

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70720 of 2025

(Arising out of Order-in-Appeal No.1346/ST/Alld/2023 dated 10/10/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Prakash Construction,
(Hisaampur, Maharoopur, Jaunpur-222002)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Allahabad**

....Respondent

(38, MG Marg, Civil Lines, Allahabad)

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.70869/2025

DATE OF HEARING : 05 December, 2025
DATE OF DECISION : 05 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.1346/ST/Alld/2023 dated 10/10/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order following has been held:-

"5. In view of above, I find that the Adjudicating Authority has rightly confirmed the demand of Service Tax of Rs. 3,97,920/- alongwith interest and imposed equal penalty under section 78 of the Act. Further penalties of Rs. 10,000/- each under Sections 77(1)(a), 77(1)(c) 77(2) of the Act has correctly been imposed. I therefore, see no reason to interfere with the impugned Order-in-Original

No. 139/ST/Asstt. Commr/JNP/2022/23 dated 14.01.2023 passed by the Assistant Commissioner, CGST & Central Excise, Division-Jaunpur and reject the appeal filed by the appellant.

The appeal filed by the appellant is disposed of accordingly."

2.1 Appellant having PAN No.AALFP3419P was engaged in providing taxable services without getting themselves registered with the Department as required under Section 69 of the Finance Act, 1994.

2.2 On the basis of data received from the Third Party information provided by the Income Tax Department it came to the notice of the Department that during F.Y. 2016-17 the appellant had received gross amount of Rs.26,52,800/- against Sale of Service, but failed to discharge their tax liability properly.

2.3 Accordingly the appellant were requested to provide relevant / financial documents for the period FY 2016-17 in order to ascertain their exact tax liability. In response, appellant provided copy of Balance Sheet and ITR only. In absence of proper documentary evidences/information /data, no exemption /abatment has been taken into account and quantification of the Service Tax liability was done on the basis of information available with the Department. It was observed that the appellant had received taxable amount of Rs.26,52,800/- during the FY 2016-17 but failed to pay Service Tax (including Cesses) to the tune of Rs.3,97,920/- on this amount. They also failed to furnish the statutory ST 3 Returns pertaining to impugned period.

2.4 Show cause notice dated 21.10.2021 was issued asking them to show cause as to why:-

"(i) Service Tax liability of Rs.397920/- (Rupees Three Lacs Ninety Seven Thousand Nine Hundred Twenty Only) should not be demanded and recovered from them under the proviso to the section 73 (1) of the Finance Act, 1994, read with Section 68 & 668 of the Finance Act, 1994 as amended.

(ii) Interest should not be demanded and recovered from them at the appropriate rates under Section 75 of the Act.

(iii) Penalty should not be imposed upon him/them under section 78 of the Act, for the suppression of facts from the department.

(iv) Penalty should not be imposed upon them/him under Section 77(1)(a) of the Act for not obtaining service tax registration within stipulated time under Section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994

(v) Penalty should not be imposed upon them under Section 77(2) of the Act read with Rule 7 of the Service Tax Rules, 1994 for not submitting ST-3 return.

(vi) Penalty should not be imposed upon them/him under 77(1) (c) of the Act, for not furnishing information/documents called by the department.”

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 02.01.2023 wherein Adjudicating Authority has confirmed the demand of Service Tax along with interest under Section 75 & penalty under Section 78 of the Act. He further confirmed penalty of Rs.10,000/- each under Section 77(1)(a), 77 (1)(c) and 77 (2) of the Act.

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 When the matter was called none appeared for hearing, a written request praying for adjournment has been received in the matter.

3.2 As I find that the issue involve herein is in very narrow compass, the matter is taken up for consideration under Rule 20 of CESTAT Procedure Rules, on the basis of available records and after hearing Smt Chitra Srivastava, 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 Impugned order records as follows:-

"4.3 I find that during the course of personal hearing held on 02.01.2023 before the adjudicating authority, Shri Rajeev Singh (Partner) submitted that he is registered civil contractor and they have supplied goods only & he has no other income except supply of goods. However, they failed to provide any documents viz copies of bills (purchase and sale), VAT returns to substantiate their claim that they have supplied goods only.

4.4 The appellant have submitted the copy of ITR for the Assessment Year 2017-18 alongwith the copy of Form 26AS for FY 2016-17. They have contended in their ground of appeal that their nature of work was related to single unit residential house not meant for commercial purpose which is specifically exempted vide Entry No 14 of Mega Notification 25/2012-ST dated 20.06.2012. In this regard, they have submitted an agreement entered between Mahesh Yadav resident of Miyapur, Jaunpur for construction of his house for ground floor & first floor. The area of the construction work will be 3400 sq feet @ Rs.1300 per sq feet. The contract for construction work will be inclusive of material along with plumber and electrical works.

4.5 I find that the agreement is neither notarized nor bears date of execution. It has no meaning in the eyes of law. Further, the balance sheet submitted by the appellant is also undated. The signature of the appellant on both the balance sheet and agreement differs which casts a doubt on the authenticity on the documents submitted by the appellant. Sec. 35 of the Indian Stamp Act, 1899 directs that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such

person or by any public officer, unless such instrument is duly stamped cited in V.Madhusudhan Rao v. S. Nirmala Bai, AIR 2019 AP 93.

4.6 I find that plea of service provided for construction of single unit residential house was not raised by the appellant before the Adjudicating Authority; hence they cannot take completely new plea at the Appeal stage. Having not raised the plea before the lower authorities, the appellant cannot now claim that classification of their service is construction of single unit residential house instead of sale of goods. This claim being entirely new which was not advanced earlier in the proceedings before the adjudicating authority, it is not permissible to the Commissioner (Appeals) to consider a case laid for the first time in appeal because the stage for setting out the factual matrix is before the authorities below.

4.7 The appellant has not submitted the copies of bills (sale and purchase) as well as the VAT returns, hence it is not possible to determine and extend the benefit of any abatements/exemptions to the appellant.

4.8 I find that after the introduction of the Negative List of Services i.e w.e.f 01.07.2012, the statutory provisions of the Act pertaining to the activity carried out by the appellant is, as under:

Section 65B(44): "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include---

Section 66B: There shall be levied a tax (hereinafter referred to as the service tax) at the specified rate on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Thus, I hold that the appellant is liable to pay service tax of Rs 3,97,920/-as quantified in the SCN on Rs

26,52,800/- as sale of services as per third party data supplied by the Income Tax Department.

4.9 On examining the facts of the instant case in terms of Section 75 of the Act. I find that where any amount is payable as tax but not paid/paid belatedly, it results in financial loss to the exchequer and corresponding financial gain to the assessee. Therefore, if the Service Tax has been paid beyond the due date, interest is chargeable in terms of statutory provisions mentioned above. Therefore, I find that in this case, the demand/ recovery of interest on Service Tax not paid by the appellant, has correctly been ordered by the Adjudicating Authority.

4.10 I find that under self assessment procedure prescribed under the statute, the appellant were required to assess & pay their Service Tax liability correctly, whereas the non-payment of Service Tax could be detected only during the data received from the Central Board of Direct Taxes. The appellant had also not obtained service tax registration with the Department. Thus, I find that there was suppression of facts with the intent to evade payment of Service Tax, on the part of the appellant. Thus, I find that the suppression of facts and contravention of the statutory provisions with intent to evade payment of Service Tax are present in this case and as such, the Adjudicating Authority has correctly confirmed the demand of Service Tax alongwith interest and has imposed appropriate penalty under Section 78 of the Act.

4.11 I find that Sections 77(1)(a), 77(1)(c) & 77(2) of the Act are, as under

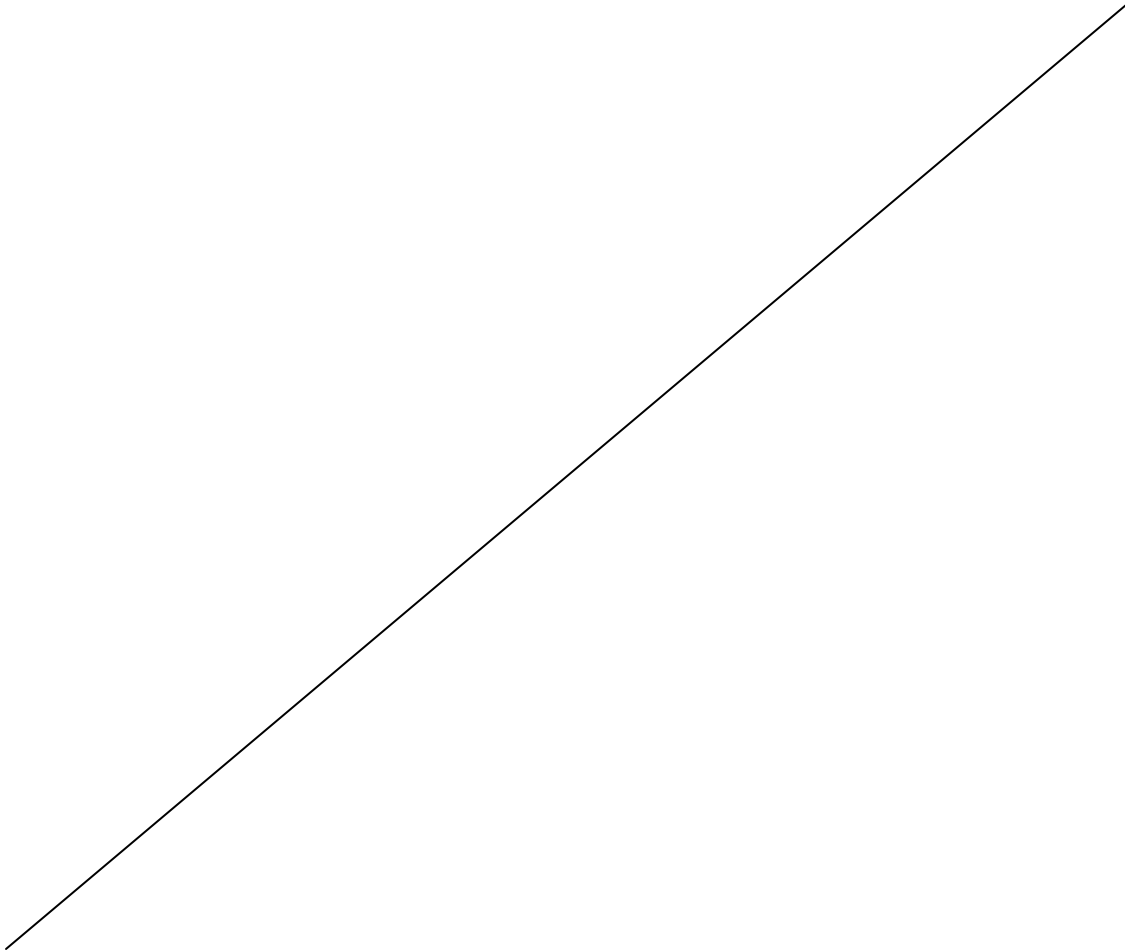
Section 77(1)(a): who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;

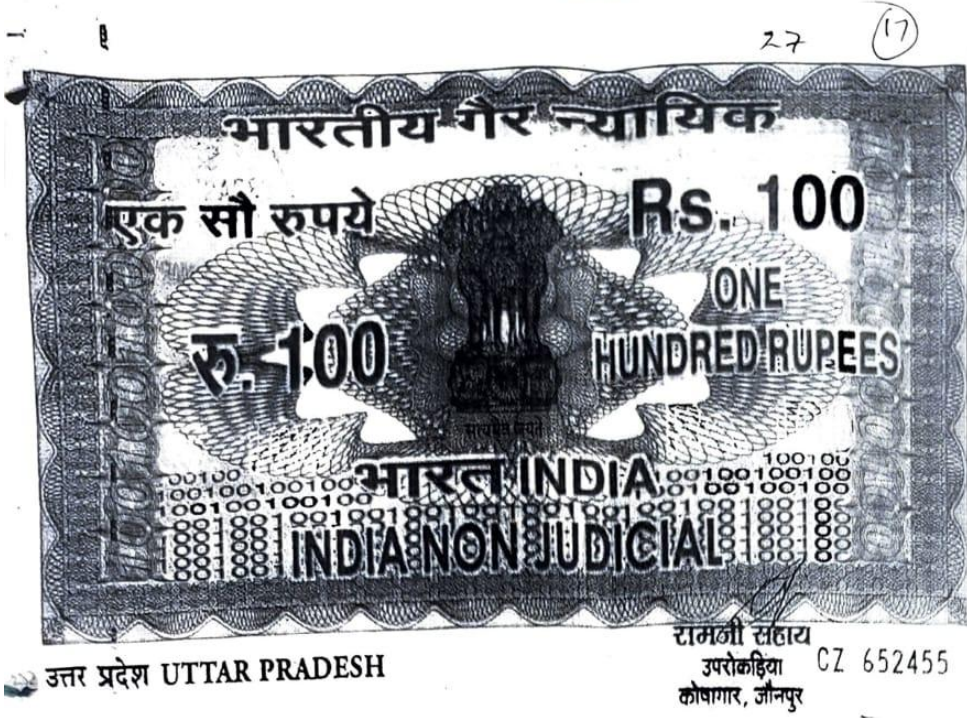
Section 77(1)(c): Any person, who fails to appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

Section 77(2): Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter shall be liable to a penalty which may extend to ten thousand rupees.

Thus, I find that the penalties imposed by the adjudicating authority under Section 77(1)(a), 77(1)(c) & 77(2) of the Act are justified."

4.3 I find that appellant had produced a copy of agreement reproduced below before the First Appellate Authority-





साइड नाम - मियापुर जौनपुर

इकरारनामा

प्रकाश कंस्ट्रक्शन, प्रकाश सिंह महरूपुर जौनपुर।

मकान मालिक का नाम एवं पता

श्री महेश यादव मियापुर जौनपुर के निवासी हैं, अपने उक्त भवन निर्माण के सम्बन्ध में दिनांक

18/06/2016 को श्री प्रकाश सिंह से अपने ग्राउण्ड फ्लोर व प्रथम फ्लोर का मकान बनाने

का मैटेरियल सहित ठीका दिया गया है। जिसका रेट प्रति स्क्वायर फिट 1300/- रुपया

तय हुआ है। निर्माण कार्य लगभग 3400 स्क्वायर फिट का होगा। ठीका के अंतर्गत कार्य

3850

निम्न प्रकार से किया जाना है -

श्री महेश यादव

Sprish

Shil

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मैटेरियल नाम

टाटा सरिया

सीमेंट ए. सी. सी. या अल्ट्राटेक

चुनाई कार्य 1:4 5" वाल

चुनाई 1:6 9" वाल

ढलाई कार्य 1:2:3

प्लास्टर सीलिंग 1:4

दिवाल प्लास्टर 1:5

प्लम्बर कार्य

पानी सप्लाई 1" का दिया जायेगा, कम्पनी नाम - आशीर्वाद रेन वाटर एवं बाथरूम फिटिंग 4" पाईप सुप्रीमो कम्पनी का दिया जायेगा। प्रति बाथरूम सेनेटरी कार्य वाल मिक्चर, नल एवं टोटी, क्मोड, सेरा कम्पनी का देय होगा।

प्रति बाथरूम में बेसिन दिया जायेगा।

प्रति किचन नल टोटी, सिंक कम्प्लीट देय होगा।

इलेक्ट्रिक कार्य

टोटल कंस्ट्रक्शन एरिया इलेक्ट्रिक पाईप एवं वायर देय होगा।

इलेक्ट्रिक वायर हैवेल्स कम्पनी का देय होगा।

स्वीच एवं बोर्ड ऐंकर कम्पनी का देय होगा।

प्रति कमरे में ए सी तार एवं पवार प्लग दिया जायेगा।

मैटेरियल 21/4/21

S.P. Singh

Handwritten signature

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(19)

लकड़ी कार्य

चौखट का फेम मलेशिया साखु का देय होगा, जिसका साईज 7 फिट x 5 x 2.5 खिड़की में गील शीशा कम्प्लीट देय होगा।

खिड़की के पल्ले सागौन के दिये जायेंगे।

दरवाजा के पल्ले दोनों तरफ माड़का लगाकर प्लाई का दिया जायेगा।

टाईल्स कार्य

टोटल फर्श एरिया टाईल्स जॉनसन कम्पनी का देय होगा।

प्रति बाथरूम 7 फिट हाईट तक टाईल्स देय होगा।

प्रति किचन 2.5 फिट टाईल्स एवं प्लेटफार्म ग्रेनाईट कार्य कम्प्लीट होगा।

पेन्ट कार्य

टोटल कंस्ट्रक्शन एरिया जे के वाल पुट्टी एवं प्राइमर कम्प्लीट देय होगा।

टोटल कंस्ट्रक्शन एरिया नेरोलक पेण्ट दिया जायेगा।

नोट - सीढ़ी का स्टील रेलिंग देय होगा।

अतिरिक्त कार्य

छत के उपर चुनाई कार्य 135 रु० स्क्वायर फिट 5" दीवाल

छत के उपर 9" दीवाल 180 रु० स्क्वायर फिट

छत के उपर एल्बेस्टर शीट का कार्य अलग से देय होगा।

सेफ्टी टैंक एवं सोखता का कार्य मालिक को अलग से देना होगा।

मिट्टी का कार्य मालिक को अलग से देना होगा।

छत के उपर रेलिंग कार्य 185 रु० प्रति स्क्वायर फिट देना होगा।

सहैश यादव

S. S. S. S.

अक्षय

30 (20)

पेमेंट

टोटल कंस्ट्रक्शन एरिया का एडवांस 25 प्रतिशत, फाउंडेशन कार्य होने पर 10 प्रतिशत, चुनाई एवं लिन्टर कार्य होने पर 10 प्रतिशत, छत ढलाई के समय 30 प्रतिशत, इलेक्ट्रिक एवं प्लम्बर कार्य के समय 10 प्रतिशत, पेण्ट कार्य के समय 10 प्रतिशत, कार्य कम्प्लीट होने पर 5 प्रतिशत देय होगा।

नोट - साईड पर लेबर को रहने की व्यवस्था एवं पानी व बिजली मालिक द्वारा देय होगा।

मकान मालिक का नाम एवं पता-

श्री महेश यादव मियापुर जौनपुर

श्री महेश यादव
06/06/2016

ठेकेदार

प्रकाश कंस्ट्रक्शन
महरूपुर जौनपुर

S. Singh
06.06.2016

(Signature)

4.4 On perusal of the above agreement, it is evident that the said agreement has been executed on 06.06.2016 on stamp-paper of Rs.100/-. On perusal of this agreement it is evident that appellant had undertaking work of construction of a house for Shri Mahesh Yadav and the agreement is for undertaking construction alongwith the material @Rs.1300/- per sq feet the total area is about 3400 sq feet. In my view, the above agreement is enough to establish that appellant undertaken the work of construction of single unit for Shre Mahesh Yadav and the services provided in respect of construction of single house are exempt from payment of service tax under Notification No.25/2012-ST.

4.5 Even if the above is not admissible, this agreement definitely creates a bonafide belief for none payment of service tax in respect of these services provided in view of this bonafide belief as is executed with the appellant, the demand could not have been made by invoking extended period of limitation, as there cannot be any suppression, mis-statement with intend to evade payment of service tax.

4.6 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 or 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 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;

4.8 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. Impugned order is set aside.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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