

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**ST/224/2009-DB**

[Arising out of Order-in-Appeal No. 329/2008 dated  
16/12/2008 passed by Commissioner of Central Tax,  
Bangalore North]

**M/s. Karnataka State Tourism  
Development Corporation**

No.49, 2nd Floor, Khanija Bhava, Race  
Course Road, Bangalore

Appellant(s)

**Versus**

**-Commissioner Of Central Tax,  
Bangalore North**

No-59, HMT Bhawan  
Ground Floor, Bellary Road  
BANGALORE  
KARNATAKA  
560032

Respondent(s)

**Appearance:**

**Mr. Amarnath A.S., CA**

H.R.SURESH & CA  
#B-4, 1ST FLOOR, 'B' BLOCK, UNITY  
BUILDINGS, JAYACHAMARAJENDRA WADIAR  
ROAD, BANGALORE-560 002

For the Appellant

**Mrs. Kavita Podwal, AR**

For the Respondent

Date of Hearing: 04/09/2018

Date of Decision:04/12/2018

**CORAM:**

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER**

**HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 21829/2018**

**Per : S.S GARG**

The present appeal is directed against the impugned  
order dated 16.12.2018 passed by the Commissioner (Appeals)

whereby the Commissioner (A) has rejected the appeal of the appellant and upheld the Order-in-Original passed by the Deputy Commissioner of Service Tax.

2. Briefly the facts of the present case are that the appellants have Service Tax Registration and are engaged in the activity of providing various taxable services and paying Service Tax. During the course of scrutinizing the trial balance of the assessee, for the period 04/2005 to 09/2005, they have noticed that the appellant had received an amount of Rs.4,42,547/- towards luggage collection, driver batta and casual contract and also received commission of Rs.17,64,100/- towards hotel booking, luggage collection hotel booking, luggage collection, driver batta and casual contract during the period 2004-05. The amount so received is liable to Service Tax under category of 'tour operator/business auxiliary service' and that the appellant have failed to discharge the Service Tax on gross value of Rs.22,06,647/- on which Service Tax works out Rs.2,12,776/-. The original authority after issue of SCN, confirmed the demand of Rs.66,386/- under Section 73(2) of the Finance Act, 1994 and Appropriate Rs.1,46,390/- which was already paid by the appellant, on 25.03.2006 out of Rs.2,12,776/- and demanded the interest of Rs.43,080/- and also imposed penalty of Rs.200 per

day under Section 76 of the Finance Act 1994 and equivalent penalty of Rs.1,49,380/- under Section 78 of the Finance Act 1994 for contravention of provision of Section 67 of the Finance Act, 1994 read with Rule 6(3) of the Service Tax Rules, 1994. Aggrieved by the said order, the appellant filed appeal before the Commissioner (A) and the Commissioner (A) has upheld the order of the Deputy Commissioner on the ground that the issue was observed by the Internal Audit Party and came to fore on scrutiny of their balance sheet. Had it not been noticed by the audit, the same would have gone unnoticed and there would have been a revenue loss and further only on receipt of SCN, they have accepted the contention and paid the Service Tax and further, the appellants have not produced any evidence in their support.

3. Heard both sides and perused the records of the case.

4. Learned counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the impugned order is contrary to the binding judicial precedent. He further submitted that the entire demand is barred by limitation. He further submitted that the Revenue has wrongly invoked the extended period of limitation of

5 years which can only be invoked in case of fraud, collusion, wilful mis-statement, suppression of facts or contravention of the provisions with intent to evade payment of Service Tax. It is his further submission that the appellant has not suppressed any information and has paid the Service Tax of Rs.1,46,390/- on 25<sup>th</sup> March 2006 based on its calculation much before the issue of SCN which was issued on 16.01.2008. He further submitted that the Revenue has not brought any material on record to show that there was a suppression of fact on the part of the appellant who is the State Government undertaking to evade the payment of Service Tax. In support of his submission, he relied upon the decision in the case of ***Infinity Infotech Parks Ltd. Vs. UOI reported in 2013 (31) STR 653 (Cal.)*** wherein the Hon'ble High Court of Calcutta held that just because the issue was identified during the audit, the Revenue is not correct in concluding that the extended period of limitation for issuance of SCN is applicable and valid. He further submitted that it is a settled position of law that no mala fide intentions can be attributable to the PSUs and the Government bodies and in the appellant's own case reported in ***KSTDC Vs. CST, Bangalore 2011 (21) STR 518 (Tri. Bang.)*** wherein the Tribunal has held as under:

*"We find that once adjudicating authority has come to such*

*a conclusion, there cannot be any mala fide attributed to the appellant who is a Statutory State Govt. Body for evasion of payment of Service Tax. We are fortified in our stand by the decision of this very Bench in the case of BSNL Vs. Commr. - 2009 (14) STR 359 (Tri.) wherein it was held as under:*

*"Appellant being a Statutory Government Body, there cannot be any mala fide intention to evade payment of tax - penalty not leviable."*

4.1 Learned counsel also relied upon the decision in the case of **CST, Bangalore Vs. M/s. Karnataka State Warehousing corporation reported in 2011 (23) STR 126 (Kar.)** wherein the Hon'ble High Court of Karnataka while interpreting Section 73 (1), has held as follows:

*"The proviso to Section 73(1) extends the period of limitation to 5 years in the event of fraud, collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions or Rules made therein with intent to evade payment of Service Tax.*

*This is an appeal by the Revenue, challenging the order passed by the Tribunal, which held that the demand of Service Tax made prior to the issue of SCN is beyond the period of one year and is clearly barred by time.*

*In the facts of this case, it is clear that the assessee did not get themselves registered. It is their contention the service rendered by them is not amenable to the Act. However, when it was brought to their notice that, they are covered under the Act, they have registered themselves and have paid the tax. The*

*material on record do not disclose a case of fraud, collusion, wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or the Rules made therein with intention to evade payment of tax. It discloses that the assessee having bona fide believed that the services provided by them do not attract Service Tax, they did not get themselves registered. The department also did not levy tax. The moment it was brought to their notice that the services rendered by them comes under the Act they promptly registered themselves and paid tax. Therefore, it is clear the case falls under sub-section (1) of Section 73 and not under the proviso of the said Section. Therefore, the period prescribed is one year prior to the date of the SCN. Beyond that period, it is clearly barred by time. Therefore, the findings recorded by the Appellate Tribunal is in accordance with law and does not; suffer from any legal infirmity which calls for interference.*

4.2 Learned counsel also relied upon the decision of the Hon'ble Apex Court in the case of **Larsen & Toubro Ltd. Vs. Commr. of C. Ex. – 2007 (8) STT 403 (SC)** wherein it was held that Acts of fraud or suppression, it is well settled, must be specifically pleaded. The allegations in regard to suppression of facts must be clear and explicit so as to enable the noticee to reply thereto effectively. Further, the learned counsel also submitted that on merit also, the appellants have paid the Service Tax which was liable to be paid much before the issue of SCN and the finding of the Commissioner that the appellants have

paid the Service Tax on receipt of SCN is factually incorrect because the appellant has paid the Service Tax on 25<sup>th</sup> March 2006 promptly when it came to their knowledge through Audit Party that some of the services are liable to Service Tax whereas the SCN was issued on 16<sup>th</sup> January 2008 which is almost 2 years later from the date of payment of tax.

5. On the other hand, learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant is a State Government undertaking which is engaged in providing various taxable services and after the audit, the appellant themselves computed the tax liability and paid the Service Tax of Rs.1,46,390/- on 25<sup>th</sup> March 2006 whereas the SCN was issued on 16<sup>th</sup> January 2008 much beyond the period of one year. Further, we find that the appellants have not suppressed any material fact with intent to evade payment of tax. Further, we find that the Revenue has wrongly invoked the extended period of 5 years which is only applicable in the case of fraud, collusion, wilful mis-statement, suppression of facts or contravention of provision with intent to evade payment of Service Tax whereas in the present case, we do not find any material to hold that there

was an intention on the part of the appellant to evade the payment of Service Tax. Further, we find that in the appellant's own case cited supra, this Tribunal has held that the assessee being a Statutory Government Body there could not be any mala fide intention to evade payment of tax. Further, we find that the decision of Calcutta High Court in the case of ***Infinity Infotech Parks*** cited supra has squarely applicable in the present case. The relevant findings of the Calcutta High Court are reproduced here in below:

*"... there is a sweeping statement that if the Audit Team had not visited the premises of the said assessee and unearthed material facts, the assessee would have been continuing the evasion. Therefore, proviso to Section 73(1) is invocable for extending time. It prima facie appears to this Court that the reasons for invoking the extended period of limitation, as disclosed, are totally vague and devoid of material particulars.*

*Prima facie, there is no whisper in the impugned notice of the facts which have allegedly been suppressed. Prima facie, the vague assertion that the petitioner had willfully suppressed facts pertaining to providing/receiving the services with intent to evade payment of Service Tax is unfounded.*

*On a prima facie perusal of the impugned notice it prima facie appears to this Court that the Commissioner proceeded on the basis that there had been contravention, as a result of which, some tax payable had not been paid. Prima facie, the Commissioner of Service Tax did not address the issues, which were required to be addressed, for issuing a notice by invoking*

*the extended period of limitation. Moreover, whether Service Tax is payable on premium for a long term lease is a question of law. The petitioners have an arguable case....”*

6.1 Similarly, we find that the grounds on which the extended period of limitation can be invoked have not been specifically pleaded by the Revenue in the SCN. Further, we find that on merits also, the appellant has a good case but since we are allowing the appeal on limitation itself, we need not go to the merits of the case. By following the ratios of the decisions cited supra, we are of the considered view that the impugned order is not sustainable in law therefore we set aside the impugned order by holding that the entire demand is barred by limitation. Consequently, we allow the appeal with consequential relief, if any.

(Order was pronounced  
in Open Court on **04/12/2018**)

**P. ANJANI KUMAR**  
**TECHNICAL MEMBER**

**S.S.GARG**  
**JUDICIAL MEMBER**

Parveen...