

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No.40091 of 2017

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-183-13 dated 08.05.2013 passed by the Commissioner of Customs, Central Excise & Service Tax, (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018)

M/s. RU's Marketing and Creative Unit

No.601/602, MAK Prabha CHS
Opp. Prabhadevi Temple
Kowli Wadi, Prabhadevi
Mumbai 400 025

...Appellant

Versus

Commissioner of GST & Central Excise

6/7, A.T.D. Street, Race Course Road
Coimbatore 641 018

...Respondent

APPEARANCE:

Shri S. Annamalai, Advocate

Shri N. Satyanarayana, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40460/2026

DATE OF HEARING : 09.12.2025

DATE OF DECISION : 02.04.2026

Per Mr. AJAYAN T.V.

RU's Marketing and Creative Unit, the appellant herein, has preferred this appeal aggrieved by the Order in Appeal No. CMB-CEX-000-APP-183-13 dated 08.05.2013 (the impugned order).

2. The relevant facts are that the appellant is alleged to be engaged in providing the services of Real Estate Agents without registering with the department. It is stated that officers of the Directorate General of Central Excise Intelligence gathered intelligence which indicated that the appellant had been engaged by Sahara India Commercial Corporation

Limited (SICCL) for acquiring land by means of a Memorandum of Understanding dated 25.03.2003 signed by SICCL and the appellant through Ms. Levensia D'Souza, Mumbai. In response to DGCI Unit's letter, SICCL furnished a reply by letter dated 22.02.2010 in which they mentioned payments made to the appellant along with which they enclosed two work orders dated 20.09.2004 and 06.05.2005 for levelling of soil including filling of gorges / nallah / removing of shrubs, grass, rubbish at Sahara City Home, Coimbatore and the bills 175 dated 20.09.2014 and 226 dated 06.05.2005 issued by the appellant for the above work signed by Ms. Levensia D'Souza, a partner of the appellant. Subsequently, statements were recorded from Ms. Levensia D'Souza and one Mr. Rajesh Kukreja, Chartered Accountant.

3. The Department, being of the view that though SICCL had supposedly issued the aforementioned work orders for the stated purpose and for which the appellant had also raised the aforesaid bills; the appellant had rendered services to SICCL in connection with acquiring of land, which falls under Real Estate Agent Services. Therefore, the department issued a Show Cause Notice No.57/2010 dated 21.10.2010 (SCN) alleging that the appellant had rendered Real Estate Agent Services. The SCN took the value shown in the invoice No.226 dated 06.05.2005 as the consideration and demanded service tax of Rs.24,51,435/- along with the applicable interest and proposed to impose penalties under Section 76 & 78 of the Finance Act, 1994 (Act). After due process of law, the Adjudicating Authority confirmed the demand of service tax along with applicable interest and imposed an equivalent penalty under Section 78 of the Finance Act, 1994. Aggrieved, the appellant preferred an appeal before the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore. The Appellate Authority, vide the impugned order, rejected the appeal and upheld the order of the Adjudicator. Hence this appeal.
4. Shri S. Annamalai, Ld. Advocate appearing on behalf of the appellant submitted that the appellant, a partnership firm, entered into a Memorandum of Understanding dated 25.03.2003 with SICCL. The appellant was carrying on the business of trading in real estate i.e., purchase and sale of land. The said activity of purchase and sale was

completed before March, 2005 in respect of the MOU entered by the appellant on 25.03.2003 with M/s. Sahara India Commercial Corporation Limited. Ld. Counsel submits that M/s Sahara India Commercial Corporation Limited issued a work order vide dated 06.05.2005 in respect of levelling of soil including filling of gorges/nallah, removing of shrubs, grass and rubbish etc., at Sahara City Homes, Coimbatore for a consideration of Rs. 2,64,85,115/- and the appellant issued an invoice dated 06.05.2005 charging an amount of Rs.2,08,47,420/- and an amount of Rs.56,37,695/- for the work of removing shrubs, grass and rubbish from the area complete in all respects Rs. 56,37,695 totalling to Rs. 2,64,85,115/-. Ld. Counsel argues that the said activity of the appellant of levelling of soil is not liable to service tax under the taxable category of Real estate agent. It is also argued that the appellant has not provided any services in relation to sale, purchase, leasing or renting of any real estate and therefore the definition of Real Estate Agent as defined in section 65(88) of the Act does not apply to the appellant in the facts and circumstances of the case.

5. Without prejudice, it was submitted that the Appellate Authority ought to considered the Board Circular F.No.B1/6/2005-TRU, dated 27.07.2005 in respect of Departmental clarifications on Site formation and clearance, Excavation, Earthmoving and Demolition services, and that if at all the appellant were to be stated to have rendered services, it could be only that of site formation and clearance service. Reliance was placed on the decisions in ***M/s. Elegant Developers v. Commissioner of Service Tax in Service Tax Appeal No.50119 of 2014, dated 21.06.2019, affirmed by the Honourable Supreme Court in Commissioner of Service Tax v M/s. Elegant Developers, 2025 INSC 1299, Nkg Infrastructure Ltd. v. Commissioner of Customs, Central Excise & Service Tax (2017) 77 taxmann.com 63 (Allahabad), Nkg Infrastructure Ltd. v. Commissioner of Customs, Central Excise & Service Tax, Ghaziabad (2017) 77 taxmann.com 69 (SC) and Indian Farmers Fertilizer Co-operative Ltd. v. Commissioner of Central Excise (2007) 6 STT 283 (New Delhi – CESTAT).***

6. Ld. Counsel has also contended that the SCN issued demanding service tax on the alleged consideration received in May 2005, being even beyond the extended period of limitation of five years, is thus barred by limitation. Ld. Counsel contended that as per Rule 6 of the Service Tax Rules, 1994, the payment of service tax in respect of partnership firms is required to be made by 5th of the month immediately following the quarter in which the payments are received and therefore, assuming without admitting that the Appellant were to be liable to pay any service tax, then for the payment received in May 2005, the payment was due for the quarter ending June 2005 on or before 5th July 2005. Since the appellant was not registered with the Department and no return is filed or to be filed, the relevant date was the date on which the tax was liable to be paid as per provisions of Section 73 (6)(c) and therefore the SCN issued on 21.10.2005 for the period of May 2005 is wholly barred by limitation. Reliance was placed on the decision in ***Indian Farmers Fertilizers Cooperative Ltd v CCE, [2007] 6 STT 283 (NEW DELHI-CESTAT) : 2007 (5) STR 281 (Tri-Del)***.
7. Shri N Satyanarayana, Ld. Authorised Representative appearing for the Respondent, reiterated the findings in the impugned order. He submits that the Appellate Authority has relied on the conditions in the MOU, particularly condition (4) and Condition 8 to arrive at a finding that the appellant had arranged the sellers, fixed the rates and undertaken other preliminary works towards transfer of land from the sellers to SICCL and also undertaken other related works such as levelling of soil including filling the gorges etc, and hence their activity would fall under 'real estate agent service'. Ld. A.R. contends that as the invoice was dated 06.05.2005, the demand raised on 21.10.2010 was within the time limit prescribed for invoking the extended period of limitation as the appellant had not registered as real estate agents or filed ST-3 returns.
8. We have heard the rival submissions and carefully perused the material available in the records.
9. The issues that arise for our determination are:

- A. Whether the Demand is wholly barred by limitation as contended by the Appellant?
- B. If the demand is not barred by limitation, then on merits whether the demand confirmed along with applicable interest and imposition of penalty is tenable?

10. When a plea that the demand is wholly barred by limitation is raised at the outset, we too find it appropriate to deal with the said contention at first. The question of limitation goes to the root of the matter and involves a question of jurisdiction to raise the demand itself in the first instance. This in turn is premised on the provisions of law that prescribe the situations as well as the attendant ingredients thereto that attract its application. The findings of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question therefore needs to be examined and is to be determined having regard to both the facts and law involved therein.

11. To appreciate whether the demand is wholly barred by limitation, it would therefore be appropriate to reproduce section 73(1) of the Finance Act, 1994 as it stood at the relevant time. This section deals with recovery of service tax not levied or paid or short levied or short paid or erroneously refunded. It is as follows:

"73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."

12. Thus, from a perusal of sub-section (1) of section 73 of the Finance Act, it can be seen that where any service tax has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve a notice on the person chargeable with the service tax which has not been levied or paid, requiring him to show cause why he should not pay amount specified in the notice.
13. The proviso to section 73(1) of the Finance Act stipulates that where any service tax has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Chapter or the Rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax, the provisions of the said section shall have effect as if, for the word "one year", the word "five years" has been substituted.
14. The "relevant date" has been defined in section 73 (6) of the Finance Act as follows:
 - " 73 (6) For the purposes of this section, "relevant date" means, —
 - (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid—
 - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
 - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (c) **in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;**
 - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.” (**emphasis supplied**)

15. We find that the contention of the appellant that the demand was wholly barred by limitation has been addressed by the appellate authority in para 9 of the impugned Order in Appeal, as under:

“ 9. Other arguments by the appellant that the service was rendered before March 2005 and there was no activity after March 2005 and the SCN was issued after the period permitted under section 73(1) are found not correct since the show cause notice was issued within the prescribed time limit under Section 73(1) of the Finance Act, 1994. As per Section 73(6)(b), “where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules” would be the ‘relevant date’ to raise the demand. Further as the appellant had failed to register, assess their tax liability and pay the tax dues and file the periodical returns are required under Service Tax law, provisions of section 73(1) of the Finance Act 1994 is rightly invoked in their case and within the time limit prescribed. Thus the show cause notice is found issued within the permissible time frame. Further the invoice relied on towards demand of service tax is dated 6.5.2005 and the demand was raised on 21.10.2010 which is well within the time limit prescribed under Section 73(1) of the Finance Act, 1994. Here the argument that no service was rendered after March 2005 is also found not true since the relevant invoice is found raised on 6.5.2005.”

16. We notice that the allegation in the SCN in para 16 is as under:

“16. **INVOCATION OF EXTENDED PERIOD:**

16.1 From the foregoing discussions, it appears that RMCU have indulged in deliberate suppression of value of taxable services received, respect of Real Estate Agent service rendered by them.

16.2 Hence, the extended period of limitation appears to be invokable n terms of proviso to sub-section (1) of Section 73 of Finance Act, 1994 for the amount received during the month of May 2005. It is manifest that, but for the detection and timely investigations conducted by the Directorate, the suppression of value indulged by the service provider would not have come to light.”

17. On the issue of limitation, we find merits in the contention of the Appellant that has been noted above, about the demand being well beyond the five years extended period of limitation when computed on the basis of the applicable relevant date as per the provisions of Section 73(6) of the Act.

We find that in the decision in ***Indian Farmers Fertilizers Cooperative Ltd v CCE, [2007] 6 STT 283 (NEW DELHI-CESTAT) : 2007 (5) STR 281 (Tri-Del)***, the Principal Bench of this Tribunal has held as under:

" 18.... For the purpose of Section 73 "relevant date" is defined in Section 73(6). In cases where under the rules made under Chapter V of the said Act, a periodic return is to be filed by an assessee, the date of such return would be the relevant date and in cases where no periodic return is filed, the last date on which such return is to be filed under the rules will be the relevant date. The returns are to be filed under Rule 7 in a prescribed form. By Section 70, a person liable to pay service tax, is required to self-assess the tax payable on the services and to furnish return in the prescribed form. Half-yearly return is to be submitted, as required by Rule 7. However, the liability to pay service tax, as contemplated by rule 6, arose by the 5th of the month immediately following the calendar month in which the payments were received towards the value of taxable services. Therefore, if service tax is not paid on the date prescribed under rule 6(1), the date relevant for issuing notice for recovery of tax would be, in respect of those who are not registered, like the appellant who was not registered at the relevant time, the date when the tax liability arose. **A person not registered could not have given the particulars of registration in the prescribed form, and would therefore be governed by clause (c) of Section 73(6), which prescribes the date on which the tax was to be paid as the "relevant date"**. The prescribed form of return ST-3 or ST-3 A is required to accompany copy of TR-6 challan showing the payment of service tax. **In cases where registration is not obtained and no return is filed or to be filed along with such copy of TR-6 challans as was the case with the appellant, the relevant date was the date on which the tax was liable to be paid...**" (emphasis supplied).

18. That the provisions of Section 73 is pari materia with that of Section 11A is no more res integra as can be seen from the decisions in ***CCE v Northern Operating Systems, 2022 (61) GSTL 129 (SC), Commissioner of Service Tax v Vijay Television, 2015 (40) STR 671 (Mad), Bharat Hotels v CCE (Adjudication), 2018 (12) GSTL 368 (Del)***, and ***Naresh Kumar & Co Pvt Ltd v. UOI, 2015 (37) STR 451 (Cal)***.

19. As early as in 1989 the Honourable Apex Court in ***CCE v Chemphar Drugs & Liniments, 1989 (40) ELT 276 (SC)***, has laid down that in order to make the demand for duty sustainable beyond a period of six months and up to a period of five years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability. Again in ***Tamilnadu Housing Board v CCE, Madras, 1994(74) ELT 9***, the Apex court held as under:

"3. Section 11A of the Act empowers the Central Excise Officer to initiate proceedings where duty has not been levied or short-levied within six months from the relevant date. But this period to commence proceedings under proviso to the Section stands extended to five years if the duty could not be levied or it was short-levied due to fraud, collusion, wilful misstatement or suppression of facts etc. The proviso to Section 11A reads as under :

"Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder, with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "Central Excise Officer", the words "Collector of Central Excise" and for the words "six months", the words "five years" were substituted."

A bare reading of the proviso indicates that it is in nature of an exception to the principal clause. Therefore, its exercise is hedged on one hand with existence of such situations as have been visualised by the proviso by using such strong expression as fraud, collusion etc. and on the other hand it should have been with intention to evade payment of duty. Both must concur to enable the Excise Officer to proceed under this proviso and invoke the exceptional power. Since the proviso extends the period of limitation from six months to five years, it has to be construed strictly. The initial burden is on the Department to prove that the situations visualised by the proviso existed. But once the Department

*is able to bring on record material to show that the appellant was guilty of any of those situations which are visualised by the Section, the burden shifts and then applicability of the proviso has to be construed liberally. **When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word `evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word `intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise 1989 (43) E.L.T. 195, it was held that where there was scope for doubt whether case for duty was made out or not, the proviso to Section 11A of the Act would not be attracted.**" (emphasis supplied)*

20. In **Pushpam Pharmaceuticals Company v CCE, Bombay, 1995 (78) ELT 401 (SC)**, the Apex Court went on to reiterate the dictum as under:

*"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.**" (emphasis supplied)*

21. In 2013, in ***Uniworth Textiles v CCE, Raipur, 2013 (288) ELT 161 (SC)***, the Apex Court noticed a slew of its earlier judgements and after reproducing therefrom, held as under:

"17. In fact, the Act contemplates a positive action which betrays a negative intention of willful default. The same was held by *Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore* - (2003) 3 SCC 410 = 2003 (152) E.L.T. 39 (S.C.) wherein this Court held :-

"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. *This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.*"

[Emphasis supplied]

18. We are in complete agreement with the principle enunciated in the above decisions, in light of the proviso to Section 11A of the Central Excise Act, 1944"

22. In its judgement in *Uniworth Textiles Ltd supra*, the Apex Court also reiterated 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. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."*

23. About four years ago, in ***CCE v Northern Operating Systems, 2022 (61) GSTL 129 (SC)***, while considering the invocation of extended period under Section 73 of the Finance Act, 1994, which is pari materia with Section 11A(4) of the Central Excise Act, 1944 reproduced supra, the Apex Court went on to hold as under:

"62. The revenue's argument that the assessee had indulged in wilful suppression, in this Court's considered view, is insubstantial. The view of a previous three judge ruling, in *Cosmic Dye Chemical v. Collector of Central*

Excise [(1995) 6 SCC 117 = 1995 (75) E.L.T. 721 (S.C.)] - in the context of Section 11A of the Central Excise Act, 1944, which is in identical terms with Section 73 of the Finance Act, 1994 was that :

"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, *i.e.*, intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Misstatement or suppression of fact must be wilful."

63. This decision was followed in *Uniworth Textiles v. Commissioner of Central Excise* [(2013) 9 SCC 753 = 2013 (288) E.L.T. 161 (S.C.)] where it was observed that "(t)he conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts" is "untenable". This view was also followed in *Escorts v. Commissioner of Central Excise* [(2015) 9 SCC 109 = 2015 (319) E.L.T. 406 (S.C.)], *Commissioner of Customs v. Magus Metals* [(2017) 16 SCC 491 = 2017 (355) E.L.T. 323 (S.C.)] and other judgments."

24. A few months ago, the Apex Court ***in Stemcyte India Therapeutics Ltd v. CCE & ST, Ahmedabad III, 2025 (394) ELT 3 (SC)***, after noticing its earlier decisions including the ones reproduced above, has again reiterated the position in law for invoking the extended period of limitation, as under:

"9.3 It is a settled principle of law that, for the department to invoke the extended period of limitation, there must be an active and deliberate act on the part of the assessee to evade payment of tax. Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract the extended limitation period.

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9.4 Therefore, in the absence of fraud, collusion, wilful misstatement, or suppression of facts with an intent to evade payment of service tax, the invocation of the extended period of limitation under Section 73 of the Finance Act, 1994 is wholly unwarranted. **Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation**

period. Accordingly, the show cause notice issued by the department is clearly time-barred. On this ground alone, the impugned order deserves to be set aside.

25. Yet, seemingly impervious to the law laid down by the Apex Court and repeatedly reiterated over decades, and in utter disregard to judicial discipline, Revenue has gone ahead in this instance to issue a show cause notice even beyond the extended period of limitation available under the statute, by resorting to disingenuous interpretations and disregarding the applicable relevant date. We are appalled that the Revenue has not deemed it fit to put the appellant to notice in the SCN as to how the relevant date for invoking the extended period of limitation has been determined and also has chosen not to explain in the notice as to how the SCN dated 21.10.2010 demanding the alleged service tax payable on the amount received in May 2005 is within the extended period of limitation. While we refrain from any opprobrious remarks, it would be remiss of us to turn a blind eye to such statutory impropriety occasioned by misplaced revenue zeal, that has resulted in burdening the appellant with unwanted litigation. Hence, we are constrained to castigate such attempts and hope that they would be eschewed henceforth.
26. In the present case, we notice that even the unproven statement relied upon by the Appellate Authority is scanty in details and do not reveal what exactly was the service that the appellant allegedly rendered to SICCL in the land procurement/consolidation so as to bring the appellant within the ambit of provider of 'real estate agent' service. Save for a mere ipse dixit that the appellant has indulged in deliberate suppression of value of taxable services received, the SCN also has not let in any evidence of any positive act of fraud, suppression or wilful misstatement of facts with intent to evade payment of duty on the part of the Appellant and is thus bereft of reasons justifying the invoking of the extended period of limitation. Therefore, we find merits in the appellant's contest of the demand being barred by limitation. The Revenue has failed to adduce any evidence or establish that the respondent engaged in wilful or deliberate suppression of material facts, and there is nothing on record to suggest that the appellant acted with any intention to mislead the authorities or evade payment of service tax. Therefore, respectfully

adhering to the dictum of the decisions of the Hon'ble Apex Court cited above and also in light of the decision of the Principal Bench of this Tribunal reproduced above, from which we find no reason to differ, we are of the considered view that the SCN issued on 21.10.2010 for the period of May 2005 being wholly barred by limitation, would also render the impugned order upholding the order of the Adjudicating Authority confirming the demand with interest and imposing penalty under Section 78, unsustainable and liable to be set aside on this count too.

27. Given our aforesaid findings in favour of the appellant on limitation, even though the contentions on merits urged placing reliance on the decisions in ***M/s. Elegant Developers v. Commissioner of Service Tax in Service Tax Appeal No.50119 of 2014, dated 21.06.2019, affirmed by the Honourable Supreme Court in Commissioner of Service Tax v M/s. Elegant Developers, 2025 INSC 1299*** too, *ex facie* appear to be in favour of the appellant, we are not addressing the same.

28. Furthermore, we find that the Honourable High Court of Allahabad, in ***Commr of Cus, C.Ex & S.Tax v. Monsanto Manufacturer Pvt Ltd, 2014 (35) STR 177 (All)***, has held as under:

"20. Though in the appeal by the assessee several questions of law have been framed, the following question has been pressed at the hearing :

"Whether the Tribunal having held that proceedings were barred by limitation and proceedings were liable to be quashed on the ground of limitation, the Tribunal committed an illegality in deciding the question on merits. Hence is the finding of Tribunal on merits liable to be set aside?"

21. The appeal is admitted on the following question of law and is by consent taken up for final hearing.

22. The Tribunal came to the conclusion that the demand by the Revenue was beyond the period of limitation of one year prescribed under Section 73(1) of the Finance Act, 1994 and that the period of five years could not have been invoked. That part of the judgment of the Tribunal has been confirmed in the companion appeal. **Once that be the position and the Tribunal having come to the conclusion that the extended period of limitation could not have been validly applied, the**

Tribunal, in our view, acted outside its jurisdiction in entering upon the merits of the dispute on whether the demand for duty should be confirmed. Once it is held that the demand is time barred, there would be no occasion for the Tribunal to enquire into the merits of the issues raised by the Revenue.

23. In **State Bank of India v. B.S. Agricultural Industries (I)- (2009) 5 SCC 121**, the Supreme Court dealt with a situation where the consumer forum had held that the complaint was barred by limitation but had nonetheless proceeded to decide the issue on merits. Holding that this would amount to an illegality, the Supreme Court observed :

"12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. **If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.**"

24. **Consequently, since the Tribunal was justified, as we have held, in coming to the conclusion that the demand was time barred, there was no occasion for the Tribunal to enter upon the merits of the dispute.** We, accordingly, answer the question of law as framed by the assessee in the affirmative and in favour of the assessee.

25. The appeal by the assessee shall stand disposed of in the aforesaid terms." **(Emphasis supplied)**

29. We also find that the Honourable Supreme Court *in Commissioner of Customs, Mumbai v B.V. Jewels, 2004 (172) ELT 3 (SC)*, has observed that " **If, in reality, the CEGAT found that the action taken by the departmental authorities was beyond the period of limitation, it could have disposed of the appeals before it only on that ground without examining the merits**". This decision of the Apex Court in B.V. Jewels *ibid* is noticed to have been followed in **Commr of Service Tax, Mumbai IV v. Rochem Separations (I) P Ltd, 2019 (366) ELT 103 (Bom)**.

30. It is also seen that the jurisdictional High Court in **E.T.A General Pvt Ltd v Additional Commissioner of C.Ex, Chennai, 2016 (44) STR 409 (Mad)** has held as under:

"11. In Commissioner of Customs, Central Excise & Service Tax v. M/s. Monsanto Manufacturer Pvt. Ltd., reported in 2014-TIOL-550-HC-ALL-ST, while declaring the demand as beyond the period of one year, the Tribunal, entered into the merits of the appeal filed by the assessee and passed an adverse order. Before the Allahabad High Court, one of the substantial questions of law raised by the assessee, was when the Tribunal having held that proceedings were barred by limitation, has committed any illegality in deciding the question on merits. Whether the finding of the Tribunal on merits, is liable to be set aside?"

12. While addressing the above said substantial question of law, decision of the Hon'ble Supreme Court in State Bank of India v. B.S. Agricultural Industries reported in (2009) 5 SCC 121, has been pressed into service, wherein, the Hon'ble Supreme Court had an occasion to deal with a situation, where the consumer forum held that the complaint was barred by limitation, but nonetheless had proceeded to decide the issue on merits. Dealing with the issue, which is similar to the case on hand, at Paragraph 12, the Hon'ble Supreme Court in State Bank of India's case (cited supra), held as follows :-

"12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside."

Applying the ratio of the Supreme Court in State Bank of India v. B.S. Agricultural Industries reported in (2009) 5 SCC 121, the Allahabad High Court in Commissioner of Customs, Central Excise & Service Tax v. M/s. Monsanto Manufacturer Pvt. Ltd., reported in 2014-TIOL-550-HC-ALL-ST, answered the question of law in favour of the assessee.

13. Judgment of the Supreme in State Bank of India's case (cited supra), followed in Commissioner of Customs's case (cited supra), squarely applies to the facts on hand, wherein, CESTAT, Madras, while dismissing the appeal as time-barred, has entered into the merits of the case and dismissed the same, on merits. In the words of the Hon'ble Supreme Court, that would be an illegality.

14. Though Mr. A.P. Srinivas, learned counsel appearing for the Revenue submitted that the correctness of the order impugned before us, can be decided in an appeal before the CESTAT and prayed to sustain the order, dated 15-2-2016 in W.P. No. 5501 of 2016, in the light of the above discussion and the decision in State Bank of India's case (cited supra), **we are not inclined to accept the said contention. When the Hon'ble Supreme Court has described the manner of disposal of an appeal, as illegality, the same can be corrected by this Court, in exercise of the powers under Article 226 of the Constitution of India and no useful purpose would be served in relegating the appellants to approach the alternative remedy. Courts have held that a writ petition is maintainable, when the act committed is per se illegal, and contrary to the statute.**

15. **In the light of the above discussion and decisions, we are inclined to interfere with the order of the Writ Court as well as the Order-in-Appeal No. 349/2015 (STA-II), dated 30-11-2015, passed by the Commissioner of Service Tax (Appeals-II) and the same are set aside."**

31. Given our findings that the demand is wholly barred by limitation for the reasons stated above, adhering to judicial discipline and respectfully following the binding judicial precedents of the Honourable Apex Court and High Courts cited supra, we refrain from delving into the merits of the matter and rendering a finding on merits. Inasmuch as we have found the demand unsustainable and liable to be set aside, the consequential demand of interest and penalty imposed is also found to be untenable and liable to be set aside.
32. For the reasons stated above, we allow the appeal and set aside the impugned Order in Appeal. The appellant is entitled to consequential reliefs in law, if any.

(Order pronounced in open court on 02.04.2026)

AJAYAN T.V.)
MEMBER (JUDICIAL)

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(M. AJIT KUMAR)
MEMBER (TECHNICAL)