CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 89113 of 2013
&
Service Tax Cross Objection No. 91059 of 2014

(Arising out of Order-in-Original No. 05/ST/HAB/13-14 dated 07.06.2013 passed by the Commissioner of Service Tax (Adjudication), Mumbai)

Commissioner of Service Tax-I, Mumbai **.... Appellant**
115, New Central Excise Building, 5th Floor,
M.K. Road, Churchgate,
Mumbai – 400 020

Versus

M/s Zee Entertainment Enterprises Ltd. **.... Respondent**
135, Continental Building,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018

APPEARANCE:

Ms. S. Varalakshmi, Authorized Representative for the Appellant

Shri S.S. Gupta, Chartered Accountant for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86673/2025

Date of Hearing: 14.08.2025
Date of Decision: 14.08.2025

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the respondents, M/s Zee Entertainment Enterprises Ltd., are engaged *inter alia,* in the business of providing 'broadcasting services' to their subscribers/customers. For provision of such taxable services, the respondents got themselves registered with the Service Tax Department. Broadcasting services provided by the respondents to Cable Operators and Multi System Operators (MSO) were exempted from payment of service tax upto the period 16.06.2005. Thus, as per the provisions of Rule 6(3) of the CENVAT Credit Rules, 2004, the utilization of CENVAT Credit was restricted upto 20% of the ultimate tax payable on such output taxable services provided by them. With effect from 16.06.2005, provision of broadcasting services to cable operators/MSO were liable for payment of service tax and the respondents had started paying service tax in respect of the said services provided to the cable operators/MSO. However, the provision of broadcasting service to the subscribers in the State of Jammu and Kashmir was exempted from payment of service tax. Since, for the period post 16.06.2005, the respondents were engaged in providing the taxable services as well as the exempted services, they were under the obligation for utilization of CENVAT Credit upto 20% of the service tax amount payable from the CENVAT account. During the course of scrutiny of the records maintained by the respondents, the Audit Wing of the Department had observed that for the disputed period from 2004-05 to 2006-07, the respondents did not comply with the requirement of Rule 6(3) of Rules of 2004 and accordingly, initiated show-cause proceedings against the respondents, alleging that they had irregularly availed/utilized CENVAT Credit. The show-cause notice (SCN) dated 05.04.2010 was issued by the Department under Section 73(1) of the Finance Act, 1994. The said SCN was issued by invoking the extended period of limitation, alleging that there was suppression of fact in non-payment of service tax by the respondents. The SCN dated 05.04.2010 issued by the Department was adjudicated upon vide Order-in-Original No. 05/ST/HAB/13-14 dated 07.06.2013 by the Commissioner of Service Tax (Adjudication), Mumbai, wherein he has dropped the proposals made in the SCN. The learned adjudicating authority has dropped the proceedings initiated by the Department on the ground that Rule 14 of the Rules of 2004 has not been invoked and there is no element of suppression of facts, fraud, collusion, wilful mis-statement etc., justifying invocation of the extended period of limitation provided under the proviso to Section 73 of the Act of 1994. Revenue has assailed the impugned order on the ground that dropping of the show-cause proceedings by the original authority is not proper and justified inasmuch as the respondents had suppressed the material evidence regarding non-compliance of the requirement of Rule 6(3) of Rules of 2004 and that they did not voluntarily submit any information with regard to irregular utilization of the CENVAT Credit. According to the Department, since the Audit Wing gathered the information during the course of audit of the books of accounts maintained by the respondents, the extended period of limitation has been rightly invoked for the recovery of the proposed demand as per the SCN.

2. Heard both sides and examined the case records.

3. As per the provisions contained in Rule 6(3) of the Rules of 2004, the respondents were required to utilize CENVAT Credit to the extent of 20% of service tax payable on the output services provided by them. However, the Department had alleged that such statutory provisions have not been complied with by the respondents. Thus, according to the Department, there is irregular utilization of CENVAT Credit by the respondents. Insofar as recovery of wrongly taken or utilization of CENVAT Credit is concerned, Rule 14 of the Rules of 2004 mandates that the said irregularly availed or utilized CENVAT Credit can be recovered along with interest and for effecting recovery of such amount, the provisions of Section 73 of the Act of 1994 shall apply *mutatis mutandis*. On reading of the provisions contained in Rule 14 of the Rules of 2004, it transpires that no specific mechanism has been provided therein for recovery of the irregularly availed and utilized CENVAT Credit. Accordingly, for effecting recovery of the irregularly availed or utilized CENVAT credit, the CENVAT statute has borrowed the provision from Section 73 of the Act of 1994 for effecting the recovery of the irregularly availed and utilized CENVAT Credit. Therefore, while issuing the SCN, it was incumbent on the part of the adjudicating authority to invoke the provisions of Rule 14 of Rules of 2004, which admittedly is absent in the present case. The SCN dated 05.04.2010 had invoked only the provisions of Section 73(1) of the Act of 1994, without specifically mentioning or alleging that the irregularly availed/utilized CENVAT Credit can be recovered under Rule 14 of the Rules of 2004. Since the statutory provisions contained in Rule 14 of the Rules of 2004 have not been invoked for issuance of the SCN, in our considered view, the show-cause proceedings dropped by the adjudicating authority cannot be faulted with.

4. With regard to the issue that the extended period of limitation has been invoked for recovery of the irregularly utilized CENVAT Credit, it is an admitted fact on record that the respondents had maintained the CENVAT accounts, mentioning the particulars therein with regard to taking and utilization of the CENVAT Credit of service tax paid on the input services and their utilization for payment of service tax on the output services. It is not the case of the Revenue that the Audit Wing of the Department had gathered the information from any outside sources and proceeded against the respondents for issuance of the SCN by invoking the extended period of limitation. Thus, the allegation of mis-statement, collusion, suppression of

facts etc., cannot be levelled against the respondents, justifying invocation of the extended period of limitation for issuance of the SCN. Insofar as short-levy, non-levy or short-payment of service tax is concerned, issuance of the SCN within the normal period is the rule and invoking the extended period for recovery of the service tax under such circumstances, is an exception, which has to be very cautiously applied. Thus, for invoking the extended period of limitation, onus lies entirely with the Department to prove that there are involvement of ingredients mentioned in the proviso clause of Section 73 of the Act of 1994. We find that analyzing the statutory provisions vis-à-vis books of accounts maintained by the respondents, the learned adjudicating authority has dropped the show-cause proceedings, holding as under: -

> *"29.1 Suppression of facts: In terms of the proviso to Section 73(1) of the FA, it is provided expressly that the extended period can be considered for invocation only in case the allegation made contains any of the following elements, viz. fraud, or collusion, or willful misstatement, or suppression of facts, or contravention of any of the provisions of Chapter V of the FA-94 or of the STR, with intent to evade the payment of ST. The said allegation is premised on the essential ground and reasoning, as recorded in para-11(x) of the SCN in substance, that they (Noticee) appeared to have suppressed the material details (leave alone, 'FACTS' as is expressly mandated in that section) and with intention to utilize CENVAT credits illegally and evade ST. Interestingly and materially, the department has not alleged delay/non-submission or falsification, etc. of the ST-3 returns filed by the Noticee from time to time, as claimed by them on record. Therefore, department has admitted that there is no lapse/error whatsoever committed by the Noticee in this regard - leave alone in any manner which possibly has a nexus and bearing (leave alone, causal) on the aspect and applicability of invocation of the extended period as has been done. Section 77 of the Finance Act, 1994 is not invoked also in this regard. There is not a whisper in this regard. The necessity and importance accruing to the assessee and the department regarding filing of the ST-3 return in terms of section 70 of the FA-94 cannot be missed or over-emphasized, leave alone the issue of penalty for its non-filing. The Noticee have also been regularly filing the half-yearly ST-3 Returns (and revised return where necessary) with the department alongwith copies of the requisite documents, as is evident. They (Noticee) have sufficiently and properly thus complied with the legal requirements required of them. Hence, there can be no suppression of material details (as alleged), as alleged, both in fact and law. Yet ignoring, disregarding and in fact omitting to consider such material and essential factual ground and basis, the allegation of suppression of material -further with intent to evade payment of ST is made by the department The law in this regard is well known and well-settled. The ratios of Noble Institute (Education) P Ltd. vs. CST (2008 (10) STR 374 (Tri.)]; Narayana IIT Academy vs. CCE (2010 (17) STR 108 (Tri), Sayaji Hotels Ltd. vs. CCE [2011 (24) STR 117 (Tri.)]; Idea Cellelar Ltd vs. CCE [2009 (16) STR 742 (Tri.)]; Saurin Investment P. Ltd. vs. CST - 2009(16) 446 (Tri.) and Chandra Shipping and Trading Services vs. CCE&C -2009 (13) STR 655(Tri), amongst others, apply here in favour of the Noticee, on facts. The allegation of suppression of material details with the intent to evade the payment of duty is hence improper and egregious, besides being self-serving and self-fulfilling being made in such manner. On this ground, the allegation fails.*

29.2 Moreover, there is again no proper consideration and discussion also recorded in this regard in the SCN for denying and disregarding the contents of the ST-3 returns. This has serious implications against the SCN. In such binding circumstances, the question of any alleged suppression, leave alone, with any intention to evade payment of ST, cannot arise for the said so-called lapses/acts of commission and omission by them. Furthermore, in CCE vs. Moti Laminates P. Ltd. [1997 (96) ELT 191 (Tri.)], it was held (Headnotes) - "Demand - Limitation Suppression of facts-Details of clearances of the goods to the depots and the discount claimed in the RT 12 returns submitted - Prices at which the assessee sold the goods from its depot, where the goods were taken after payment of duty, not required to be disclosed - Omission to furnish such information not amounts to suppression of facts, Extended period of limitation not applicable - Section 11A of the Central Excise Act, 1944". (Emphasized). This binding ratio applies to the instant case in principle. Here, they (Noticee) genuinely and reasonably believed based on material on record, above, of the acts of commission and/or omission made by them, as evidenced by the said ST-3 returns filed. There is no proper consideration and discussion also recorded in this regard in the SCN for denying and disregarding the same. This has adverse implication against the SCN (alleged suppression).

30. <u>Alleged "intent to evade payment of ST"</u>. This issue is now taken up for discussion. It has been alleged that the said acts of commission and omission by them (Noticee), above, have been done by them "with intent to evade payment of ST" - simpliciter (in law). However, I find that there is absolutely no elaboration nor explanation nor any consideration and discussion whatsoever as to how, in what manner, etc., the so-called "intent to evade payment of ST" has been made by them, as per the SCN-in express and categorical manner, as is essential for its consideration accordingly. Intent is a positive, wilful and deliberate act to evade ST. There is not a whisper in this regard. Nor is it discernible in any manner. There is total absence of basis and reasoning evident here. It is based entirely and solely on presumption and assumption. There is absolutely no material basis and evidence whatsoever brought on record to even prima facie establish, support and sustain such serious and grave charge against them (Noticee). It is left to guess-work and fancy, it would appear. Moreover, the alleged nexus between the so-called "suppression of material details" and their "intent to evade payment of ST" has also not been elaborated nor explained nor duly considered and discussed, as to how, in what manner, etc., the alleged nexus between these two said incidents has been made and arrived at. There is not a whisper in this regard. Nor is it discernible in any manner. There is total absence of basis and reasoning evident here. It is also thus cryptic and based on surmise alone. It fails at the threshold, as it were. In sum, I find that in the SCN, there is not a whisper, with material and evidence in support, as is necessary, as to how and in what manner it can be reasonably considered even prima facie, that there exists so-called "suppression of material details", (leave alone, any "suppression of facts", as is mandated in the sub-section) by them (Noticee) and further that the same is done intentionally, i.e., willfully done – i.e., knowingly and consciously to evade the payment of ST by them, when they knew (believed) otherwise. It is based entirely on subjective observation and conjecture and is arbitrary. No supporting material, such as, precedent, the CBEC's guidelines, case law, wilful and deliberate guilt by the Noticee, etc. is brought on record nor discernible. Conclusion of this allegation is mere ipse dixit in the face of the FACTS and the well-settled legal position in this regard in favour of the Noticee, as discussed. The non-application of mind by the author of the SCN is evident. The strict burden of proof has not been discharged in the SCN. The position in law on this issue is well known and settled. Surprisingly, not a single case-law is referred and relied upon."

5. On careful reading of the above findings recorded in the impugned order, we do not find any infirmity therein, in order to take a contrary stand, as prayed for in the present appeal filed by the Revenue. Therefore, we do not find any merits in the appeal and accordingly, the same is dismissed.

6. Cross-objection filed by the respondents stands disposed of.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha