CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 1474 of 2011
(Arising out of **Order-in-Original** No.15/2011-Adjn.(Commnr.) ST dated 23.02.2011
passed by Commissioner of Customs & Central Excise, Hyderabad)

M/s Logos Travels .. **APPELLANT**
D.No.2-56/33/7,
Ayyappa Society,
Madhapur,
Hyderabad,
Telangana – 500 033.

VERSUS

Commissioner of Central Excise .. **RESPONDENT**
And Service Tax
Hyderabad - IV
Posnett Bhawan,
Tilak Road,
Ramkoti,
Hyderabad,
Telangana – 500 001.

APPEARANCE:
Shri A. Likith Reddy, Advocate for the Appellant.
Shri V. Srikanth Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30077/2026

Date of Hearing: 16.09.2025
Date of Decision: 06.02.2026

[ORDER PER: ANGAD PRASAD]

M/s Logos Travels (hereinafter referred to as appellant) has filed this appeal against the impugned order / Order-in-Original No. 15/2011-Adjn.(Commnr.)ST dated 23.02.2011 passed by Commissioner of Customs & Central Excise, Hyderabad.

2. The fact in brief M/s Logos Travels is engaged in providing "Rent-a-Cab Operator Service", a taxable service under the Finance Act, 1994. The appellant obtained Service Tax registration on 29.09.2004 and was filing ST-3 returns, during an audit / investigation, it was observed that the appellant

had failed to fully pay the Service Tax liability for period of dispute 2004-05 to 2008-09. Appellant deposited a substantial sum of Rs. 63,78,452/- towards Service Tax liability before the issuance of Show Cause Notice. Subsequently, a Show Cause Notice, bearing O.R. No.10/2009-Adjn. (Commnr)(S.Tax) was issued, demanding Rs. 2,48,82,269/-, invoking extended period of limitation under the proviso to Section 73(1) on the ground of suppression. The demand was wrongly computed without giving abatement under Notification No. 9/2004-ST.

3. Appellant filed reply and submits that the entire tax liability after correctly allowing the 60% abatement, amounted only to Rs. 1,06,72,191/-. The extended period was not invokable due to lack of mens rea and the bonafides established by the pre-SCN payment. The delay was due to genuine "cash flow problems and recession" pending of the OIO, the appellant made a further payment of Rs. 25,51,575/-, waiting for confirmation of the actual tax amount and soon after the actual tax amount with abatement was adjudicated in the OIO as Rs. 1,12,46,860/-, the appellant has paid the balance amount Rs. 23,16,833/- there by discharging the entire agreed-upon Service Tax liability of Rs. 1,12,46,860/-.

4. Learned Adjudicating Authority by impugned order / Order-in-Original No. 15/2011-Adjn.(Commnr.)ST dated 23.02.2011 confirm the demand of Rs, 1,12,46,860/- (after abatement) and failed to properly appropriate/ acknowledge pre-SCN payments and also imposed penalties under Sections 76, 77 and 78, denying relief under Section 80. Learned Adjudicating Authority also upheld invocation of extended period of limitation.

5. Being aggrieved by the impugned order/ Order-in-Original the appellant has filed this appeal to set aside the penalties and to hold that the tax demand stands fully satisfied.

6. Learned Counsel for the appellant submits that the Learned Commissioner erred in determining the Service Tax demand payable at 1,12,46,860/- when such demand is already paid by the appellant. The Learned Commissioner ought to have given credit for the Service Tax demand of Rs. 63,78,452/- that was paid before issuance of Show Cause Notice, and the amount paid after issuance of Show Cause Notice. The appellant in fact has paid entire demand of Rs. 1,12,46,860/- and there is no Service Tax due. Therefore, the demand is not sustainable.

7. Learned Commissioner erred in imposing penalty under Sections 70, 77 and 78 of the Finance Act. There is no mens rea and appellant not evaded payment of Service Tax willfully.

8. Learned Counsel for the appellant relied on the following decisions:

(i) MSR Constructions Vs Commissioner of Central Excise & Service Tax [2020 SCC Online CESTAT 80].

(ii) Susee Auto Sales & Service (P) Ltd., Theni Main Road Kalavasal, Madurai Vs Commissioner of GST & Central Excise Central Revenue Buildings Bibikulam, Madurai. [2023 SCC Online CESTAT 3828].

9. Learned AR submits that the appellant was very well aware regarding the liability of Service Tax and having collected the same from the service recipients failed to pay the total tax collected and only paid part of the tax intentionally and have also failed to file the Service Tax returns and also reiterated the finding given by the Adjudicating Authority.

10. Learned AR for the Department relied on the following decision:

(i) Commissioner of Central Excise, Tiruchirapalli Vs JOE Transport [2015 (39) S.T.R. 366 (Mad.)]

11. Heard Learned Counsel for the appellant Shri A. Likith Reddy and Learned Representative of the Department Shri V. Srikanth Rao and perused the records with their submissions.

12. We find that the appellant is not contesting the Service Tax payable and the interest thereon. The appellant is contesting only the imposition of penalties under Section 76, 77 & 78 of the Finance Act, 1994. It has been stated that an amount of Rs. 63,78,452/- was deposited prior to the issuance of the Show Cause Notice, Rs. 25,51,575/- deposited during the course of adjudication, and the remaining amount immediately after adjudication. However, the Adjudicating Authority has not considered these facts.

13. Appellant in his support relied on the decision of the CESTAT, Chennai Bench in MSR Constructions, supra, wherein, held that since major portion of the tax due had been paid prior to issuance of the Show Cause Notice and the remaining amount was also paid, the penalty was set aside by extending the benefit under Section 80 of the Finance Act, 1994.

14. The appellant had collected Service Tax from the recipient of the service and had also shown the same as tax liability. However, the amount was not paid to the department. Thus, despite collecting Service Tax, failure to deposit the same cannot be considered a reasonable cause for non-payment under Section 80 of the Finance Act, 1994. In such facts and circumstances, the appellant is not entitled to get benefit under Section 80 of the Finance Act, 1994.

15. Learned Counsel for the appellant also relied on Chennai Bench decision in Susee Auto Sales & Service (P) Ltd., Theni Main Road Kalavasal, Madurai, supra, wherein, the appellant had not collected Service Tax and was granted waiver of penalty by giving the benefit of doubt.

16. In this regard, firstly, it is to be stated that this was a decision of Single Member Bench and is not binding on a Division Bench. Secondly, in that case, the appellant had not collected Service Tax as there was a prevailing doubt as to whether the said activity was liable to Service Tax or not, whereas, no such doubt exist in the present case. Therefore, the appellant cannot derive any benefit from the above decision.

17. Learned Counsel for the appellant has submits that penalties under Section 76 & 78 cannot be imposed simultaneously. Whereas, Learned AR submits that both are separate provision and penalty may be imposed in both sections simultaneously. In this regard, Learned AR has relied upon the decision of Madras High Court, Joe Transport, supra, wherein, held that even penalty under Section 76 of the Finance Act, 1994 has been imposed, penalty under Section 78 of the Finance Act, 1994 is also imposable. Therefore, we however, find that penalty under Section 76 & 78 simultaneously is not imposable as held in Catena of judgments and hence penalty under Section 76 is set aside.

18. Learned Counsel for the appellant submits that there is no willful suppression of facts with intention to evade payment of tax and also no any mensrea against non-payment of Service Tax. Therefore, extended period of limitation is not invokable. Learned Commissioner categorically held that appellant had collected certain amount from their clients; M/s Oracle India (P) Ltd., M/s Kaene India Ltd., M/s C.A. Computers Ltd., Hyderabad, but failed to pay Service Tax on the amounts so received. Learned Commissioner also held that tax liability was computer based on their income tax assessments shows that they never disclosed these details to the Service Tax Department, with intention to evade payment of Service Tax, therefore,

it is clear-cut evasion of payment of Service Tax. Therefore, in these facts and circumstances the Department has rightly invoked period of limitation.

19. In view of the above discussion, we find that no any factual or legal infirmity in the order of the Learned Commissioner except for the penalty under Section 76.

20. Appeal is allowed partly.

(Pronounced in the open court on 06.02.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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