CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70625 of 2025

(Arising out of Order-in-Appeal No.91-ST/Appl/LKO/2025 dated 28/03/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Girraj Singh, **.....Appellant**
(3/145, Dhakran, Nai ki Mandi, Agra)

VERSUS

Commissioner of Central Excise &

CGST, Agra **....Respondent**

(113/4, Sanjay Place, Agra-282002)

APPEARANCE:

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

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

FINAL ORDER NO.70867/2025

DATE OF HEARING : 02 December, 2025
DATE OF DECISION : 02 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.91-ST/Appl/LKO/2025 dated 28/03/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

> *"In view of above, I find that the appellant was liable to discharge service tax liability of Rs. 2,36,852/which I confirm the under proviso to Section 73 of the Finance Act, 1994 alongwith applicable interest under Section 75 of the Finance Act, 1994. I also impose equal penalty of Rs. 2,36,852/-under Section 78 of the Finance Act, 1994.*

Further, following the ratio of judgment of Hon'ble CESTAT, Allahabad judgment in Vasan Traders vs. Commissioner of Central Excise & Service Tax, Lucknow, reported at 2019 (28) GSTL 116 (Tri. All.) wherein, it has been categorically stated that: -

"However, as regards imposition of penalty in terms of Section 77 of the Act, we find that as already full penalty stands imposed under Section 78, there may not be justification for imposition of separate penalty under Section 77 of the Act. The same is accordingly set aside."

In view of the above, I set aside the penalty imposed upon the appellant under 77(1)(a), 77(1)(c) & Section 77 (2) of the Finance Act, 1994. In the light of discussions made in the foregoing paras, the impugned order is modified to the above extent and the appeal is disposed of accordingly."

2.1 Appellant is not registered with the department and is having PAN No.BIDPS9791N.

2.2 On the basis of information received from the Income Tax Department, it was observed that during the period 2015-16 they had declared in their ITR about receipt of Rs.18,70,310/- in lieu of services rendered and TDS had been deducted on this amount in their Form 26AS. Thus, it was observed that appellant has short paid service tax as detailed in table below:-

Receipts towards Services			Service tax (including cess)	
ITR	26AS	Higher	Rate (%)	Payable
1817310	1563339	1817310	15	271195

2.2 Appellant was asked to furnish documents for verification of liability of service tax, but the appellant did not submit any reply of the letters by department.

2.3 Show cause notice dated 16.12.2020 was issued to the appellant asking them to show cause as to why:-

"a. Service Tax (including ceases) amounting to Ra.2,71,195/-(Rupees Two Lakh Seventy One Thousand

One Hundred and Ninety Five Only) not paid during the period 2015-16 should not be demanded and recovered from them by way of Invoking the extended period under the proviso to Section 73(1) of the Act read with Section 174 of the CGST Act, 2017;

b. Interest at the appropriate rates for the relevant period till the payment of the Service Tax mentioned at Sr. No.(a) above, should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

c. Penalty should not be imposed upon them under Section 77(1)(c) of the Acr read with Section 174 of COST Act, 2017 in as much as the Noticee failed to furnish the information called by the COST & Central Excise Officer.

d. Penalty should not be imposed upon them for suppressing the facts from the department with intent to evade payment of service tax under Section 78 of the Act read with Section 174 of the CGST Act, 2017.

e. Penalty should not be imposed upon them under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017 for their failure to take registration as per provisions of Sectioin-69 of the Act.

f. Penalty should not be imposed upon them under Section 77(2) of the Act read with Section 174 of the Central Goods and Services Tax Act, 2017 for contravention of various provisions of the Act ibid and Rules made there under."

2.4 The said show cause notice was adjudicated as per the Order-in-Original No.13/ST/DC/HQ/Agra/2023-24 dated 06.02.2024 by holding as follows:-

"ORDER

a. I confirm the demand of Service Tax amounting to Rs.271195/- Rupees Two Lakh Seventy One Thousand One

Hundred and Ninety Five Only) and ordered for its recovery against M/s Girraj Singh, 3/145, Dhakran Nai Ki Mandi, Agra-282003 under the Section 73 (2) of the Finance Act, read with Section 174 of CGST Act, 2017 1994 as discussed here-in-above.

b. I confirm the liability of interest at the appropriate rates on the aforesaid short paid Service Tax of amount of Ra. 271195/- and order for its recovery under the provisions of the Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 as discussed here-in-above.

c. I also impose a penalty of Rs. 271195/- upon the aforesaid Noticee, under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017, for contravention of various provisions of the Act/Rules. However, an option is given to the Noticee under Clause (ii) of sub Section (1) of Section 78 of the Finance Act, 1994 that if the Service Tax along with interest is deposited within thirty days of communication of this order, the amount of penalty liable to be paid by the party shall be twenty five percent of the Service Tax so determined in the order. Provided that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period.

d. I also impose a penalty of Rs. 10,000/-[Rupees Ten Thousand only) upon the Noticee under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017, for the reasons discussed here-in-above.

e. I also impose a penalty of Rs. 10,000/-(Rupees Ten Thousand only) upon the Noticee under Section 77(1)(e) of the Finance Act, 1994, read with Section 174 of COST Act, 2017, for the reasons discussed here-in-above.

f. I also impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only upon the Noticee under Section 77(2) of

the Finance Act, 1994, read with Section 174 of CGST Act, 2017, for the reasons discussed here-in-above."

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

2.6 Aggrieved appellant have filed this appeal.

3.1 Matter was listed for hearing today and Counsel for appellant sought for adjournment in the matter.

3.2 However, as I find that the issue involve herein is in very narrow compass, the matter is taken up for consideration on the basis of available records and after hearing Smt Chitra Srivastava, Authorized Representative appearing for the Revenue.

3.3 Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

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 as follows:-

"5.1 I have carefully gone through the case records. I find that the department has alleged non-payment of service tax by the appellant on the grounds that the appellant had failed to discharge their due service tax liability by not filing statutory returns and not declaring the taxable assessable value therein. The appellant however, has contested the demand of service tax on the grounds that the appellant is a surveyor and he has raised bills showing separate entries of fee for service and reimbursement amount, thereby resulting in receipts of reimbursement amount as pure agent. If this amount is removed from the amount received by the appellant, then their gross receipts are below Rs. 10 lacs making them eligible for Small Scale Industries Exemption.

5.2 In order to support their claim in respect of separate entries of fee for service and reimbursement amount in

their bills the appellant has produced before me copy of invoices and C.A. Certificate.

5.3 Before discussing the contentions of the appellant, I consider it to be in the fitness of things to examine the bills submitted by the appellant. From mere cursory perusal of the contents of the photocopy of the invoices submitted by the appellant it is conspicuously noted that separate entries of professional fee, conveyance, photograph charges are present which have been charged by the appellant from National Insurance Company and United India Insurance Company. I find that the appellant has brought on record copy of their Form 26AS for the period 2015-16 and 2014-15. From there it is apparent that the TDS has been deducted under Section 194 J of the Income Tax Act, 1961, relating to 'TDS on Fees for professional or technical services. This establishes that undisputedly, the appellant is engaged in rendering professional or technical service. The bone of contention in the present appeal relates to inclusion or exclusion of reimbursement of expenses in the assessable value for determining the service tax liability. Answering this question will enable me to take-up subsequent contentions of the appellant.

The statutory provisions relating to 'inclusion in or exclusion from value of certain expenditure or costs from the assessable value for the purpose of computing service tax liability has been provided under Rule 5 of the Service Tax Determination of Value Rules, 2006 which stipulates that: -

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service. Explanation.

For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service,

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party:

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1.-For the purposes of sub rule (2), "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service,

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service,

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services

The above statutory provision makes it amply clear that the service provider and recipient should have entered into an agreement that the service provider will be acting as Pure Agent to incur expenditure or costs in the course of providing taxable service and should not have used such services. The appellant has failed to bring any documentary evidence to establish the same. Also, the invoices submitted by the appellant also indicate that the appellant used the transport services and then charged expense incurred on such travelling which is in violation of clause (c) as provided in the explanation above. 5.4 Further, the Hon'ble Apex Court in Civil Appeal No. 2013 of 2014 in the matter of Union of India & Anr. Vs. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. while deciding the issue of inclusion of reimbursement of expenditure or cost incurred by the service provider for the period prior to 14th May 2015 has noted the stand of Advocate, appearing on behalf of the respondent. i.e. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. in their order which is as follows:-

"16) Mr. J.K. Mittal, Advocate, appeared for M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. He argued with emphasis that the impugned judgment of the

High Court was perfectly in tune with legal position and did not call for any interference. At the outset, he pointed out that the Parliament has again amended Section 67 of the Act by the Finance Act, 2015 w.e.f. May 14, 2015. By this amendment, explanation has been added which now lays down that consideration includes the reimbursement of expenditure or cost incurred by the service provider. Taking clue there from, he developed the argument that for the first time, w.e.f. May 14, 2015, reimbursement of expenditure or cost incurred by the service provider gets included under the expression 'consideration', which legal regime did not prevail prior to May 14, 2015."

In the light of the statutory provisions and the order of the Hon'ble Supreme Court I do not find any force in the contention of the appellant that they had acted as Pure Agent in respect of the reimbursement while rendering the services, but, on the contrary, that the expenditure or costs are incurred by the appellant in the course of providing taxable service, thus, should be treated as the consideration for the taxable service provided and the same has been correctly included in the value for the purpose of charging service tax on the said service.

5.5 In respect of contention of the appellant in respect of dropping penalty as no element of suppression or wilful misstatement is present in their case, I note that had the information not been provided by the Income Tax Department then the instance of loss to government exchequer of service tax of Rn. 2,71,195/-would have gone unnoticed.

5.6 find that the appellant has contested that they have not charged any service tax against the monetary considerations received by them for providing services. In support, the appellant has also submitted copy of invoices raised by them to the insurance companies. On going through these invoices, I find that the appellant has not

charged any services tax against such receipts. Thus, I find that the appellant is eligible for cum tax value benefit under Section 67(2) of the Finance Act, 1994 as it is clear from the copy of invoices raised by the appellant to insurance companies that they had not charged any service tax on the same. Thus, the correct service tax liability which the appellant is required to pay is calculated as under: -

Value	*Taxable value after cum tax value benefit*	*Service Tax 14.50%*
1870310	*1633459*	*236852*

4.3 I find from the above impugned order that the issue is purely revolving around interpretation of the amount claimed by the appellant as reimbursable charges from where appellant as they claimed they had acted as pure agent while collecting the same.

4.4 Impugned order denies that reimbursement claim would not be admissible as the appellant was not acting as a pure agent. It is also on record that appellant was not charging any amount towards service tax in the bills/invoices raised by them.

4.5 Thus I find that the issue is in respect of interpretation of the status of the appellant vis a vis this amount collected by them. Appellant entertained a bonafide belief as per the interpretation placed by them on the term "pure agent" as defined by the provisions of Finance Act, 1994 read with the Rules made thereunder. A bonafide belief based on the interpretation of law that was entertained by the appellant was the reason for non collection and deposit of service tax by the appellant. Extended period of limitation could not have been invoked for making this demand. Hon'ble Supreme Court has in the case of International Merchandise [2022 (67) G.S.T.L. 129 (S.C.)] held as follows:

24. *We are of the considered view that the Tribunal having come to the conclusion that the issue turned upon an interpretation of the provisions of Section 65(68) and Section 65(86b) of the Finance Act, 1994, there was no*

warrant to allow the invocation of the extended period of limitation and to direct the determination of the penalty following the re-quantification of the demand. The extended period of limitation would clearly not stand attracted in respect of the first show cause notice dated 20 October, 2009. The show cause notice shall hence have to be confined to the normal period of limitation excluding the extended period.

25.*As far as the penalty is concerned, we are of the considered view that there was no warrant for the imposition of the penalty as the dispute in the present case essentially turned on the interpretation of the statutory provisions and their inter-play with the circular issued by the CBEC. ……."*

4.6 In case of Burn Standard Co. Ltd. [2011 (267) E.L.T. 193 (Tri. – Kolkata)], Kolkata Bench held as follows:

9.4 *……. We also notice that the dispute involved in these appeals involved fine interpretation of Provisions of Notification 67/95 read with Rule 6 of the CENVAT Credit Rules, 2001. In the facts and circumstances of the case, we are not inclined to agree with the submission that the appellants have deliberately suppressed any information which they were legally required to submit. In view of the above, we hold that raising of demand invoking extended period of limitation is not justified., The Ld. Advocate submits that the appellants being a public sector undertaking cannot be alleged to have any intention to evade payment of duty. We are not in a position to accept such blanket submissions. However as already mentioned, in the facts and circumstances of this case, we do not find that there was any suppression of relevant facts and therefore extended period of limitation cannot be invoked. For the same reasons we also hold that the appellants are not liable to any penalty."*

4.7 Hon'ble Kerala High Court has in case of Cochin Minerals & Rutiles Ltd. [2010 (259) E.L.T. 182 (Ker.)] observed as follows:

> *10. The learned counsel for the appellant therefore very strenuously argued that the Tribunal erred in allowing the appeal of the respondent herein. The learned counsel placed reliance on the following judgments of the Supreme Court. In Continental Foundation Jt. Venture v. Commr. of C.Ex., Chandigarh-I - 2007 (216) E.L.T. 177 (S.C.) at paragraph 10, the Supreme Court considered the meaning of the expression 'suppression' occurring under the proviso to Section 11A(1) of the Central Excise Act and held as follows :*
>
> > *"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*
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> *Similarly, in Nestle India Ltd. v. Commissioner of Central Excise, Chandigarh [2009 (235) E.L.T. 577 (S.C.)], at paragraph 17, the Supreme Court considered the question*

as to when the extended period of limitation is invokable and held as follows :

> *"17. On the question as to whether the Department was entitled to invoke the extended period of limitation, we are in agreement with the view expressed by the Tribunal that the extended period of limitation was not invokable in this case for two reasons. Firstly, the assessee has been clearing the said intermixture of vitamins for last more than twenty years prior to the issuance of show cause notice. In fact, during adjudication, the assessee offered demonstration to the Department. The Department did not avail of that opportunity to find out whether there is manufacture in the first instance, conceptually. Secondly, as held in the judgment of this Court in the case of Padmini Products v. Collector of C.Ex., reported in 1989 (43) E.L.T. 195, as well as in the case of Collector of Central Excise v. Chemphar Drugs & Liniments, reported in 1989 (40) E.L.T. 276, extended period of limitation is applicable only when there is some positive act other than mere inaction or failure on the part of the manufacturer. There must be conscious or deliberate withholding of information by the manufacturer to invoke larger period of limitation. In view of the aforesaid two decisions, we see no infirmity in the decision rendered by the Tribunal on the question of extended period of limitation."*

Coming to the third judgment, i.e. Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)], at paragraph 11, the Supreme Court held as follows :

> *"In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."*

> *11. An examination of the above three judgments makes it abundantly clear that it is not in every case where there is short levy or short payment or non levy, etc. that the extended period of limitation is made available to the department for recovery of the amount of tax which escaped assessment. It is only in those cases where there is wilful and deliberate suppression of the fact, such extended period of limitation is available to the department. An 'element of deception or malpractice' is a necessary concomitant of wilful and deliberate suppression of fact. The Supreme Court also opined that in order to invoke the extended period of limitation under the proviso to Section 11A(1) of the Act, there must be some positive act other than mere inaction or failure on the part of the manufacturer.*

4.8 Further, I find that no allegation in respect of suppression with intend to evade payment of taxes, mis-statement etc. have been made in the show cause notice. The show cause notice only records as follows:-

> *"5. And whereas, it has been noticed that the Noticee did not inform the department about their actual taxable value received from their service recipients neither by way of registering themselves under Service Tax, filing their ST-3 returns and disclosing the figures of taxable value nor by way of providing information when being demanded by the department continuously under the enquiry initiated by the Jurisdictional Range Superintendent. Had the information*

not been received from the other sources such as income tax as a Third Party Information, the fact that the Noticee is providing taxable services with disclosing their correct value of Services and the service tax evaded thereon would have been remained unnoticed by the department. Thus the Noticee suppressed the facts of receiving the amount in lieu of providing taxable services from the department with intent to evade payment of service tax. Therefore, the Service Tax along with cesses amounting to Rs. 271195/- appears to be recoverable from the Noticee by invoking extended period of five years under proviso to Section 73(1) of the Act. Accordingly, interest for delay in payment of service tax till actual date of deposit is also demandable from the Noticee under Section 75 of the Act. The Noticee has also rendered themselves liable for penalty under Section 78 of the Act for suppressions of the facts with intention to evade the payment of Service Tax.

6. Whereas, the Noticee was asked to furnish the documents for verification of liability of Service Tax upon them by the Superintendent, CGST & Central Excise, Range-VIII, Division-II, Agra by writing letters to them but the Noticee did not submit even a single reply in the matter. Therefore, the Noticee appears to be liable for penalty under Section 77(1)(c) of the Act as the Noticee failed to furnish information called by the Central Excise/CGST officer despite repeated reminders,

7. Whereas, it appears that the Noticee has provided Taxable Services, the Noticee should have got themselves registered under Service Tax as per provisions of Section-69 of the Act and should have filed the required ST-3 returns but the Noticee also failed in doing so, also accordingly, they appears liable to a penalty under Section 77(1)(a) for their failure to take registration and a penalty under Section 77(2) of the Act for their failure to file the required ST-3 returns as per provisions of Section-70 of the Act."

4.9 Similarly, Order-in-Original records as follows:-

> *"Thus it is amply clear that for availment of exemption from Service Tax for the claimed re-imbursement, the condition prescribed under sub-Rule 2 of Rule 5 of Service Tax (Determination of Value) Rules 2006 are required to be satisfied by the Noticee failing which all the amounts received by him are taxable under Rule 5(1) of these Rules. Thus the only contention of the Noticee for exclusion of the Conveyance Charges and photo charges is not sustainable on account of non-submission of any documentary evidence. Further they have also claimed SSI exemption based upon their calculation that the conveyance charges and photo charges incurred by them were not part of taxable value. As their claim of exclusion from taxable value is not sustainable; It thus also rejects the claim of the Noticee for SSI exemption. Further, it has already been accepted by them in their reply that they were liable to Service Tax. Thus in the ern of self assement thus were required to take registration and fulfill their obligation in the Finance Act, 1994 They also did not pay attention to the correspondences prior to issuance of SCN. Thus I hold that the Noticee has suppressed the facts from the department with intent to evade payment of Service Tax and accordingly proviso to Section 73 is applicable to extend the demand for the period of 5 years. Therefore, I, confirm the demand of Service Tax of Rs.2,71,195/- under Section 73(2) of the Act upon the Noticee."*

4.10 It is settled law that in absence of clear allegation of positive act of suppression, mis-statement etc. with intend to evade payment of taxes extended period of limitation would not have been invoked. The facts also points that appellant entertained a bonafide belief to the effect that he was acting as a pure agent and various reimbursable amounts should not have been added to the value of services provided by him. In view of the above facts that appellant entertained a bonafide belief to the effect that he was acting as a pure agent as has been held

by Hon'ble Supreme Court in the case of 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."*

4.11 In the following decisions also it has been held that extended period of limitation could not have been invoked for making the demand when the person entertained a bonafide belief about non taxable nature or exempted nature of the services provided.

- Anand Nishikawa Co. Ltd. Vs CCE, Meerut 2025 (188) ELT 149;
- Infinity Infotech Parks Ltd. Vs UOI 2014 (36) STR 37;
- CCE, Chennai Vs Chennai Petroleum Corporation Ltd. 2007 (211) ELT 193;

4.12 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. The impugned order is set aside.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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