-95, Khazana Complex, Ashiyana Kanpur Road, Lucknow, of the appellant. Further, enquiry was conducted, by way of scrutiny of the records/ documents and recording of the statements of Shri Vinod Kumar Mishra, Director of the appellant, under Section 14 of the Central Excise Act, 1944, applicable to Service Tax under Section 83 of Chapter V of the Act, revealed that the appellant had not assessed their Service Tax Liability properly and had short paid/ not paid Service Tax (including Edication, Cess and Secondary & Higher Education Cess) of Rs.2,84,781/-, during the period 2011-12 to 2014-15.

2.2 Show Cause Notice dated 18.10.2016 was issued to the appellant for demanding Service Tax (including Cesses) of Rs.2,84,781/- alongwith interest, for imposing penalties under Sections 77(1)(d) & 78 of the 70 of the Act read with Rule 7C of the Service Tax Rules, 1994, penal provisions under Section 78A of the Act were also invoked against Shri Vinod Kumar Mishra, Director of the appellant.

2.3 The said show cause notice was adjudicated vide Order-in-Original dated 31.03.2017 and following order was passed:-

<u>ORDER</u>

(i) I confirm the demand of Service Tax of Rs.2,84,781/- (Rupees Two lac eighty four thousand seven hundred eighty one only) and order for recovery from M/s V.M. Placement Services Private Ltd. 129-Manohar Nagar, Barrá-2, Barra, Kanpur under Section 73(2) alongwith interest due thereon under Section 75 of the Finance Act, 1994.

(ii) I impose a penalty of Rs.2,84,781/- (Rupees Two lac eighty four thousand seven hundred eighty one only) upon M/s V.M. Placement Services Private Ltd. 129- Manohar Nagar, Barra-2, Barra, Kanpur under Section 78 of the Finance Act, 1994 for suppression of facts and value of taxable service and contravention of the provisions of the Act and Rules with intent to evade payment of Service Tax.

(iii) I impose a penalty of Rs.1000/- (Rupees One thousand only) upon M/s V.M. Placement Services Private Ltd. 129- Manohar Nagar, Barra-2, Barra, Kanpur under Section 77(1)(d) of the Finance Act, 1994 for not depositing service tax in due time electronically as per Rule 6 of Service Tax Rules and Section 68 of the Finance Act, 1994.

(iv) I impose a late fee of Rs.1500/- (Rs.1000+500) (Rupees One thousand five hundred only) under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delayed furnishing of ST-3 returns.

(v) I impose a penalty of Rs.10000/- (Rupees Ten Thousand only) upon Shri Vinod Kumar Mishra Director of M/s V.M. Placement Services Private Ltd. 129-Manohar Nagar, Barra-2, Barra, Kanpur under section 78A of the Finance Act, 1994.

2.4 Being aggrieved the Appellants filed appeals before the first Appellate Authority. The learned Commissioner (Appeals) has passed the following order:-

"2.3 Aggrieved with the impugned order dated 31.03.2017, the appellant and Shri Vinod Kumar Mishra, Director of the Appellant, have filed the present two appeals, on 20.11.2017, contesting the confirmation of demand and the imposition of penalties. They have also filed applications for Condonation of delay, submitting that the delay in filing the appeal was due to misplacement of impugned order dated 31.03.2017 by the recipient of the impugned order, Shri Jay Prakash Shukla, an employee and authorized signatory of the Appellant & Shri Vinod Kumar Mishra, Director of the Appellant.

2.4 Since they did not mention in the applications of the condonation of delay as to when their authorized signatory had received the impugned Order, enquiry was conducted with the jurisdictional Assistant Commissioner, vide letter *dated 01.02.2018, for ascertaining the mode and date of communication of the impugned order to the Appellant and Shri Vinod Kumar Mishra, Director of the appellant. The Assistant Commissioner, CGST Division-1, Kanpur, vide letter dated 14.03.2018, informed that the impugned Order was served upon Shri Jay Prakash Shukla the authorized signatory of the appellant, who was authorized by Shri Vinod Kumar Mishra, on 04.05.2017, by hand and also enclosed copy of the said dated acknowledgement.*

3. ***Discussions and Findings****: I have gone through the records of the case. I find that Section 37C(1)(a) of the Central Excise Act, 1944 as made applicable to the Service Tax matters vide Section 83 of the Act, provides that any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, by tendering the decision, order, summons or notice, or sending it by registered post -------to the person for whom it is intended or his authorized agent, if any.*

3.1 Since in this case, the impugned Order was served upon the authorized signatory, on 04.05.2017, I, thus, find that the appellant and Shri Vinod Kumar Mishra, Director of the appellant, had received the impugned Order on 04.05.2017, whereas they have filed the appeals on 20.11.2017.

3.2 Further, I find that Section 85(3A) of the Act provides, as under: Section 85(3A): An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter: Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

3.3 From the aforesaid statutory provisions, it is clear that any appeal is required to be filed within a period of two *months from the date of receipt of the decision or order of the Adjudicating Authority and the Commissioner of Central Excise (Appeals) has power to condone the delay in filing the appeal for a further period of one month only. However, in this case, the period of two months expired on 04.07.2017, as the impugned Order was served upon the appellant and Shri Vinod Kumar Mishra, on 04.05.2017, and the further period of one month which the Commissioner (Appeals) can condone, expired on 04.08.2017, whereas the appeals have been filed on 20.11.2017.*

3.3 It is, thus, observed that since the appeals have been filed much beyond the time limit specified in Section 85(3A) of the Act, the same being time barred, are liable for dismissal.

4. In view of the above, the appeals filed by the appellant and Shri Vinod Kumar Mishra, Director of the appellant, are rejected."

2.5 Being aggrieved appellants have filed present appeals before this Tribunal.

3.1 Learned Counsel for the appellant sent a letter for adjournment on the ground that due to illness, she is unable to appear before the Bench. In support of the illness application, she has not submitted any medical document. In have heard Smt Chitra Srivastava learned Authorised Representative appearing on behalf of the revenue.

3.2 Learned Authorised Representative submits that in the matter so many times granted and illness application without any supporting medical certificate is no ground for an adjournment. Appeal be heard and decided on merits of the case.

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

4.2 We observe that illness without a medical certificate cannot be a ground for adjournment. Therefore, after rejecting the prayer for adjournment, we proceed to decide the appeal after hearing the learned Authorised Representative appearing for revenue.

4.3 The appeal filed by the appellant was dismissed by the First Appellate Authority by observing as follows:-

> *"3. Discussions and Findings: I have gone through the records of the case. I find that Section 37C(1)(a) of the Central Excise Act, 1944 as made applicable to the Service Tax matters vide Section 83 of the Act, provides that <u>any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, by tendering the decision, order, summons or notice,</u> or sending it by registered post ----------- <u>to the person for whom it is intended or his authorized agent, if any.</u>*
>
> *3.1 Since in this case, the impugned Order was served upon the authorized signatory, on 04.05.2017, 1, thus, find that the appellant and Shri Vinod Kumar Mishra, Director of the appellant, had received the impugned Order on 04.05.2017, whereas they have filed the appeals on 20.11.2017.*
>
> *3.2 Further, I find that Section 85(3A) of the Act provides, as under:*
>
> *<u>Section 85 (3A):</u> An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:*
>
> *Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.*

3.3 From the aforesaid statutory provisions, it is clear that any appeal is required to be filed within a period of two months from the date of receipt of the decision or order of the Adjudicating Authority and the Commissioner of Central Excise (Appeals) has power to condone the delay in filing the appeal for a further period of one month only. However, in this case, the period of two months expired on 04.07.2017, as the impugned Order was served upon the appellant and Shri Vinod Kumar Mishra, on 04.05.2017, and the further period of one month which the Commissioner (Appeals) can condone, expired on 04.08.2017, whereas the appeals have been placed on 20.11.2017.

3.3 It is, thus, observed that since the appeals have been filed much beyond the time limit specified in Section 85(3A) of the Act, the same being time barred, are liable for dismissal."

4.4 The above approach of the First Appellate Authority cannot be faulted with in view of the decision of Honb'le Supreme Court in the case of M/s Singh Enterprises [2008 (221) E.L.T. 163 (SC)], wherein it has been held that Commissioner (Appeals) could not condone the delay beyond the 30 days in filing the appeal before him, relevant part of the said decision are reproduced bellow for ready reference:-

"6. *At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows :*

> ***"35. Appeals to Commissioner (Appeals). -*** *(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :*

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."

7. *It is to be noted that the periods "sixty days" and "thirty days" have been substituted for "within three months" and "three months" by Act 14 of 2001, with effect from 11-5-2001.*

8. *The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order.* ***However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion***

of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.

9. *Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C.'s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.*

10. *Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.'s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."*

4.5 Appellant have stated in the appeal filed before us that they had received the copy of the Original Authority on 25.09.2017 and have filed the appeal on 30.11.2017. Thus, the appeal filed before the First Appellate Authority was well within the period of limitation and could not have been dismissed for the reasons stated in appeal. It has been stated that in terms of Section 37C, the Jay Prakash Shukla the employee who received the order was not the authorized person and nothing has been placed on record to show that he received the copy of Order-in-Original under authorization from the appellant. The said fact is contrary to the findings recorded in para 2.4 of the impugned order. Para 2.4 is reproduced bellow:-

> *"2.4 Since they did not mention in the applications of the condonation of delay as to when their authorized signatory had received the impugned Order, enquiry was conducted with the jurisdictional Assistant Commissioner, vide letter dated 01.02.2018, for ascertaining the mode and date of communication of the impugned Order to the appellant and Shri Vinod Kumar Mishra, Director of the appellant.* ***The Assistant Commissioner, COST Division-1, Kanpur, vide letter dated 14.03.2018, informed that the impugned Order was served upon Shri Jay Prakash Shukla the authorized signatory of the appellant, who was authorized by Shri Vinod Kumar Mishra, on 04.05.2017, by hand and also enclosed copy of the said dated acknowledgement."***

4.6 From the above, it is evident that Shri Jay Prakash Shukla was the authorized signatory of the appellant who was authorized by Shri Vinod Kumar Mishra on 04.05.2017 to get the said order by hand and copy of the said dated acknowledgement was seen by the First Appellate Authority. The said authorization letter dated 04.05.2017 is reproduced as under for ready reference:-

(44)

VM
Placement Services Pvt. Ltd.
Group Of Professionals

PLACEMENT LABOUR CONTRAC HOUSE KEEPING

Head Office : 129, Manohar Nagar, Near Shikha Guest House, Barra-2, Kanpur Mob.: 9415405135, 9936413779
Website : www.vmplacement.com

Ref. No........................ Date 04/05/2017

To,

Asstt. Excise commissioner
Service Tax Division, Kanpur
Kanpur Uttar Pradesh

Dear Respected Sir,

This is to certify that Mr. Jay prakash shukla is a permanent employee of my company

He will liable to receive any document related to our company from central excise

Signature Approved
Jay Prakash shukla

Thanks & Regards
V.K. Mishra

4.7 In terms of the above letter dated 04.05.2017, the Order-in-Original was served upon the authorized representative of the appellant and the copy of acknowledgement of the receipt of same is reproduced below:

ACKNOWLEDGEMENT

Received Order-in-Original No.103/ST/AC/17 dated 31.03.2017 passed by the Assistant Commissioner, Service Tax Division, Kanpur vide C.No.V(30)ST/DSCN/V M PLACEMENT/371/2016/725 and 726 both dated 24.04.2017 in respect of (1) M/s. V.M. Placement Services Private Ltd., 129-Manohar Nagar,Barra-2, Kanpur; and (2) Shri Vinod Kumar Mishra, Director, of M/s. V.M. Placement Services Private Ltd., 129-Manohar Nagar,Barra-2, Kanpur respectively.

Signature:
Name: Jay Prakash Shukla
Date: 4/05/17
Designation: Manager
Mobile No.: 8756992552
Stamp: For V. M. Placement Services (P) Ltd.
Authorised Signatory

4.8 From the above, it is evident that the order was served upon the appellant in the manner provided under Section 37C of the Act. If the order was served in that manner as provided under Section 37C on 04.05.2017 then there cannot be any question with regards to service of the order on that date, the evidence to that effect is available in the impugned order itself, which is not disputed.

4.9 From the records, it is evident that appellant had received the copy of order on 04.05.2017 and no evidence has been placed on record with regards to the service of the order on 25.09.2017. It is only by manipulation of document- specifically the last page of Order-in-Original that appellant have claimed that they have receive the copy of Order-in-Original on 25.09.2017. On going through the copy of the Order-in-Original filed along with the appeal before us, I find that the order enclosed with the appeal is neither certified copy of the order nor there is any signature of the any authority who has adjudicated in the matter. Scanned copy of the order provided by the appellant with the appeal is reproduced below:-

-31

CASE PROCEEDINGS INITIATED AGAINST M/S V.M. PLACEMENT SERVICES PRIVATE LIMITED, 129, MANOHAR NAGAR, BARRA-2, BARRA, KANPUR(NAGAR), UTTAR PRADESH-208027 VIDE SCN NO.DGCEI/LZU/Inv./[illegible]/2016/Pt-[illegible] DATED 18.10.2016

BRIEF FACTS OF THE CASE

M/s V.M. Placement Services Private Limited, 129, Manohar Nagar, Barra-2, Barra, Kanpur(Nagar), Uttar Pradesh-208027, (here-in-after referred to as the 'party') are engaged in providing services under the category of 'Manpower recruitment/supply agency service". The party is registered with the department w.e.f. 24.06.2008 having Service Tax Registration No.AACCV6546RST001 for "Manpower recruitment/supply agency service".

2. Intelligence was gathered by the officers of DGCEI, Lucknow Zonal Unit, Lucknow (hereinafter referred to as the "officers" for the sake of brevity) that M/s VM Placement Services (VM Group of Companies) Registered at C-144, Awas Vikas Colony, Etawah & having corporate branch office at LGF-95, Khazana Complex, Ashiyana Kanpur Road, Lucknow-226012 are engaged in providing of taxable services of "Manpower Recruitment & Supply Agency Services" were not discharging their service tax liability correctly by suppressing the correct assessable value. The information was also gathered that the authorized persons of M/s VM Placement Services have formed some other companies also through which they are providing taxable services (Man Power Recruitment & Supply Agency) and evading payment of service tax.

3. Based on intelligence that the party is engaged in providing the taxable service and suppressing the value of taxable service and thereby evading the payment of service tax, search was conducted by the team of officers of DGCEI, Lucknow Zonal Unit (hereinafter referred to as the Officers) on 14.03.2016 in the premises of M/s V.M. Group of Companies, at LGF-95. Khazana Complex, Ashiyana, Kanpur Road, Lucknow & at C-144, Awas Vikas Colony, Etawah. The search was conducted under the authority of search warrants issued by the competent authority and result of search has been narrated in the Panchnama dated 14.03.2016 drawn on the spot. During the search certain documents relevant to the enquiry were also resumed. During the search of the premises statement of Shri Gaurav Tiwari. Accountant of V.M. Group of Companies was also recorded on the spot on 14.03.2016. Shri Gaurav Tiwari in his statement dated 14.03.2016 stated that there is no service tax liability on M/s VM Placement Services Pvt. Ltd. and he further submitted the copies of Balance sheet of the party for FY 2011-12 to 2014-15, Form 26AS of the party for FY 2011-12 to 2014-15 & ST-3 return for F.Y.2011-12 to 2014-15.

The Show Cause is limited upto M/s VM Placement Services Pvt. Ltd., Kanpur & separate show cause will be issued to M/s VM Placement Services & other companies of VM Group in due course.

4. Definition and scope of manpower recruitment or supply agency is as under:-

"manpower recruitment or supply agency" means any [person] engaged in providing any service. directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, [to any other person,]

Page 1 of 10

29

-32-

"Taxable service" means any service provided or to be provided, [to any person], by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;

5. A summon dated 15.03.2016 was issued to Shri Vinod Kumar Mishra authorized person of M/s V.M. Group of Companies working as Director of the party for appearance on 21.03.2016, alongwith certain documents/records. In response to the above summon dated 15.03.2016 Shri Vinod Kumar Mishra, Director of the party appeared on 21.03.2016 and he vide his statement dated 21.03.2016 recorded under Section 14 of the Central Excise Act, 1944 as applicable to Service Tax under Section 83 of Chapter V of the Finance Act, 1994, stated that:-

(i) M/s V.M. Placement Services Pvt. Ltd. having registered office at 129 Manohar Nagar, Barra-2, Kanpur was established in 2008 and have working branches at Gurgaon & Greater Noida and is engaged in providing services of placement of Manpower and is registered with the service tax department.

(ii) That M/s V.M. Placement Services Pvt. Ltd. is filing the ST-3 returns regularly and the party is discharging their service tax liability, copy of the same will be provided within 07 days.

6. Further summon dated 21.03.2016 was issued to Shri Vinod Kumar Mishra of M/s V.M. Group of Companies for appearance on 11.04.2016 along with certain documents/records. As Shri Vinod Kumar Mishra did not appear on 11.04.2016, further summon dated 19.04.2016 was issued to Shri Vinod Kumar Mishra for appearance on 25.04.2016 along with certain documents/records, against which neither of the representative appeared.

7. A letter dated 22.03.2016 & 27.04.2016 was issued to Shri Vinod Kumar Mishra of M/s V.M. Group of Companies to provide various documents related to the party such as latest final audit report, reconciliation of bills showing collection of service tax with bank statement, copy of ST-3 returns, Final 26AS for F.Y. 2015-16 & service tax liability. In the absence of any reply further summons dated 11.05.2016, 06.06.2016, 04.07.2016 & 18.07.2016 were issued to Shri Vinod Kumar Mishra of M/s V.M. Group of Companies for appearance on 24.05.2016, 20.06.2016. 14.07.2016 & 25.07.2016 respectively along with certain documents/records & for declaration of service tax liability with reconciliation statement upto 31.03.2016. The said documents were not provided by the party.

8. A summon dated 05.08.2016 was issued to Shri Atul Mehrotra, CA M/s Arsan & Co. for appearance on 22.08.2016 along with certain documents. Shri Atul Mehrotra, CA appeared before the Senior Intelligence Officer, DGCEI. Lucknow Zonal Unit, Lucknow on 22.08.2016 and in his statement dated 22.08.2016 he stated that :-

(i) He is practicing charted accountant as partner of M/s Arsan & Co., 8/196-A, Arya Nagar, Kanpur and were the statutory auditors of the party upto F.Y. 2013-14 and submitted the authenticated copies of audited financial statements for F.Y. 2011-12 & 2012-13.

(ii) Income has been accounted for on the basis of accrual system of accounting, which does not include amount of service tax charged from respective customers receiving services & service tax which was payable at the end of financial year was duly shown under the head of current liabilities.

20

-33-

9. A summon dated 05.08.2016 was issued to Shri Ankur Agarwal, CA, M/s Agarwal & Tulsyan, Charted Accountants, M-243, Ashiyana Lucknow for appearance on 23.08.2016 along with balance sheet & P&L Account of the party for F.Y. 2010-11 to 2015-16. Shri Ankur Agarwal, CA appeared before the Senior Intelligence Officer. DGCEI, Lucknow Zonal Unit. Lucknow on 06.09.2016 and in his statement dated 06.09.2016 he stated that:-

(i) He is practicing charted accountant as partner of M/s Agarwal & Tulsyan, M-243, Ashiyana Lucknow and were the statutory auditors of the party for F.Y. 2014-15 and submitted the authenticated copies of audited financial statements for F.Y. 2014-15.

(ii) Income has been accounted for on the basis of accrual system of accounting, which does not include amount of service tax charged from respective customers receiving services & service tax which was payable at the end of financial year was duly shown under the head of current liabilities.

(iii) He has verified the books of accounts of the client during the course of statutory audit, whatever dues are payable have been duly shown as other current liability of the client.

(iv) M/s Agarwal & Tulsyan vide their letter dated 22.08.2016 submitted the authenticated copies of balance sheet and P & L account of the company for F.Y. 2014-15.

10. A summon dated 05.08.2016 was issued to Shri Sukhdev Singh, Charted Accountants, 109/418A, Nehru Nagar, 80 Feet Road, Kanpur for appearance on 22.08.2016 along with balance sheet & P&L Account of the party for F.Y. 2010-11 to 2015-16. But Shri Sukhdev Singh, CA did not appear.

11. Letter dated 07.09.2016 was also written to various service recipients of the party to provide the following details:-

1. Whether the party has charged and collected the service tax through their bills for F.Y. 2011-12 to 2015-16.
2. Whether payments to the service provider are made inclusive of service tax, as claimed by them through their bills for F.Y. 2011-12 to 2015-16, or exclusive of service tax.
3. Copy of 02 sample bills (each for F.Y. 2011-12 to 2015-16) raised by the service provider.
4. Details of the bills raised by the service provider and payments made.

12. In response to the letters issued by this office, various service recipients of the party submitted that the party has charged and collected the service tax through their bills, as detailed under:-

1. Letter dated 10.08.2016 of M/s HPL Electric & Power Ltd., wherein it has been informed that the party has charged S. Tax & the same has been paid by the recipient.
2. Letter dated 19.08.2016 of M/s Pranav Vikas (India) Pvt. Ltd. wherein it has been informed that the party has charged S. Tax & the same has been paid by the recipient during F.Y. 2011-12 & 2012-13.

-34r

3. Letter dated 24.08.2016 of M/s SPM Autocomp Systems Pvt. Ltd. wherein it has been informed that the party has charged S. Tax & paid by the recipient during F.Y. 2012-13 only.
4. Letter dated 19.08.2016 of M/s EXEDY India Ltd. wherein it has been informed that the party has charged S. Tax & paid by the recipient during F.Y. 2011-12 to 2015-16.
5. Letter dated 20.08.2016 of M/s Tri-Star Products Pvt. Ltd. wherein it has been informed that the party has charged S. Tax & paid by the recipient during F.Y. 2011-12 to 2015-16.
6. Letter dated 23.09.2016 of M/s Autometer Alliance Ltd. wherein it has been informed that the party has charged S. Tax & paid by the recipient during F.Y. 2011-12, 12-13, 13-14 & 2015-16.
7. Letter dated 21.09.2016 of M/s Calcom Vision Limited wherein it has been informed that the party has charged & collected during F.Y. 11-12 to 15-16.
8. Letter dated 22.09.2016 of M/s Motherson Techno Tools Ltd. wherein it has been informed that the party has charged & collected during F.Y. 13-14, 14-15 & 15-16.
9. Letter dated Nil received on 26.09.2016 of M/s Nissin Brake India Pvt. Ltd. wherein it has been informed that the party has charged & collected during F.Y. 11-12 to15-16.
10. Letter dated 22.09.2016 of M/s Timex group precision engineering limited wherein it has been informed that the party has charged & collected during F.Y. 11-12 to15-16.
11. Letter dated 29.09.2016 of M/s Hindustan Coca-Cola Beverages Pvt. Ltd. wherein it has been informed that the party has charged & collected during F.Y. 12-13 & 13-14.
12. Letter dated 26.09.2016 of M/s Durga Charitable Society, Ghaziabad wherein it has been informed that the party has charged & collected during F Y. 11-12 to 15-16.
13. Letter dated 26.09.2016 of M/s River Engineering Pvt. Ltd., Noida wherein it has been informed that the party has charged & collected during F Y. 11-12 to 15-16.
14. Letter dated 28.09.2016 of M/s Jindal India Thermal Power Limited, New Delhi wherein it has been stated that service tax has been charged on the invoice separately and payments has been made inclusive of Service Tax during F.Y. 2011-12 to 2015-16.
15. Letter dated 27.09.2016 of M/s Landbase India Limited, Haryana wherein service recipient has stated that party has charged and collected the service tax during F.Y. 2011-12 to 2013-14.
16. Letter dated 27.09.2016 of M/s Shriram Pistons & Rings Ltd.. Ghaziabad wherein service recipient has stated that party has charged and collected the service tax during F Y. 2011-12 to 2015-16.
17. Letter dated 26.09.2016 (RUD-35) of M/s Minda Silica Engineering Pvt. Ltd., Greater Noida wherein service recipient has stated that party has charged and collected the service tax during F Y. 2011-12 to 2015-16.
18. Letter dated 29.09.2016 of M/s Honda Siel Power Products Ltd., Greater Noida wherein service recipient has stated that party has charged and collected the service tax during F.Y. 2011-12.

-35-

19. Letter dated 21.09.2016 of M/s Tenneco Automotive India Private Ltd., Haryana wherein service recipient has stated that party has charged and collected the service tax during F.Y. 2011-12 & 2012-13.

20. Letter dated 27.09.2016 of M/s Bry Air (Asia) Pvt. Ltd., Gurgaon wherein service recipient has stated that party has charged and collected the service tax during F.Y. 2011-12, 2012-13 & 2013-14.

21. Letter dated 29.09.2016 of M/s Minsarika Pvt. Ltd., Gurgaon wherein service recipient has stated that party has charged and collected the service tax during F.Y. 2011-12, 2012-13, 2014-15 & 2015-16.

13. From the above it appeared that the party was providing the taxable services namely "Manpower recruitment/supply agency service" to various companies viz. M/s Nssin Brake India Pvt. Ltd., M/s Autometer Alliance Ltd., M/s River Engineering Pvt. Ltd., M/s HPL Electric & Power Ltd., M/s Pranav Vikas (India) Pvt. Ltd., M/s SPM Autocomp Systems Pvt. Ltd., M/s Tri-Star Products Pvt. Ltd., M/s EXEDY India Ltd., M/s Motherson Techno Tools Ltd., M/s Timex Group Precision Engineering Limited etc. The party has rendered the services to their clients & raised their bills. On perusal of the copies of the sample bills/invoices (issued by the party) & provided by various service receivers, it is observed that the same has been issued for placement charges. The party has charged the service tax on their bills and has received the payments along with service tax from their service receivers, as claimed by them through their bills. Therefore the party has charged & collected service tax from their clients.

14. W.e.f. 01.07.2012, the taxation of services shifted to Negative List based taxation regime wherein. "Service" has been defined under Section 65B(44) of the Finance Act, 1994 (as amended by the Finance Act, 2012) Service Tax is to be levied at the specified rate on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person/ firm/company to another and collected in such manner as may be prescribed. As the party is a private limited company thus the service tax liability is upon the party and the party was liable to pay the full service tax applicable on the services provided by them under Notification No. 30/2012-ST dated 20.06.2012.

15. From the documents i.e. Balance sheet/profit & loss statement, Form 26AS submitted by the party and as per statements of Shri Vinod Kumar Mishra Director of the party, various replies submitted by the service recipients of the party, it appeared that the party had provided the taxable services namely Manpower recruitment/supply agency service to their clients. The same is also evident from bills issued by the party and statement of Shri Gaurav Tiwari, accountant of V.M. Group of Companies.

16. On perusal of the tax credit statement Form 26AS submitted by the party it is observed that they have received Rs. 85,90,306/-, Rs. 73,11,134/-, Rs. 72,27,360/- & Rs. 52,16,170 during the F.Y. 2011-12, 2012-13, 2013-14 & 2014-15 respectively from various service receivers. Further as per the balance sheet submitted by the party/statutory auditors of the party, it is observed that income from placements/revenue from operation has been shown as Rs.84,64,453/-, Rs.71,37,088/-, Rs.68,17,265/- & Rs.52,77,855/- for the F.Y. 2011-12, 2012-13, 2013-14 & 2014-15 respectively.

-22-

-36-

17. During the investigation, the party's service tax liabilities are worked out as per Service Tax Rules, 1994 & the same is detailed below:-

(Amount in Rs.)

F.Y.	Amount received as per the balance sheet/P&L account	Form 26AS	Assessable value for Service Tax liability	Rate of Service Tax in %	Service Tax PAYABLE	Service Tax Paid (from ST-3 returns)	Service Tax Short paid/not paid
2011-12	8464453	8590306	8590306	10.30	884802	762142	122660
2012-13	7137088	7311134	7311134	12.36	903656	873049	30607
2013-14	6817265	7227360	7227360	12.36	893302	813181	80121
2014-15	5277855	5216170	5277855	12.36	652343	600950	51393
TOTAL	**27696661**	**28344970**	**28406655**		**3334103**	**3049322**	**284781**

18. In view of the above, it appeared that the party has not assessed the service tax due on the taxable service, manpower recruitment/supply agency service provided by them and not paid/short paid the service tax including cess total amounting to Rs.2,84,781/- during the period 2011-12 to 2014-15 and thereby, violated the provisions of Section 68 of the Finance Act, 1994 (here-in-after referred to as the Act') read with Rule 6 of Service Tax Rule, 1994 (here-in-after referred to as the Rules').

19. As per section 68(1) of the Act, every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed under Rule 6 of the Rules. From the above, it appeared that the party has not paid/short paid the service tax amounting to Rs.2,84,781/-, thus appeared to have violated the provision of Section 68(1) of the Act read with Rule 6 of the Rules.

20. As per Section 70 of the Act, every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed. Also on perusal of the ST-3 returns filed by the party it is observed that they not shown the correct value of taxable service provided by them in their ST-3 returns thereby have contravened the provisions of Section 70 of the Act read with Rule 7 of the Rules. It is also observed that the party has not filed ST-3 returns in time. Therefore, the party has made themselves liable for payment of late fee under Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994.

21. The party was required to show the correct value of taxable service provided by them in the ST-3 returns filed by them, which they have not done so. The party has not disclosed the true & correct assessable value/information about the value of taxable service provided by them in the statutory ST-3 return filed by them thus the party had suppressed material facts from the department with intent to evade payment of Service Tax and despite being engaged in providing taxable services and receiving payment, they did not pay Service Tax due thereon. Had the departmental officers not initiated the enquiry of the party, the said non-payment/short payment of tax would not have been unearthed. Therefore, extended period of limitation of five years appears to be rightly invokable in this case. The party has also willfully suppressed the fact of providing service/receipt of Service Tax by them with intent

24
-37-

to evade payment of Service Tax. Therefore, proviso to Section 73(1) of the Act along with interest under Section 75 of the Act is invokable in this case. The party appears to have evaded the payment of service tax to the Government exchequer to the tune of Rs. 2,84,781/- (including cesses) for providing taxable service.

22. From the foregoing facts, it appeared that the party has contravened the following provisions of the Act and rules made there under:-

(i) Section 67 of the Act, in as much as they have failed to ascertain the value of taxable service.
(ii) Section 68 of the Act read with Rule 6 of the Rules in as much as they have failed to pay the service tax.
(iii) Section 70 of the Act in as much as they have failed to self assess the service tax on the taxable value.

23. It appeared that party has suppressed the facts and value of taxable service and made contravention of the provisions of the Act and Rules willfully with intent to evade payment of service tax and thus appears to have rendered themselves liable for penal action under Section 78 of the Finance Act, 1994. Further the party has also contravened the provisions of Section 67, Section 68 and Section 70 of the Act read with Rule 6 of the Rules and thereby appears to have rendered themselves liable for penal action under Section 77 of the Finance Act, 1994.

24. It appeared that Shri Vinod Kumar Mishra, Director of M/s V.M. Placement Services Pvt. Ltd., Kanpur is working as financial head of the company & looking after over all business of the company, As per directions of Shri Vinod Kumar Mishra only all the bills & invoices were raised, service tax charged & collected through the bills from their clients & being financial head, as per directions of Shri Vinod Kumar Mishra only. service tax payments are made & ST-3 returns are filed. On perusal of the financial statement & ST-3 returns, it is observed that Shri Vinod Kumar Mishra has willfully suppressed the correct assessable value & short paid service tax liability. Therefore, Shri Vinod Kumar Mishra has contravened provisions of Finance Act, 1994 read with Service Tax Rules, 1994 & made himself liable for penal action under Section 78A of the Finance Act, 1994.

CASE FOR THE DEPARTMENT

Accordingly, a show cause notice issued to M/s V.M. Placement Services Private Limited, 129, Manohar Nagar, Barra-2, Barra, Kanpur (Nagar), Uttar Pradesh asking them as to why:

(i) The Service Tax amounting to Rs.2,84,781/- (Rs. Two lakh eighty four thousand seven hundred eighty one only) should not be demanded and recovered from them under proviso to Section 73(1) along with the interest due thereon under section 75 of the Finance Act. 1994.

(ii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act 1994 for suppressing the facts and value of taxable service and contravention of the provisions of the Act and Rules with intent to evade payment of service tax.

-38-

(iii) Penalty should not be imposed upon them under Section 77(1)(d) of the Act for not depositing Service Tax in due time as per Rule 6 of the Service Tax Rules, 1994 and Section 68 of the Act.

(iv) Late Fee should not be imposed upon them under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for late filing of ST-3 returns as detailed in Annexure-A.

(v) Penalty should not be imposed upon Shri Vinod Kumar Mishra Director of M/s V.M. Placement Services Private Limited, 129, Manohar Nagar, Barra-2, Barra, Kanpur (Nagar), Uttar Pradesh under the provisions of Section 78A of the Finance Act 1994 for willfully suppressing, hiding the facts and taxable value of taxable services and contravention of the provisions of the Finance Act, 1994 and Rules made there under with intent to evade payment of service tax.

CASE FOR THE PARTY

The party submitted reply to the show cause notice vide their letter dated 17.11.2016 wherein they stated that they had made a reconciliation statement (year wise) for the period 2011-12 to 2014-15 in respect of Service Tax demand of Rs.2,84,781/-. In their view, there was no such demand exist on their part.

RECORD OF PERSONAL HEARING

Shri Vinod Kumar.Mishra, Director of the party appeared before the undersigned on 06.03.2017 and reiterated the contents of written submission made on 17.11.2016. He explained service tax is discharged after raising final bill.

DISCUSSION & FINDINGS

I have gone through the case records viz SCN, Defence reply of the party, submissions made during the course of personal hearing and other records related to case on records. In the instant case party is engaged in providing "Man Power Recruitment and Supply agency services to different service receivers. I find that investigation agency carried out investigation and gathered evidences from different sources and value of taxable service has been taken either from Balance sheet/Profit and Loss Account or form 26AS whichever is higher for respective financial year. I find that total service tax liability for financial year 2011-12 to 2014-15 comes to Rs.33,34,103/- whereas against this amount party has paid total service tax during 2011-12 to 2014-15 Rs.30,49,322/- as is evident from their ST-3 returns for the said periods. Thus I find that it is clear that party has not discharged full service tax hence party short paid Rs.2,84,781/- and thereby contravention of provisions of service tax Act and Rules proved. The said amount is recoverable from the party alongwith interest and party is liable for penal action. Further I find that party has not disclosed true and correct assessable value/information about the value of taxable service provided by them in the ST-3 returns thus party suppressed material facts from the department with intent to evade payment of service tax. Had the departmental officers not initiated the enquiry of the party, the said non-payment/short payment of service tax would not have been unearthed. Therefore extended period of limitation of five years has rightly been invoked in this case. Thus I find that party is also liable for penal action for suppressing value of Taxable services and contravention of provisions of the Act and Rules with intent to evade payment of service

-39-

tax. Party has also not deposited Service Tax in due time as per Rule 6 of Service Tax Rules, 1994 and Section 68 of Finance Act, 1994.

Perusal of the reconciliation sheet submitted by the party reveals that by way of furnishing various details, the party has calculated the value of taxable service during the financial year 2011-12, 2012-13, 2013-14 & 2014-15 as Rs. 85,01,671/-, Rs. 72,81,070/-, Rs. 68,47,099/-, Rs. 52,38,866/- respectively, which does not match with any of the figures given in the SCN. These calculations are not supported by any documentary evidence and also not tallying with the figures given in the SCN. Considering these facts, I reject the calculations given in the reconciliation sheet given by the party.

As regards late filing of ST-3 returns, I find that ST-3 return for the period Oct12 to March13 was filed on 08.10.2013 whereas its due date was 10.09.2013 thus a delay of 28 day occurred which is also reflected in the ST-3 return itself. Accordingly party is liable to deposit Rs.1000/- under Section 70 of The Finance Act read with Rule 7C(ii) of Service Tax Rules 1994. Further, I find that ST-3 return for the period April 14 to September 14 was filed on 24.11.2014 whereas its due date was 14.11.2014 thus a delay of 10 days occurred which is also reflected in the ST-3 return itself. Accordingly party is liable to deposit Rs. 500/- under Section 70 of Finance Act read with Rule 7C (i) of Service Tax Rules 1994. All the other returns have been filed in time.

Further, I find that Shri Vinod Kumar Mishra, Director of the party is working as financial head of the company and looking after overall business of the company. In his statement dated 21.03.16 which has been made RUD-07, he has accepted this fact. As per his direction only all the invoices and bills were raised, Service Tax charged and collected though the bills from their clients, and as per his direction service tax payments are made and ST-3 returns are filed. This fact has been accepted by him in his statement dated 21.03.16. Hence, I find that Shri Vinod Kumar Mishra has willfully suppressed the correct taxable value and short paid service tax liability with intent to evade service tax. By doing so Shri Vinod Kumar Mishra, Director of the party has contravened provisions of the Finance Act 1994 and Service Tax Rules 1994 and made himself liable for penal action under Section 78 A of the Finance Act, 1994.

In view of the above I pass the following order

ORDER

(i) I confirm the demand of Service Tax of Rs.2,84,781/- (Rupees Two lac eighty four thousand seven hundred eighty one only) and order for recovery from M/s V.M. Placement Services Private Ltd.129-Manohar Nagar, Barra-2, Barra, Kanpur under Section 73(2) alongwith interest due thereon under Section 75 of the Finance Act, 1994.

(ii) I impose a penalty of Rs.2,84,781/- (Rupees Two lac eighty four thousand seven hundred eighty one only) upon M/s V.M. Placement Services Private Ltd.129-Manohar Nagar, Barra-2, Barra, Kanpur under Section 78 of the Finance Act, 1994 for suppression of facts and value of taxable service and contravention of the provisions of the Act and Rules with intent to evade payment of Service Tax.

27

-40-

(iii) I impose a penalty of Rs.1000 (Rupees One thousand only) upon M/s V.M. Placement Services Private Ltd.129-Manohar Nagar, Barra-2, Barra, Kanpur under Section 77(1)(d) of the Finance Act, 1994 for not depositing service tax in due time electronically as per Rule 6 of Service Tax Rules and Section 68 of the Finance Act, 1994.

(iv) I impose a late fee of Rs.1500/- (Rs.1000+500) (Rupees One thousand five hundred only) under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delayed furnishing of ST-3 returns.

(v) I impose a penalty of Rs.10000/- (Rupees Ten Thousand only) upon Shri Vinod Kumar Mishra Director of M/s V.M. Placement Services Private Ltd.129-Manohar Nagar, Barra-2, Barra, Kanpur under section 78A of the Finance Act, 1994.

Received.
25/9/17
(Ram Shanker Tripathi)

4.10 On perusal of last page of the order, it is evident that this order does not show any signature of the Adjudicating Authority nor there is any other detail which is relevant, is found. The only fact which is made visible on this copy of the order is that Shri Ram Shanker Tripathi has received the order on 25.09.2017, it is also not understand that as to how the signature of the person receiving the copy of order, put the signature with remark as 'received' on the copy received, it would only on the office copy maintaining with the authority giving the copy. Further, why would any person duly authorized receive an unsigned copy of order without getting the same certified. Appellant have not produced any letter by which he asked for the service of this order on him through Shri Ram Shanker Tripathi his authorized representative.

4.11 All these facts clearly shows that the appellant is trying to hide many more things, then what is stated in the case of the appellant do not merit any consideration, even in terms of law of equity and good conscious the basic principle of application of such law when person is claiming equity he should come with clean hand, which is not show in the present case. For this reason also, I do not find any merit in the appeal filed by the appellant. Nothing is available on record by which it can be claimed that Shri Ram Shanker Tripathi also was the authorized person to receive this copy or this copy was actually received by the appellant from the office of the any revenue authorities, certain marks indicate that this is only last page, which has been photocopies by hiding certain signatures and information which was available on the last page to prove the service of the order and instead of that information signature of Shri Ram Shankar Tripathi has been put, a signed copy of the order cannot become unsigned in the photocopy and if the order even signed then it accepted as an order in law and cannot have been implemented in that case appellant need not have file any appeal before First Appellate Authority or before us. The facts/grounds stated in para 6 & 7 of appeal is reproduced bellow are not worth any consideration:-

> "6.*That Shri Jay Prakash Shukla an employee in appellant's company had himself earlier gone to the Revenue office and there only he had received the copy of the aforesaid O-I-O No. 103/ST/AC/17 dated 31-03-2017. However shortly thereafter he met an accident, on account of which*

he did not come to work for quite some time. After recovering from his injuries, when he recalled about the copy of said Order-in-Original, he informed about the same to the appellant for the first time. Shri Jay Prakash Shukla searched for the aforesaid copy at his house and elsewhere but could not get the same. Thus as the copy of the impugned order could not actually reach the appellant, they wrote letters, one after another, asking for copy of the same as their aforesaid employee had forgotten where he had kept the copy of the same. However despite appellant's repeated request vide several letters, they were not being provided with the copy of the same. Finally the appellant went to the Revenue Office and got received in hand, the unsigned copy of aforesaid Order-in-Original No. 103/ST/AC/17 dated 31-03-2017 on 25.09.2017.

7. That the appellant being aggrieved by the O-I-O dated 31-03- 2017 and defacto received on 25-09-2017 preferred an appeal on 20.11.2017, i.e. within two months of the actual date of receipt of the said order, before the Commissioner (Appeals), Customs, Central Excise and Service Tax. The Commissioner (Appeals), Allahabad vide his Order-in-Appeal No. 189- 190/ST/ALLD/dated 26-03-2018, dispatched on 13.04.2018, dismissed the appeal on the ground of delay without appreciating the facts and circumstances of the case and also without giving an opportunity of hearing to the appellant."

4.11 A copy of the last page of the order received from the concern jurisdictional authorities is reproduced bellow:-

32

(iii) I impose a penalty of Rs.1000 (Rupees One thousand only) upon M/s V.M. Placement Services Private Ltd.129-Manohar Nagar, Barra-2, Barra, Kanpur under Section 77(1)(d) of the Finance Act, 1994 for not depositing service tax in due time electronically as per Rule 6 of Service Tax Rules and Section 68 of the Finance Act, 1994.

(iv) I impose a late fee of Rs.1500/- (Rs.1000+500) (Rupees One thousand five hundred only) under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for delayed furnishing of ST-3 returns.

(v) I impose a penalty of Rs.10000/- (Rupees Ten Thousand only) upon Shri Vinod Kumar Mishra Director of M/s V.M. Placement Services Private Ltd.129-Manohar Nagar, Barra-2, Barra, Kanpur under section 78A of the Finance Act, 1994.

Sd/-
(C.N.MISHRA)
Assistant Commissioner,
Service Tax Division, Kanpur

To,

(1) **M/s V.M. Placement Services Private Ltd.,**
129-Manohar Nagar, Barra-2, Barra, Kanpur
(2) **Shri Vinod Kumar Mishra Director**
M/s V.M. Placement Services Private Ltd.
129-Manohar Nagar, Barra-2, Barra, Kanpur

Office of the Assistant Commissioner,
Service Tax Division, 117/7, Sarvodaya Nagar, Kanpur

C.No.V(30)ST/DSCN/V.M. Placement/371/2016/ Dated: .03.2017

Copy forwarded for information and necessary action to:-
1- The Assistant Commissioner (Review), Central Excise, Kanpur.
2- The Superintendent (R-IV), Service Tax Division, Kanpur along with copy meant for the party with requested to serve the order in original upon the party under dated acknowledgement and sent the copy to this office for record.
3- Guard File.

728
24/04/17

31/05/2017
Superintendent
Service Tax Division :: Kanpur

CDR-63/73

24-4-17.

4.12 The observations made by the Hon'ble Apex Court on the law of limitation in the case of Pathapati Subba Reddy [[2024] 4 S.C.R. 241] are relevant to the facts of this case and are reproduced below:

> *17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.*
>
> *18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd [A.I.R. 1962 SC 361] has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.*
>
> *19. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors.[A.I.R. 1935 PC 85], it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.*
>
> *20. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Ors.[2014 (4) SCALE 50] wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause*

of action had arisen, other persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

21. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors.[(2011) 4 SCC 363], where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.

22. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.[AIR 2009 SC 1927 14] , that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

23. In Basawaraj and Anr. vs. Special Land Acquisition Officer [(2013) 14 SCC 81], this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands. Paragraph 12 reads as under:

> *"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."*

25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:

> *"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters*

laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature." (emphasis supplied)

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.*

4.13 In our considered view, impugned order needs to be upheld.

5.1 Appeals are dismissed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

akp