(2024) 07 CESTAT CK 0012

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Service Tax Appeal No. 50011, 50274 Of 2017

M/s Corporate Housekeeping Services (India) Private Limited		APPELLANT
	Vs	
Commissioner of Service Tax		RESPONDENT

Date of Decision: July 9, 2024

Acts Referred:

- Finance Act, 1994 - Section 64, 65, 65(68), 65(105)(k), 66, 66B, 73(1), 75, 76(1), 77, 78, 93, 93(1)
- United Nations (Privileges and Immunities) Act, 1847 - Section 2, 3
- Finance Act, 2004 - Section 95(3)
- Finance Act, 2007 - Section 140(3)

Hon'ble Judges: Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench: Division Bench

Advocate: Sunil Upadhyay, Gaurav Agarwal, Rajeev Kapoor

Final Decision: Allowed

Judgement

Hemambika R. Priya, J

1. Two appeals, viz., Service Tax Appeal No. 50011 of 2017 and Service Tax Appeal No. 50274 of 2017 have been filed to assail the Order-in-

Original dated 29.09.2016 wherein the Commissioner has confirmed the demand of Rs. 1,30,26,548/- along with interest and penalty. M/s Corporate

Housekeeping Services Private Limited (hereinafter referred to as appellant) has filed Appeal No. 50011 of 2017 against the said confirmation of

demand. The department has filed the Service Tax Appeal No. 50274 of 2017 wherein the department has agitated the issue of non-confirmation of

demand and non-imposition of commensurate penalties.

2. The brief facts are as follows: M/s Corporate Housekeeping Services Private Limited, (appellant in Service Tax Appeal No. 50011 Of 2017) and

(respondent in Service Tax Appeal No. 50274 Of 2017) is engaged in the activity of providing/supplying manpower and Cleaning/Housekeeping

Services to various domestic organizations/companies, United Nations Organizations and International Organizations like WHO, ILO, UNESCO, FAO

and SEZ units etc. The appellant/respondent have been filing Service Tax Returns regularly & discharging service tax liability under the category of

'Manpower Recruitment or Supply Agency's Servicesâ€™. Post audit of the records of the appellant/respondent, the Department noted that the

appellant/respondent were not paying service tax on the income received from services provided to international organisations. Three Show cause

Notices dated 24/10/2012, 01/05/2014, 20.04.2015 and Statement of Demand dt 21.06.2016 raising service tax demand of Rs. 96.36.318/-, Rs.

45,81,112, Rs. 20,23,607/- & Rs. 36,64,452/-(Including E. Cess and H & SE. Cess) u/s 73(1) of the Finance Act, 1994 in respect of the period FY

2007-08 to FY 2011-12, 2012-13, 2013-14 and 2014-15 under Manpower Recruitment or Supply Agency Services' along with interest and penalty. The

Appellant filed the reply to the show cause notice contending that the said demand is in respect of services rendered by the Appellant to United

Nations and are exempted under Notification No. 16/2002-ST dated 02.08.2002 and Notification No. 25/2012-ST dated 20.06.2012. Vide the

impugned Order-In- Original No. DLISVTAX002COM0181617 dated 29.09.2016, the Commissioner confirmed the service tax demand of Rs.

1,30,26,548/- under Manpower Recruitment or Supply Agency's Services and Cleaning/Housekeeping Services provided as per section 65(68) read

with section 65(105)(k) of Chapter V of the Finance Act 1994 for the period 01.04.2011 to 31.03.2015. The Commissioner of Service Tax, Delhi-II

also imposed interest under section 75 and penalty under section 76(1) of Rs. 13.02.655/-. The Commissioner refrained from imposing penalty under

sections 77 & 78 of the Finance Act, 1994. Hence the present two appeals have been filed.

3. Learned Counsel appearing on behalf of the appellant-respondent submitted that the Commissioner did not consider that services rendered to United

Nations Organizations viz., UN-Women, UNDP, UNFPA, UNICEF and UNODC etc are exempt from payment of service tax as these organisations

are representatives of United Nations. The service tax demand against the appellant to the extent of Rs. 1,02,11,729/- in the Financial Year 2011-12 to

2014- 15 is liable to be set-aside as being exempted from service tax, being services rendered to the United Nations as per Notification No. 16/2002-

ST dated 02.08.2002 and Notification No. 25/2012-ST dated 20.06.2012. 3.1 He further submitted that as per United Nations System Chart UN-

Women, UNDP, UNFPA, UNICEF and UNODC etc are representatives of the six organs of the United Nations. In support of his submission, the

learned counsel has relied upon the following decisions:-

â€¢ M/s AC Nielson ORG. Marg Pvt Ltd. vs COMMISSIONER of S.T., Mumbai-II reported in 2018(12) GSTL 322 (Tri-Mumbai)

â€¢ M/s Ballset Entertainment Pvt Ltd vs CST Delhi Final Order No ST/A/58436/2017-CU(DB) dated 19/12/2017

3.2 Learned counsel further contended that the Commissioner did not consider that the appellant has also provided Cleaning and House Keeping

services amounting to Rs. 2,05,81,959/- to Educational Institutes, which are exempt from payment of Service Tax vide clause (9) of Exemption

Notification No. 25/2012-ST dated 20.06.2012 (w.e.f. 01.07.2012). Thus, the tax demand amounting to Rs. 2543930/- (Including E. Cess and H & SE.

Cess) on the Cleaning and House Keeping services provided to Educational Institutes value of Rs. 2,05,81,959/- are exempt be liable to be set-aside.

3.3 The ld counsel also contended that the Commissioner did not consider the fact that the appellant had provided services in the State of Jammu and

Kashmir, which are not covered under Finance Act, 1994 and confirmed the tax demand of Rs. 29,047/- (Including E. Cess and H & SE. Cess) and

as per Section 64 of the Finance Act, 1994 service tax provisions are applicable to whole of India except the State of Jammu and Kashmir.

3.4 He further contended that the Commissioner had not considered that output service provided to SEZ units are covered under exemption

notifications issued by the Central Government and confirmed the tax demand of Rs. 2,41,843/- (Including ECess and H & SE. Cess). During the

period FY 2012-13 and FY 13-14, the Noticee has also provided services amounting to Rs. 19,56,655/- (FY 2012-13 Rs. 12,20,312/-and FY 2013-14

Rs. 7,36,342/- respectively) to some SEZ Units which are exempt from payment of Service Tax vide Notification No. 17/2011-ST dated 01.03.2011

and Notification No. 40/2012-ST dated 20.06.2012 (w.e.f. 01.07.2012). Therefore, in view of the exemption notification, Noticee has not charged

service tax on the gross amount billed to the SEZ Units.

4. Learned Authorized Representative appearing for the Department submitted his arguments issue wise:-

Issue No. 1: Services provided to International Organisation:

The appellant has claimed that services provided by them to UN-Women, UNDP, UNFPA, UNICEF and UNODC etc are representatives of United

Nations. No other evidence has been provided in support of same. On comparing United Nation System Chart with the international organisation

notified by the Central Government for the purpose of Section 3 of The United Nations (Privileges and Immunities) Act, 1847, he contended that many

agencies shown in the United Nation chart (assumed to be representative of United Nations) are not reflecting in the list of International Organisations

notified by the Central Government such as:

(i) World Health Organisation

(ii) International Labor Organisation

(iii) UN Education, Scientific and Cultural Organisation (UNESCO)

(iv) International Labor Organisation etc.

This itself shows that all agencies mentioned in said charts are not covered in the definition of United Nations and is treated as International

Organisations. The ld AR submitted that the adjudicating authority had observed that the appellant had failed to provide any evidence to establish that

their clients fall either under the category of 'United Nations' or â€œInternational Organisation"". The ld. Authorized Representative relied on the

Supreme Court Judgement dated 02.08.2011 in the case of M/s Saraswati Sugar Mills vs. Commissioner of Central Excise, Delhi in Civil

Appeal No. 5295 of 2003.

Issue 2: Services rendered at J&K by the noticee in accordance to the Place of Provision of Service Rules, 2012: The ld AR submitted

that the appellant-respondent did not submit any evidence by way of documents, other than a single letter written by the Vice President,

Administration, HDFC Standard Life Insurance.

Issue 3: Services provided to SEZ: The ld. Authorized Representative submitted that the appellant-respondent neither submitted documents while

replying to show cause notices nor during personal hearing granted to them.

4.1 In view of the foregoing, the ld AR submitted that the demand confirmed against the appellant-respondent was correct.

5. As regards the departmental appeal against the impugned order, the ld AR submitted that the adjudicating authority had erred in holding that the

appellant â€" respondent had disclosed the amount of exempt service provided under the appropriate column as the services provided by them were

not exempted. He also submitted that the reliance placed on the case of M/s Pushpam Pharmaceuticals Company vs Collector of C.Ex., Bombay is

misplaced as in the instant case it was recorded which revealed that they were not discharging the service tax liability on the amount received by them

in lieu of providing services to international organisations. He further contended that in the self-assessment regime, the onus to correctly assess

service tax liability lies on the appellant â€" respondent which they had failed to discharge. In addition, the learned AR submitted that the imposition of

commensurate penalty under section 78 becomes imperative in the first show cause notice dated 24.10.2012 as the demand in question pertains to

period beyond the normal period of limitation and as the ingredients of proviso to section 73(1) for invoking the extended period and the ingredients of

equal penalty under section 78 are identical.

6. The learned counsel for the respondent submitted that for invoking the extended period, there must be collusion, wilful statement, suppression of

facts or contravention of any of the provisions of the chapter of the rules with an intent to evade payment of service tax. He reiterated that the

appellant respondent had filed their service tax returns regularly and had indicated the amount of income received from services provided to the

organisations of the United Nations under services exempt from service tax. He relied on the ratio of several case laws in this regard:

1. CCE, Mangalore vs Shree Krishna Pipe Industries [2004(165) ELT (508)]

2. IOC vs Commissioner, Rajkot[2004(170) ELT 554(Tri. Mum)]

3. Hirakud Industrial Works vs Collector, Bhubaneshwar [2003(159) ELT 381(Tri. Del)]

4. M/s Pushpam Pharmaceuticals Company vs Collector of C.Ex., Bombay [1995(78)ELT 401(SC)]

5. Tamil Nadu Housing Board vs Collector of C.Ex, Madras [1994(74)ELT 9(SC)]

6. New Decent Footwear Ind vs Union of India [2002 (150) ELT 71(Del)]

7. Heard both the parties and perused the case records. In order to appreciate the arguments of the LD Counsel and the ld AR, we need to examine

the relevant notifications, which are reproduced hereinafter for ease of reference.

â€œNotification no. 16/2002 -ST dated 02.08.2002

Service Tax â€" Services provided to United Nations or International Organisation exempted

In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), and in supersession of the notification of the

Government of India, in the Ministry of Finance, Department of Revenue vide GSR 205(E), 24th April, 1998, the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby exempts all the taxable services specified in section 65 of the said Act

provided by any person, to the United Nations or an International Organisation, from the whole of the service tax leviable under section 66

of the said Act.

EXPLANATION:- For the purposes of this notification, â€œInternational Organisationâ€ means an international organisation declared by

the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the

provisions of the Schedule to the said Act apply. [Notification No. 16/2002-S.T., dated 2-8-2002]â€

7.1 In the instant case, we find that the appellant-respondent has provided services to UNDP, UNICEF, UN Women, UN AIDS, UNODC, &

UNOPS. The question before us is whether the said organisations are covered by the aforesaid notification. For the period prior to 01.07.2012, the

applicable notification was Notification no. 16/2002 which exempted United Nations or International Organisation or an International Organisation,

which was declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947. It is generally

understood that United Nations is part of the UN system, which in addition to itself comprises many specialised agencies, funds, programmes, each

having their own area of work, leadership and budget. We note that the six organs of the United Nation are being represented by the various Funds

and Programmes/Departments and Offices/Subsidiaries/Functional and Regional Commissions and Other Entities etc. These representatives also have

their offices at different locations in India. Therefore, Indian offices of these representatives of United Nations are basically part of United Nations,

which are provided various privileges and immunities under Indian Laws. It is seen that the Central Government vide the aforesaid notification granted

exemption from payment service tax on all the taxable services to United Nations. There is no connection between exemption provided to United

Nations and International Organizations as both are independent from each other. Further, the reference to â€˜The United Nations (Privileges and

Immunities) Act, 1947â€™ in the definition of â€˜Specified International Organisationsâ€™ is for limited purpose and has nothing to do with

exemption provided to United Nations. In this context, we take note of the decision in M/s Ballset Entertainment Pvt Ltd., vs Commissioner of Service

Tax, Delhi wherein the Tribunal vide FINAL ORDER NO. 58436/2017 dated 19.12.17 held as follows:

â€œ5. On the second issue regarding services provided for use by the international organization UNICEF, we note the lower authorities

denied the exemption under Notification 16/2002-ST on the ground that the services were provided by the appellant to M/s Lintas India (P)

Ltd. and not to UNICEF. Notification 16/2002-ST exempts all taxable services provided by any person to the United Nations or an

international organization as declared by the Government. UNICEF is covered by the exemption notification. We have perused various bills

raised by the appellant to receive the consideration for such services. Though the bills were raised in the name of M/s Lintas India (P) Ltd.,

the nature of service is clearly mentioned as charges towards branding cost of three UNICEF Van, UNICEF Girl Star activities, cost of

UNICEF Float Operational for 30 days, branding of Van for UNICEF. A perusal of these bills make it clear that the services are for

UNICEF though the bill is raised through M/s Lintas India (P) Ltd. We find in such situation, denial of exemption under Notification

16/2002-ST will not be sustainable. Accordingly, the claim of the appellant is accepted for such exemption.

7.2 We now take up the issue of exemption under the Notification no. 25/2012-ST dated 20.06.2012, which is reproduced hereinafter for ease of

reference:

â€œNotification no. 25/2012 -ST dated 20.06.2012

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the

said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax

leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;

â€¦

As per the said notification as well, we observe that it granted similar exemption from payment service tax on all the taxable services to United

Nations or a specified International Organization. As already noted supra, the six organs of the United Nations are represented by the various Funds

and Programmes/Departments and Offices /Subsidiaries/ Functional and Regional Commissions and Other Entities etc, who have offices in India,

making these essentially part of United Nations. These offices are provided various privileges and immunities under Indian Laws. It is seen that the

Central Government vide the aforesaid notification granted exemption from payment service tax on all the taxable services to United Nations or a

specified International Organization. As regards the â€˜specified International Organizationâ€™ declared by the Central Government in pursuance of

section 3 of the United Nations (Privileges and immunities) Act, 1947 (46 of 1947), we have already held that this clause is different from United

Nations. Therefore, section 3 of the United Nations (Privileges and Immunities) Act, 1947 only talks about the other International Organisation which

are separately notified by the Central Government. Further, the section 2 of the United Nations (Privileges and Immunities) Act, 1947 states:-

â€œ2. Conferment on United Nations and its representatives and officers of certain privileges and immunities.-

(1) Notwithstanding anything to the contrary contained in any other law, the provisions set out in the Schedule to this Act of the Convention on the

Privileges and Immunities, adopted by the General Assembly of the United Nations on the 13th day of February, 1946, shall have the force of law in

India.

2) The Central Government may, from time to time, by notification in the Official Gazette, amend the Schedule in conformity with any amendments,

duly made and adopted, of the provisions of the said Convention set out therein.â€

7.3 Therefore, section 2 of the United Nations (Privileges and Immunities) Act, 1947 provides privileges and immunities to the United Nations and its

representatives and officers adopted by the General Assembly of the United Nations on the 13th day of February, 1946, wherein India is also member.

There is no connection between exemption provided to United Nations and International Organizations as both are independent from each other.

Further, the reference to â€˜The United Nations (Privileges and Immunities) Act, 1947â€™ in the definition of â€˜Specified International

Organisationsâ€™ is for limited purpose and has nothing to do with exemption provided to United Nations. We hold that to avail exemption under the

Notification No. 25/2012-ST dated 20.06.2012, one has to be either United Nations or a notified International Organization. We note that the Mega

Exemption Notification No. 25/2012-ST provides exemption to United Nations and there is no condition in this notification that any

organizations/agency attached or affiliated to the United Nations also requires to be notified by Central Govt. under Section 3 of the United Nations

(Privileges and Immunities) Act, 1947. Hence, we hold that the exemption to United Nations is general in nature and services provided to UNDP,

UNICEF, UN Women, UN AIDS, UNODC, & UNOPS is available on the basis of mega exemption Notification No. 25/2012-ST dated 20.06.2012

itself. The demand in this regard is accordingly is liable to be set aside.

8. We now take up the issue of the exemption availed by the appellant on services provided to HDFC Standard Life Insurance, based in the State of

Jammu & Kashmir. We note that though the appellant has claimed the exemption, but no documentary evidence was provided by them before the

adjudicating authority to corroborate their submissions. We note that it is a fact that the levy of service tax extended to the whole of India except the

State of Jammu & Kashmir. However, this would be a question of fact to establish that the services were indeed provided in the non-taxable territory.

Consequently, it would be appropriate that this issue be remanded to the adjudicating authority, giving opportunity to the appellant-respondent to submit

corroborative evidence before the adjudicating authority in order to claim the exemption.

9. We now address the issue relating to provision of service of units in SEZ under Notification no. 40/2012-ST dated 20.06.2012. The said notification

reads as follows:

â€œâ€¦â€¦..on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax leviable under

section 66B of the said Act, received by a unit located in a Special Economic Zone(hereinafter referred to as SEZ) developer of SEZ and used for the

authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions namely:-

(a) exemption shall be provided by way of refund of the service tax paid on the specified services received by a unit located in a SEZ or the developer

of SEZ and used for the authorised operations:

provided that where the specified services received in SEZ and used for authorised operations are wholly consumed within the SEZ, liable to pay

service tax has the option not to pay the service tax ab initio instead of the SEZ unit the developer claiming exemption by way of refund in terms of

this notification.â€

9.1 It has been observed by the adjudicating authority that the appellant failed to furnish any documents required to avail exemption. In this regard, we

note that the detailed procedure under this notification was prescribed under Notification no. 12/2013 ST dated 01.07.2013, which is reproduced

hereinafter.

Notification No. 12/2013-Service Tax

â€œG.S.R 448(E).â€"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred

to as the said Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance

Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.

40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number

G.S.R. 482 (E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on

being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the

said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to

as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess

leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and

used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person

liable to pay service tax has the option not to pay the service tax ab initio, subject to the co3. This exemption shall be given effect to in the following

manner:

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised

operations (referred to as the â€˜specified servicesâ€™ elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption

from service tax.

(II) The ab-initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the

authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the

list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central

Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the

said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of

service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-

3, furnishing the details of specified services received by it without payment of service tax;

â€¦

9.2 From the above, it is apparent that to avail the ab initio exemption, certain procedure was laid down, wherein the SEZ unit or Developer had to

give a copy of the authorisation to the service provider for claiming the exemption. Therefore, as the adjudicating authority has held that no such

evidence was submitted but as per assessee document are available and for this issue matter be remanded to the adjudicating authority with the

directions to decide this particular issue afresh after giving opportunity to the appellant-respondent to submit corroborative evidence before the

adjudicating authority, in order to claim the exemption.

10. It has also been submitted before us that the appellant-respondent had rendered housekeeping services to three educational institutions viz., IIT

Patna, AIIMS Patna & The Heritage School, Gurugram during the Financial Year 2014-15. We observe that mega exemption 25/2012-ST dated

20.6.2012 provided the following exemption:

9. Service provided,-

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by such institution:]

[Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing

services by way of pre-school education and education up to higher secondary school or equivalent;]

â€¦â€

By virtue of the said exemption, we hold that the services provided to the three educational institutions by the appellant-respondent during 2014-15 is

exempted under Mega exemption itself. Accordingly, the demand in this aspect is set aside.

11. We now take up the issue of dropping of demand for the extended period, along with penalty under Sections 77 & 78 of the Finance Act, 1994.

We note that in the impugned order, the extended period has been dropped as the adjudicating authority has observed the following:

â€œâ€¦ In the case, on going through the written submissions I find that the noticee has been regularly filing ST-3 return form, disclosing the amount of

exempted service provided under the column. Further, there is no proof of malafide provided. I rely upon the case of M/s Pushpam Pharmaceuticals

Company vs Collector of C.Ex, Bombay [1995(78) ELT 401(SC)]â€¦â€¦â€¦â€¦.â€

11.1 It was submitted by the ld AR that the non-payment of service tax came to light during the audit of the appellant â€" respondent. The appellant

respondent by filing their ST-3 returns had mentioned the amount received by them in the column meant for exempted services which was not as per

the law as the services provided by them were taxable. Self-assessment regime placed the onus to correctly assess their service tax liability on the

appellant respondent which was not fulfilled. Therefore, the penalty under section 78 was imperative. Similarly, as the appellant respondent had

misdeclared the amount of taxable services, hence penalty under section 77 was leviable. On going through the show-cause notice, we find that

except for stating that the show-cause notice has been issued only after conduct of audit and that the appellants have suppressed the material facts, no

evidence has been put forth to show that there has been a positive act of suppression on the part of the appellant-respondent to evade payment of

duty. We find that this Tribunal has been consistent in holding that extended period cannot be invoked unless a positive act on the part of the appellant

is evidenced showing the intent to evade payment of duty. We find that Principal Bench of the Tribunal in the case of M/s G.D. Goenka Pvt. Ltd

(2023-TIOL-782-CESTAT.DEL) held as follows:

â€œ15. Another reason given in the SCN for invoking extended period of limitation was that the appellant had deposited the disputed

amount of service tax during audit but later disputed it which shows the appellantâ€™s intent to wilfully and deliberately suppress the facts.

This reasoning of the Revenue cannot be accepted because there is nothing in the law which requires the assessee to accept the views of the

audit or of the Revenue. There is nothing in the law by which an inference of intent to evade can be drawn if the assessee does not agree

with the audit. It also does not matter if the assessee deposited the disputed amount as service tax during audit and later disputed it. Often,

during audit or investigation, the assessee deposits some or all of the disputed amounts and later, on consideration or after seeking legal

opinion, disputes the liability and seeks a notice or an adjudication order. This does not prove any intent to evade or deliberate or wilful

suppression of facts.

16. Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-

assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it

amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this

argument because every assessee operates under self-assessment and is required to selfassess and pay service tax and file returns. If some

tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered

otiose if alleged incorrect self-assessment itself is held to establish wilful suppression with an intent to evade. To invoke extended period of

limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is

operating under self-assessment.

17. The argument that the appellant had not disclosed in its returns that it was availing and using ineligible CENVAT credit also deserves to

be rejected. The appellant cannot be faulted for not disclosing anything which it is not required to disclose. Form ST-3 in which the

appellant is required to file the returns does not require details of the invoices or inputs or input services on which it availed CENVAT credit

and the appellant is not required to and hence did not provide the details of the CENVAT Credit taken. It also needs to be pointed out that

the Returns are filed online and therefore, it is also not possible to provide any details which are not part of the returns. If the format of ST-

3 Returns is deficient in design and does not seek the details which the assessing officers may require to scrutinise them, the appellant

cannot be faulted because as an assessee, the appellant neither makes the Rules nor designs the format of the Returns. So long as the

assessee files the returns in the formats honestly as per its self-assessment, its obligation is discharged.

18. Another ground for invoking extended period of limitation is that the appellant had not sought any clarification from the department.

We find that there is neither any provision in the law nor any obligation on the assessee to seek any clarification. It was held by the High

Court of Delhi in paragraph 32 of Mahanagar Telephone Nigam Ltd. vs. Union of India & Ors.6 as follows:

â€œ32. As noted above, the impugned show cause notice discloses that the respondents had faulted MTNL for not approaching the service

tax authorities for clarification. The respondents have surmised that this would have been the normal course for any person acting with

common prudence. However, it is apparent from the statements of various employees of MTNL that MTNL did not believe that the amount of

compensation was chargeable to service tax and therefore, there was no requirement for seeking clarifications. Further, there is no

provision in the Act which contemplates any procedure for seeking clarification from jurisdictional service tax authority. Clearly, the

reasoning that MTNL ought to have approached the service tax authority for clarification is fallacious.â€

11.2 In view of the above, we uphold the impugned order in respect of dropping of penalties under sections 77 & 78 of the Finance Act, 1994.

12. In view of the above, we dismiss the Service Tax Appeal ST/50274/17 filed by the Revenue department. As regards Service Tax Appeal

ST/50011/17 filed by the appellant -respondent, we set aside the service tax demand in respect of services provided to UN agencies and educational

institutions. As regards the demand in respect of services provided in the State of Jammu & Kashmir and units in SEZ, the same is allowed by way of

remand with direction to adjudicating authority below for providing an opportunity to the appellant-respondent to submit all documentary evidence to

substantiate their claim to the exemption. The interest and penalties will be subject to recalculation, based on the demand confirmed, if any. The appeal

filed by the appellant is thus partly allowed vis-a-vis two issues as stated above and is allowed vis-a-vis remaining two issues as stated above is

allowed, by way of remand.

(Order pronounced in the open Court on 09.07.2024)