CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70324 of 2025

(Arising out of Order-in-Appeal No.DDN-EXCUS-000-APPL-MRT-13-2024-25 dated 30/05/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun)

M/s VS Travels Solutions, **.....Appellant**
(383/2, Chaube Compound,
Western Kutchery Road,
Near HDFC Bank, Meerut)

VERSUS

Commissioner of Central Excise &
CGST, Meerut-I **....Respondent**
(2nd & 3rd Floor, Shree Palace,
Nathanpur, Dehradun-248001)

APPEARANCE:

None, for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70760/2025

DATE OF HEARING : 06 October, 2025
DATE OF DECISION : 06 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.DDN-EXCUS-000-APPL-MRT-13-2024-25 dated 30/05/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun. By the impugned order following has been held:-

> *"7. In view of the above discussion and findings I uphold the demand of service tax of Rs.6,57,496/-, along with interest. I appropriate Rs.61,114/- deposited by the appellant, against this confirmed demand. Considering the facts of the case the penalty under Section 78 of the Act*

stands reduced to Rs.5,96,382/-. However, I do not interfere with the imposition of penalty of Rs.20,000/- imposed in the impugned Order under Section 70 of the Act.

ORDER

8. The appeal No. 36/ST/ APPL-MRT/MRT/2023-24 dated 31.05.2023 filed by M/s V.S. Travels Solutions, 383/2, Chaube Compound, Western Kutchery Road, Near HDFC Bank, Meerut, against Order-in-Original No.212-ST/AC/MZN-1/2022-23 dated 03.04.2023 is disposed of in the above terms."

2.1 Appellant was registered with the Department with S Tax registration No. AKDPJ0109JSD001 for providing taxable services as defined by Section 65B (44) of the Act.

2.2 On the basis of information received from the Income Tax Department that they had received Rs.64,95,326/- in their ITR during the financial year 2016-17. Inquiries were made and on comparison of the figures with ST-3 filed by the appellant following have been observed:-

Period	Total Sale of Services (ITR)	Total Value for TDS(including 194C, 194Ia, 194Ib, 194J, 194H)	Total Gross value Provided (Service Tax Return)	Difference between value of services from ITR & Gross value in STR	Rate of Service Tax	Total payable amount of Service tax
2016-17	64,95,326	64,95,326	0	64,95,326	15%	9,74,299.

2.3 Appellant was asked to clarify in respect of the differences so noticed and were asked to provide following documents:-

"(i) Balance Sheet for the period F.Y. 2016-17 & Trial Balance for the period April-June 2017 along with ledgers.

(ii) Form-26 AS for the period F. Y.2016-17 & for the period April-June 2017.

(iii) Service Tax Return (STR) for the period F. Y. 2016-17 & for the period April-June 2017.

(iv) Details of invoices issued for service provided and services received for all service Separately for the period F. Y. 2016-17 &for the period April-June 2017 in Excel Sheet.

(V) Details of service tax paid alongwith copy of challans."

2.4 However, even after repeated correspondence (letter dated 14.10.2021 & 03.12.2021), the said information was not provided.

2.5 Alleging that appellant have suppressed the facts willfully with intent to evade payment of service tax, a show cause notice dated 21.04.2022 was issued to the appellant, asking them to show cause as to why:

(i) *The Service Tax amounting to Rs. 9,74,299/ (including SBC and KKC) (Rupees Nine lacs. seventy four thousand, two hundred and ninety nine only) not paid by them should not be demanded and recovered from them-by invoking extending period under Section 73 of Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.*

(ii) *Interest payable on the above demand of the service tax should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of the Centrai Goods and Services Tax Act. 2017.*

(iii) *Penalty should rot be imposed upon them under Section 78 of the Finance Act. 1994 for contravention of the provisions discussed in the notice read with Section 174 of the Central Goods and Services Tas Act. 2017.*

(iv) *Penalty late fees should not be demanded under Section 70 of the Finance Act, 1994 read with Rule 7 of service tax Rule1994 for contravention of the provisions of section 70 of the Finance Act, 1994 read with Rule 7 of service tax rules 1994 discussed in the notice read with Section 174 of the Central Goods and Services Tax Act, 2017.*

2.6 The above show cause notice was adjudicated as per the Order-in-Original No.212-ST/AC/MZN-I/2022-23 dated 03.04.2023 by holding as follows:-

Order

(i) *I confirm the demand and order to recover the service tax of Rs.9,74,299/- (Rupees Nine Lakh Seventy Four thousand Two hundred Ninety Nine* *only) from them in terms of the proviso to Section 73(1) of the Finance Act, 1994, read with Section 174 of the Central Goods & Services Tax Act, 2017. Further as the party have deposited amount of Rs.1,49,733/- vide GAR-7 challans, the same is being appropriated against the above said demand.*

(ii) I also demand and order to recover interest on the aforesaid amount of service tax as mentioned in para (i) from them, in terms of Section 75 of the Finance Act, 1994, read with Section 174 of the Central Goods & Services Tax Act, 2017.

(iii) I impose penalty of Rs.9,74,299/- (Rupees Nine Lakh Seventy Four thousand Two hundred Ninety Nine only) upon the party under Section 78 of the Finance Act, 1994 with an option to the party, under proviso to Section 78 to pay 25% of the penalty amount provided they pay the entire amount of Service Tax along with interest payable thereon as ordered in para (ii) above, within 30 days of the communication of this order.

(iv) I impose penalty of Rs. 20,000/- (Rupees Twenty Thousand only) from them, in terms of Section 70 of the Finance Act, 1994, read with Section 174 of the Central Goods & Services Tax Act, 2017.

The adjudged dues should be paid forthwith."

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order referred in para-1 above.

2.8 Aggrieved appellant have filed this appeal.

3.1 This matter was listed for hearing on 15.09.2025, when appellant did not appear and the matter was adjourned by observing as follows:-

"When the matter was called none appeared on behalf of the appellant nor any adjournment request has been received from the appellant. In the interest of justice matter is adjourned. List on 06.10.2025."

3.2 Today i.e. 06.10.2025 also none appeared for the appellant nor any request for adjournment has been received.

3.3 I find that the issue involved in the present case is in very narrow compass, I proceed to consider the appeal after hearing Smt Chitra Srivastava learned Authorized Representative appearing for the revenue, who reiterates the findings recorded in the impugned order.

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

4.2 In the present case, I find that the issue can be decided on a very short ground of limitation as for making this demand for the period 2016-17 (confirmed by the First Appellate Authority for the period October 2016 to March 2017) show cause notice has been issued on 21.04.2022.

4.3 Impugned order for invoking the extended period of limitation records the findings as follows:-

> *"6.4 At the outset, I take up the argument regarding the demand being time barred under the provisions of the Act read with various case laws cited by the party. In this regard. I find that the appellant were registered with the Department and were therefore required to file the ST-3 Returns as per the provisions of the Act, declaring correct value of the taxable services rendered by them during the relevant period. I find that this has not been done and therefore this clearly was an act of suppression of facts on their part and the Department was not privy to the assertions now being raised by the appellant. Thus, not declaring the complete income, unearthed now from the sharing of data by the income tax department, was a clear and deliberate act of suppression of facts on their part. Under these circumstances, I am of the view that material facts were deliberately suppressed by the appellant from the Department with an intent to evade payment of tax. Thus, there are sufficient and cogent grounds for*

invocation of extended period under the proviso to Section 73(1) of the Act.

6.5 However, I find the notice the impugned SCN in this case was issued on 21.04.2022. The 'relevant date' i.e. the last date of filing the ST-3 return for the period April to September 2016 was 25.10.2016, therefore, the demand for this period, even by invoking the extended period clause, should have been served upon the appellant within five years from the 'relevant date' latest by 25.10.21. Thus, I am of the view that no service tax can be demanded vide the impugned SCN dated 21.04.22 for the services rendered during the first half of the financial year 2016-17.

6.6 I find that the demand in instant SCN has been raised on the receipts of Rs.64,95,326/- recorded in the TDS records. Upon perusal of Form 26AS, the sale of service for the first half (i.e., from April to September 2016) is Rs.21,12,020/- and for the second half (i.e., from October to March 2017) is Rs. 43,83,306/-. Therefore, I hold that the demand of Rs.3,16,803/- raised on the value of Rs.21,12,020/- was clearly time barred on the date of issuance of the impugned SCN and is accordingly set aside."

4.4 Order-in-Original records the findings as follows:-

"(c) As regards to invocation of the extended period the Show Cause Notice alleges that during the period, the party have contravened the provisions of the Finance Act, 1994 with intention to evade payment of service tax. Proviso to Section 73(1) of the Finance Act, 1994 prescribes the invocation of extended period. The relevant provisions are as under:

> *Section 73(1) of the Finance Act, 1994 reads as under-*
>
> *(1) where any Service Tax has not been levied or paid or short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within*

thirty months from the relevant date serve notice on the person chargeable with the Service Tax which has not been levied or paid or which has been short-levied or short-paid or the persons to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-

(a) fraud; or

(b) collusion; or

(c) 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 effect, as if for the words eighteen months, the words 'five years' had been substituted.

As above, the extended period of limitation under proviso to Section 73(1) of Finance Act, 1994, can be invoked if the due Service Tax has not been levied or paid or has been short-levied or short-paid by reasons of (a) fraud or (b) collusion or (c) wilful mis-statement or (d) suppression of facts and (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. Thus any of the reason out of five reasons mentioned in said proviso is apposite for invoking extended period of limitation. Therefore, I find that the extended period is correctly invoked in the matter."

4.5 Show cause notice records as follows:-

"Whereas, from the facts mentioned above, they have suppressed the fact of not paying Service Tax on

taxable value willfully with intent to evade the payment of service tax. Thus, it is evident that non-payment of Service Tax on the said Services came to the notice of the Department only during investigation by the department on the data shared by the Income Tax department. In view of above the service tax of Rs. 9,74,299 (including SBC and KKC)is recoverable from the party in terms of Section 73(1) of Finance Act, 1994 by applying the provisions of extended period, which is squarely applicable in view of the above facts, along with interest payable under Section 75 of the said Act. Thus whereas it appears that the party have contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 with an intent to evade payment of Service Tax, the penalty also appears to be imposable upon them under Section 78(1) of the Act, ibid in view of above.

5. It therefore appears that the party suppressed the material facts from the Department and contravened the provisions of the Act and Rules made thereunder as mentioned above with intent to evade payment of Service Tax. Therefore, service tax which was not paid by the party in the manner provided under the Act and the rules made thereunder, as referred to above, is required to be demanded and recovered from them by invoking firm proviso to Section 73 of the Finance Act 1994. The party is also liable to pay interest under Section 75 of the Act and Penalty under Section 78 of the Act ibid."

4.6 From reading of the above, I do not find any allegation or the finding to show that there was any deliberate act of suppression on the part of the appellant with intent to evade payment of taxes. Appellant was received certain commission from the airlines against sale of the tickets, part of the commission was distributed by the appellant to its sub-agent and on the part amount they paid the service tax. This fact has not been disputed either by the Original Authority or by the Appellate Authority.

4.7 From the above it is evident that appellant had a bonafide belief that they were required to pay service tax only on the amount retained by them as commission and not on the entire amount received. They were discharging the service tax on the amount retained as is evident and recorded in the orders of the authority below:

4.8 The appellant was discharging service tax on the part of the commission received RE show cause notice as authorities below have recorded that the value of service indicated in ST-3 return has not part of the relied upon documents. To establish this fact, neither there is any discussion in ST-3 return nor in the impugned order, when appellant was paying service tax by way of the details of challans for payment of service tax as recorded in the impugned order and it is observed that he had paid the service tax against the challans in July, 2016 and in the Month of April, 2017. If appellant was depositing service tax as is evident, the same amount would not have been reflected in the ST-3 returns being not made relied upon document in the present proceedings, I do not find any merits in invocation of extended period of limitation for making this demand.

4.9 Hon'ble Supreme Court has in the case of Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)]held as follows:

> *"**21.** The Revenue contended that of the three categories, the conduct of the appellant falls under the case of "willful misstatement" and pointed to the use of the word "misutilizing" in the following statement found in the order of the Commissioner of Customs, Raipur in furtherance of its claim :*
>
> *"The noticee procured 742.51 kl of furnace oil valued at Rs. 54,57,357/- without payment of customs duty by misutilizing the facility available to them under Notification No. 53/97-Cus., dated 3-6-1997"*
>
> ***22.** We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or*

misstatement. The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, Sixth Edition (pp 1599) defines "willful" in the following manner :-

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

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

23. *In the present case, from the evidence adduced by the appellant, one will draw an inference of bona fide conduct in favour of the appellant. The appellant laboured under the very doubt which forms the basis of the issue before us and hence, decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did the appellant decide to claim exemption. Even if one were to accept the argument that the Development Commissioner was perhaps not the most suitable repository of the answers to the queries that the appellant laboured under, it does not take away from the bona fide conduct of the appellant. It still reflects the fact that the appellant made efforts in pursuit of adherence to the law rather than its breach.*

24. *Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in* *support of bona fide conduct, by observing that "the appellants had not brought anything on record" to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."*

25. *Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In Aban Loyd Chiles Offshore Limited and Ors. (supra), this Court made the following observations :*

"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :

'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such

averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...." (Emphasis supplied)

26. *Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful* *default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant."*

4.10 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.

(Dictated and pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp