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

REGIONAL BENCH

Service Tax Appeal No. 70473 of 2020-DB

(Arising out of Order–in-Original NOI-EXCUS-001-APP-493-20-21 dated 19.08.2020 passed by the Commissioner CGST (Appeals), Noida)

Om Kumar **......Appellant**
Proprietor of Om Security &
Cleaning Services, E-194, Sector-63
Noida-201307

Versus

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

<u>APPEARANCE:</u>

Shri R.S. Sharma, Advocate for the Appellant
Shri B.K. Jain, Authorized Representative of the Department

<u>CORAM:</u>

HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 03.08.2022
Date of Decision: 17.08.2022

FINAL ORDER No. <u>70136/2022</u>

JUSTICE DILIP GUPTA:

The order dated 19.08.2020 passed by the Commissioner (Appeals) Noida[1], upholding the order dated 16.07.2019 passed by the Additional Commissioner confirming the demand of service tax of Rs. 1,58,43,075/- with interest and penalty, has been assailed in this appeal.

2. The appellant is a proprietor of Om Security and Cleaning Services, Noida, which was engaged in providing man power supply agency service and security agency service. Audit of the service tax records of the appellant for the period from October, 2011 to March,

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1. the Commissioner (Appeals)

2011 was conducted during the period from 01.10.2013 to 04.10.2013 and a show cause notice dated 02.12.2016 alleging short payment of service tax of Rs. 1,58,43,075/- was issued to the appellant for the services provided during the period 2010-2011 to 2014-2015 on account of differential taxable value in the balance sheet and ST-3 returns.

3. By order dated 16.07.2019, the Additional Commissioner confirmed the demand of service tax of Rs. 1,58,43,075/- under the proviso to section 73(1) of the Finance Act, 1994[2]. The appellant filed an appeal before the Commissioner (Appeals), which was dismissed by order dated 19.08.2020.

4. Earlier, a show cause notice dated 18.04.2016 had also been issued to the appellant for the period 2014-2015 for short payment of service tax of Rs. 17,09,232/- after audit of service tax records of the appellant for the period to April 2013 to March, 2015. This show cause notice is pending adjudication.

5. Shri R.S. Sharma, learned counsel for the appellant submitted that the extended period of limitation, as contemplated under the proviso to section 73(1) of the Finance Act, could not have been invoked in the facts and circumstances of the case, except for the period between October 2014 to March 2015 which is within the normal period of limitation and, therefore, the demand of service tax for the extended period of limitation should be set aside. Learned counsel also pointed out that even for the demand made for the normal period of limitation, there is overlapping of period with the period covered by the earlier show cause notice dated 18.04.2016.

6. Shri B.K. Jain, learned authorized representative appearing for the Department submitted that the extended period of limitation was

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2. The finance Act

correctly invoked.

7. To appreciate the submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the department it would be appropriate to place the chart provided by the learned counsel for the appellant relating to the demand contained for the extended period of limitation in respect of the show cause notice dated 02.12.2016, which alone is the subject matter of the present appeal and it is as follows:-

S. No.	**PERIOD**	**DATE OF FILING RETURN**	**FROM RELEVANT DATE UNDER SECTION 73**
1.	April 2011 to September 2011	6.2.2011	4 years 11 months 27 days
2.	October 2011 to March, 2012	25.04.2012	4 years 7 months 7 days
3.	April 2013 to September 2013	25.10.2013	3 years 1 month 8 days
4.	October 2013 to March 2014	2.9.2014	2 years 3 months
5.	April 2014 to September 2014	24.10.2014	2 years 1 month 9 days
6.	October 2014 to March 2015	25.04.2015	1 year 7 months 7 days

8. According to the learned counsel for the appellant, the extended period of limitation has been invoked for the period covered from S. No's. 1 to 5 and it is only the period covered by S. No. 6 that is within the normal period of limitation contemplated under section 73(1) of the Finance Act.

9. Learned counsel also pointed out that the normal period of limitation under section 73(1) of the Finance Act would be as follows:-

Upto 27.05.2012	12 months
28.05.2012 to 13.05.2016	18 months
14.05.2016 to 30.06.2017	30 months

10. It is, therefore, clear that the period covered by S. No's. 1 to 5 is beyond the normal period of limitation and it has to be seen

whether for this period the Department was justified in invoking the extended period of limitation contemplated under the proviso to section 73 (1) of the Finance Act. To examine this it would be necessary to ascertain what was the allegation regarding this aspect made in the show cause notice and how it has been dealt with by the impugned order.

11. The portion of the show cause notice dated 02.12.2016, in so far as it deals with the extended period of limitation, is reproduced below:-

> "Whereas, as the said party has willfully evaded payment of service tax amounting to Rs. 1,58,43,075/- by contravening the provisions of section 67 of the Finance Act, 1994 read with the provisions of Rule 5 of Service Tax (Determination of Value) Rules, 2006 and Rule 6 of the Service Tax Rules, 1994 so they have also rendered themselves liable for penal action as envisaged under section 78 of the Finance Act, 1994. **It may here emphatically be stated that, as is also apparent from the foregoing facts and findings, the extended period of time limitation, as envisaged under the proviso appended to subsection (1) of section 73 of the Finance Act, 1994, appears to be invokable in the instant case owing to the fact that the fact of suppression of value in the ST-3 returns came to the knowledge of the department only during the course of the subject Audit of the records and said fact was never revealed by the said party on their own accord.** As is obviously evident, **this willful suppression on the part of the said party was with their sole intention to contravene the said relevant provisions of the said Rules and the Act with intent to evade payment of service tax and accordingly the provisions of extended period of time limitation appears to be appropriately invoked in the instant case."**
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> **(emphasis supplied)**

12. This aspect has been dealt with by the Additional Commissioner in the order dated 16.07.2019 in the following manner:-

> "18. In view of the above discussion, I am of the view that the party has short paid service tax of Rs. 1,58,43,075/- and the same is liable to be recovered as per the proviso to section 73(1) of the Finance Act, 1994. The party is also liable to pay applicable interest in terms of section 75 of the Finance Act, 1994. **Further, the activity of short payment/non-payment of service tax by suppressing/concealing the vital information from department with willful intent to evade payment of service tax, in view of the facts as mentioned hereinabove, has rendered themselves liable for penal action as provided under section 78 of the Act."**
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> **(emphasis supplied)**

13. The Commissioner (Appeals) has not dealt with this issue at all even though it was specifically raised by the appellant as is clear from paragraph 3 of the order, the relevant portion of which is reproduced below:

> "3. Aggrieved with the above impugned order, the appellant have preferred the present appeal on following main grounds:
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> a. that the entire demand is time barred as extended period is not applicable;
> b. the ST-3 return for 10/2010 to 03/2011 was filed on 19.04.2011 whereas SCN was issued on 02.12.2016 which is beyond period of 5 years.
> c. It is not a case of fraud, collusion, willful mis-statement, suppression or contravention of the provisions of finance Act or rules."

14. It would, therefore, be necessary to remit the matter to the Commissioner (Appeals) to examine this issue.

15. In regard to the overlapping of period from October 2014 to March 2015, it is noticed that a portion of it is covered by the earlier

show cause notice dated 18.04.2016. This mater would also, therefore, have to be remitted to the Commissioner to examine this aspect afresh.

16. The matter is, accordingly, remitted to the Commissioner (Appeals) to examine both the issues relating to the applicability of the extended period of limitation as also the overlapping of period and the appeal is allowed to the extent indicated above.

(Order pronounced in the open Court on **17.08.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Rekha/JB