

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH COURT NO.IV

SERVICE TAX APPEAL NO. 51174/2020

[Arising out of Order-In-Original No. RPR/EXCUS/000/COM/ST/013-2020 dated 21.08.2020 passed by the Principal Commissioner, Central Tax and Central Excise, Raipur]

HARJAS ASSOCIATES PRIVATE LIMITED

440 Punjab Tyre Sole Building
K K Road, Jaistambh Chowk
Mouldhapara, Raipur (CG) 492001.

APPELLANT

VS.

**COMMISSIONER, CUSTOMS & CENTRAL
EXCISE & SERVICE TAX,**

C R Building, Tikrapara
RAIPUR (CG) 492001.

RESPONDENT

APPEARANCE:

Shri Abhas Mishra, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative for the Department

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: October 29, 2021

Date of Decision: 6.1.2022

FINAL ORDER No. 50009/2022

PER AJAY SHARMA

The instant appeal has been filed by the Appellant impugning the Order-In-Original No. RPR/EXCUS/000/COM/ST/013-2020 dated 21.08.2020 passed by Principal Commissioner, Central Tax and Central Excise, Raipur.

2. As per the department, the Appellant are providing taxable services to various recipients but are not discharging their service tax liability under the provisions of the Finance Act, 1994 and the rules made thereunder. The department got to know about the transactions only after scrutiny of the TDS/ ITR data provided by the Income Tax Department. The information reveals that the appellant have received an amount of Rs.7,06,91,528/- during the period 2013-14 to 2014-15 as consideration towards the provision of services made by them to their service recipients. According to revenue, on the basis of the data available with the department, it appears that the appellant were providing taxable services, but they neither paid the due service tax leviable thereon nor filed the ST-3 returns for the aforesaid period. Accordingly a letter dated 5.10.2018 was issued to the appellant asking them to submit certain details/documents as mentioned in the said letter. According to the department, the appellant neither disclosed the complete and correct taxable value received by them, nor did they discharge the service tax liability or the taxable service provided by them during the period 2013-14 to 2014-15 and these acts on the part of the appellant appeared to have been committed by way of suppression of facts with an intent to evade payment of service tax, therefore by invoking extended period of limitation a show cause notice dated 17.10.2018 was issued to the Appellant demanding the service tax amounting to Rs.87,37,473/- for the period 2013-14 to 2014-15 under sections 72 & 73 of the Finance Act, 1994 and S. 174 of CGST, 2017 along with interest and penalty. An Addendum to show cause notice on identical facts/grounds was issued on 16.4.2019 demanding service tax amounting to Rs.3,78,88,566/- for the period 2015-16 to 2016-June, 2017 under sections 72 & 73 of the Finance Act, 1994 and s.174 of CGST, 2017 along with interest and penalty, by invoking extended period. The said addendum to the show cause notice was

also issued on the basis of data received from the income tax department.

3. The appellant submitted a common reply dated 26.6.2019 to the authority concerned stating inter alia that when the first show cause notice dated 17.10.2018 is issued raising demand on a ground by invoking extended period of limitation, issuance of second show cause notice dated 16.4.2019 on the same very issue by further invoking extended period of limitation is not maintainable; that the adjudication cannot be allowed to take place in a piecemeal manner; that both the show cause notices are barred by limitation and extended period could not have been invoked by the department since the department had complete knowledge of providing goods transport agency service (GTA) by the appellant way back in the year 2016 itself when the department issued a letter dated 29.1.2016 to the appellant on the basis of information received from the Income Tax Department, asking for the information of gross receipts for the F.Y. 2012-13 and the required information was submitted by the appellant to the department on dated 10.3.2016 stating therein that in case of goods transport service, the service tax liability is to be cast upon the person who is liable pay freight; that in reply to the aforesaid communication, the Range Officer further wrote a letter dated 16.3.2016 asking for some more information and the required information was supplied by the appellant vide letter dated 31.3.2016 and thereafter no further communication was received by the appellant from the department and a presumption was drawn by the appellant that the department got satisfied by the reply that the appellant is not required to pay any service tax for the aforesaid service; that as per Section 68(2) of the Act read with Notification No. 30/2012-ST dated 20.6.2012, 100% service tax was payable by the recipient of GTA service, under Reverse Charge Mechanism.

4. The Adjudicating Authority vide Order-in-Original dated 21.8.2020 dropped the demand of major portion of service tax since there the recipient of the service was partnership firms but confirmed the demand of service tax amounting to Rs.13,27,904/- along with interest and equal penalty in respect of the transaction of appellant with proprietary firms since according to the authority the statutory obligation lies on the appellant to pay service tax on the taxable services rendered by them in those cases.

5. I have heard learned counsel for the appellant and learned Authorized Representative on behalf of the Revenue and perused the case records including the written submissions. The learned counsel submits that the extended period has wrongly been invoked by the department and that both the show cause notices are liable to be quashed on this ground itself. According to learned counsel the department had complete knowledge of providing goods transport agency service (GTA) by the appellant way back in the year 2016 itself when the department issued a letter dated 29.1.2016 to the appellant on the basis of information received from the Income Tax Department, asking for the information of gross receipts for the F.Y. 2012-13 and the required information was submitted by the appellant to the department on dated 10.3.2016 stating therein that in case of goods transport service, the service tax liability is to be cast upon the person who is liable pay freight. In reply to the aforesaid communication, the Range Officer further wrote a letter dated 16.3.2016 asking for some more information and the required information was supplied by the appellant vide letter dated 31.3.2016 and thereafter no further communication was received by the appellant from the department and a presumption was drawn by the appellant that the department got satisfied by the reply and that the appellant is not required to pay any service tax for the aforesaid service. It is also the submission of the learned counsel that even otherwise also

they are not liable to pay any service tax as according to Notification No.30/2012-ST dated 20.6.2012 read with Rule 2(1)(d) of Service Tax Rules, 1994 where the service provided by a goods transport agency to body corporate, partnership firm and factories covered under the provisions of Factory Act, the total liability of service tax on such service has to be paid by the recipient of the service and not the service provider. Per contra learned Authorized Representative reiterated the findings recorded in the impugned order and prayed for dismissal of the Appeal. According to learned Authorized Representative the proprietary firms are not included in the specified categories in terms of Rule 2(1)(d)(i)(B) *ibid* as mentioned in the notification relied upon by the appellant and in those cases it's GTA i.e. the appellant herein who is liable to pay service tax, therefore the adjudicating authority has rightly confirmed the demand of service tax in such transactions along with interest and penalty.

6. I will firstly deal with the objection of learned counsel regarding the invocation of the extended period of limitation by the department. From the preceding paragraphs it is clear that the fact that the appellant is a goods transporter is within the knowledge of the department since January, 2016, when the department issued a letter dated 29.1.2016 to the appellant on the basis of information received from the Income Tax Department, asking for the information of gross receipts for the F.Y. 2012-13 and the required information was submitted by the appellant to the department on 10.3.2016 and thereafter again on 31.3.2016. Since thereafter no further communication was received by the appellant from the department so the appellant rightly presumed that they are not liable to pay any service tax for the aforesaid service. Although the aforesaid submissions were made before the adjudicating authority also, but there is no discussions about it in the impugned order. It clearly shows that the department had full

knowledge about the activities of the appellant way back in the year 2016 itself therefore in my view the plea of suppression or non-disclosure with intent to evade service tax is not available to the department. It is settled legal position that mere failure to declare does not amount to mis-declaration or willful suppression and therefore extended period cannot be invoked in such a situation. There is no evidence of fraud or suppression of fact. So in my view the period 2013-14 to 2015-16 is beyond the normal period of limitation and since the show cause notice dated 17.10.2018 and part of the addendum to the show cause notice dated. 16.4.2019 was issued to the appellant by invoking the extended period of limitation therefore the demand qua that period is liable to be quashed on this ground alone.

7. Now I will take the period from April, 2016 to June, 2017 as it falls within the normal period. It is not the case of the department that the appellant though has collected the service tax but not paid the same to the government. The demand confirmed in the impugned order pertains to GTA services provided by the appellant to the proprietorship concern because according to the authorities below, since the persons to whom GTA service was provided by the appellant were proprietorship concerns, Reverse Charge Mechanism is not applicable to them and the appellant is liable to pay service tax. The appellant disputed the demand since according to them, such proprietorship concerns are the factories registered under the Factories Act/ Rules and therefore as per section 68(2) of the Act r/w Notification 30/2012-ST dated 20.6.2012, the total service tax was payable by the recipient of the GTA services, who made payment of freight to them. The certificates, issued by the respective State Governments, to the effect that the said proprietary concerns are registered as Factories have also been submitted by the Appellant before the authorities concerned and before me as well. A perusal of the

same will lead to inevitable conclusion that the proprietary concern to whom GTA services were provided by the appellant, were authorized dealers of Piggio Auto and were registered as factories therefore in view of Section 68(2) ibid read with Notification (supra) those they are liable to pay service tax under reverse charge mechanism. Therefore the demand for the period April, 2016 to June, 2017 is also liable to be set aside. Although the appellant has also raised the issue of threshold exemption under notification no.33/2012-ST dated 20.6.2012 but as I have already held that since those proprietary concerned have been registered as factories, they are liable to pay service tax under reverse charge mechanism, therefore I am not deciding the issue of threshold exemption.

8. In view of the discussions made in the preceding paragraphs the Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in the open Court on 6.1.2022)

(AJAY SHARMA)
MEMBER (JUDICIAL)

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