CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)

Service Tax Appeal No.70023 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-580-23-24 dated 04/03/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Hindustan Road Lines,
Proprietor: Vijay Kumar Gupta, ...**Appellant**
(House No.843, New Alok, Hapur)

VERSUS

Commissioner of Customs, Central Excise &

CGST, Noida ....**Respondent**

(4th Floor, C-232A/2 to 232A/3,

GST Bhawan Sector-48, Noida-201305)

APPEARANCE:

Shri Sahil Sharma, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70852/2025

DATE OF HEARING : 20 November, 2025
DATE OF DECISION : 20 November, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-580-23-24 dated 04/03/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

(I) The demand of service tax for the period of October 2014 to March 2015 needs to be ascertained afresh as discussed above. Accordingly, I hereby remand the matter back to the adjudicating authority with the directions to re-

ascertain the demand for the period of October 2014 to March 2015 only along with applicable interest and penalties.

(II) I hereby uphold the impugned order to the extent of demand of service tax under Section 73(1) of the Act, along with interest under Section 75 and penalties under Section 78 and Section 77(1)(b) of the Act for the period of F.Y. 2015-16 and 2016-17 only.

The Appeal No. 264/ST/Noida/APPL/NOI/2023-24 dated 28.12.2023 filed by M/s Hindustan Roadlines (Proprietor Vijay Kumar Gupta), House No. 843, New Alok, Hapur (U.P.) is disposed of in above terms. The Order-in-Original No. 07/AC/DIVISION/HPR/2023 dated 31.08.2023 passed by the Assistant Commissioner, Central GST Division-Hapur stands modified to the above extent."

2.1 Appellant was registered with the Service Tax Department having Service Tax Registration No. AFLPG4939EST001 for providing the taxable services as defined under erstwhile Section 65B(44) of the Finance Act, 1994.

2.2 On scrutiny of third party data received from the Income Tax Department for the F. Y. 2014-15, 2015-16 & 2016-17, the department observed difference between the values of sale of services declared in their Income Tax Return; values for TDS and total Gross value provided in service tax returns. The details of the said difference are as under:-

Period (Rate of Service Tax)	Sale of Services as per ITR	Gross value of services provided as per STR	Higher value difference between Column (b & d) or between column (c & d)	Service Tax due calculated on higher value difference reflected in column 'e' (Inclusive of Cesses)
2014-15	15,84,048	15,64,494	19,554	2,417
2015-16 (14.5%)	17,30,655	9,83,185	7,47,470	1,12,120
2016-17 (15%)	20,96,943	8,97,664	11,99,279	1,73,895
Total				2,88,432

2.3 Range Superintendent sent e-mail dated 04.12.2020 on the registered mail address of the appellant and a letter dated 15.12.2020 was also sent to the appellant requesting them to furnish the details of the payment received along with copies of ST-3 returns & reason of difference of value as shown in STR and Income tax return. However, appellant did not respond.

2.4 Show cause notice dated 28/12/2020 was issued to the appellant, asking them to show cause as to why:-

> *"(i) The Service Tax amounting to Rs.2,88,432/- (Rupees Two Lac Elghty Eight Thousand four hundred thirty Two only) should not be demanded and recovered from them under proviso to Section 73(1) of the Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.*
>
> *(ii) The due interest on the amount of Service Tax mentioned at (1) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 reed with Section 142, Section 173 and Section 174 of CGST Act, 2017.*
>
> *(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act 1004 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for fallure to pay service tax & suppressing the facts and value of taxable service with intent to evade payment of service tax.*
>
> *(iv) Penalty should not be imposed upon them under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 for not maintaining the proper records."*

2.5 The said show cause notice was adjudicated as per the Order-in-Original No.07/AC/Division/HPR/2023 dtd 31.08.2023 by holding as follows:-

"ORDER

> *(i) I confirm the demand of service tax of Rs.2,417/ (including Education Cess & Secondary Higher Education Cess) for F.Y. 2014-15 against M/s. Hindustan Roadlines, Opp. PNB, Meerut Road, Hapur, Ghaziabad. Uttar Pradesh in terms of powers conferred upon me vide proviso to*

Section 73(1) of the Finance Act, 1994, rend with Section 142, Section 173 and Section 174 of the Central Goods & Services Tax Act, 2017.

(ii) I confirm the demand of service tax of Rs. 1,12,120/- (including SBC) for F.Y. 2015-16 against M's. Hindustan Road lines, Opp. PNB, Meerut Road, Hapur, Ghaziabad, Uttar Pradesh in terms of powers conferred upon me vide proviso to Section 73(1) of the Finance Act. 1994, read with Section 142, Section 173 and Section 174 of the Central Goods & Services Tax Act, 2017.

(iii) I confirm the demand of service tax of Rs. 1,73,895/- (including SBC) for F.Y. 2016-17 against M/s. Hindustan Road lines, Opp. PNB, Meerut Road, Hapur, Ghaziabad, Uttar Pradesh in terms of powers conferred upon me vide proviso to Section 73(1) of the Finance Act, 1994, read with Section 142, Section 173 and Section 174 of the Central Goods & Services Tax Act, 2017.

(iv) I also order for demand of interest chargeable on the aforesaid amounts of service tax Rs,2,417/-, Rs.1,12,120/- & Rs.1,73,895/- from the party under Section 75 of the Finance Act, 1994, read with Section 142, Section 173 and Section 174 of the Central Goods & Services Tax Act. 2017.

(v) I also impose a penalty of Rs.2,417/- upon the party for F.Y. 2014-15, under Section 78 of the Finance Act, 1994, read with Section 142, Section 173 and Section 124 of the Central Goods & Services Tax Act, 2017.

(vi) I also impose a penalty of Rs.1,12,120/- upon the party for F.Y. 2015-16, under Section 78 of the Finance Act, 1994, read with Section 142, Section 173 and Section 174 of the Central foods Services Tax Act, 2017.

(vii) I also impose a penalty of Rs. 1,73,895/- upon the party for F. Y. 2016-17, under Section 75 of the Finance

Act, 1994, read with Section 142, Section 173 und Section 174 of the Central Goods & Services Tax Act, 2017.

(viii). I also impose penalty of Rs.10,000/- upon the party under Section 77(1)(b) of the Finance Act, 1994, read with Section 142, Section 173 and Section 174 of the Central Goods & Services Tax Act, 2017."

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order.

2.7 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Sahil Sharma 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 Impugned order records the findings as follows:-

"7.1 At the outset, I observe that the appellant has pleaded that the present demand is time barred as the necessary Ingredients to invoke the extended period of limitation prescribed under Section 73(1) of the Act are not satisfied in the present case.

7.2 In view of above contention of the appellant, I find that for the period of April 2014 to September 2014, last date of filing the ST-3 return was extended up to 14.11.2014 by the virtue of Order No. 02/2014-ST dated 24.10.2014 issued by the CBEC. Even if the provisions of extended period under Section 73(1) of the Act made applicable in the instant case, even after the last date to issue the demand / SCN for the period of April 2014 to September 2014 was not beyond than 14.11.2019. In the present case the demand Show Cause Notice was issued to the appellant on 28.12.2020 thus, I hold that the demand for the period of April 2014 to September 2014 stands time barred.

7.3 As far as contention of the appellant that in the present case extended period clause under Section 73(1) of the Act cannot be invoked, as in the present case there is no suppression of facts and they were of the bona-fide belief that service tax is not applicable on their activities and there was no mala-fide intention on their part. In this regard I find that Section 73 of the Act states as under:-

> *"Section 73(1)- Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the 2[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 person 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 of paid or has been short-levied or short-paid or erroneously refunded by reason of-*
>
> *(a) fraud; or*
>
> *(b) collusion; or*
>
> *(c) wilful mis-statement; or*
>
> *(d) suppression of facts; or*
>
> *(e) contravention of any of the provisions of this Chapter or of the rules made thereunder 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 thirty months, the words "five years" has been substituted*
>
> *Further sub-section (6) of Section 73 Ibid defines "relevant date" as under:*
>
> *(i) In the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid-*

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the sald rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(i) ……………………..

(ii) …………………….

7.4 As discussed supra, I find that the appellant had contravened the provisions of Rule 6 of Service Tax Rules 1994 read with Section 68(1) of the Act, in respect of income received against the provision of the services and have contravened the provisions of Rule 2(1)(d) and Rule 6 of Service Tax Rules 1994, Rule 2A of Service Tax (Determination of Value) Rules' 2006 read with Section 66B, 66C and Section 68(2) of the Act. The appellant had also suppressed the material facts and figures related to services provided by them. The said material facts came to the knowledge of the department only when the respondent department got the income tax data of the appellant from CBDT under the data exchange policy. Had the data not given by the Income Tax Department, evasion of service tax on the amount so collected by the appellant against the provision of services would have not been unearthed by the respondent department. From the aforesaid, I find that in the case of evasion of service tax by way of fraud, collusion, willful misstatement and suppression of facts, provisions of extended period as provided under Section 73(1) of the Act are applicable.

7.5 In the above context, I rely on the case of Cosmic Dye Chemical Vs. Collector 1995 (75) ELT 721 (S.C.)-"the Hon'ble apex Court held that the intent to evade duty must be proved for invoking extended period of limitation. In this case as discussed supra the appellant suppress the fact with intent to evade the service tax. In the case of Anand Nishikawa Company Ltd. Vs. Commissioner, Meerut 2005 (188) ELT 149 (S.C.), the Hon'ble Supreme Court has held that "suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade the payment of duty." In the case of M/s. Lalit Enterprises [2010 (17) STR 370 (Tri Chennai)], it was held that in the light of the fact that on verification of the records the Department came to know-" that the appellants did not disclose receipt of service charges, therefore, five years period has been correctly invoked and applied against the appellant as the case falls within the proviso to Section 73(1) of the Finance Act, 1994 and the demand is not barred by limitation. In the case of M/s Mahavir Plastics [2010 (255) ELT 241(Tri Mumbai)], it has been held that "If facts are gathered by department in subsequent investigation, it is not correct to say that the relevant facts were known to the department during the period of dispute, in such a situation, the decisions of the Apex Court cited by the Id. Counsel would not be of any avail to the appellant."

7.6 I find that the appellant failed to declare correct value of services rendered by them and subsequently failed to declare their service tax liability in the ST-3 returns filed by them for the relevant period. I find that in the present regime of liberalization, self-assessment and filing of ST-3 returns online, the said appellant failed to provide correct information to the department and therefore the department would come to know about such short-payment of service tax only during audit or preventive/other checks. As already held above that the *appellant cannot be presumed to have acquired a wrong interpretation of the legal provisions, and thus is definitely a deliberate non-disclosure of correct fact and as such suppression of fact. As the appellant had indulged into suppression with the intent to evade the payment of tax. These facts came into notice of the Revenue only when the enquiry was initiated against them. Therefore, the extended period of limitation as provided under proviso to section 73(1) of the Act has rightly been invoked."*

4.3 Appellant has challenged the demand mainly on the ground of limitation. It is their submission that they have before the lower authorities submitted as follows:-

"10. At the outset, it is submitted that the said legal ground goes to the root of the matter, as it pertains to the patent jurisdictional error on part of the officer for invoking the inapplicable proviso to Section 73(1) in the peculiar facts of the present case and contrary to settled law.

11. It is an undisputed fact in the present matter that the entire issue has arisen / on the basis of the comparison between income disclosed by the Appellant in the ITR and value of taxable services disclosed in the periodical returns. It is also undisputed that the entire income was recorded as an income in the financial statements of the Appellant. Therefore, it is not a case where income was not recorded in the financials and that the revenue authorities found out the rendition of services on part of the Appellant on some other undisclosed sources.

12. Furthermore, the Appellant was under a bonafide belief that the difference was on account of services which were not subject to any service tax liability.

13. Therefore, this is not a case wherein there has been any suppression of facts with the intent to evade payment of Service Tax which is a condition sine-qua-non for invoking the extended period of limitation prescribed under the proviso to Section 73 of the Finance Act, 1994 (hereinafter "Act").

14. Despite the above position, the proper officer has erroneously invoked the said proviso to wrongfully initiate service tax assessment proceedings solely on the basis of the mismatch in income as disclosed in ITR vis-à-vis income subjected to service tax vide STR(s). That in doing so, the officer has failed to appreciate that the necessary conditions to invoke the said proviso is not applicable in the present matter.

15. Before adverting to our submission on this aspect, it is imperative to draw reference to the relevant provisions of Section 73 of the Act, which reads as under:

"73.(1) ……."

16. That the said proviso to section 73(1) of the Finance Act, stipulates that where any service tax has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Chapter or the Rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax, the provisions of the said section shall have effect as if, for the word "one year", the word "five years" has been substituted.

17. It is correct that section 73 (1) of the Finance Act does not mention that suppression of facts has to be "wilful" since "wilful" precedes only misstatement. It has, therefore, to be seen whether even in the absence of the expression "wilful" before "suppression of facts" under section 73(1) of the Finance Act, suppression of facts has still to be willful and with an intent to evade payment of service tax."

4.4 The entire demand has been made against the appellant on the basis of the differences noted in the figures reported in income tax return and ST-3 return. Appellant submitted that they were filing their return regularly and declaring the value of the services. The differences as are noted in the returns is for the reason that they were entered in a bonafide belief that certain services proved by them are exempt from payment of service tax. Impugned Order in para-9 has observed as follows:-

> *"9. Now I proceed the instant appeal for rest of the period i.e. F.Y. 2015-16 and 2016-17. I observe that the appellant has pleaded that certain services were rendered wherein the consignor bore the responsibility for service tax payment as stipulated under Notification No. 30/2012-ST dated 20.06.2012. The appellant has further submitted that the appellant has disclosed the receipt of delivery commission as a commission agent, which was a contributory factor to the observed variance between the reported figures. The appellant has also submitted that another reason for difference of value of services between ST-3 and ITR is rendering services Involving low value consignments, which were exempted from payment of service tax under the provisions of Notification No.25/2012-ST dated 20.06.2012 which stipulates that services provided for transportation of goods, where the gross amount charged does not exceed Rs.750/-, are exempted from payment of service tax."*

4.5 From reading of the above para, it is quite evident that appellant had a belief that certain services provided by him were exempt under Notification No.25/2012-ST dated 20.06.2012 and in respect of some services the tax was to be paid by the consignee as provided by Notification No.30/2012-ST dated 20.06.2012. Impugned order do not record that such a belief was not based on the concrete facts of the case. It is evidently appellant was filing ST-3 returns throughout and making the declaration of the value of services excluding the exempted services. It was for revenue to scrutinize and inquire in respect of the demand has been made by the impugned order.

4.6 I find that appellant entertained such bonafide belief invoking extended period of limitation for making this demand cannot be justified. Hon'ble Supreme Court in the case of M/s Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)] has 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.”*

4.7 I also find that appellant had before the lower authorities relied upon the decision of Hon’ble Delhi High Court in the case of Mahanagar Telephone Nitam Ltd. Vs UOI and others [W.P. (C) 7542 of 2018 dated 06.04.2023] 2023-VIL-216-DEL-ST (2023 (73) G.S.T.L. 310 (Del.) / (2023) 5 Centax 279 (Del.) wherein following has been held:-

*“**28.**In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made thereunder with an intent to evade payment of service tax. However, the impugned show cause notice does not contain any allegation of fraud, collusion, or wilful misstatement on the part of MTNL. The impugned show cause notice alleges that the extended*

period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax. Thus, the main question to be addressed is whether the allegation that MTNL had suppressed material facts for evading its tax liability, is sustainable.

Xxxxxxxxxxxxxxxxxxxx

41.*In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of receipt of consideration for rendering any taxable service. On the contrary, the statements of the officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/financial support from the Government of India was not taxable. Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable. The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. As stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact. MTNL's contention that the receipt is not taxable under the Act is a substantial one. No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return."*

4.8 Further, the Appellant's case is also covered by the recent decision of the Tribunal, in M/s Dinesh Chandra R Agarwal Infracon Pvt. Ltd vs. Commissioner of GST & C.Ex-Gandhinagar [(2024) 14 Centax 339 (Tri.-Ahmd)], wherein on identical set of facts the extended period of limitation was applied on account of difference in the value of taxable income under financial statements as compared to the STR. The Hon'ble Tribunal whilst placing reliance on the aforementioned decisions, held that the Commissioner had failed to examine the necessary ingredients to invoke the proviso to Section 73(1) of the Finance Act, 1994. Accordingly, the service tax demand was quashed on the ground of limitation alone. The brief excerpts are reproduced below:-

> *"**3.4** The next issue for our consideration is whether the demand of service tax is required to be set aside on the ground of limitation. It is undisputed fact in the present matter that the entire issue has arisen on the basis of comparison of the income disclosed by the appellant in their financial statements and disclosed the value of taxable services in their periodical returns. It is also undisputed fact that the entire income was recorded as a income in the financial statements of the appellant. Therefore it is not a case where the income was also not recorded in financial statement and the revenue authorities found out the rendition of services on the part of the appellant basis on some other sources.*
>
> ***3.10** We observe that Learned Commissioner has dealt with the submission of the appellant on the ground of limitation in paragraph 16.13 of the impugned Order in Original dated 19-5-2023. Para 16.13 of the impugned order in original dated 19-5-2023 is reproduced below:*
>
> *"16.13 The Noticee submitted that the period of limitation is inapplicable as the Books of Accounts is a public document and that non-disclosure of information which was not required to be disclosed or recorded by statutory provision or prescribed proforma does not amount to suppression or concealment and accordingly larger period of limitation cannot be invoked. In this regard, the extension period has been rightly invoked in the SCN, as the Noticee had not disclosed the value/amount received*

towards resurfacing of runway received in respect of said contract dated 14-6-2016 in their respective ST-3 returns. Even though the said amount was considered as exempted by the Noticee, the same is required to be mentioned in the ST-3 return along with the provisions/specific applicable exemption Notification. As the said amount was not mentioned in the ST-3 return, the difference in the same as compared to that mentioned in the Books of Accounts/Form 26AS was revealed during the investigation leading to demand SCN. The case laws cited upon by the Noticee fail in supporting this contention of the Noticee."

3.11 *It can be seen from the above that Ld. Commissioner has only observed that since the appellant did not disclose the revenue for these project in their periodical return and therefore the Ld. Commissioner has justified the invocation of extended period of limitation to confirm the demand of service tax in the present matter. Learned Commissioner has not given any ground to show that there was a deliberate attempt on the part of the appellant to suppress or to miss declare the value of service. Ld. Commissioner has not even examined the various ingredients for invocation of extended period of limitation as provided in first proviso to section 73(1) of the Finance Act 1994.We observe that on the basis of the above analysis of Section 73(1) of the Finance Act, 1994 and various decision of these tribunal and settled principle of law we are of the clear view that the demand of service tax in the present matter beyond the period of limitation is not sustainable. We observe that the demand in the present matter is for the period 2016-17 and April 2017 to June 2017 and the show cause notice is issued on 27-8-2020. Therefore the entire demand is liable to be set aside on the ground of limitation as discussed above.*

> ***4.*** *In view of our above discussion and finding the impugned order is set aside and appeal filed by the Appellant is allowed with consequential relief, if any."*

4.9 Following decisions also hold against invocation of extended period of limitation in case where the person entertained a bonafide belief with regards to non taxability of services provided or exempted nature of services.

- Anand Nishikawa Co. Ltd. [2025 (188) ELT 149]
- Infinity Infotech Parks Ltd. [2014 (36) STR 37]
- Chennai Petroleum Corporation Ltd. [2007 (211) ELT 193];

4.10 In view of the above, I find that demand is hit by limitation and the findings recorded in the impugned order in this regard cannot stand in the eyes of law. Accordingly, the impugned order is set aside.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp