CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal Nos.42023 & 42024 of 2015
(Arising out of Order-in Appeal No.71 & 72/2015 dated 02.03.2015 passed by Commissioner of Customs (General), Chennai)

M/s. Clean Care Services, ... **Appellant**
Flat No.11, 1st Floor, No.12, Varadharajan Street,
T. Nagar, Chennai 600 017.

VERSUS

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

APPEARANCE :
Shri. T. Ramesh, Advocate for the Appellant
Shri. N. Satyanarayana, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER Nos.40782-40783/2025

DATE OF HEARING: 15.04.2025
DATE OF DECISION: 31.07.2025

Per AJAYAN T.V.

M/s. Clean Care Service, the appellant herein, has preferred these appeals challenging the common Orders in Appeal Nos.71 & 72/2015 (STA-II) dated 02.03.2025 of the Commissioner of Service Tax (Appeals-II), whereby the common orders in original No.76 & 77/2011 dated 18-08-2011 passed by the adjudicating authority confirming the demand of service tax along with interest thereon for the period April 2005 to September 2008 and for the subsequent period from October 2008 to September 2010, along with the penalties imposed under Section 78 of the Finance Act, 1994 for the former period and Section 76 for the latter period with penalties under Section 77 for both the periods, were also upheld. Inasmuch as the issue involved being common, these appeals were taken up for hearing together and are being disposed of by this common order.

2. Brief facts are that the appellant who is engaged in the business of housekeeping and cleaning services, is registered with the Service Tax Department for its activities. During Audit, on scrutiny of the appellant's financial and bank statements for the period 2005-06 to 2008-09, it was noticed that on the total service charges received by the appellant the service tax payable worked out to Rs.52,94,461/-. However, on scrutiny of the challans for the period, it was noticed that the appellant had paid the service tax of Rs.23,87,979/- only and the balance service tax due worked out to Rs.29,06,482/-. It was ascertained that the appellant had not filed any service tax returns and thus a show cause notice No.616/2009 dated 24.12.2009 was issued invoking proviso to Section 73(1) for demanding the service tax of Rs.29,06,482/- along with interest and proposing penalties under section 76,77 and 78 of the Finance Act. Since the appellant continued to default in their payment for the further period, another show cause notice No.30/2011 dated 17.02.2011 was issued for the period from October 2008 to September 2010 demanding service tax of Rs.22,67,759/- under section 73(1) of the Finance Act along with interest and proposing penalties under Section 76 and 77 of the Act. In their reply dated 20.01.2010 for the first show cause notice dated 24.12.2009, the appellant submitted that the short payment/nonpayment of service tax was due to the sudden resignation of the accountant of the appellant who alone was dealing with payment of service tax and further due to the general economic recession and outstanding dues from their regular clients they were unable to fulfil their service tax liability. They also submitted that they have paid an amount of Rs.21,80,993/- against the demand and were taking efforts to pay the balance amount of Rs.7,25,489/-. In response to the second show cause notice, also the appellant pleaded financial constraints. After due process of law, the adjudicating authority, while observing that the appellant has paid an amount of Rs.21,80,993/- vide challans dated 20.01.2010, 29.01.2009, 23.12.2008 and 24.05.2008 towards the demand of Rs.29,06,482 made under SCN dated 24.12.2009, went on to hold that since the appellant had not filed ST-3 returns nor intimated their taxable income and had continued to default, the allegation of wilful suppression is proved. As regards the second SCN, the adjudicating authority held that appellant had belatedly filed the returns for part of the period on 05.03.2010 and for the remaining period on 28.01.2011 and since the appellant continued their default, the proposal to levy penalty is legal. Thus, vide the

common orders in original No.76 & 77/2011 dated 18-08-2011, the adjudicating authority confirmed the demands in both the notices along with equivalent penalty in respect of the first notice, the penalty more specifically described in the impugned OIO under section 76 in respect of the second notice and also penalty of Rs.1000/- for failure to file returns within prescribed period under Section 77, in respect of both the notices. Aggrieved by the said common orders in original, the appellant preferred an appeal before the Commissioner Appeals, who has however, vide the impugned common orders in appeal Nos.71 & 72/2015 (STA-II) dated 02.03.2025 (OIA) upheld the common orders in original of the adjudicating authority. Being aggrieved by the impugned OIA, the appellant has preferred this appeal and is thus before this Tribunal.

3. Shri. T. Ramesh, Advocate appeared and argued on behalf of the appellant. The Ld. Counsel contended that the appellant had paid an amount of Rs.21,80,993/- much prior to issuance of the show cause notice and that there was no wilful suppression or intend to evade payment of tax. It was contended that the appellant had filed periodical returns disclosing the entire taxable value without any suppression. That the delay in payment was due to the resignation of the concerned officer and financial hardship faced by the appellant, that the demand was computed based on the exact value of service furnished by the appellant and hence the demand beyond the normal period is barred by limitation. He submitted that the penalty imposed under Section 78 with respect to the first SCN may be set aside. As regards the demand confirmed in respect of the second SCN he submitted that a portion of the demand is barred by limitation and hence the demand is unsustainable and that the penalties imposed are also unsustainable. Reliance was placed on the decisions in:

i. *Sitalakshmi Mills v CESTAT, 2018 (361) ELT 647 (Mad)*
ii. *Commissioner v. Meghmani Dyes & Intermediaries Ltd, 2013 (288) ELT 514 (Guj)*
iii. *Central Warehousing Corporation v Commissioner of S.T., Ahmedabad, 2016 (41) STR 106 (Tri-Ahmd)*
iv. *Infosys Ltd v Commissioner of Central Tax, 2019 (369) ELT 975 (Tri-Bang)*
v. *Commissioner of C.Ex v Tirupathi Fuels Pvt Ltd, 2017 (7) GSTL 142 (A.P).*

4. Mr. N. Satyanarayana, Ld. Authorised Representative, appeared for the Respondent and reiterated the findings in the impugned order.

5. We have heard the rival submissions, carefully perused the appeal records and the citations submitted as relied upon.

6. The issue that arises for consideration is whether the demands confirmed and penalties imposed are tenable in the given facts and circumstances of the appellant's case.

7. On a perusal of the appeal records, we find that in the SCN dated 24.12.2009, the proposal for invoking extended period of limitation was thus:

   "4.0 The above facts came to the notice of the Department only during the course of an audit conducted by the officers of the Internal Audit Group of the Service Tax Commissionerate, Chennai. Though the assessee was registered with the Service Tax Department for their cleaning activity, the assessee has not filed any ST-3 returns during the material period nor has intimated the Department in any other manner. Hence it appears that the assessee suppressed facts with an intent to evade payment of service tax."

8. Therefore, it is evident that there was no positive evidence of any wilful misstatement or suppression of facts with intent to evade payment of duty that has been put to the notice of the appellant and which the appellant has been called upon to answer. It is settled by a catena of decisions that absent such a positive or deliberate act on the part of the appellant, extended period of limitation cannot be invoked. The decisions in ***CCE & ST, Bangalore (Adjudication) v Northern Operating Systems Pvt Ltd, 2022 (61) GSTL 129 (SC)*** and ***Naresh Kumar & Co Pvt Ltd v UOI, 2015 (37) STR 451 (Cal) affirmed in appeal in Commissioner of Service Tax v Naresh Kumar & Co, 2022 (67) GSTL 324 (Cal)*** refer for the said proposition. It was contended on behalf of the appellant that the appellant had filed periodical returns disclosing the entire taxable value without any suppression. However, we find that no evidence to substantiate this averment has been adduced even in the appeal filed before us. Thus, such averment, sans evidence, cannot be countenanced. Be that as it may, we notice that the appellant has all along been making payments of service tax, albeit in part, which fact is also reflected in the records. It is consequent

to the perusal of such payments made and verification of the challans that the audit party has determined that there has been short payment. In such circumstances, given the appellant's contention that it was financial hardship that prevented the appellant from discharging its liability in full, the explanation is not implausible, especially since the same has not been controverted in any manner by the lower authorities. Therefore, in these circumstances, in as much as none of the ingredients that are required for invoking extended period of limitation has been evidenced by the Department, we are of the view that invoking of the extended period of limitation is unsustainable. However, we hold that the appellant is liable to pay the duty liability for the normal period in respect of the SCN No.616/2009 dated 24.12.2009, along with interest due thereon. Since the ingredients that are necessary to impose penalty under Section 78 are the same as that required for invoking the extended period of limitation, in the absence of these ingredients, the penalty imposed on the appellant under Section 78 of the Act also cannot sustain.

9. As regards the demand upheld in the second show cause notice we find that the Department was well aware of the fact situation of the appellant when it issued the first SCN dated 24.12.2009. Therefore, it was incumbent upon the Department to have issued the notice for the subsequent period from October 2008 within the normal period of limitation prescribed under Section 73(1) of the Finance Act, 1994. We see that the notice for the period October 2008 to September 2010 was issued only on 17.02.2011. However, the appellate authority has rendered a finding that the notice was issued well within the normal period of one year that existed during the material period.

10. We are unable to concur with the said finding which we find to be in the teeth of the decision of this Tribunal in ***Right Resource Mangement Service v. Commissioner of CGST, Central Excise and Customs, Dehradun, (2024) 15 Centax 362 (Tri-Del)*** wherein it has been held that even if return is filed after the due date, the relevant date for computation of limitation would be the last date on which such return ought to have been filed. In the instant case, the appellant was required to file half yearly ST-3 returns as per Rule 7(1) of the Service Tax Rules, 1994. The appellant ought to have filed the ST-3 return for the half yearly period

from September 2009 to March 2010, by the due date of 25th April 2010 as per Rule 7(2) of the Service Tax Rules ibid. As the Appellant did not do so, as per section 73(6)(i)(b) of the Finance Act, 1994, the relevant date for calculating the period of limitation, being the last date on which the return is to be filed, would therefore be 25th April 2010. Thus, inasmuch as the second SCN has been issued only 17.02.2011, it would bring within its ambit only the period from September 2009 to September 2010 as within the normal period, and the demand for the period October 2008 to August 2009, which was sought to be covered under the said SCN, is clearly barred by limitation. Therefore, the appellant is liable to pay the service tax along with the interest due thereon only for the period from September 2009 to September 2010 in so far as the SCN dated 17.02.2011 is concerned. We find that the case laws relied upon by the appellant are those in which the assessee has either adhered in full to the mandate of the statutory provisions governing payments made before issuance of the show cause notice or that where the returns were filed as statutorily mandated, which fact circumstances are not akin to the case of the appellant herein. These case laws are of no avail to the appellant in this matter.

11. We also find no reason to interfere with the penalty imposed under Section 77 in respect of both the periods as upheld in the impugned OIA, which we find to be reasonable. However, considering the uncontroverted plea of financial hardship and in the peculiar facts and circumstances of the appellant's case, we invoke Section 80 of the Finance Act and set aside the penalty imposed under Section 76 that was imposed while adjudicating the SCN dated 17.02.2011 and which has been upheld in the impugned OIA.

12. In light of our discussions above, we modify the impugned Order in Appeal to the extent of setting aside the service tax demand and penalties that have been upheld, as per our discussions above, while upholding the demand of service tax which is within the normal period as covered under both the show cause notices, along with the applicable interest due thereon as well as the penalties imposed under Section 77 for both the periods. We remit the matter back to the jurisdictional adjudicating authority solely for computing the duty liability of the appellant afresh. The adjudicating authority is required to put the appellant to notice of the quantification so arrived at and also adhere to principles of natural justice during the denovo

adjudication proceedings, which are directed to be completed within ninety days of receipt of this order. The appellant is also directed to cooperate with the denovo adjudication proceedings.

With these directions, the appeals that have been partly allowed, are disposed of.

(Order pronounced in the open court on 31.07.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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