CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55608 of 2023 [SM]

[Arising out of Order-in-Appeal No. DDN-EXCUS/000/APP/86/2023-24 dated 31.07.2023 passed by the Principal Commissioner of Central Goods & Service Tax (Appeals), Dehradun]

Suresh Kumar **...Appellant**
Village – Gaziwali, Shyampur
Haridwar, Uttarakhand – 249408,

VERSUS

Principal Commissioner of C.G.ST.,
Dehradun **...Respondent**
2nd & 3rd Floor, Shree Palace,
Nathanpur, Dehradun,
Uttarakhand – 248001

WITH

Service Tax Appeal No. 55650 of 2023 [SM]

[Arising out of Order-in-Appeal No. DDN-EXCUS/000/APP/78/2023-24 dated 26.07.2023 passed by the Principal Commissioner of Central Goods & Service Tax (Appeals), Dehradun]

Amrish Kumar Jain **...Appellant**
293, Govindpuri,
Haridwar-249401

VERSUS

Principal Commissioner of C.G.ST.,
Dehradun **...Respondent**
2nd & 3rd Floor, Shree Palace,
Nathanpur, Dehradun,
Uttarakhand – 248001

APPEARANCE:
None for the Appellant
Shri Kuldeep Rawat, Authorized Representative for the Respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

DATE OF HEARING: 03.07.2024
DATE OF DECISION: 03.07.2024

FINAL ORDER No. 55997-55998/2024

ASHOK JINDAL

Both the appeals are arising out of common issue and therefore both are disposed of by a common order.

2. The facts in both the appeals are identical and as under:

2.1 On the basis of information received from Income Tax Department through Form 26AS, it was revealed that the appellants have received certain consideration against the service provided by them. In view of these, the proceedings were initiated against the appellants by issuance of the letter dated 25.03.2021 to provide details of their activity, service tax registration and relevant documents which appellants failed to provide. Thereafter, the show cause notice dated 22.04.2021 was issued for the period 2015-16 which was again amended vide Corrigendum dated 04.11.2022. The matter was adjudicated by the adjudicating authority and demand of service tax was confirmed against the appellant along with the interest and penalties under Section 78, 77(1)(a), 77(1)(b), 77(1)(c) and 77(1)(d) were imposed and fine under Section 70 of the Finance Act, 1994 was also imposed for non-filing their ST-3 returns. Both the adjudication orders were challenged by the appellants before learned Commissioner (Appeals), who held that show cause notice has been issued by invoking extended period of limitation beyond five years. Therefore, demand against the appellants are not sustainable but he uphold the penalties imposed on the appellants under Section 77(1)(a), 77(1)(b), 77(1)(c) and 77(1)(d) and late fees under Section 70 of the Finance Act, 1994. Aggrieved from the said orders, appellants are before me.

3. A request has been received from the appellants to decide the appeals on the basis of available records and on merits and sought permission not to appear before the court.

4. Heard learned Authorized Representative and perused the records.

5. On perusal of the records, I find that in both the cases demand is for the period 2015-16 and admittedly show cause notices have been issued beyond five years i.e. on 22.04.2021 which were again amended vide Corrigendum dated 04.11.2022. As show cause notices have been issued beyond the period of five years, therefore, the proceedings against the appellants are not sustainable. In view of that penalty imposed on the appellants under Section 77(1)(a), 77(1)(b), 77(1)(c) and 77(1)(d) and fine imposed under Section 70 of the Finance Act, 1994 are not imposable on the appellants.

6. In view of that the penalties and fine imposed on the appellants are set aside. In result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

[Dictated and pronounced in the open Court]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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