

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42454 of 2015

(Arising out of Order-in-Original No. 22/2015 dated 03.09.2015 passed by Commissioner of Service Tax, Newry Towers, No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. San Media Limited

No. 15/07, "Ramajayam",
Anusaya Street, Rangarajapuram,
Kodambakkam,
Chennai – 600 024.

...Appellant

Versus

Commissioner of GST and Central Excise

Chennai Outer Commissionerate,
Newry Towers, No. 2054-I, II Avenue,
Anna Nagar,
Chennai – 600 040.

...Respondent

APPEARANCE:

For the Appellant : Mr. Kannan, Advocate

For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41081 / 2025

DATE OF HEARING : 07.08.2025

DATE OF DECISION : 30.09.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/42454/2015 has been filed M/s. SAN Media Ltd., Chennai (hereinafter referred to as 'Appellant') being aggrieved by the Order-in-Original No. 22/2015 dated 03.09.2015 (hereinafter referred to as Impugned order) passed by the Commissioner of Service Tax, Chennai on the ground that the amount collected towards 'telecast fees' is also includible in the taxable value

of service under the head "sale of space or time for advertisement services".

1.2 The brief facts of the case as culled out from the Impugned Order are that the business activity of the Appellant is booking of timeslots in the television channels, getting approval from the channel for the contents of the serial to be telecast and producing the serials. The television channels are charging telecast fee for the program. The channels also grant Free Commercial Time (FCT) to the Appellant who in turn sells such FCT' to advertising companies.

1.3 During the Audit of the accounts of the Appellant, it was noticed that Appellant had taken only the sponsorship fee as taxable value and had not paid Service Tax on telecast fee since the telecast fees received by the Appellant was paid to the Broadcasting Channel as per the invoice raised by the Broadcaster which would be inclusive of Service' Tax. The Appellant contended that the question of paying Service Tax by it would not arise in the case of Telecast fees' and contended that it was a revenue neutral situation as it collected the same amount charged by the broadcaster from the advertising agencies.

1.4 A SCN No. 127/2011 dated 04.04.2011 was issued demanding Service Tax for the period 18.04.2006 to 31.03.2010 under proviso to Section 73(1) of the Finance Act, 1994 along-with interest under section 75, and with a proposal for imposition of penalty under Section 76 and Section 78 of the Finance Act, 1994.

1.5 The Commissioner of Central Excise, Chennai IV Commissionerate, Chennai after due process of Law *vide* Order-in-Original No. 9/2013 dated 13.02.2013 confirmed the demand.

1.6 Aggrieved, the Appellant preferred an appeal before this Tribunal, and *vide* Final Order No.40398/2014 dated 16.07.2014, the case was remanded to the adjudicating authority to decide afresh after considering the discharge of tax through CENVAT credit.

2. Pursuant to the remand directions of the Tribunal Chennai, the Commissioner of Central Excise, Chennai after due process of Law, adjudicated the matter afresh and confirmed demand of Rs. 88,78,883/- out of the total demand of Rs. 90,32,373/- under 'Sale of Space or time for advertisement Services' during the period from 01.05.2006 to 31.3.2010 under proviso to Section 73(1) read with

Section 73(2) of the Finance Act, 1994;and dropped the demand to the extent of Rs.1,53,490/- and ordered for appropriation of an amount of Rs 88,78,883/- against the service tax demanded along with appropriate interest under section 75 of the Finance Act, 1994;and imposed a penalty of Rs.88,78,883/- under Section 78(1) of the Finance Act 1994.

3. Once again aggrieved by the order, the Appellant is in Appeal before this Tribunal.

4. The Ld. Advocate Shri Kannan appeared on behalf of the Appellant and submitted as follows: -

4.1 That the Appellant had already paid a sum of Rs.88,78,883/- towards tax prior to the issuance of the impugned order by availing and adjusting input services credit which is appropriated by the impugned order. The dispute in the subject appeal is limited to the imposition of penalty and interest against the allegation that there was intention to evade payment of taxes.

4.2 The Appellant is engaged in the production of serials which are broadcasted in TV Channels. As a fee for such broadcast, the TV Channels collect "telecast fees" along with service tax. In addition, a period of 240 seconds of free

commercial time (FCT) for display of advertisements is provided by the Channel in each episode of the serial.

4.3 Appellant sells the Free Commercial Time to marketing agencies and, through such consideration, recuperates the cost of production of the serials. Since the Appellant sells the Free Commercial Time provided by the Channel for broadcast of advertisements along with the serial episode, the marketing agencies reimburses the telecast fees incurred by the Appellant.

4.4 Since the telecast fees charged by the TV Channel is per se reimbursed by the marketing agencies, the Appellant's sole consideration in this transaction is the proceeds of the free commercial time charges. On such proceeds, the Appellant had also discharged service tax under the Finance Act, 1994, and there is no dispute on this aspect.

4.5 The Appellant also paid service tax to the TV Channel on its receipt of the telecast services but had not availed CENVAT credit of such tax since, in respect of the telecast fees, by virtue of the reimbursement from the marketing agencies, considered itself as a pure agent.

4.6 Proceedings were initiated on the ground that the Appellant ought to have included the telecast fee reimbursed by the marketing agencies in its taxable value for the discharge of service tax.

4.7 Since the entire issue was revenue neutral in as much as the Appellant could avail CENVAT credit of the taxes paid to the TV Channel and use it to set off against the alleged liability on collection of amount as reimbursement from the marketing agency, it filed revised returns in May 2011 availing such CENVAT credit and also discharged the alleged tax liability. The availment and adjustment of the CENVAT credit against the alleged tax liability is also accepted by the department.

4.8 The imposition of penalty is contested as the entire issue is revenue neutral as demonstrated by the assessee by availment and set off against CENVAT Credit, and therefore there could not have been any intention to evade payment of taxes and placed reliance on several case Laws.

4.9 The Appellant had believed that it was a pure agent in respect of reimbursement of telecast fees and had computed its liability in accordance with Rule 5(2) of

Valuation Rules, 2006, which excludes any amount collected by a pure agent from the gross value.

4.10 The issue was one of interpretation and there was a wide difference in views on the scope and ambit of pure agent as also the validity of Rule 5(2) during the relevant period. Therefore, penalty could not be imposed.

4.11 The audit has quantified the tax liability from 18/04/2006 onwards but has nowhere brought out anything regarding suppression. The invocation of the extended period is absolutely without basis, and the penalty is also unsustainable.

5. *Per Contra*, the Ld. Authorized Representative Shri Sanjay Kakkar appearing for the Revenue, re-iterated the findings in the order in Original (Impugned Order) and submitted that the appeal is liable to be rejected on merits. The Respondent submits that: -

5.1 The impugned Order-in-Original is legally sustainable, as it complies with the remand directions of the CESTAT.

5.2 On the issue of 'suppression', it is submitted that the Show cause Notice and the 1st O-in-O No. 9/2013 dated

13.02.2013 have recorded that the Appellant had paid and collected Service Tax in the Invoices raised for both the charges — the 'Telecast Fee' and the 'Subscription (FCT) Charges' which were clubbed in their P & L Account under the heading 'Income from Operations'. Even so, the taxable portion for Telecast Fee was not indicated in the ST3 Returns, thus making it a clear case of suppression. Thus, though Service Tax had been collected from the service recipients, it was not shown in the ST3 Returns.

5.3 On the issue of invocation of extended period and levy of penalty under Section 78 of the Finance Act, the legal position, as it stood at the relevant time it is clear that there is no usage of the words, or 'intent' in cases of fraud, collusion and suppression and such words are restricted only in cases of misstatement or other contraventions. This appears to be for the reason that the element of fraud, collusion and suppression, the legislature has perceived these acts as conscious acts and hence, any fraud, collusion or suppression could not be construed as one without any intent to evade duty. It is submitted that according to the Principles of Statutory Interpretation, the golden rule of interpretation of a statute is the literal rule of interpretation and that in a taxing statute, intendment or governing purpose has no role beyond what is stated in plain language.

Reliance is placed on Hon'ble Supreme Court judgement dated 03.10.2024 in Civil Appeal No. 2948/2023 in the case of Chief Commissioner of Central Goods and Service Tax & Ors. Vs M/s. Safari Retreats Private Ltd. & Ors.

5.4 In view of the provisions of Section 78, the Statute interpreted literally, it is submitted that there is no escapement from levy of penalty under Section 78 of the Finance Act once it is a case of suppression, notwithstanding the fact that it was detected by Audit. In fact, it remains a fact that but for Audit, the taxable turnover would have escaped the tax. It is submitted that Revised ST3 Returns were filed only after the issue was detected by Audit and after the SCN was issued.

5.5 On the issue of application of extended period and levy of penalty, the Respondent placed reliance on various case Laws.

6. Heard both sides and considered the rival submissions including the evidence available in the appeal records and the case laws relied upon.

7. The issues that arise for determination are whether: -

- i. The appellant is liable to pay interest on belated payment of service tax by inclusion of Telecast Fees which was held to be payable in the impugned Order and which was duly paid by the Appellant even before the issue of the impugned order? and,
- ii. Imposition of penalty under Section 78 (1) of Finance Act is justified invoking extended period of limitation, based on facts and circumstances of the case?

8.1 The Ld. Advocate during the hearing before the Tribunal has not disputed the payment of service tax as confirmed and appropriated by availing the input services credit. Further, in his written submissions, he has contested only on demand of interest and imposition of 100% penalty on the ground that there was no intention to evade payment of tax.

8.2 We find that as the demand of service tax vide impugned Order is upheld, the interest, being a statutory liability imposed under Section 75 of the FA, is automatically chargeable. Reliance is placed on the following case laws, which are equally applicable to Service Tax matters, taking into account the provisions relating to interest are similar between Central Excise and Service Tax laws: -

- i. In the case of *Commissioner of C.Ex. Bangalore-III versus Presscom Products [2012 (26) STR. 79 (Kar)]*, the Hon'ble Karnataka High Court has held as follows: -

"10. *Therefore, the legislature has not kept anyone in doubt. Section 11AB of the Act provides for interest on delayed payment of duty. It provides that, where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of Section 11A shall, in addition to the duty, be liable to pay interest at such rate not below [ten per cent] and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of Section 11A till the date of payment of such duty. Therefore, Section 11AB provides for interest on delayed payment of duty. Explanation (2) makes it clear this provision regarding interest on delayed payment of duty equally applies to the payment of duty under sub-section 2B of Section 11A. Therefore, whatever may be the reason for the delay in payment of duty and even in a case where duty is paid even before the issue of a show cause notice claiming duty under sub-section (1) of Section 11A once the duty is not paid on the due date, the liability to pay interest on such delayed payment of duty becomes effective automatically. In the scheme of the Act, no provision is made or no circumstances is carved out for excluding the payment of interest on delayed payment of duty...."*

- ii. Further in the case of *CCE & C, Aurangabad vs Padmashri V.V. Patil S.S.K. Ltd. [2007 (215) E.L.T. 23 Bom]*, the Hon'ble High Court of Mumbai has ruled that *"interest is a civil liability of assessee who has retained amount of public exchequer with himself and which ought to have gone in the pockets of Central Government much earlier. Interest on duty evaded is*

payable and the same is compulsory eventhough evasion of duty is not mala fide or intentional.”

Therefore, the first question is answered in favour of the Respondent-Department. Having accepted the payment of tax, the appellant is required to pay appropriate interest and so ordered accordingly.

9.1 With regard to penalty imposed, we club it together with the issue of Limitation discussed hereunder, as mandatory penalty imposed under Section 78(1) has nexus with the invocation of extended period under Proviso to Section 78(1) of the FA, 1994.

9.2 On the issue of limitation, both the sides have fiercely contested the issue and placed reliance on several case Laws in support of their defence.

9.3 Our primary observation in this regard is that the whole issue stems out from an Audit objection which is a consultative process on both the sides and the entire details were pulled out from the balance sheet. Immediately on conclusion of the Audit proceedings, the Appellant went to the extent of filing Revised ST-3 returns. We have already observed that it is a Revenue neutral exercise i.e., i) without payment of tax and without availment of CENVAT as done in their Original ST-3 Return; and the other is ii) On payment of Tax with availment of CENVAT on the impugned Telecast

Fees. The only difference in both the situations is that interest is leviable, as Tax held to be payable in the impugned order and was paid belatedly in the Revised ST-3 Return.

9.4 We observe that the impugned order has upheld the invocation of extended period of limitation in the OIO.

The impugned order has held in Para 4.10 that: -

"4.10. Regarding the extended period invoked under proviso to Section 73(1) of the Finance Act, 1994, in the impugned show cause observe that the fact remains that the gross income received the assessee was not reflected in the ST-3 RETURNS filed originally by the assessee, and the same was not informed to the Department in any other manner. I find that in the instant case, the assessee was all-along aware of its liability to pay Service Tax on the 'Telecast fees' received, having collected the same with service tax component from its client, but yet the assessee neither paid the tax nor reflected such income in the statutory returns, thereby resorting to suppression of facts with an intent to evade payment of tax. As a result, the Department is justified in invoking the extended period of limitation....."

9.5 We find that time and again, it has been held by various courts including the Supreme Court that invocation of larger period is a draconian provision and has to be invoked with caution. This is a case of valuation involving interpretation of Statutes, where one cannot find any suppression/misstatement warranting invocation of larger period.

9.6 We find that Revenue has picked up the figures from the balance sheet and profit and loss account maintained by the Appellant. The balance sheet and profit and loss account have been held to be public documents by various decisions and it stands concluded that when the income arising from various activities stand reflected in the said public documents, it cannot be said that there was any suppression or misstatement on the part of the Appellant so as to invoke the longer period of limitation. Reference can be made to Tribunal's decision in the case of *C.S.T., New Delhi v. Kamal Lalwani* [2017 (49) S.T.R. 552 (Tri. - Del.)], laying down that extended period is not invocable if services rendered are reflected in balance sheet and income tax returns and no evidence stands produced that non- payment of duty was due to any mala fide. Reference can also be made to Hon'ble Allahabad High Court's decision in the case of *Commissioner of Central Tax v. Zee Media Corporation Ltd.* [2018 (18) G.S.T.L. 32 (All.)]. The Hon'ble High Court observed that the show cause notice itself shows that every detail was maintained by the Appellant in usual course of business, the ingredients of proviso to Section 73(1) of the Finance Act, 1994, establishing any suppression of facts to evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue." (Emphasis supplied)

9.7 We also find that the SCN does not adduce any evidence of any positive act of wilful suppression or misstatement of facts with intent to evade service tax that has been made by the appellants. On the contrary, we observe that the appellants have been regularly filing their ST-3 returns and have initially not paid the service tax on the *bonafide* belief that the Telecast Fees is not includible in the gross value of the service rendered by them based on several decisions by Tribunals/Courts in their favour. Even otherwise, entertaining a belief to incorrect valuation cannot be viewed as *malafide* action on the part of the appellant. It is also appropriate at this juncture to refer to the decision of the Apex Court in *Uniworth Textiles Ltd v CCE, Raipur, 2013 (288) ELT 161 (SC)*, wherein the Apex Court has held that it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. In the case of *Uniworth Textiles Ltd. v. CCE, Raipur [2013 (288) E.L.T. 161 (S.C.)]*, it was held that mere non-payment of duties is not equivalent to collusion or wilful misstatement or suppression of facts, otherwise there would be no situation of which ordinary limitation period would apply. Inadvertent non-payment is to be met within the normal limitation period and the burden is on Revenue to prove allegation of wilful misstatement. The onus is not on the

assessee to prove their bonafides. In the case of *CCE v. Chemphar Drugs Liniments [2002-TIOL-266- SC-CX = 1989 (40) E.L.T. 276 (S.C.)]*, the Supreme Court held that something positive other than mere inaction or failure on the part of the assessee or conscious or deliberate withholding of information when assessee knew otherwise, is required before it is saddled with the liability of the extended period.

9.8 The issue involved in this appeal also relates to interpretation of law and revenue neutral situation. Either way, the Appellant does not stand to benefit from this issue and hence, no *malafides* can be attributed to them. We find that the Appellant has filed the original returns in time without inclusion of Telecast Fees; and on Audit Advisory, the Appellant has filed the revised ST-3 Returns before the issue of impugned order. Under these circumstances, we hold that invocation of extended period is totally not justified in this case. The decisions referred to above have clearly held that in such circumstances there can be no suppression of facts with an intent to evade payment of service tax.

9.9 We are in complete agreement with the Appellant's contentions that there has neither been any suppression of facts nor any wilful mis-statement warranting invocation of such larger period and that sufficient grounds

do not exist in this case to sustain the allegation of wilful misstatement or the suppression of facts and therefore, the extended period cannot be invoked. The show cause notice in this case was issued on 04.04.2011 and the period of demand involved is 18.04.2006 to 31.03.2010 and therefore, the one-year period (normal period) expired by the end of March 2010.

9.10 We are of the firm opinion that when the words of the Statute under the Proviso to Section 78(1) are unambiguous and clear, there is no need to seek any recourse under any decisions/judgements and the objective of the legislature should never be rendered invalid by importing meanings into the provisions as it is clearly established from the above narrative that there is absence of suppression or mis-representation of facts.

9.11 In such circumstances, the Department should not have invoked the extended period of limitation and the Appellants plea that extended period of limitation ought not to have been invoked and equivalent penalty ought not to have been imposed, merits acceptance. Hence, we are of the view that there cannot be any ground for the Department to invoke larger period under proviso to Section 73(1) of Finance Act nor impose any penalty under Section 78 of the

FA, 1994. When the order itself fails on limitation, imposition of penalty is not tenable.

10. In view of the above findings, we order to modify the impugned Order-in-Original No. 22/2015 dated 03.09.2015 to the extent of setting aside the penalty imposed under Section 78(1) of the Finance Act, 1994. However, it is made clear that the appellant is required to pay appropriate interest on the service tax paid by utilizing the input services credit belatedly.

11. Thus, the appeal is partly allowed as above with consequential relief, if any, as per the law.

(Order pronounced in open court on 30.09.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK