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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70741 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APPL-396-2024-25 dated 26/03/2025 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s MVM Business Services, **.....Appellant**
(1028, ITHUM IT Park, Sector-62, Noida)

VERSUS

Commissioner of Central Excise &

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

(Commissioner CGST, Noida)

<u>APPEARANCE:</u>

Request for virtual hearing, for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.70042/2026

DATE OF HEARING : 16 January, 2026
DATE OF PRONOUNCEMENT : 20 February, 2026

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APPL-396-2024-25 dated 26/03/2025 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

> *In view of the above discussion and findings the appeal bearing No. 184/ST/NOIDA/APPL/NOI/2024-25 dated 27.08.2024 filed by M/s MVM Business Services, 1028/ITHOM IT Park, Sector-62, Noida is modified as follows:*

(i) I confirm the demand of Service Tax amounting to Rs Rs.7,40,829/- not paid/ short paid by the party, on the taxable value during the period of 2015-16 & 2016-17 under the provisions of Section 73(1) of the Finance Act, 1994.

(ii) I confirm the demand of interest on the party at an applicable rates during the relevant period, on the amount of Service Tax demanded/confirmed at point (i) above, under the provisions of Section 75 of the Finance Act, 1994.

(iii) I impose penalty of Rs.7,40,829/- upon the party, under Section 78 of the Finance Act, 1994.

(iv) I impose penalty of Rs.5,000/- under Section 77(1)(d) of the Finance Act, 1994."

1.2 By the Order-in-Original No.*106/AC/Div-II/Noida/ 2024-25, dated 12-07-2024 A*djudicating Authority has modified the Order-in-Appeal by holding as follows:-

"ORDER

(i) I confirm the demand of Service Tax amounting to Rs.8,39.001/-(Rupees Eight Lakh Thirty-Nine Thousand and One rupees Only) not paid/short paid by the party, on the taxable value during the period of 2015-16 2016-17 under the provisions of Section 73(1) of the Finance Act, 1994.

(ii) I drop the demand of Service Tax amounting to Rs.87,755/- due to exports of services made by taxpayer during the period of 2015-16 & 2016-17 under the provisions of section 73(1) of the Finance Act, 1994.

(iii) I confirm the demand of interest on the party, at an applicable rates during the relevant period, on the amount of Service Tax demanded /confirmed at point (i) above, under the provisions of Section 75 of the Finance Act, 1994.

(ii) I impose penalty of to Rs.8,39,001/-(Rupees Eight Lakh Thirty Nine Thousand and One Only) upon the party, under Section 78 of the Finance Act, 1994. If the amount as determined under Section 73 above is paid within 30 days from the date of receipt of the order along with the interest payable thereon as per Section 75. penalty will be only 25% of the service tax determined under Section 73. The benefit of reduced penalty shall be available only if the amount of penalty determined has also been paid within the period of 30 days from the receipt of the order.

(iv) I impose penalty of Rs.5000/-(Rupees Five Thousand only) under Section 77(1)(d) of Finance Act, 1994."

2.1 At the relevant time appellant was registered with the Service Tax Department with Service Tax Registration No. AAZFM5090PSD001 and are engaged in providing/ receiving taxable Services as defined under Section 65B(44) of the Act read with Section 66D of the Finance Act, 1994.

2.2 As per the information received from the Income Tax Department and on comparison of the same to service tax return filed by the appellant following was observed:-

(Amount in Rupees)

Financial Year	Receipts as per			Higher of (2-4) and (3-4)	Service Tax (incl cess)	
	ITR	26AS	STR		@%	Short Paid
1	2	3	4	5	6	7
2015-16	5380397	5335005	0	5380397	14.5	780158
2016-17	7740563	7922299	6944978	977320	15	146598
Total						926756

2.3 inquiries were made vide letter dated 02.12.2022 asking to the appellant to furnish details of payment of service tax along with copies of ST-3 returns & 26AS and reason of differential value shown in service tax return & Income tax return. Appellant did not respond to the above communication. Hence it was not possible to determine exact nature and classification of the services provided by the appellant.

2.4 Accordingly, alleging suppression, show cause notice dated 30.03.2021 was issued to the appellant asking them to show cause as to why:-

(i) *"The Service Tax amounting to Rs. 9,26,756/ (Rupees Nine Lakh Twenty-Six Thousand Seven Hundred Fifty-Six only) should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994.*

(ii) *The due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994.*

(iii) *Penalty should not be imposed upon them under Section 78 of the Finance Act 1994, for failure 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 ander section 77(1)(d) of the finance Act, 1994 for failure to pay Service Tax electronically through net banking."*

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 12.07.2024 as referred in para 1.2 above.

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

2.7 Aggrieved appellant have filed this appeal.

3.1 When the matter was called, it was informed that Counsel for the appellant has requested for adjournment and filed an application for virtual hearing. I find that the issue is a very narrow compass and can be considered even in absence of the Counsel.

3.2 I have heard Shri Manish Raj learned Authorized Representative appearing for the revenue, he 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 the findings as follows:-

"12. I find that after issuance of impugned order, the only issue for determination before me is Whether demand and recovery of service tax amounting to Rs.8,39,001/- under Section 73(1) of the CGST Act. 2017 along with interest under Section 50 of the CGST Act. 2017 and equal penalty of Rs.8,39,001/ under Section 78 of the CGST Act, 2017 and penalty of Rs.5,000/- under Section 77(1)(d) of the finance Act, 1994 is justifiable or not?

13. I observe that the appellant has challenged that the competent authority failed to investigate the issue and only on the basis of the data provided by the CBDT, the SCN was issued. The appellant further stated that the department has not ascertained the nature, classification of the services provided during the relevant period but demand of service tax was raised without ascertaining the classification and nature of services provided by them. They are simply engaged in the business of selling of spaces on their website.

They further stated that the service tax is not leviable on selling of space for advertisement. As regards leviability of service tax, it is contended that service tax is not leviable on the activity of sale of space or time for advertisement but it is leviable on the activities/services provided 'in relation to sale of space or time for advertisement'.

14. Against the pleas made by the appellant, first of all I proceed to examine the issue of taxability of the service 'sale of space or time for advertisement. The service tax was introduced on this service w.e.f. 01.05.2006. The scope of this service enlarged to cover all forms of sale of space and time for advertisement in 2012 when the regime of service tax changed from classification based to include everything except what was excluded by putting in the list of negative service. It then covered all other modes of advertisements like advertisements in Internet, motion pictures, television serials, video and music albums, mobile *phones, ATMs, films and television serials etc. too. The sale of space for advertisement in print media remained exempted from the levy of service tax. Thus the subject levy continued without any major changes from 01.05.2006 till 30.06.2012. From 01.07.2012, the sale of space or time for advertisement was notified in the negative list under Section 66D of Finance Act, 1994. Entry (g) of Section 66D Ibid read as 'selling of space or time for advertisements other than advertisements by broadcast by radio or television'. It is clearly evident thal for the period 01.07.2012 to 30.09.2014, selling of space or time for advertisements in internet or website are not subjected to service tax because of the entry in the negative list during such period. To summarize, period-wise taxability of the said service at different points of time as under:-*

S.No	*Period*	*Taxable*	*Non-Taxable*
1	*01.05.2006 to 30.06.2012*	*All*	*Print Media*
2	*01.07.2012 to 30.09.2014*	*Television and Radio*	*All*
3	*01.10.2014 to till date*	*All*	*Print Media*

Now, in the instant case, the service involved is sale of space and time for advertisement on the internet or website for the period 2015-16 & 2016-17. This period falls under SI No. 3 above, when except for print media, ell the services under the category of 'sale of space and time for advertisement including selling space for advertisement on internet or website" are taxable. Hence the service provided by the appellant is taxable.

I find that the appellant stated that they provide advertisement service through internet also known as Aerial advertising or selling of space for advertisement on internet. They have their own website namely (COUPONSCULTURE.COM, PINKNET.IN) on internet by having registration on domain service provider (viz godaddy.com). The Appellant have submitted a tow bills of their input services to provide the output service of the sale of space for advertisement on their website. They *have also submitted a mail as an example, with their client Vespa scooter, which placed order with them for the online campaign. The Appellant submitted a few printouts of how the COUPONS CULTURE.COM, PINKNET.IN page looks like with advertisement in place. Having gone through these details, I find that indeed the service provided by the Appellant is of sale of space & time for advertisement on their website. This service was taxable in the year 2015-16 and 2016-17 as relevant in this matter.*

15. I observe that the appellant has not challenged the differential value between the value of services shown in ITR and value of services provided in STR during the relevant period. The second contention is that the appellant thought his service is not chargeable to service tax. I find that as per the documentary submission made by the Appellant, he took service tax registration on 07/06/16 under the category of 'Advertising agency service and paid service tax on Rs. 69,44,978/-. In the year 2015-16 the Appellant had not taken the registration, hence his plea that he be given cum tax relief on the taxable value appears justifiable as it is unlikely that he would have issued invoices adding service tax on the billed amount. I am therefore Inclined to give duty cum benefit to the Appellant for the year 2015-16.

16.1 The adjudicating authority calculated service tax liability in the following manner on the consideration received against the service provided allowing exemption on exports made during the relevant period:-

SI.NO.	*Particulars*	*F.Y.2015-16*	*F.Y.2016-17*
1	*Taxable value as per SCN*	*53,80,397.00*	*9,77,320.00*
2	*Less: Export of services*	*34,069.00*	*5,52,099.00*
3	*Net taxable value*	*53,46,328.00*	*4,25,221.00*
4	*Service tax payable thereon (@14.5% in 2015-16 & 15% in 2016-17)*	*7,75,218.00*	*63,783.00*

I find that the adjudicating authority has accordingly, in view of the above, has confirmed the total service tax *liability of Rs.8,39,001.00 (2015-16 Rs.7,75,218.00 & 2016-17 Rs.63,783.00) during the relevant period.*

16.2 The appellant contested that they were involved in selling of L.T.Goods on which VAT had been discharged and on the sale of goods on which VAT had been discharged, therefore the service tax cannot be levied on the same goods.

16.3 The above contention of the appellant has been examined in respect of consideration received in Form 26AS under Section 194C of the Income Tax Act. The year-wise/ party-wise details of tax deducted at source is given below :-

Financial Year 2015-16:

Si. No	*Name of party to whom service was Section provided*	*Section*	*Amount paid as consideration*
1	*Quotient Four Technologies Private Limited*	*194C*	*4,30,693.00*
2	*Httpool Digital Private Limited*	*194C*	*3,71,328.00*
3	DGM India Internet Marketing Private Ltd.	194C	5285.00
4	SGS Global Services Private Limited	194C	3,500.00
5	SVG Media Private Limited	194C	10,82,808.00
6	Vcommission Media Private Limited	194C	5,476.00
7	Ashmit Corporation Private Limited	194C	6,05,564.00
S	Fork Media Private Limited	194C	1,53,507.00
9	Pointific Digital Private Limited	194C	3,35,105.00
10	Inuxu Digital Media Technologies Pvt Ltd	194C	47,683.00
11	Polyvalent Digital Services Pvt Ltd	194C	22,94,056.00
Total			53,35,005.00

Financial Year 2016-17:

SI.No.	Name of party to whom service was provided	Section	Amount paid as consideration
1	Quotient Four Technologies Private Limited	194C	61,356/-
2	Httpool Digital Private Limited	194C	3,500/-
3	Adglobal 360 India Pvt Ltd	194C	1,28,571/-
4	Geoads Media Pvt Ltd	194C	1,29,483/-
5	Living Media India Limited	194C	8,75,000/-
6	Optimedia Network Pvt Ltd	194C	8,778/-
7	SVG Media Private Limited	194C	90,834/-
8	Vcommission Media Private Limited	194C	438/-
9	Ashmit Corporation Private Limited	194C	59,33,700/

10	Big Trunk Communications Pvt Ltd	194C	1,67,529/-
11	Pointific Digital Private Limited	194C	1,16,243/-
12	Inuxu Digital Media Technologies Pvt Ltd	194C	14,464/-
13	Admitad Media Pvt Ltd	194C	2,70,798/
14	Collectcent Digital Media Pvt Ltd	194C	7,453/-
15	ICUBESWIRE Technologies Pvt Ltd	194C	7,000/-
16	Polyvalent Digital Services Pvt Ltd	194C	1,07,151/-
Total			79,222,98.00

In view of the above details, it can be seen that, TDS has been deducted by the respective buyers under Section 194C of the Income Tax Act, which is for the "Payments to contractors and sub-contractors". If one refers to what all is covered under Section 194 C of the Income Tax then it is seen that TDS on payments concerning services by the contractors and subcontractors are covered under this Section. This income as reflected in the 26 AS statements pertaining to the Financial Year 2015-16 and 2016-17 does not come from the sale of goods. As in the relevant year there was no requirement to deduct TDs on the sale of goods. Section 1940 has been introduced in the Finance Act of 2021 to cause deduction of 0.1% of TDS on account of sale of goods. Thus claim that the Appellant has made with regard to sale of goods in the year 2015-16 and 2016-17 does not figure in the 26AS. I find no deduction can be given on this count to the Appellant from the assessed taxable value of Rs. 53,80,397.00 & Rs. 79,22,299/-in the F.Y. 2015-16 and 2016-17. A few simple electronically printed Invoices are submitted showing receipts from the sale of goods, at the bottom written sale of laptop, however no description is given in the bill. Hence this claim of the Appellant with regard to the sale of goods is largely unsubstantiated and in any case makes no difference to the taxable value as explained above for the purpose of levy of service tax. If at all there is sale of goods then its other than the sale of service of space & time on the website/internet. I find therefore that profit and loss account statement submitted by the appellant *does not correctly reflect what is appearing in the 26AS in the relevant year.*

17. I find the benefit of the export of service has already been granted by the adjudicating authority. The claim of deduction on account of sale of goods is not admissible. Further the cum duty benefit as available in the Section 67(2) of the Finance Act, 1994, for the financial year 2015-16, I am inclined to extend as discussed above. Accordingly I find that following service tax is due from the Appellant which they have to pay with interest:

Amount in Rs.

SLNo.	Particulars	F.Y.2015-16	F.Y.2016-17
1	Taxable value as per SCN	53,80,397.00	9,77,320.00
2	Less: Export of services	34,069.00	5,52,099.00
3	Net taxable value	53,46,328,00	4,25,221.00
4	Service tax payable thereon (14.5 % 2015-16 & 15% 2016-17)	-	63,783.00
5	Giving benefit of cum tax price 2015-16 ST calculated 14.5%	Taxable value: 46,69,282.00 Service Tax Payable :6,77,046.00	Total: Rs6,77,046/- +Rs. 63,783/- =Rs. 7,40,829/-

18. I find that evasion of service tax of Rs.7,40,829/- Would have escaped attention of the Department had it not been for the third party data supplied by the CBDT, which brought it to fore, hence I find that the penalty under Section 78 of the Finance Act, 1994 is imposable. I also uphold the demand of penalty of Rs. 5000/-as I find that the Appellant has failed to pay service tax electronically during the relevant time.

19. In view of the above made discussion on the facts of the case, submissions of the appellant, various provisions of law, I find that the appellant has to pay service tax of Rs.7,40,829/- alongwith applicable interest."

4.3 From the above facts I observe that appellant was registered with the Department and was paying service tax during the period 2016-17. During the said period appellant had declared the value of services of Rs.69,44,978/- in their STR and have paid the due service tax on that value during the period 2016-17. However, he was not registered and did not pay any service tax during the period 2015-16.

4.4 Original Authority and first appellate authority in this contest have recorded period wise details to show that during the period of dispute, sale of space for advertisement on internet was subject to service tax. Order-in-Original records the findings as follows:-

> *"As far as first paint is concerned the party has accepted the difference and so there is no dispute on that, for the second point the party has stated that they provide advertisement service through internet also known as Aerial advertising or selling space for Advertisement on internet & sell 1.T. goods. They have their own Website (namely COUPONSCULTURE.COM, PINKNET.IN) on internet by having registration on domain service provider (viz godaddy.com). The different clients/advertiser give their adds to run on their website for which they take some charges. The said activity/service falls under Negative list as per Section 66Dig) of Finance Act, 1994. Since their service attracts no service tax, they were not registered under service tax during the relevant period. They also stated that they have exported services of amount Rs.34,069/- 5,52,099/- for the financial year 2015-16 & 2016-17 respectively. In support of this, the taxpayer has submitted the copy of ITR return, invoices, P&L account, copy of 26AS form, FIRCS.*
>
> *In this instant case, I find that the taxpayer has provided only copies of electronic invoices, not actual invoices in support of their claim that the service provided by them falls under negative list under section 66D(g) of Finance Act, 1994. Therefore, the benefit of non-taxable service cannot be given to the taxpayer merely on printed invoices. The taxpayer either should have provided*

comprehensive documents like service agreement, balance sheet, actuar copies or invoices to establish the veracity of the facts or should have declared their services pertaining to negative list in their ST-3 return for relevant period."

4.5 From the above observations made in Order-in-Original, it is evident that appellant was providing certain advertisement services through internet also known as Aerial advertising or selling space for advertisement on internet & sell I.T. goods on their website namely COUPONSCULTURE.COM, PINKNET.IN. Appellant was under a belief that their services fall under the negative list as per Section 66 D(g) of the Finance Act, 1994. As such they were in relation to sale of space for advertisement on internet for this reason they had not taken registration during the period of 2015-16 and have not paid the service tax. The said claim has been rejected by the Original Authority only by stating that appellant have provided only electronic copies of invoices and not actual invoices in support of their claim made. I express my ignorance in understanding what Adjudicating Authority intends to say by that? Electronic invoices are accepted invoice for all purposes and would not require even a signature on it if issued from secure server as per the Information Technology Act, 2000. I find that Adjudicating Authority has completely ignored the provisions of the said Act while making such an observation and for rejecting the claim of the appellant.

4.6 I also observe that when appellant had come seeking registration in the year 2016-17 in respect of similar/ same serv ices provided they had disclosed the entire nature of their activities to the revenue authorities and it was incumbent upon the authorities to make further enquiries as required to assess the tax liability if any for the past period. Once appellant had disclosed the nature of his activities to the revenue authorities while seeking the registration and concerned authorities failed to make enquiries at that time, then I do not find any reason for making this demand by alleging suppression etc., for invoking the extended period of limitation as per proviso to Section 73 (1) for making this demand.

4.7 Having noted as above, I find that appellant was entertained a bonafide belief that his services were falling under Negative List of services and was not required to pay any service tax. In view of the above bonafide belief he entertained the demand made by alleging suppression etc. to invoke extended period of limitation could not have been made.

4.8 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."*

4.9 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;

4.10 I observe that Hon'ble Supreme Court has in the case of Stemcyte India Therapeutics Pvt. Ltd [Order dated 14.07.2025 Civil Appeal Nos. 3816-3817 of 2025] observed as follows:

> *"9. In the present case, the disputed period is from 01.07.2012 to 16.02.2014. However, the show cause notice was issued only on 28.07.2017, demanding a sum of Rs.2,07,29,576/- towards service tax, by invoking the extended period of limitation. Under section 73(1) of the Finance Act, 1994, a show cause notice must ordinarily be issued within one year from the relevant date. The proviso to section 73(1) allows an extended period of up to five years only where the nonpayment or short payment of service tax is due to fraud, collusion, wilful misstatement, suppression of facts, or contravention of the provisions of the Act or Rules, with an intent to evade payment of service tax.*
>
> *9.1. It is evident from the communication dated 02.12.2013 issued by the Deputy Commissioner of Central Excise, Ahmedabad-III, directing the appellant to furnish the documents relating to their activities, that the department was already aware of the nature of the appellant's operations as early as in 2013. Despite such awareness, the department issued the show cause notice after an inordinate delay, well beyond the ordinary period of limitation, and sought to justify it by invoking the extended period.*
>
> *9.2 ....*
>
> *9.3. It is a settled principle of law that, for the department to invoke the extended period of limitation, there must be an active and deliberate act on the part of the assessee to evade payment of tax. Mere non-payment of tax, without any element of intent or suppression, is not sufficient to*

attract the extended limitation period. In this regard, reference may be made to the following judgments:

(i) Padmini Products v. CCE [(1989) 4 SCC 275]

> *"12. Shri V. Lakshmi Kumaran, learned counsel for the appellant drew our attention to the observations of this Court in CCE v. Chemphar Drugs and Liniments, Hyderabad [(1989) 2 SCC 127 : 1989 SCC (Tax) 245] where at p. 131 of the report, this Court observed that in order to sustain an order of the Tribunal beyond a period of six months and up to a period of five years in view of the proviso to sub-section (1) of Section 11-A of the Act, it had to be established that the duty of excise had not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. It was observed by this Court that something positive other than mere inaction or failure on the part of the manufacturer or producer of conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established before it is saddled with any liability beyond the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal, however, had held contrary to the contention of the appellant. The Tribunal noted that dhoop sticks are different products from agarbatis even though they belonged to the same category and the Tribunal was of the view that these were to be treated differently. Therefore, the clarification given in the context of the*

agarbatis could not be applicable to dhoop sticks etc. and the Tribunal came to the conclusion that inasmuch as the appellant had manufactured the goods without informing the central excise authorities and had been removing these without payment of duty, these would have to be taken to attract the mischief of the provisions of Rule 9(2) and the longer period of limitation was available. But the Tribunal reduced the penalty. Counsel for the appellant contended before us that in view of the trade notices which were referred to by the Tribunal, there is scope for believing that agarbatis were entitled to exemption and if that is so, then there is enough scope for believing that there was no need of taking out a licence under Rule 174 of the said Rules and also that there was no need of paying duty at the time of removal of dhoop sticks, etc. Counsel further submitted that in any event apart from the fact that no licence had been taken and for which no licence was required because the whole duty was exempt in view of Notification No.111 of 1978, referred to hereinbefore, and in view of the fact that there was scope for believing that it was exempt under Schedule annexed to the first notification i.e. No.55 of 1975, being handicrafts, the appellant could not be held to be guilty of the fact that excise duty had not been paid or short-levied or short-paid or erroneously refunded because of either any fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder. These ingredients postulate a positive act. Failure to pay duty or take out a licence is not necessarily due to fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act. Suppression of facts is not failure to disclose the *legal consequences of a certain provision. Shri Ganguly, appearing for the Revenue, contended before us that the appellant should have taken out a licence under Rule 174 of the said Rules because all the goods were not handicrafts and as such were not exempted under Notification No. 55 of 1975 and therefore, the appellant were obliged to take out a licence. The failure to take out the licence and thereafter to take the goods out of the factory gate without payment of duty was itself sufficient, according to Shri Ganguly, to infer that the appellant came within the mischief of Section 11-A of the Act. We are unable to accept this position canvassed on behalf of the Revenue. As mentioned hereinbefore, mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act. In the facts and circumstances of this case, there were materials, as indicated to suggest that there was scope for confusion and the appellant believing that the goods came within the purview of the concept of handicrafts and as such were exempt. If there was scope for such a belief or opinion, then failure either to take out a licence or to pay duty on that behalf, when there was no contrary evidence that the producer or the manufacturer knew these were excisable or required to be licensed, would not attract the penal provisions of Section 11-A of the Act. If the facts are otherwise, then the position would be different. It is true that the Tribunal has come to a conclusion that there was failure in terms of Section 11-A of the Act. Section 35-L of the Act, inter alia, provides that an appeal shall lie to this*

Court from any order passed by the appellate tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purpose of assessment. Therefore, in this appeal, we have to examine the correctness of the decision of the Tribunal. For the reasons indicated above, the Tribunal was in error in applying the provisions of Section 11-A of the Act. There were no materials from which it could be inferred or established that the duty of excise had not been levied or paid or short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or of the Rules made thereunder. The Tribunal in the appellate order has, however, reduced the penalty to Rs 5000 and had also upheld the order of the confiscation of the goods. In view of the fact that the claim of the Revenue is not sustainable beyond a period of six months on the ground that these dhoop sticks, etc. were not handicrafts entitled to exemption, we set aside the order of the Tribunal and remand the matter to the Tribunal to modify the demand by confining it to the period of six months prior to issue of show-cause notice and pass consequential orders in the appeal on the question of penalty and confiscation. The appeal is allowed to the extent indicated above and the matter is, therefore, remanded to the Tribunal with the aforesaid directions. This appeal is disposed of accordingly."

(ii) CCE v. Chemphar Drugs and Liniments [(1989) 2 SCC 127]

"7. The respondent filed an appeal before the Tribunal. The Tribunal considered the matter and noted that the appellant's case was that the demand

for duty for the period beyond six months was time-barred; and the respondent's case was that the demand for the period beyond 6 months from the receipt of show-cause notice, was time-barred inasmuch as there was no suppression or misstatement of facts by the appellant with a view to evade payment of duty. In support of its claim the respondent produced classification list approved by the authorities during the period 1978-79, and also produced extracts from the survey register showing that the officers had been visiting its factory from time to time and also taking note of the previous goods manufactured by the respondent. The plea of the Revenue was that there was suppression and/or mis-declaration and/or wrong information furnished in the declaration itself. The Tribunal noted the facts as follows:

> *"We observe it is not denied by the Revenue that the appellants had been submitting their classification lists from time to time showing the various products manufactured by them including those falling under T.I. 14-E and 68 also these containing alcohol. The officers who visited the factory as seen from the survey register at the factory also took note of the various products being manufactured by the appellants. It cannot be said that the appellants had held back any information in regard to the range and the nature of the goods manufactured by them. The appellants have maintained that the value of the exempted goods under T.I. 68 and also value of medicines containing alcohol, according to their interpretation, were not required to be included for the purpose of reckoning of the total excisable goods cleared by them. There is*

> *nothing on record to show that the appellants non-bonafidely held back information about the total value of the goods cleared by them with a view to evade payment of duty. Their explanation that it was only on the basis of their interpretation that the value of the exempted goods were not required to be included that they did not include the value of the exempted goods which they manufactured at the relevant time and falling under T.I. 68 is acceptable in the facts of that case. The departmental authorities were in full knowledge of the facts about manufacture of all the goods manufactured by them when the declaration was filed by the appellants. That they did not include the value of the product other than those falling under T.I. 14-E manufactured by the appellants has to be taken to be within the knowledge of the authorities. They could have taken corrective action in time. We therefore find there was no warrant in invoking longer time-limit beyond six months available for raising the demand. So far as the demand for the period within six months reckoned from the date of receipt of the show-cause notice is concerned, we observe that the appellants' case is that value of the goods under T.I. 68 was not required to be included but the Revenue's plea is that only value of the specified goods under Notifications Nos. 71/78 and 80/80 was not required to be excluded."*

8. On the aforesaid view the Tribunal came to the conclusion that the demand raised on this for a period beyond 6 months was not maintainable.

9. Aggrieved thereby, the Revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or shortlevied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that explanation was plausible, and also noted that the department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The *respondent did not include the value of the product other than those falling under T.I. 14-E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence."*

(iii) Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462]

"4. Section 11-A empowers the Department to reopen proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. Infact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

(iv) CCE v. Punjab Laminates (P) Ltd. [(2006) 7 SCC 431]

"12. At no point of time, the Revenue doubted the correctness or otherwise of the manufacturing process or the ingredients disclosed by the respondent. The stand of the respondent that the industry as such had adopted the same manufacturing process and had been extended the benefit of the exemption notification of 1989 has not been called in question. If the stand of the manufacturer is correct, there was no reason as to why it should be singled out.

13. This Court decided Bakelite Hylam Ltd. [(1997) 10 SCC 350] on 10-3-1997. The impugned notice was issued only on 9-12-1997 evidently relying on or on the basis thereof.

14. It is not a case where the respondents had not disclosed the activities of manufacturing products carried out by them by declaration or otherwise. They responded to each and every query of the appellant, as and when called upon to do so. The authorities of the appellant must have verified the said disclosures. At least they are expected to do so. The disclosure made by the respondent was acceptable to them. Their bona fides were never questioned.

15. The applicability of the extended period of limitation is, therefore, required to be considered in the aforementioned context. The proviso, it is trite, provides for an exception. It is not the rule. A case, therefore, has to be made out for attracting the same.

16. In Primella Sanitary Products (P) Ltd. v. CCE [(2005) 10 SCC 644 : (2005) 184 ELT 117] a three-Judge Bench of this Court was dealing with a case where a concession was made by a counsel appearing on behalf of the Revenue. The Court opined that although the item was put under the *right classification list but they had not been permitted to take a different stand stating: (SCC p. 648, para 13)*

> *"As the matter of classification has proceeded on a matter of concession of facts we do not allow the appellants to withdraw from that concession. They are now not permitted to argue on the question of classification."*

17. In Pahwa Chemicals (P) Ltd. v. CCE [(2005) 189 ELT 257] this Court held:

> *"The appellants have all along claimed that merely because they were affixing the label of a foreign party, they did not lose the benefit of Notification No. 175/86-CE as amended by Notification No. 1/93-CE The view taken by the appellants had, in some cases, been approved by the Tribunal which had held that mere use of the name of a foreign party did not disentitle a party from getting benefit of the notifications. It is only after larger Bench held in Namtech Systems Ltd. v. CCE [(2000) 115 ELT 238 (cegat)] that the position has become clear. It is settled law that mere failure to declare does not amount to wilful misdeclaration or wilful suppression. There must be some positive act on the part of the party to establish either wilful mis-declaration or wilful suppression. When all facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no wilful mis-declaration or wilful suppression. If the Department felt that the party was not entitled to the benefit of the notification, it was for the Department to immediately take up the contention that the benefit of the notification was lost."*

18. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that it is not a fit case *where this Court should interfere. The appeal is, therefore, dismissed. The parties shall, however, pay and bear their own costs."*

9.4. Therefore, in the absence of fraud, collusion, wilful misstatement, or suppression of facts with an intent to evade payment of service tax, the invocation of the extended period of limitation under Section 73 of the Finance Act, 1994 is wholly unwarranted. Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation period. Accordingly, the show cause notice issued by the department is clearly time-barred. On this ground alone, the impugned order deserves to be set aside."

4.11 In view of the above, I find that demand made by invoking extended period cannot be upheld. Thus I do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Order pronounced in open court on-20 February, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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