

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO. 85821 OF 2023

[Arising out of Order-in-Original No: MUM/CGST/MW/COMMR/AK70/2022-23 dated 27th February 2023 passed by the Commissioner of CGST, Mumbai West.]

Mr Ali Akbar Ratansi

Flat No. 31, 3rd Floor, 4C, Versova View, 4 Bungalow,
Andheri West, Mumbai-400058

... Appellant

versus

Commissioner of CGST

Mumbai West

Commissionerate, Mahavir Jain Vidyalaya
CD Burfiwala Road, Juhu Lane, Andheri West,
Mumbai-40058

...Respondent

APPEARANCE:

Shri Sunit Jhunjhunwala , Chartered Accountant for the appellant

Shri SBP Sinha, Superintendent Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 86947/2025

DATE OF HEARING: 23/12/2025
DATE OF DECISION: 23/12/2025

This appeal of Shri Ali Akbar Ratans is limited to the incidental imposition of penalty of ₹ 1,00,000, under section 78A of Finance Act,

1994, while adjudicating notice for recovery of differential tax from M/s Fox Lights & Grips (I) Pvt Ltd of which the appellant was purportedly Director till 5th October 2017. The proceedings were initiated against the assessee, *vide* show cause notice dated 18th September 2020, for alleged failure to pay tax of ₹ 1,93,85,973 for the period from 2012-13 to 2017-18 up to June 2017 on services allegedly rendered.

2. Learned Chartered Accountant appearing for the appellant submitted that the notice was issued long after the termination of Directorship and that the notice itself was invalid in the light of the authentication prescribed in circular of Central Board of Indirect Taxes & Customs (CBIC) for the purpose of issue of notice under section 73 of Finance Act, 1994. He further submitted that the impugned order has not set out any of the grounds on which penalty under section 78A of Finance Act, 1994 could be imposed on the appellant.

3. Learned Authorized Representative pointed out that the show cause notice itself had set out allegations thus,

'17. Mr Allaudin Sirajuddin Syed and Mr. Ali Akbar Ratansi both Directors, have by their set of omission and commission failed in their responsibility of statutory compliance of Service Tax Rules and Law from time to time. They were themselves responsible for payment of taxes in their capacity as Directors of the company, but have failed to do so, hence appears to be act of wilful default in payment of statutory

service tax dues, with an intension to evade payment of Service Tax and thus have rendered themselves liable for penal action as per the provision of Section 78A of the erstwhile Finance Act, 1994.'

and that the impugned order has stated that

'12. From the facts mentioned in forgoing paras, it appears that the assessee have rendered taxable services for the period F.Y. 2012-13 (July-Mar) to 2017-18 (Apr-June) during the erstwhile service tax regime, whereas they failed to pay appropriate service tax and applicable interest thereon as has been mandated as per Section. 75 read with Section 68 of the Finance Act, 1994. There appears a set pattern period over, wherein they have defaulted from time to time to pay their statutory service tax dues, hence it is abundantly clear that the assessee is a habitual offender. They also failed to file ST-3 returns for the period Oct 2015 to April 2017 and pay the applicable Service Tax for the due period. Not only before; but even after default was reported by the department, the assessee defaulted in payment of due taxes, hence, the department initiated action for recovery by initiating action under 87 of the Act. From the above, it is observed that there was willful omission and commission on the part of the assessee, with intention to evade payment of service tax, which tantamounts to suppression of facts. Had. if not been for the investigation carried out by the Service Tax Officers, this fact would have never come to light. Therefore, it appears that the assessee had violated the provisions of erstwhile Finance Act, 1994 and Rules made thereunder with a malafide intention to evade payment of Service Tax and hence proviso to sub-section (1) of Section 73 of the erstwhile Finance Act, 1994 is invocable in the instant case. Mr. Allaudin Sirajuddin Syed and Mr. Ali Akbar Ratansi both Directors, were equally responsible for

compliance of statutory service tax dues, however they have failed to discharge their responsibility, hence they are also liable to personal penalty under the provision of Section 78A of the Finance Act, 1994.'

4. Non-payment or short-payment of service tax by the assessee is not an issue in this appeal. The show cause notice itself has set out only vaguely, and without any supporting evidence of, the manner in which appellant was directly responsible for discharge of correct service tax liability. The conclusion in the impugned order *supra* is also lacking in any material fact for determining that, as Director, the appellant was knowingly concerned with any alleged contravention of provisions of Finance Act, 1994. It is on record that neither assessee nor appellant herein had participated in the proceedings and, consequently, the determination appears to have been entirely drawn from the show cause notice. Section 78A of Finance Act, 1994 prescribes imposition of penalty on, *inter alia*, 'any director'

'Where a company has committed any of the following contraventions, namely :—

(a) evasion of service tax'

The pre-requisites for imposition of penalty under section 78A of Finance Act, 1994 is that the director concerned was responsible to the company for the conduct of business of such company and was knowingly concerned with such contravention. These ingredients have not been either alleged in the show cause notice nor established in the

impugned order.

5 Consequently, there is no justification for the penalty to subsist and, accordingly penalty, under section 78A of Finance Act, 1994 is set aside as far as the appellant is concerned.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*