CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60407 of 2020

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-334-2020 dated 31.08.2020 passed by the Commissioner (Appeals), CGST, Ludhiana]

C I I S Educational Services Society ......**Appellant**
Village Jalvehra PO Nabipur, NH-I,
Fatehgarh Sahib, Punjab 140407

VERSUS

Commissioner of CG & ST, Ludhiana ......**Respondent**
GST Bhawan, F Block, Rishi Nagar, Ludhiana
Punjab 141001

APPEARANCE:

Present for the Appellant: Mr. Joy Kumar, Advocate

Present for the Respondent: Mr. Amandeep Kumar, A.R.

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60966 /2021

DATE OF HEARING: 16.12.2021
DATE OF DECISION: 16.12.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein demand of service tax has been confirmed on account of short levy or not paid for the period 2012-13 and 2013-14 by invoking the extended period of limitation.

2. The ld. Counsel for the appellant without going into merit of the case submitted that the audit was undertaken for the impugned

period on 28.03.2014 and 02.04.2014 and no such queries were raised for short levy or not paid service tax from the appellant as per the impugned order. But the show cause notice has been issued to them on 21.04.2017 by invoking the extended period of limitation which is highly barred by limitation; therefore, the show cause notice is not sustainable.

3. On the other hand, the ld. A.R. relied on the decision of the Larger Bench of this Tribunal in the case of *Nizam Sugar Factory vs. Collector of Central Excise, Hyderabad – 1999 (114) ELT 429 (Tri. LB)* to say that where there is a short levy of payment of duty or not payment of duty, five years period can be invoked. He also argued the case on merit and submitted that the appellant has not shown their books of accounts, miscellaneous income which they have required to show, but it came to the notice at the time of issuance of the show cause notice, therefore, on merit also, the appellant has no case.

4. Heard the parties and considered the submissions.

5. Considering the facts that the demand has been raised for the period 2012-13 and 2013-14 for which audit undertook on 28.03.2014 and 02.04.2014. For better appreciation, the audit report is also enclosed herewith as under:

Annexure – X
(para 8.1.2)

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FORMAT OF AUDIT REPORT
Part – I

1	Name & Address of the taxpayer	M/s.CIIS Educational Services Society, Village Jalvehra, PO Nabipur,Distt. Fatehgarh Sahib
2	Head Office, Regional/Branch offices etc.	Operating from above address.
3	Status of the taxpayer	Registered Society
4.	Jurisdictional Commissionerate / Division / Range . Name of the Range Superintendent /Inspector	Commissionerate – Chandigarh-I Division – C.Ex Div., Mandi Gobindgarh Range – V, Mandi Gobindgarh Sh/Smt -
	Name of Taxable services provided/ received (in case of payment of service tax under reverse charge mechanism)	Commercial Training & Coaching
6	STC No. & date of issue	AAATC5852ESD001 dated 21.07.2012
7	Exemption Notification No. and its effective date along with gist of exemption notification in case exemption is claimed.	NIL
8	Date of Last audit	First Audit
9	Period for which current audit undertaken	2012-13 & 2013-14
10	Dates on which audit undertaken	28.03.2014 & 02.04.2014
11	Unconfirmed demand, if any	NIL
12	Confirmed demand, if any	NIL
13	Appeal filed, if any a. By Department b. By Taxpayer	NIL
14	Tax, Interest and penalty paid during the current audit period.	2012-13 – Rs.3286513 2013-134– Rs .5129395
15	No. of Revenue Paras	2
16	No. of Procedural Paras	NIL
17	Total Revenue involved in audit paras	741043/- S.Tax +175284/- Interest

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PART – II SUMMARY OF AUDIT RESULTS

(provide an outline of important and material non-compliance issues during the audit, indicate if the taxpayer has agreed to comply)

Audit para No.	Gist of Objection	Code Number of objection as per Annexure-XI of the Service Tax Audit Manual	Revenue implication, if any (in Rs.)	Assessee Agreement Yes/ No. If no, reasons for disagreement	Department's conclusions with reasons
1	Short payme..t of service tax amounting to Rs.741043/- for the period 2013-14. While scrutinizing records it was observed that the assessee had [redacted] deposited Rs.2000000/- only against the total liability of Rs. 2740425/- for the month of Feb'2014. It had also not paid Rs.618/- S.Tax of March'2014.	CSR01	741043/- S Tax.	Yes.	On being pointed out the assessee agreed to the audit objection and deposited Rs.741043/- S.Tax along with Rs.11319/- Interest through e-payments dated 5.04.2014 and 15.04.2014. ***Para stands approved & settled.***
2	Non payment of Interest Rs.163965/- against delayed deposit of service tax. It was also observed that the assessee had not been depositing its service tax liability during 2012-13 & 2013-14 on prescribed dates.		163965/- Interest	Yes	On being pointed out the assessee agreed to the audit objection and deposited Rs.163965/- Interest through e-payment dated 15.04.2014. ***Para stands approved & settled.***
Total Revenue involved			741043/- S.Tax + 175284/- Interest		

SUGGESTION FOR BETTER REVENUE COMPLIANCE

NIL

25.04.17

ASSISTANT COMMISSIONER (AUDIT)

On going through the audit report, I find that no such objection of short payment or non-payment of service tax has been raised during the course of audit as pointed out by the ld. Counsel during the course of argument and admittedly, the show cause notice has been issued on 21.04.2017 which is beyond the period of limitation of one year, therefore, I hold that demand cannot be raised against the appellant as there is not suppression on the part of the appellant as audit took place on 02.04.2014 itself. The case law relied upon by the ld. A.R. have no relevance to the facts of this case as in the case of *Nizam Sugar Factory (supra)*, the Larger Bench of this Tribunal has not considered the fact that whether audit has been taken place or not? and if audit has been conducted, then five years period is invokable or not?

6. In view of the above discussion, without going into the merits of the case, I hold that as the show cause notice has been issued beyond the period of limitation of one year, therefore, the demand against the appellant is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi