

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.89 of 2012**

(Arising out of Order-in-Original No.10/ST/ADJ/COMMR/DIB/11 dated 02.11.2011 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

**M/s. Oil & Natural Gas Corporation Limited**  
(Sivasagar, Assam.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Dibrugarh**  
**.....Respondent**  
(Milan Nagar, Lane 'F', P.O. C.R. Building, Dibrugarh-786003.)

**APPEARANCE**

Shri Deepto Sen, Advocate for the Appellant (s)  
Shri A.Roy, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)**  
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 75881/2023**

DATE OF HEARING : 17 May 2023  
DATE OF DECISION : 28 June 2023

**Per : K. ANPAZHAKAN :**

M/s Oil and Natural Gas Ltd (ONGC - The Appellant) had entered into a contract with Newsco to provide Mining Services vide contract dated 06.09.2007. As Newsco had an office in Mumbai, the Appellant had a bona fide belief that they are liable to pay service tax, for the services rendered by them to the Appellant. The department issued a Show Cause Notice dated 16.03.2011, demanding service tax of Rs. 1,42,36,213/- along with interest and penalty, for the period April 2008 to 07.05.2009. The Notice was adjudicated and the demand of service tax along with interest and penalty equivalent to service tax was confirmed vide Order-in-Original dated 02.11.2011 passed by the

Commissioner. Aggrieved against the impugned order, the Appellant filed the present appeal. It is a settled principle of law that extended period of limitation not invocable in case the assessee is on a bonafide belief that tax is not payable by them. In this case they paid the service tax, even though the liability is not on them. Hence, they prayed for setting aside the penalties imposed in the impugned order.

2. In their submission, the Appellant stated that there was no service tax liability on them as a receiver of service, since the service provider Newsco had an office in Mumbai. The department approached Newsco to ascertain whether they have paid service tax on this transaction. However, put the issue into rest, they deposited the service tax along with interest and informed the department vide letter dated 11.12.2009. After more than a year the department issued Notice dated 16.03.2011, by invoking the extended period of limitation. In the adjudication, the Commissioner confirmed the service tax payable along with interest. He also imposed penalties under section 77 and 78 of the Finance Act.

3. The Appellant stated that there was no suppression involved in this case. In the impugned order, the Commissioner has not given any finding regarding the grounds available in this case for invoking extended period.

4. In support of their contention, the Appellant relied on the following decisions:

(i) Orissa Bridge & Construction Corporation Ltd Vs CCE, Bhubaneswar, 2011 (264) ELT 14 (SC)

(ii) Gammon India Ltd Vs CCE< Goa, 2002 (146) ELT 173 (Tri - Mum)

(iii) Shree Alloys Industries Vs Lovely Food Industries Vs CCE&ST, Jaipur-II, 2015 (39) STR 869 (Tri - Del)

(iv) Lovely Food Industries Vs CCE, Cochin, 2006 (195) ELT 90 (Tri - Bang)

5. The Ld. A.R. for the department reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that there was no service tax liability on the Appellant in this case as a receiver of service, since the service provider Newsco had an office in Mumbai. The department approached Newsco to ascertain whether they have paid service tax on this transaction. When it came to light that Newsco has not paid service tax, the department issued Show Cause Notice dated 16.03.2011 demanding service tax from the Appellant. Even though there was no liability on the Appellant, they deposited the service tax along with interest, to put the issue at rest and informed the department vide letter dated 11.12.2009. After more than a year the department issued Notice dated 16.03.2011, by invoking the extended period of limitation. In the adjudication, the Commissioner confirmed the service tax payable along with interest. He also imposed penalties under section 77 and 78 of the Finance Act 1994.

8. We observe that the entire issue of service provided by Newsco to the Appellant was within the knowledge of the department. The Appellant was in correspondence with the department and informed the department about the payment of service tax by them vide letter dated 11.12.2009. Thus, we observe that there was no suppression involved in this case. Since the entire service tax along with interest was paid, there was no need to issue the Notice as provided in Section 73(3) of the Finance Act. Thus, we observe that the Notice issued by invoking extended period is bad in law and it cannot be sustained. The adjudicating authority went ahead and adjudicated the Notice and imposed penalties under section 77 and 78 of the Finance Act 1994. As

there was no suppression involved and there was no intention to evade payment of service tax, we hold that penalty under Section 78 of the Finance Act, 1994, not imposable in this case. As there was no violation of provisions of Section 77, no penalty imposable under this section. In view of the above, we observe that it is a fit case to invoke section 80 of the finance Act, 1994, to waive all penalties. This view is supported by the following decisions cited by the Appellant:

9. In the case of Orissa Bridge & Construction Corporation Ltd Vs CCE, Bhubaneshwar, 2011 (264) ELT 14 (SC), it has been held as under:

*"4. The second point on which the show cause notice was contested by the appellant was on the point of limitation. In the impugned order, it is mentioned that appellant's activities were detected by the revenue on 24-8-1987 and show cause notice was issued on 4th December, 1989.*

*5. On the previous date of hearing, we adjourned this case to enable the counsel for the revenue to seek instructions as to why the show cause notice was issued after two years and 4 months approximately of the inspection carried out by the authorities. Counsel appearing for the revenue informs us that file is misplaced and is not traceable.*

*6. Keeping in view the facts and circumstances of the case and without laying any proposition of law, we hold that the department was not justified in invoking the extended period of limitation under Section 11A of the Central Excises and Salt Act, 1944 (for short, 'the Act') and accordingly, finding of the Tribunal on this point is reversed. We hope that the department shall initiate some action against the erring officer/official for issuing show cause notice to the assessee after a gap of approximately two years and four months from the date of inspection at the factory of the assessee."*

10. In the case of Gammon India Ltd Vs CCE< Goa, 2002 (146)ELT 173 (Tri - Mum), it has been held as under:

**"4.** We have examined the submissions made. We find that in the judgment in the case of *J.S.L. Industries Ltd. v. CCE, Ahmedabad - 1999 (109) E.L.T. 316 (T) = 1998 (25) RLT 779* the Tribunal had discussed the effect of delay in issuing the show cause notice on the plea of limitation. The Tribunal took cognizance of the earlier judgments in which it was held that the delay between the knowledge of the department and the issue of show cause notice was fatal to the argument that there was suppression. In the case before the Tribunal, the information was sought in August, 1987 which was supplied by the assesseees within 4 days. The show cause notice however, was issued in September, 1989. In this situation, although, the period of demand was within 5 years from the date of show cause notice, the Tribunal held the plea of limitation would sustain. In doing so, among other citations, the Tribunal relied upon the judgment in the case of *Mopeds India Ltd. [1991 (56) E.L.T. 241 (Tribunal)]* in which the department had knowledge in October, 1975. The show cause notice was issued in January, 1977. The period of delay in the cited case is identical to the period of delay in the facts before us. Accepting the arguments that the fabrication was before the eyes of the general public and also following the ratio in the case of *J.S.L. Industries*, wherein, identical delay was noticed by the Tribunal, we hold that in the present case, the plea of limitation succeeds. Since we are deciding this issue on limitation, the merits are not considered.

**5.** On the ground of limitation, we allow this appeal with consequential relief."

11. In the case of *Shree Alloys Industries Vs CCE&ST, Jaipur-II, 2015 (39) STR 869 (Tri - Del)*, it has been held as under:

**"14.** On limitation the appellant has submitted that the investigation was conducted during the period 15-8-2008 to 20-12-2008 and show cause notice has been issued on 14-9-2010 by invoking extended period of limitation. The said issue has been dealt by the Hon'ble Apex

Court of *Orissa Bridge & Construction Corpn. Ltd.* (Supra) wherein Hon'ble Apex Court has observed as under :

"It is mentioned that appellant activity was detected by the Revenue on 24-8-1987 and show cause notice was issued on 4-12-1989.

Keeping in view the facts and circumstances of the case and without laying any proposition of law, we hold that the department was not justified in invoking the extended period of limitation under Section 11A of the Central Excises and Salt Act, 1944 and accordingly, finding of the Tribunal on this point is reversed. We hope that the department shall initiate some action against the erring officer/official for issuing show cause notice to the assessee after a gap of approximately two years and four months from the date of inspection at the factory of the assessee."

**15.** By observing that the Hon'ble Apex Court has held that department was not justified in invoking extended period of limitation. Following the precedent decision in the case of *Orissa Bridge & Construction Corpn. Ltd.* (Supra) I hold that facts of this case are similar to the facts of the said case and that extended period of limitation is not invocable.

**16.** With these terms appeals are disposed of with consequential relief if any."

12. In the case of *Lovely Food Industries Vs CCE, Cochi, 2006 (195) ELT 90 (Tri – Bang)*, it has been held as under:

"4 *We have carefully considered the submissions and have perused the citations. The Show Cause Notice was issued after a lapse of 3 years. The department gathered all the information on their visit to the factory on 5-11-1999. The records were seized and statements were recorded on that day. The department took its own time to issue the Show Cause Notice on 25-7-2002. Therefore, the appellants are seeking the benefit of time bar. The citations referred to are not*

*directly on the point. In the case of Namtech Systems Ltd., the question was pertaining to use of foreign brand by an Indian company and the dispute was settled by the Larger Bench. In so far as the use of brand name of another person, a Notification No. 01/93-CE dated 28-2-1993, clearly spells out that the benefit will not be extended to those manufacturers who affixes the specified goods with a brand name or a trade name (registered or not) of another person, who is not eligible for the grant of exemption under the Notification. Therefore, the appellants were required to have filed their declarations and disclosed the facts. In the case of Queen Electrical Industries, the appellant was filing declarations regularly and all the facts were known to the department. Therefore, the benefit of time bar was given. It was also held that the disclosure of brand name in the declaration was not required as per law. Therefore, as the details of manufacture done had been declared to the department, the benefit of time bar was given. The Apex Court, in the case of BPL, has clearly held that the extended period is invocable if the appellants have not disclosed the department the manufacture of the goods and the removal from the factory. But the main question that is to be decided in the present case is as to whether the benefit can be given to a person solely on the ground that the department took about three years to issue the Show Cause Notice. In this regard, the Tribunal, in the case of Indian Petrochem. Corpn. Ltd. v. CCE, Vadodara - [2000 \(125\) E.L.T. 1048](#) (Tribunal) held that where there is delayed issue of Show Cause Notice, then the benefit of time bar has to be extended to the appellant. In view of this judgment and in the light of the fact that the department took 3 years time to issue the Show Cause Notice, the appeals are allowed by grant of benefit of time bar, with consequential relief, if any."*

13. Following the above cited decisions, we hold that there was no suppression involved in this case. Accordingly we set aside the penalties imposed on the Appellant under Sections 77 and 78 of the Finance, 1994.

14. In view of the above discussion, we allow the appeal filed by the Appellant.

(Order pronounced in the open court on 28 June 2023.)

Sd/

**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

Sd/

**(K. ANPAZHAKAN)**  
**MEMBER (TECHNICAL)**

sm