CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41131 of 2016

(Arising out of Order-in-Appeal No.20/2016 (STA-II) dated 17.02.2016 passed by Commissioner of Service Tax (Appeals-II), Chennai)

M/s. Deloitte Haskins & Sells, **....Appellant**
ASV Ramana Towers, No.52,
Venkatnarayana Road,
T. Nagar, Chennai-600 017.

Versus

Commissioner of GST & Central Excise **... Respondent**
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

APPEARANCE:

Shri Parthasarathy R., Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 40598/2025

DATE OF HEARING: 04.06.2025
DATE OF DECISION: 09.06.2025

Per: Mr. P. Anjani Kumar

The appellants, M/s. Deloitte Haskins & Sells are a registered partnership firm engaged in auditing of companies; the appellant's are registered themselves with Service Tax and are paying Service Tax as applicable; however during the audit of the appellants' records, it appeared that the appellants have received certain advances from their customers and have not paid the applicable Service Tax on the same. The appellants have deposited a sum of Rs.1,60,346 towards the duty payable as per the audit. A Show Cause Notice 07.10.2013 was issued to the appellant demanding Service Tax of Rs.1,78,502/- along with interest and penalties. The demand raised in the Show Cause Notice was confirmed by the Order 10.09.2015 wherein demand of Rs.1,78,502/- was confirmed; duty paid of Rs.1,60,346/- was appropriated; balance amount of Rs.18,156/- was ordered to be paid along with interest and imposed penalty of Rs.1,78,502/- on an appeal filed by the appellant Commissioner (Appeals) *vide* order dated 17.02.2016 upheld the order of the Lower Authority. Hence, this appeal.

2. Ld. Counsel Shri Parthasarathy R., for the appellant submits that the appellant has only received the advance, for the work they were yet to undertake at the time of the receipt of these amounts, they were not sure whether the said services would be rendered or whether the amounts required to be returned back; there were also confusion as to the stage of payment of Service Tax. He submits that this being a matter involving interpretation of legal / statutory, provisions with reference to the point of levy of Service Tax on the appellant, extended period cannot be invoked. Ld. Counsel also submits that whereas the demand was for Rs.1,78,502/-; the appellants have paid Rs.1,60,346/- which was appropriated in the impugned order; the appellants have arrived at the Service Tax payable by them by considering the amount received to be inclusive of Service Tax that is to say that they have calculated duty on the consideration on cum-duty basis. He submits that Hon'ble Apex Court in the case of Advantage Media Consultants held that cum-duty benefit should be allowed. He would further submit that the Tribunal in the case of **M/s. Crimson Foods**

vs. Commissioner – 2025 (4) TMI 959 – CESTAT Chennai have held that cum-duty benefit is required to be allowed. Ld. Counsel relied on the following judgements:

1) CCE, Patna vs. Advantage Media Consultants – 2008 (3) TMI 59 – CESTAT Kolkata
2) CCE, Patna vs. Advantage Media Consultants – 2008 (10) TMI 570 – SC Order

3. Shri M. Selvakumar, Ld. Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that the appellants being consultants themselves in the field of direct and indirect taxation, cannot plead ignorance of the taxation provisions and therefore, extended period is correctly invoked.

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

5. We find that regarding the cum-duty benefit the appellants have submitted that this Bench has already take a view in the case of M/s. Crimson Foods (Supra)

relying the Hon’ble Apex Court in the case of Advantage Media Consultants we find that this Bench has held in the case of M/s. Crimson Foods (Supra) as follows

> *11. As regards the issue at (G) above, the appellant has stated that the Hon'ble CESTAT, Mumbai in the case of Commissioner of Central Excise & Customs, Patna V. Advantage Media Consultants [2008 (14) STT 483 (Kol. - CESTAT)], which was further upheld by the Hon'ble Apex Court by dismissing Civil Appeal filed by the Revenue, held that the value received for the taxable purpose needs to be considered as cum-tax amount if the Service tax is not charged as per the Section 67(2) of the Finance Act. Hence the adjudicating authority ought to have granted cum-tax benefit in respect of the demand confirmed vide the impugned orders. We concur with the views expressed in Advantage Media Consultant above, but we find that one of the allegations against the appellant is that they collected service tax from their customers but did not pay the same to the exchequer. This factual matter needs to be examined by the lower authority before granting the benefit of cum-duty valuation in line with the Tribunal decision in Advantage Media Consultant. This issue may also be examined by the Original Authority during remand proceedings and if necessary, the duty may be re-quantified suitably by giving the cum-tax advantage where ever due.*
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> *12. We find that a lack of proper discussion renders the decision to be arbitrary. The Hon'ble Apex Court in East Coast Railway and another Vs Mahadev Appa Roa and others [(2010) 7 SCC 678), held as unde;*
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> > *23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order This may be evident from the order itself or the record contemporaneously maintained Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the*

> *order in question Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.*

6. Coming to the issue of extended period and imposition of equal penalty is concern we find that other than alleging that the appellants have suppressed the facts etc., Revenue has not come up with any evidence showing any positive act on the part of the appellants in order to invoke extended period of limitation. We find that Tribunal and Courts in a catena of cases held simple non-payment of tax would not amount to suppression of facts and there should be a positive act on the part of the appellant with intent to evade payment of tax. Therefore we are of the considered opinion that extended period is invokable in the impugned case before us; we also come to the conclusion keeping in mind that the appellants have deposited the applicable duty before the Lower Authorities even before the confirmation of the demand raised. In view of the same, we find that the imposition of penalty does not survive and is liable to be set aside. We do so.

7. In the result as both the issues are decided in favour of the appellant, the appeal is allowed.

(Order pronounced in open court on 09.06.2025)

(P. ANJANI KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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