M/s. Wellworth Project Developers Private Limited Vs Commissioner of CGST

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 10, 2025

Acts Referred: Finance Act, 1994 â€" Section 66B, 65B(44), 65(12), 67, 67(1), 70, 73(1), 76, 78
Central Goods and Service Tax Act, 2017 â€" Section 174(2)
Central Excise Act, 1944 â€" Section 11A, 11A(4)
Service Tax Rules, 1994 â€" Rule 6(1), 7
Cenvat Credit Rules, 2002 â€" Rule 12

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Shaubhik Gupta, Jaya Kumari,

Final Decision: Allowed

Judgement

Nature of service,Differential amount of short payment,,,

Legal Services,16936,,,

Corporate Gusrantee,5131512,,,

Advances From Customers [Excluding Tax Already Paid

On Commercial Construction & Work Contract]

(20551178-1601597)",18948098,,,

Total,"24,096,546",,,

Nature of service,Period,"Taxable value

(in Rs.)","Rate of Service

Tax","Total Service

Tax payable (in

Rs.)

L e g a l Service-

Receiver",2013-14,"88,484",12.36%,"10,937

,2014-15,"45,506",12.36%,"5,625

,2015-16,"66,410",14.50%,"9,629

,2016-17,"20,700",15.00%,"3,105

,2017-18,0,15.00%,0

Total,,"2,21,100",,"29,296

Advances received

from customers",2013-14,"16,54,65,147",12.36%,"2,04,51,495

,2014-15,,12.36%,0

,2015-16,"6,87,470",14.50%,"99,683

,2016-17,"20,700",15.00%,0

,2017-18,0,15.00%,0

Total,,"16,61,52,617",,"2,05,51,178

Corporate Guarantee,2013-14,"1,60,31,648",12.36%,"19,81,512

,2014-15,,12.36%,0

,2015-16,,14.50%,0

,2016-17,,15.00%,0

,2017-18,"2,10,00,000",15.00%,"31,50,000

Total,,"3,70,31,648",,"51,31,512

Grand Total,,"20,34,05,365",,"2,57,11,986

Period,"Due date of

filing return","Date up to which

show cause could be

served invoking

extended period of

limitation of five

years under proviso

to section 73(1) of

the Act","Date of issue of

the show cause

notice",Remarks

Apr 13 to Sep

13",25-Oct-2013,24-Apr-2018,11-Oct-2019,Time-Barred

Oct 13 to Mar

14",25-Apr-2014,24-Apr-2019,11-Oct-2019,Time-Barred

Ã¢â‚¬Å“suppression of factsÃ¢â‚¬ can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.,,,,

When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not",,,,

render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act,,,,

from the side of the assessee to find willful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate",,,,

intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central",,,,

Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act. We are, therefore, of the firm",,,,

opinion that where facts were known to both the parties, as in the instant case, it was 7 (2005) 7 SCC 749 11 E/52953/2018 not open to",,,,

CEGAT to come to a conclusion that the appellant was guilty of Ã¢â‚¬Å“suppression of facts.Ã¢â‚¬â€‹,,,,

(emphasis supplied),,,,

26. In Easland Combines, Coimbatore vs. Collector of Central Excise, Coimbatore, 22. (2003) 3 SCC 410 the Supreme Court observed that for",,,,

invoking the extended period of limitation, duty should not have been paid because of fraud, collusion, wilful statement, suppression of fact or",,,,

contravention of any provision. These ingredients postulate a positive act and, therefore, mere failure to pay duty which is not due to fraud, collusion or",,,,

wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation.,,,,

27. The aforesaid decisions of the Supreme Court were relied upon by the Supreme Court in Uniworth Textiles Ltd. vs. Commissioner of Central,,,,

Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.) and the relevant portion of the judgment is reproduced below:",,,,

Ã¢â‚¬Å“12. We have heard both sides, Mr. R.P. Batt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta,",,,,

learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. The conclusion that,,,,

mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that",,,,

were to be true, we fail to understand which form of nonpayment would amount to ordinary default? Construing mere non-payment as any",,,,

of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our",,,,

opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful",,,,

misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to",,,,

construe the acts of the appellant as fit for the applicability of the proviso.Ã¢â‚¬â€œ,,,,

(emphasis supplied),,,,

28. The Supreme Court in Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh, 2007 (216) E.L.T. 177 (S.C.) also",,,,

observed in connection with section 11A(4) of the Excise Act, that suppression means failure to disclose full information with intention to evade",,,,

payment of duty and the observations are as follows:-,,,,

Ã¢â‚¬Å“10. The expression Ã¢â‚¬Å“suppressionÃ¢â‚¬ has been used in the proviso to Section 11A of the Act accompanied by very strong words as,,,,

Ã¢â‚¬Å“fraudâ€Ÿ or Ã¢â‚¬Å“collusionÃ¢â‚¬ and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of",,,,

facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade,,,,

payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it",,,,

suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression,,,,

of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with,,,,

knowledge that the statement was not correct.Ã¢â‚¬â€œ,,,,

(emphasis supplied),,,,

29. It is, therefore, clear that the suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct",,,,

information was not disclosed deliberately to escape payment of duty.,,,,

30. In M/s. Raydean Industries vs. Commissioner CGST, Jaipur, Excise Appeal No. 52480 of 2019 decided on 19.12.2022, the Tribunal in connection",,,,

with the extended period of limitation, observed that even in the case of self assessment, the department can always call upon an assessee and seek",,,,

information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted,,,,

that departmental instructions issued to officers also emphasise that it is the duty of the officers to scrutinize the returns. The relevant portion of the,,,,

decision is reproduced below:,,,,

Ã¢â‚¬Å“24. It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it,,,,

had cleared the final products by availing the exemption under the notification dated 17.03.2012. The applicant had furnished the returns,,,,

on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information. It",,,,

is under sub-rule (1) of rule 6 of the Central Excise Rules, 20028 that the assessee is expected to self assess the duty and sub-rule (3) of rule",,,,

12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under",,,,

sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee.",,,,

Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for,,,,

verification as and when required by such officer. Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty",,,,

assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not",,,,

possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed,,,,

a proper assessment return under rule 6 of the Rules.,,,,

25. Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns. The instructions issued by the,,,,

Central Board of Excise & Customs on December 24, 2008 deal with Ã¢â‚¬Å“duties, functions and responsibilities of Range Officers and Sector",,,,

OfficersÃ¢â‚¬â€‹. It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:",,,,

xxxxxxxxx,,,,

26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to",,,,

SCRUTINY OF ASSESSMENT.,,,,

xxxxxxxxxx,,,,

27. It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment,,,,

and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require",,,,

officers at various levels to do so.Ã¢â‚¬â€‹,,,,

(emphasis supplied),,,,

31. In Commissioner of C. Ex. & Customs vs. Reliance Industries Ltd., 2023 (385) E.L.T. 481 (S.C.), the Supreme Court held that if an assessee",,,,

bonafide believes that it was correctly discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would not render",,,,

such a belief of the assessee to be malafide. If a dispute relates to interpretation of legal provisions, it would be totally unjustified to invoke the",,,,

extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it the responsibility of the assessee to determine",,,,

the liability correctly and this determination is required to be made on the basis of his own judgment and in a bonafide manner. The relevant portion of,,,,

the judgment is reproduced below:,,,,

Ã¢â‚¬Å“23. We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it,,,,

was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does,,,,

not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division,,,,

Bench of Tribunal. We note that the issue of valuation involved in this particular matter is indeed one were two plausible views could co-,,,,

exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation",,,,

by considering the assesseeÃ¢â‚¬â„¢s view to be lacking bona fides. In any scheme of self-assessment it becomes the responsibility of the,,,,

assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona,,,,

fide manner.,,,,

24. The extent of disclosure that an assessee makes is also linked to his belief as to the requirements of law. xxxxxxxxxxx. On the question of,,,,

disclosure of facts, as we have already noticed above the assessee had disclosed to the department its pricing policy by giving separate",,,,

letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed earlier there",,,,

was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for,,,,

exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on",,,,

exports. There was therefore nothing wrong with the assesseeÃ¢â‚¬â„¢s action of including the value of deemed exports within the value of,,,,

domestic clearances.Ã¢â‚¬â€œ,,,,

(emphasis supplied),,,,

32. In the present case, as noticed above, the show cause notice merely alleges that as the appellant did not disclose proper value of taxable services",,,,

in the ST-3 returns, payment of service tax amounting to Rs. 2,40,96,546/- escaped assessment resulting in contravention of various provision of the",,,,

Finance Act and the Rules with intention to evade payment of service tax. Mere suppression of facts is not enough to invoke the extended period of,,,,

limitation contemplated under the proviso to section 73(1) of the Finance Act. The suppression has to be with an intent to evade payment of service,,,,

tax and for this purpose the show cause notice must specifically allege why the asseessee has suppressed facts with intent to evade payment of,,,,

service tax. The Commissioner merely observed that show cause notice can be issued within five years from the relevant date if assessment was due,,,,

to omission of failure on the part of an assessment to disclose wholly and truly all material facts required for verification of the self-assessment. The,,,,

Commissioner completely mis-read the proviso to section 73(1) of the Finance Act. Though the normal period for issue of a show cause notice at the,,,,

relevant time was thirty months, the extended period of limitation upto five years could have been invoked only if there was suppression of facts with a",,,,

clear intention to evade payment of service tax. Mere suppression of facts would not result in invocation of the extended period of limitation.,,,,

33. Even under the self-assessment scheme, the Tribunal has repeatedly held that the proper officer can always seek information from the asseessee",,,,

and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the asseessee. The department cannot invoke the extended,,,,

period of limitation merely because the returns were self-assessed. The Commissioner fell in error in holding that the extended period of limitation can,,,,

be invoked if facts come to the notice of the department during investigation since the proper officer could have ascertained the facts. The,,,,

Commissioner also fell in error in holding that Ã¢â‚¬Å“suppression of facts clearly leads to the conclusion that the Noticee had intention to evade taxÃ¢â‚¬.,,,,

This finding is clearly contrary to the decisions to the Supreme Court and the High Courts referred to above.,,,,

34. The extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, therefore, could not have been invoked in the",,,,

facts and circumstances of the case.,,,,

35. As noticed above, the only demand of service tax falling within the normal period of limitation is the service tax demand on legal services",,,,

amounting to Rs. 3,105/- for the period 2016-17 and an amount of Rs. 31,50,000/- towards corporate guarantees for the financial year 2017-18.",,,,

36. In so far as the service tax demand on corporate guarantees is concerned, reliance can be placed on the decision of the Supreme Court in",,,,

Edelweiss Financial Services. The Supreme Court held that service tax would not be leviable as there is no flow of consideration. The relevant portion,,,,

of the decision of Supreme Court is reproduced below:,,,,

Ã¢â‚¬Å“4. Responding to the above, Mr. Bharat Rai Chandani, learned counsel for the assessee on caveat would read Section 65 (12) of the",,,,

Finance Act, 1994 to point out that issuance of corporate guarantee to a group company without consideration would not fall within banking",,,,

and other financial services and is therefore not taxable service. He would also read Section 65B (44) of the Finance Act 1994 to point out,,,,

that the definition of service would indicate that it relates to only such service which is rendered for valuable consideration.,,,,

5. The counsel would next advert to paragraph 3.1.12 of the Commissioner's order where the following was recorded:-,,,,

Ã, Ã¢â‚¬Å“further, the consideration can be of two types viz., monetary consideration and non monetary consideration. In the present case, the",,,,

Assessee has argued that they have not received any consideration. In such case it's for the department to prove that the Assessee's claim is,,,,

wrong. It is observed that nowhere in the Show Cause Notice, attempt has been made to prove that the Assessee received either monetary or",,,,

non-monetary consideration in any form. It is not alleged or proved in the Show Cause Notice as to how the Assessee got any benefit from,,,,

their subsidiaries in monetary or non-monetary terms for the Corporate Guarantees issued. Missing this vital point, valuation of the",,,,

consideration using provisions of Section 67(1) of the Finance Act, 1994 become a futile exercise.""",,,,

6. Mr. Rai Chandani then read paragraphs 8 and 9 of the judgment of the Tribunal, which are extracted below:-",,,,

Ã¢â‚¬Å“8. The criticality of 'consideration' for determination of service, as defined in section 65B(44) of Finance Act, 1994, for the disputed",,,,

period after introduction of 'negative listÃ¢â‚¬â„¢ regime of taxation has been rightly construed by the adjudicating authority. Any activity,,,,

must, for the purpose of taxability under Finance Act, 1994, not only, in relation to another, reveal a 'provider', but also the flow of",,,,

'consideration for rendering of the service. In the absence of any of these two elements, taxability under Section 66B of Finance Act, 1994",,,,

will not arise. It is clear that there is no consideration insofar as 'corporate guarantee' issued by respondent on behalf of their subsidiary,,,,

companies is concerned.,,,,

9. The reliance placed by Learned Authorised Representative on the 'non-monetary benefits' which may, if at all, be of relevance for",,,,

determination of assessable value under section 67 of Finance Act, 1994 does not extend to ascertainment of 'service' as defined in section",,,,

65B(44) of Finance Act, 1994. 'Consideration' is the recompense for the 'contractual' undertaking that authorizes levy while 'assessable",,,,

value' is a determination for computing the measure of the levy and the latter must follow the former.Ã¢â‚¬â€‹,,,,

7. The above would suggest that this was a case where the assessee had not received any consideration while providing corporate guarantee,,,,

to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate,,,,

guarantee to group companies without consideration would be a taxable service. In these circumstances, in view of such conclusive finding",,,,

of both forums, we see no reason to admit this case basing upon the pending Civil Appeal No. 428, @ Diary No.42703/2019, particularly",,,,

when it has not been demonstrated that the factual matrix of the pending case is identical to the present one.Ã¢â‚¬â€œ,,,,

(emphasis supplied),,,,

37. In view of the aforesaid decision of the Supreme Court rendered in Edelweiss Financial Services, the confirmation of demand of service tax under",,,,

corporate guarantees for the Financial Year 2017-18 cannot be sustained. The confirmation of demand of corporate guaranties for the Financial Year,,,,

2013-14 has been found to be beyond five years and, therefore, barred by limitation.",,,,

38. In this view of the matter, the only demand that could have been confirmed for the normal period for 2013-14 is Rs. 3,105/- for legal services.",,,,

Learned counsel for the appellant has not been able to point out any error in the order of the Commissioner confirming this demand.,,,,

39. Thus, for the reasons stated above, the order dated 08.12.2023 passed by the Commissioner is sustained only to the extent that it upholds the",,,,

confirmation of demand towards service tax of Rs. 3,105/- with penalty and interest under the legal services head for the period 2016-17. The rest of",,,,

the demand that has been confirmed with penalty and interest is set aside. The appeal is, accordingly, allowed to this extent.",,,,

(Order pronounced on 10.01.2025),,,,